

S I R E L I J A H I M P E Y I N I N D I A
1 7 7 4 - 1 7 8 3

Thesis submitted for the
Degree of Doctor of Philosophy
in the University of London

by

B.N. PANDEY

School of Oriental and African Studies,
June, 1958.



ProQuest Number: 11015668

All rights reserved

INFORMATION TO ALL USERS

The quality of this reproduction is dependent upon the quality of the copy submitted.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if material had to be removed, a note will indicate the deletion.



ProQuest 11015668

Published by ProQuest LLC (2018). Copyright of the Dissertation is held by the Author.

All rights reserved.

This work is protected against unauthorized copying under Title 17, United States Code
Microform Edition © ProQuest LLC.

ProQuest LLC.
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106 – 1346

ABSTRACT

This is a study of the life and character of Sir Elijah Impey as the first Chief justice of the first Supreme Court of India.

He arrived in India with a commission to administer justice according to English law and to check the Company's servants in their oppressions of the Indians. In order to administer justice according to English legal principles it was necessary not only to establish the Supreme Court as an independent organ of King's justice but also to treat the English and Indians alike in the eyes of the law. To check oppression and corruption it was further necessary to bring under the jurisdiction of the Court the revenue and judicial officers of the Company.

The late 18th century political condition of Bengal was very unfavourable for the attainments of these objects. As against the cause of law and justice which Impey tried to hold above all considerations, the Supreme Council set up the commercial and political interests of the Company. As a result the Council and the Court entered into a long series of quarrels which lasted during the whole period of Impey's stay in India. Whether the Supreme Court was to serve under the supervision and in the interest of the Council or it was to function independently as a body of checks and balances, was the main issue of

II

the quarrel between the Court and the Council.

This thesis, therefore, considers the background against which Impey had to work, the objects he had in view and the methods he applied for their accomplishment. It also assesses how and under what circumstances Impey led the infant Court in its struggle against the Council and to what extent he was successful in the attainment of his objects.

C O N T E N T SAbstract pp. I - IIContents pp. III - VChapter I

The background of the establishment of the Supreme Court at Fort William and the appointment of Impey as its Chief Justice. pp.1-37.

The state of judicature in Bengal before the establishment of the Supreme Court, pp.2-17; the passing of the Regulating Act, the granting of the Charter and the erection of the Supreme Court, pp.17-31; the early life of Impey, his appointment and arrival in India as the Chief Justice of the Supreme Court, pp.31-37.

Chapter II

Impey and Nandkumar: the conspiracy case. pp.38-77.

The early conflicts between the Court and the Council (Oct. 1774- March 1775), pp.38-43; Nandkumar's accusation of Hastings, March 1775, pp.44-56; Hastings' prosecution of Nandkumar for conspiracy, April, July, 1775, pp.56-77.

Chapter III

Impey and Nandkumar: the forgery case. pp.78-149.

Commitment of Nandkumar, May 1775, pp.78-86; the trial and execution of Nandkumar, June - August 1775, pp.87-134; certain observations on Nandkumar's case, pp.135-149.

Note to Chapter II

Radhacharn's claim for diplomatic immunity. pp.150-157.

Chapter IV

The Hastings-Impey plan for the better administration of justice, 1776. pp.158-192.

Kamaluddin's case, April - October 1775, pp.158-167; John Stewart's case, pp.168-179; The Plan, pp.179-189; Impey's attempts for councillorship, pp.189-192.

Chapter V

The quarrel between the Court and the Council; the Patna case, 1777-1779, pp.193-253.

The Patna case, 1777-79-89, pp.195-231; certain observations on the Patna case, 232-253.

Chapter VI

The quarrel between the Court and the Council (continued). pp.254-318.

Gowry Chand Dutt vs. Hosea and others, 1779, pp.256-265; Durgacharn Chakravarti vs. Calcutta Committee, pp.265-267; Seroopchand and the Dacca Council, 1777, pp.267-272; Peat and the Dacca Council, July - Oct. 1777, pp.272-280; Touchet Petition, 26 Feb. 1779, pp.280-284; on the real causes of the agitation, pp.285-288; how signatures were procured to the Petition, pp.288-291; on the demands of the petitioners, pp.291-295; the debate on the Petition in the House, pp.295-300; G.F. Grand vs. Philip Francis, 1778-79, pp.300-318.

Chapter VII

The quarrel between the Court and the Council (continued): The Cossijurah case (1779-80). pp.319-375.

The background of the Cossijurah case, pp.320-334; certain observations on the Cossijurah case, pp.334-360; consequences of the Cossijurah crisis, pp.361-375.

Chapter VIII

The last three years: a temporary settlement (1780-83). pp.376-454.

Impey's appointment to the judgeship of the Sudder Dewanni, pp.378-394; observations on the settlement, pp.395-418; Impey's journey to Banaras and Oudh (July 1781 - Dec. 1781), pp.419-447; the recall of Impey (1782-83), pp.447-454.

Some Conclusions pp.455-478.

Sources pp.479-485.

Abbreviations p.486.

CHAPTER I

The Background of the Establishment of the Supreme Court at Fort William and the appointment of Impey as its Chief Justice

When the British left India in 1947, they left behind them, among other things, an efficient judicial system based and modelled on their own. Even to-day it remains as one of the best legacies of British rule in India. It took centuries to build the present judicial structure in India, but the foundation was laid in 1774. The erection of a Supreme Court in Bengal and the appointment of four British lawyers as its judges, was the first successful attempt to transplant the plant of British justice in India. These judges were to administer English law; their guiding principle was to be 'Equality before the law', and their main concern the protection of the Indians from the oppressions of the Company's servants. Impey as the chief justice of the Supreme Court, naturally enough, had an important role to play during its infancy.

Before dealing with his career in India, we need to understand the background against which he worked. In particular we must analyse the state of judicature in Bengal before the establishment of the Supreme Court, the circumstances leading

to the passing of the Regulating Act, the granting of the Charter of 1774, and the erection of the Supreme Court. It will then be necessary to describe the early life of Impey and the circumstances of his appointment and arrival in India as the chief justice of the Supreme Court.

The state of judicatures in Bengal before the establishment of the Supreme Court.

Before the Regulations of 1772, justice in the province of Bengal was administered by the country courts, and in the town of Calcutta by the courts erected from time to time by the Crown and the Company. The state of the country judicatures, throughout the province of Bengal, as they subsisted under the ancient Constitution of the country, or as they had been affected or altered by the influence of the Company, may be summarized as follows:⁽¹⁾

The criminal court in every district was known as Fowjdary; it was presided over by the Raja or Zemindar of that district. He inflicted all kinds of punishment except capital, for which he had to secure the order of the Nabab's government at Moorshidabad. Wealthy men could escape corporal punishment by paying fines; all such fines paid in the court were appropriated by the Zemindar to his own use.

(1) Seventh Report of the Committee of Secrecy 1773, Par. Bra. no.7; pp.323-30.

The court of civil jurisdiction in each district was called Adalat and presided over by the Zemindar who was entitled to a Chauth (the fourth or fifth share) of whatever was recovered in the court.

Thus, we find that the Zemindar exercised both civil and criminal jurisdiction in his district. Quite naturally, the parties were very reluctant to resort to his tribunals and preferred to refer their dispute to arbitrators chosen by themselves.

The law which was administered in Zemindar's courts was the law of the Koran, and customs and usages of the country. As these sources of law were vague, uncertain and unascertained, the administration of justice was discretionary.

The want of subordinate jurisdictions in different parts of the Zemindary districts and want of any judicial register of the proceedings of the courts, were the lamentable defects of the whole system. Besides, the principal persons in the districts could seldom be brought under the authority of the courts; "the judges generally lay under the influence of interest, and often under that of corruption; and that the interposition of government, from motives of favour or displeasure, was another frequent cause of the perversion of justice."⁽¹⁾

(1) Ibid, p.324.

Though an appeal from the judgment of the Zemindary court lay to the government at Moorshidabad, the latter was open to easy influences by the rich and the resourceful.

Matters of religion were decided by the Kazi and the Brahman; all matters of revenue by the Naib-Diwan, who was appointed in each district by the Diwan. An appeal from the decree of the Naib-Diwan lay to the Diwan at Moorshidabad.

The following courts existed, at least in name, at the capital:⁽¹⁾

(a) The Nazim, as supreme magistrate, presided personally in the trial of capital offenders, and held a court every Sunday.

(b) The Diwan who was the proper judge of all causes relating to real estates, seldom exercised his authority in person. The Daroga Adalat Dewanni, or deputy of the Diwan, exercised this jurisdiction.

(c) The Daroga Adalat al Aalea was the judge of all cases of property, except those which related to land and inheritance he also took cognizance of quarrels, frays and abusive names.

(d) The Kazi was the judge in all claims of inheritance and

(1) Has. Papers, Add. 29076, Letter of the Committee of Circuit to the Council, 15 August 1772, pp.114-121. Also, B. Sec. Consult., 1772, R.A., Vol.19, pp.370-82.

succession, assisted by the Muftee, who expounded the law, and also by the Muhtasib, a magistrate whose immediate duty was to superintend the weights and measures and other matters of police. In case of disagreement between the three the case was referred to the Nazim who would summon the general assembly of the Kazies, Muftees and all others learned in law, to meet and decide upon the issue, and their decision would be final.

This was roughly the form of administration of justice in Bengal immediately before the grant of Dewani to the Company in 1765. The Kazi who during the reigns of Akbar and Aurangzeb exercised judicial powers free from any executive control, had, after the disintegration of the Mughal Empire, which commenced in 1750, lost his independence and dignity and functioned under the control of the executive power.⁽¹⁾ The regular course of justice was everywhere suspended, and every man exercised the functions of a judge who had the power of compelling others to submit to his decisions.⁽²⁾ In fact, the downfall of the Mughal Empire started when the Emperors were no longer able to uphold individual rights or to do justice between man and man, and when their subordinates became too powerful as against the

(1) Muhammad; Adm. of Justice in Medieval India, pp.275-81.

(2) H.M.S. 352, p.37; also Fifth Report, Select Committee of 1812, pp.4-6.

decrees of the courts. The Muhammadan law and the courts, though in themselves based on sound juristic principles, fell into abuses and misuse due to the corruption of the judges.⁽¹⁾

Since the acquisition of Dewaniⁿ certain alterations were made in the administration of justice. Sykes, who was appointed resident at the Durbar in 1765, immediately upon entering into that office, applied to the government for the establishment of some new courts of judicature. Accordingly a court consisting of twelve was erected at Moorshidabad and one in each province consisting of six judges, the latter to decide in all matters not exceeding Rs.500. The establishment of these new courts seems to have been attended with little results.⁽²⁾

The next step was taken by the President and Council by the appointment of superintending commissioners to supervise and review the proceedings of the country courts. No substantial improvement could be introduced in the existing system of justice until the appointment of the Committee of Circuit in 1772 to report on the administration of justice.⁽³⁾ The Regulations of 1772 were the outcome. The evil practice

(1) Report of the Committee of Circuit 1772; R.A.; Vol.19, pp.371-73.

(2) 7th Report, Committee of Secrecy 1773, Par. Bra. 7, p.326.

(3) Has. Papers: Add.29076; Committee of Circuit, Proceedings of 15 August 1772, pp.106-114.

of realising Chauth by the Zemindars from the proceeds of the case was at the directions of the Court of Directors, suppressed by the President and the Council in 1772.⁽¹⁾

By the Regulations of 1772 there was established in each district two courts of judicature, the one called the Mofussil Dewanni Adalat for the cognizance of civil cases, the other by the name of Fowjdary Adalat for the trial of criminal cases; the British collector and the Indian Dewan were to preside in the former, and the district Kazi and Muftee with two Moulvies to preside in the latter.⁽²⁾ The district civil court was given jurisdiction over all matters of property, with the exception of the right of succession to Zemindaries and Talookdaries which was to be determined by the President and the Council. The district criminal court was to try all criminal cases; in capital cases the opinion of the court, with the evidences and defence of the prisoner, was to be transmitted to the Sudder Nizammat Adalat (Supreme Criminal Court), and having obtained their confirmation, was to be ultimately referred to the Nizam for his sentence.⁽³⁾

(1) Revenue Comm. Consultations 1772; R.67, Vol.54; Proceedings of 21 August, p.485.

(2) H.M.S. 584, History of the Adalats, 1772-85; pp.115-38. Also B. Sec. Consult. 1772, R.A., Vol.19, pp.382-394.

(3) Colebrook's, Supp. Digest, P.6.

Superior courts were at the same time established at Calcutta and Moorshidabad, the one under the denomination of the Sudder Dewanni Adalat composed of Governor and the Council for the receiving and hearing of appeals from the district civil courts; the other by the name of the Sudder Nizam^l Adalat and composed of Daroga, Chief Kazi, Chief Muftee and three Moulvies, for revising the proceedings of the district criminal courts, a similar control over the proceedings of the latter court being intended to be vested in the Chief and Council of Moorshidabad, as the collectors were authorised to exercise over the provincial criminal courts.

All trivial disputes relative to property where the value did not exceed ten rupees, were to be decided by the principal renter of the sub-division whose decree was to be final.

Thus, we find that the Regulations of 1772 abolished the old Zemindary civil and criminal courts and erected in its place two separate courts to administer civil and criminal justice separately. The main defect of the system that was introduced in 1772 was the confinement of the judicial and executive powers in the same body. The collector, later on the provincial council, was to exercise judicial, revenue and executive powers.

Until the abolition of the system of collectorship on

23 November 1773, there were as many courts of justice as collectors; but on the recall of these later, the only courts of civil judicature remaining were (excepting those of Chittagoung and Bhagalpur) the courts annexed to the provincial councils at the stations of Patna, Dinagpore, Moorshidabad, Dacca, Burdwan and Calcutta.⁽¹⁾ These were superintended in rotation by the members of the provincial council. In the districts or subdivisions of the province, Naibs were appointed to collect revenue and to hold courts of Dewanni Adalat; an appeal in all cases was allowed from their decision to the provincial Dewanni Adalat.⁽²⁾ An appeal from the decision of the provincial Dewanni Adalat in a case the subject matter of which valued more than Rs.1,000, lay to the Sudder Dewanni Adalat at Calcutta.

By the close of 1772, the country exchequer and the Sudder Nizamat Adalat had been removed from Moorshidabad to Calcutta; the sentence of this court on the proceedings of the inferior courts were for some time transmitted to Moorshidabad to obtain the Nabab's warrant; but as much delay was found to be occasioned by this mode, it was thought expedient to procure from the guardian of the Nazim a delegation of his authority to

(1) H.M.S. 584, History of the Adalats, p.121.

(2) Colebrook's; Supp. Digest; Plan for the Management of Revenue, 1773, pp.200-206.

the Daroga of the Nizamat court, for which purpose, the great seal of the Nizamat was lodged with the Daroga.⁽¹⁾ By this measure the Bengal government obtained an entire control over this department, and became enabled both to revise the sentences of the officers of the Nizamat Adalats, and to correct the imperfections of the Muhammadan law by the warrant of the Nazim. In fact the Governor became the superintendent of the chief criminal court.⁽²⁾

* * * *

We may now turn to describe briefly the state of judicature existing in the settlement of Calcutta, partly derived from Indian practice, and partly established by His Majesty's Charters of justice.⁽³⁾

Until 1726, the only courts of justice that existed in Calcutta were derived from the system of the Nabab's government and therefore similar to those that existed in the province at

-
- (1) Has. Papers: Add.29079; Extract of Consultations of 23 November 1773; pp.22-23.
- (2) Hastings actively supervised the functions of the Sudder Nizamat Adalat until 14 April 1774, when he relinquished his trust, as feeling the duty of it too heavy to discharge. A confusion in the functions of the Sudder Nizamat court continued till 18 October 1775, when this court was transferred to Moorshidabad under the charge and superintendence of Mohammad Reza Khan who had been appointed Naib-Nazim and in that capacity entrusted with the administration of criminal justice throughout the provinces. ~~See~~. (Proceedings of the Select Secret Committee, 18 October 1775; Forrest's Selections, Vol.II, pp.1-6.)
- (3) 7th Report; Comm. of Secrecy 1773; pp.323-351.

large. During the last years of the 17th century the Company had acquired the Zemindary rights from the Nabab and became the Zemindar of Calcutta. In that capacity they exercised the criminal, civil, religious and revenue jurisdiction over the town and district of Calcutta. Thus there were established in Calcutta, Fowjdary, Cutcheharry and collector's court. The criminal court was presided over by one person appointed by the Governor and Council and it continued to exercise concurrent jurisdiction with the court of Oyer and Terminer when the latter was established by the Royal Charter of 1726. Several judges were appointed by the Governor and Council to sit by rotation in the civil court, which had jurisdiction over all the natives and in cases between a native and a European, where the latter was plaintiff; but in this case, the native might remove the cause into the Mayor's court when the latter was established by the Charter of 1726.⁽¹⁾ Appeal lay from the civil and criminal courts to the Governor and Council.

The collector, appointed by the Governor and Council, sat as judge in the revenue court. He appointed revenue-judges for the inferior courts in the parganas. Appeals from the inferior revenue courts lay to the collector's court and from his judgment to the Governor and Council. Thus, we find that the

(1) Ibid.

Company's courts established in Calcutta though modelled on the country courts excelled the latter in their system of subordinate jurisdictions.

Under the Charters of 1726 and 1753, the following courts with different powers had been established at Calcutta:

(1) Mayor's Court:⁽¹⁾

This court consisted of a Mayor and nine Aldermen, seven of whom were to be British subjects. It had jurisdiction in all civil suits between party and party and an appeal from its decision lay to the Governor and Council and thence to the King and his Privy Council in cases involving sums above the amount of 1,000 pagodas (Madras currency). The jurisdiction of this court was limited to persons not natives of the town; the suits between natives could be entertained only by the consent of the parties.

(2) Court of Oyer and Terminer and Gaol Delivery:

The Governor and Council were constituted in a court of Oyer and Terminer and gaol delivery, for the trial of all offences, except high treason, committed within the town of Calcutta and within any of the factories. The Charter of 1726 had introduced trial by jury in all criminal cases in the sessions court

(1) Morley's Digest; Intro. pp.IX-XXIII.

of Oyer and Terminer. Not only was there to be a petty jury of twelve for the actual trial, but the novelty in India of having a grand jury of twenty-four for preliminary finding of a 'true bill' was also introduced.⁽¹⁾

(3) Justices of Peace:

By the Charter of 1726 the Governor and Council had been constituted Justices of Peace and authorised to hold Quarter Sessions.

(4) Court of Requests:

This court comprised of the principal inhabitants of the town: not more than twenty-four, all to be appointed by the Governor and Council. It entertained suits for the recovery of small debts.

These four were the courts established by the Charters of 1726 and 1753. They functioned side by side with the Company's courts which had been established in the town of Calcutta.

The Mayor's court was the principal court which functioned in Calcutta before the establishment of the Supreme Court in 1774. Observing on the defects of the Mayor's court in their seventh report, the Committee of Secrecy remarked that the court was dependent on the Governor and Council, who had the power to remove the judges. The court of Oyer and Terminer

(1) Fawcett's - First Century of British Justice in India, p.217.

and Mayor's court as constituted, could not be considered "as free and independent judicatures, in any case where the Company is a party, or where any member of the Council is prosecuted on a criminal charge".⁽¹⁾

Although these courts, at least with respect to Europeans, were bound to judge according to the laws of England, yet the judges of these courts were not required to be, and in fact had never been, persons educated in the knowledge of these laws by which they must decide.⁽²⁾ On the other hand, Sir Charles Fawcett, who had the opportunity of looking into the registers of the Mayor's courts, is of opinion that these courts were not as incompetent as they are generally believed to have been.⁽³⁾ Though the benches had no professional lawyer among them, they judged the causes before them with apparent fairness and in a sensible manner.

That they were not as sensible and fair as Fawcett believes them to have been is evident from the censure to which they were frequently put by the Court of Directors. Two complaints were made to the Court of Directors against the Mayor's court of Calcutta, one by Whittal who had been attorney of the court, from which he was dismissed by the court; and the other by Jephson who complained of illegal and abusive

(1) 7th Report, Comm. of Secrecy 1773; p.333.

(2) Ibid.

(3) Fawcett's, p.225.

exercise of the authority of the Mayor's court, which had stopped him from proceeding to England, though he had secured due leave and permission. The Court of Directors found that the complaints were true and duly communicated to the government of Bengal their disapproval of the conduct of the judges of the Mayor's court.⁽¹⁾ It is, therefore, true that the judges of the Mayor's court were Company's mercantile servants - men of the slenderest legal attainments, and the slightest judicial training.⁽²⁾ The President and Council and the members of the Mayor's courts were often brought into collision, "and between the two, neither law nor justice was treated with much respect".⁽³⁾

To sum up, there were no regular courts in the districts of Bengal before the Regulations of 1772; civil and criminal justice was irregularly and corruptly administered by the Zemindars; an appeal from their decisions to the government at Moorshidabad was a luxury which only rich and influential gentry could afford. The common men preferred to refer their cause to mutually chosen arbitrators rather than to resort to the Zemindar's court.

Under the Regulations of 1772, a division on clearer lines

(1) 7th Report; Comm. of Secrecy, pp.332-33.
(2) Kaye's, Adm. of E.I.C.; p.322.
(3) Ibid.

was maintained between civil and criminal jurisdiction, and two different systems of Adalats were established to administer civil and criminal justice. Since criminal administration was a function of the Nizamat, the interference with the criminal courts was "an usurpation" on the part of the Company.⁽¹⁾ However, the administration of criminal justice under the superintendence of the Company was bound to be more efficient and impartial than its administration under the nominal and 'never effective' superintendency of the Nizam. But this system as introduced in 1772 had its obvious and latent defects. Though in theory criminal justice was separated from the civil, the collector, later on the provincial council, exercised effective control over all the courts that functioned in his district. Virtually the judicial and executive power came to be vested in the same person or body of persons. These persons, the British servants of the Company, were corrupt and partial. Most of them had acquired notoriety for their corruption during the period between 1760 to 1765. They had no legal training; they knew nothing of the laws of Hindus and Muhammadans and had no learning of the Indian languages. Besides, their revenue and executive functions took much of their time, energy and zeal. Consequently they abandoned their judicial functions to the

(1) Moon's, Hastings; p.102.

subordinate officers of the court who were quite ill-suited to discharge such an important function.

* * * *

It is necessary to turn to some description of the passing of the Regulating Act, the granting of the Charter and the erection of the Supreme Court.

The first effective parliamentary intervention of 1773 in the affairs of the East India Company was stimulated by many factors and conditioned and shaped by diverse interests.

Reports from India about the corruption and excesses of the Company's servants had been reaching the British public through various channels. India had become an El Dorado for young men in search of a fortune, and the Directors of the East India Company wielded a patronage of royal dimensions.⁽¹⁾ These young servants of the Company being actuated by the policy of self-aggrandisement, when left to themselves after the departure of Clive from India in 1760, resorted to all sorts of ignoble and oppressive means to amass private fortune. Nowhere in Europe, nowhere else, perhaps in the world, were large fortunes so easily amassed.⁽²⁾ Clive himself had gone out a penniless

(1) Plumb's, England in 18th Century; p.174.

(2) Lecky's, Vol.III; p.473.

clerk; when he returned to England, at thirty-four, he had acquired a fortune of more than £40,000 a year, besides giving £50,000 to his relatives.⁽¹⁾ Yet he stood amazed at his own moderation when the Commons brought themselves to investigate into his conduct.⁽²⁾ However, during his second administration Clive did not fail to intimate to the Directors of the tyranny and oppression of their servants in India:

'In a country where money is plenty, where fear is the principle of government, and where your arms are ever victorious; in such a country, I say, it is no wonder that corruption should find its way to a spot so well prepared to receive it. It is no wonder that the best of riches should readily embrace the proffered means of its gratification, or that the instruments of your Power should avail themselves of their authority, and proceed even to Extortion, in those cases where simple corruption could not keep pace with their Rapacity.'⁽³⁾

Among the various means by which the vast fortunes of the servants of the Company were accumulated was private trade. They did not pay the transit duty and defied, displaced or

(1) Malcolm's, II, p.187.

(2) Par. His., Vol.17, pp.858-64.

(3) 3rd Report, Select Comm. 1773; Clive to Directors, 30 September 1765; pp.391-98.

intimidated all Indian officials, even the Nabab himself, if they tried to resist them.⁽¹⁾ They monopolised the trade in certain necessaries of life, like salt, and sold them at famine prices to a half-starving Indian population.⁽²⁾ They bought from Indians at the lowest price and sold to them at the highest.

The attention of the reading public in England had been drawn towards these abuses in the Company's administration of Indian territories, by the two editions of Alexander Dow's 'History of Hindustan' and William Bolt's 'Considerations on Indian Affairs'.⁽³⁾ These authors, who had recently returned from India, in vindication of their personal prejudices against Clive brought to the notice of the public the prevailing corruption and abuses in the rank and file of the Company.⁽⁴⁾

These rumours and reports from India were gradually making the public mind keenly sensible of the enormity of the abuses in India, and it was felt that an Empire already exceeding in magnitude every European country except France and Russia, with a gross revenue of four millions, should no longer be left uncontrolled by the Parliament.⁽⁵⁾ A conviction was rapidly

(1) Mill's, Vol.III; pp.326-7.

(2) Lecky, Vol.III; p.474; also Adolphus, Vol.I, pp.346-7.

(3) Sutherland's, E.I.C.; p.221. Bolt's was expelled from India by the order of the President and Council (2nd Report, Select Comm. 1772, pp.271-79).

(4) Adolphus, Vol.I, p.345.

(5) Malcolm's, Clive III; pp.313-16.

growing that the whole system of governing a great country by a commercial Company was radically and incurably false. The arguments on the subject were better put by Adam Smith.⁽¹⁾ The first interest, he said, of the Sovereign of a people is that its wealth should increase as much as possible. But a Company of merchants exercising Sovereign power will always treat their character of Sovereignty as a mere appendix to their character of merchants. As Sovereigns it was the plain interest of the Company that their subjects should buy European goods as cheaply, and should sell their own goods as profitably, as possible. As merchants it was their interest to compel the Indians to buy what they supplied at the dearest rate, and sell to the Company their own goods at the cheapest rate. Furthermore, the Company had a connection with India and a strong interest in not ruining it; its servants had gone out for a few years to make their fortunes, and when they left the country they were absolutely indifferent to its fate.

After their return to England the British 'Nababs', as the retired servants of the Company were called, by their wealth and ostentation, and by forcing themselves on English society, aroused the jealousy and dislike of the country gentry.⁽²⁾

(1) Adam Smith, Wealth of Nations, Vol.II, Book IV, Chap.VII; pp.251-56.

(2) Sutherland's, E.I.C.; p.147.

The assumption of the Diwanni by Clive, which was estimated by him to bring a net gain of over £2,000,000 a year for the Company, provided an irresistible attraction for the government to intervene in the affairs of a Company "apparently so rich and certainly so disorganized".⁽¹⁾ The nation was labouring under debts; George III wanted to redeem it by Company's fund. The fear of French aggression in India had further aroused the concern of the government about the Company's affairs.

The financial breakdown of the Company provided the immediate cause for the government's intervention. Its debts were already estimated at more than six million sterling; it supported an army of about 30,000 men; it paid about one million sterling a year in the form of tributes, pensions, or compensations to the Emperor, the Nānab of Bengal and other great native personages.⁽²⁾ The war with Hyder Ali (1767-69) had almost emptied the Company's treasury in India. To make the situation worse, the proprietors, whose belief in the enormous wealth of India had greatly increased, raised their dividend in 1767 to 12½ per cent. The government introduced a bill in

(1) Ibid; also letter of Clive to Directors, 30 September 1765; 3rd Report, Select Comm., p.394. Bengal and Bihar yielded in April 1766 Rs.33025968 to the Company. Doherty's 'History of Hindoostan', Vol.II, Sec.VI, p.93.

(2) Annual Register 1773; p.65.

the House to prevent the Company from increasing its dividend without the consent of Parliament. Terrified at the bill, the Company offered the government £400,000 a year. The House accepted the Company's offer, but passed the bill. This additional financial liability further weakened the Company's financial position. A trade depression in Bengal, suddenly intensified by the disastrous famine of 1769-70, inevitably cut down the territorial revenues of the Company; its credit sank and the price of the East India stock fell by 60 per cent.⁽¹⁾ The Chairman and Vice-Chairman of the Company were obliged to wait upon the minister to inform him that nothing short of a loan of at least one million from the government could save the Company from ruin.

It fell to the government of Lord North to negotiate terms and conditions with the Company. The Company wanted a loan from the government, the government wanted to share or take over the Company's immense new responsibilities and potential profits. North's ministry was stable but badly co-ordinated and "ill-devised even by eighteenth century standards for taking decisions or for tackling problems in time to prevent their becoming serious difficulties".⁽²⁾ The sober administrators whose advice North took did not believe that the machinery of

(1) Lecky's, 18th Century England, Vol.III, p.484.

(2) Sutherland, E.I.C.; p.214.

government was strong enough to take over the responsibility of governing Bengal.⁽¹⁾ By appointing a Select, and then a Secret Committee in 1772, to report on various aspects of Indian affairs, the government betrayed its resolution to intervene in the Company's affairs.

On 18 May 1773, Lord North introduced the Regulating bill in the House; on 10 June it was passed by the House, on 19 by the Lords, and on 21 June it became the Regulating Act.⁽²⁾ There was division everywhere - in the government, in the opposition, in the Company and among the Directors. Different groups in Parliament had different party alliances in the Company. Yet, neither side was actuated in its alliances by any motive other than immediate expediency. In the opposition, the Rockingham group supported the Company and the Chathamites the government. The City of London and the East India Company petitioned against the bill.⁽³⁾ Dowdeswell while opposing the bill said that it was a "medley of inconsistencies, dictated by tyranny, yet bearing through each line the mark of ignorance".⁽⁴⁾ The Clause relating to the appointment of the judges of the Supreme Court by the Crown, was criticised among others by Burke,

(1) Ibid, p.237.

(2) The bill was passed in the House by 131 votes against 21, in the Lords by 47 to 15. (Par. Hist., Vol.17; pp.904-914).

(3) Par. Hist., Vol.17; pp.887-90.

(4) Ibid, pp.890-91.

Charles Fox and Dowdeswell. They supported the Company's proposal that the judges should be nominated by the Company, approved by the three Chiefs in Westminster Hall and confirmed by the Crown.⁽¹⁾ On the whole, the appointment of judges and a new court of justice, was not so much debated in either House, as other parts of the Regulating bill; the abortive Judicature bill put forth by the Company in the preceding year differed little from that adopted by the government.⁽²⁾

Those who supported the Act justly stressed its transitory character.⁽³⁾ It was intended to bridge the gap between 1773 and the running out of the Company's Charter in 1780.⁽⁴⁾ Lord North said that "the bill was necessary in every instance; that it carried with it animadversions on criminals, alterations of officers, regulations of various kinds; and that it was not a single regulation that would secure Bengal to this country: that if this bill was passed, though it did not perhaps afford a complete reformation, yet it began a correction of those evils, which future information might complete".⁽⁵⁾

Indeed, the Regulating Act was a half-measure, and

-
- (1) Ibid, p.898.
(2) Annual Register, 1773, p.105.
(3) Weitzman's, H. and F., p.15.
(4) Sutherland's, E.I.C., p.261.
(5) Par. His., Vol.17, p.903.

disastrously ambiguous in many points.⁽¹⁾ The vagueness of the language of the Act arose from the fact that "its authors did not wish to face the problem with which they had to deal, and to grapple with its real difficulties".⁽²⁾ For example, they wished that the King of England should act as the Sovereign of Bengal, but they did not wish to proclaim him to be so. Much has been said about the defects and the disastrous consequences of the Act. As the Act had to accommodate conflicting interests and contradictory principles, it could be nothing better than a half-measure, a compromise and a temporary settlement. The variety of sources from which its various provisions were drawn and the careful balance of interests which it incorporated is made clear by the difficulty of attributing the credit for it to any one man.⁽³⁾

We may now briefly refer to the provisions of the Act and the concomitant Charter of 1774, relating to the composition, powers and jurisdiction of the Supreme Court.

Sections 12 to 22 and Sections 34, 36 and 38 of the Act relate to the Supreme Court.⁽⁴⁾ The Charter, which was granted on 26 March 1774, fills in the details about the exercise of the

(1) Roberts', British India, p.182.

(2) Stephen's, Impey and Nandkumar, Vol.II, p.129.

(3) Sutherland, E.I.C., p.261.

(4) 'Collections', Vol.2; Regulating Act, pp.144-155.

Part of the
Supreme Court. (1)

The Supreme Court was to be composed of a chief justice and three puisne judges, "being barristers in England or Ireland of not less than five years standing." The judges were to be appointed by the Crown and to hold office during His Majesty's pleasure. The chief justice was to draw per month £8,000 and the puisne judges £6,000 from the Company's treasury.

The Supreme Court was vested with five distinct jurisdictions: civil, criminal, equity, ecclesiastical and admiralty. Over the town of Calcutta it was given a territorial jurisdiction; in the provinces at large a personal jurisdiction over the British subjects and servants of the Company. Over the British subjects and persons directly or indirectly employed in the service of the Company, the Court was to exercise civil, criminal and admiralty jurisdiction. This jurisdiction was personal, hence extended throughout the provinces. Over the inhabitants of Calcutta, whether Indians or Europeans, the Court was given a territorial jurisdiction in all matters, civil and criminal. Those Indians who neither resided in Calcutta, nor were employees of the Company, were not subject to the jurisdiction of the Court, except in civil matters for such transactions in which they have bound themselves by bond to be

(1) Morley's, Digest, Vol.II; Charter of 1774, pp.549-587.

amenable to the Supreme Court. The Court was to exercise ecclesiastical jurisdiction only over the British subjects residing in the provinces. Thus, according to the jurisdiction of the Court, the population of the three provinces could be classified into four classes - the British subjects, the servants of the Company, the inhabitants of Calcutta, and the Indians residing in the provinces at large.

Who were the British subjects? What law was the Supreme Court to administer? Neither the Act nor the Charter define precisely who were British subjects and which law, English or Indian, the Court was supposed to administer. In the ninth report of the Select Committee, 1783, Burke said, "The defect in the institution seemed to be this; that no rule was laid down, either in the Act or the Charter, by which the Court was to judge. No description of offenders, or species of delinquency were properly ascertained, according to the nature of the place, or to the prevalent mode of abuse".⁽¹⁾ Stephen, while expressing his doubts as to who were British subjects, argues that in one sense the whole population of Bengal, Bihar and Orissa were British subjects, in another sense no one was a British subject who was not an Englishman born, and in a third sense all the inhabitants of Calcutta might be regarded as

(1) 9th Report, Select Comm. 1783, p.6.

British subjects.⁽¹⁾

It may here be observed that though the Act and the Charter in general suffer from vague expressions, it is not hard to define who were British subjects. The answer to the first question is that born Englishmen were intended by the Act and the Charter to be considered as British subjects. The Act and the Charter use the following terms for different denominations of the population:- 'Inhabitants of Calcutta', 'British subject', 'persons in the service of the Company', 'inhabitants of India residing in the provinces'. That all residents of Calcutta were not British subjects is evident from the difference maintained by Clause XIX of the Charter between the 'subjects of Great Britain' residing in Calcutta and the 'Indian population of Calcutta'. Only the British subjects resident in Calcutta were to serve on the jury in a criminal trial.⁽²⁾ Likewise, the Indians residing in the provinces at large were not British subjects because unlike British subjects they were not amenable to the jurisdiction of the Court except by their own consent.⁽³⁾ That all servants of the Company were not British subjects is evident by the 22nd Clause of the Charter which empowers the Supreme Court to exercise ecclesiastical jurisdiction only over

(1) Stephen's, Vol.ii; p.126.

(2) Morley's, Digest, Vol.II, Charter of 1774, p.570.

(3) 'Collections', Vol.II; Regulating Act, Cl.XVI, p.149.

the British subjects and not on the Indian servants of the Company. Throughout the Act and the Charter a distinction is maintained between the Indians in the service of the Company and the British subjects. Thus we may reasonably conclude that the framers of the Act and the Charter used the term 'British subjects' for Englishmen.

Though it is nowhere mentioned either in the Act or in the Charter which law the Court was to administer, by implication and analysis it can be reasonably said that the Court was expected to administer English law. There are circumstantial evidences to prove that the Court was intended to administer English law. The very composition, powers and jurisdictions of the Supreme Court were modelled on the lines of the Kings Courts of England. There was to be the power of attachment, vested in the judges, the right of committal for contempt of Court, authority to issue writs, everything, in short, which appertained to, or was characteristic of the courts of law in England.⁽¹⁾ Besides, the intention of Parliament in creating the Supreme Court at Calcutta was to extend the advantages of English law to the people of India. It has, therefore, been rightly believed by the authors and critics on this subject that the Supreme Court was to administer English law in Bengal.

(1) Gleig, I, p.450.

The controversies arise on a different question. Whether it was proper to administer English law in India? What part of Common and Statute law applied in India? Mill, for example, conceived that it was improper to extend to India through the instrumentality of the Supreme Court the arbitrary and technical rules of English law, which were ill-suited to the conditions of India.⁽¹⁾ We shall have occasion to discuss in the following chapter what part of English law applied in India. Here, it may be observed that the Charter of 1726 had for the first time extended to India all the Statutes and Common law existing at that time in England.⁽²⁾ It may be further observed that Impey was associated with the drafting of the Charter^{of 1774}, hence he knew the true intent and purpose of its various Clauses.⁽³⁾

Another serious defect of the Act as generally pointed out, is that it left undefined the relations between the Council and the Court.⁽⁴⁾ The Governor-General and the Council were exempt from the criminal jurisdiction of the Court except in cases of treason and felony, and they were not liable to be arrested or imprisoned, but there is nothing else in the Act to exempt them from the responsibility to which all British

-
- (1) Mill, Vol.III, p.502.
(2) Morley's, Adm. of Justice, p.7.
(3) Impey's, 'Speech', p.26.
(4) Cambridge Hist., Vol.5, p.191.

subjects, and all servants of the Company were, on the narrowest possible construction of the Act, made subject.⁽¹⁾ There was nothing in the Act or Charter to prevent the judges from entertaining any suit or complaint against the Governor-General and Councillors and against the servants of the Company for Acts done in the discharge of their executive, revenue or judicial functions. On this it may be reasonably said that the legislators did not intend to grant such exemptions to the Company's servants. If such an exemption were granted to the servants of the Company, the whole purpose of the Supreme Court would have been defeated; the chief purpose of which was "to form a strong and solid security for the natives against the wrongs and oppressions of British subjects resident in Bengal".⁽²⁾

* * * *

By the Charter of 1774, Elijah Impey was appointed the chief justice of the Supreme Court. The appointment was made by Lord Bathurst, who was Chancellor from 1771 to 1778, on the recommendation of Thurlow, who was then Attorney-General.⁽³⁾ The three other judges, who were also appointed by the Letters Patent, were Robert Chambers of Middle Temple (called to Bar on

(1) Stephen's, Vol.II, p.129.

(2) 9th Report, Select Comm. 1783, p.6.

(3) Stephen's, Vol.I, p.3.

22 May 1761), John Hyde of Lincoln's Inn (called to Bar on 6 November 1758), and Le Maistre of Inner Temple (called to Bar on 20 June 1760).⁽¹⁾

For the early life of Impey the chief source of information, though fragmentary, is the 'Memoirs' written by his son, Barwell Impey. Elijah Impey was the third and youngest son of Elijah Impey, by his second wife, Martha Fraser.⁽²⁾ He was born at Hammersmith on 13 June 1732; "his father like many of his predecessors, was a merchant, engaged in various traffic, but chiefly connected with the East India and South Sea trade".⁽³⁾ Of Impey's two brothers, Michael, the eldest, succeeded to his father's business, and resided at Hammersmith until his death in 1794. The second, James, was educated at Westminster, and Christ Church, Oxford; he took the degree of M.D. and practised as a physician.⁽⁴⁾

In his seventh year, Impey was placed in the lowest form of Westminster School. It was at Westminster that he developed a friendship with Warren Hastings. The friendship thus commenced, continued till old age and death, "being never

(1) H.M.S., Vol.I08, pp.311-29.

(2) Impey's family tree; ~~Appendix 1.~~

(3) 'Memoirs', p.2.

(4) He died at Naples in 1756.

for a moment interrupted, except for a short interval at Calcutta".⁽¹⁾ Besides Hastings, the poet Cowper was one of his school fellows.⁽²⁾

He quitted Westminster School in 1751; on 28 December 1751, he was admitted a pensioner of Trinity College, Cambridge; having on the preceding 8 December entered as a law student at Lincoln's Inn. In 1756 he won the junior Chancellor's medal.⁽³⁾ On 3 October 1757, he became a junior Fellow of Trinity College; and, on 4 July 1759, he became a senior Fellow.⁽⁴⁾ In the meantime, on 23 November 1756, he had been called to the Bar.⁽⁵⁾ At the Bar he had become associated with, among others, Thurlow, Kenyon, Heath, Mansfield, Wallace and Dunning; with the last two he maintained regular correspondence during his stay in India. He married in 1768.⁽⁶⁾

He started his practice on the Western Circuit, and was considered, as a pleader, second to none but Dunning.⁽⁷⁾ In 1769, he distinguished himself in an assault case (Head vs

(1) 'Memoirs', p.6.

(2) Southey's, Life of Cowper, p.18.

(3) This medal is still in the possession of Lawrence Impey, the great-great-great grandson of Elijah Impey, who is living at Chilland, near Winchester.

(4) 'Memoirs', p.10.

(5) H.M.S., Vol.108, p.323.

(6) In 1766-7, he had made an extensive tour on the continent, and after his return married Mary on 18 January 1768; Mary was the daughter of Sir John Reade, Baronet of Shimpton Court, Oxfordshire.

(7) 'Memoirs', p.12.

Mullins and others), which was tried before chief justice Willes at Exeter Assizes.⁽¹⁾ From this period he was greatly sought as a counsel. In 1772 he was appointed one of the counsels on behalf of the East India Company in the Lords against a bill to restrain the Company from sending out supervisors to India.⁽²⁾

Thus, he was a barrister of seventeen years standing, and in good practice when he was appointed to be the chief justice of the Supreme Court. Having received the honour of Knighthood from His Majesty George III, and leaving his two sons, Michael and John in England under the guardianship of his brother Michael, he with his wife and attendants, sailed for India on board the 'Anson', with the other three judges, on 1 April 1774.⁽³⁾

A few words about the three puisne judges. Chambers, a member of the Club, a friend of Dr. Johnson, and Vinerian professor of law at Oxford, was the most distinguished of them. From his later conduct in India we may say that he was a weak though learned man.⁽⁴⁾

In the letters of Impey, Le Maistre and Hyde appear to have

(1) Ibid.

(2) Pat. Hist., Vol.17, p.675.

(3) H.M.S., Vol.115, p.17.

(4) Stephen's, Vol.II, p.36.

been arrogant, abusive and violent.⁽¹⁾ To Thurlow, Impey wrote:
"I have every day more and more reason to be concerned at my
having assisted in getting H and L (Hyde and Le Maistre)
appointed judges. Hyde (in whom the need of the discretion
which he had a little before he left England still remain) and
Le Maistre are violent beyond measures ... Hyde is an honest
man, but a great coxcomb, his tongue cannot be kept still, and
he has more pride and pomp than I have seen in the East".⁽²⁾
Impey, it seems, was a little disappointed in his choice of
Hyde and Le Maistre. When Le Maistre died on 4 November 1777,
Francis wrote in his journal - "Le Maistre dies at 6 p.m. this
evening in great agonies. What a joy to the House of Impey".⁽³⁾

The judges and the three new councillors, Francis,
Clavering and Monson, sailed for India in April, the former by
the 'Anson' and the latter by the 'Ashburnham'.⁽⁴⁾

Under the Charter, the chief justice was given precedence
after the Governor-General over the Supreme Councillors.⁽⁵⁾ The
new Councillors viewed this precedence with jealousy and
reproach.⁽⁶⁾ Macrabbie, who was travelling with Francis, wrote

(1) Impey to Dunning, 30 August 1777; I.P., Vol.16259, pp.82-3.
(2) Impey to Thurlow, 30 August 1777; I.P., Vol.16259, pp.84-5.
(3) Francis MSS. EUR. MSS. E.23; Journal, 4 November 1777.
(4) H.M.S., Vol.115, p.17.
(5) Charter of 1774, Clause VII, Morley's Digest, Vol.II, p.553.
(6) Francis to Ellis, 18 November 1777; Weitzman's, H and F,
p.296.

of this in his diary: "The chief justice has stolen a march on the gentlemen of the Council in point of precedence, a mark of distinction which takes from the dignity of the latter without doing any credit, in my opinion, to the other honourable gentlemen".⁽¹⁾

Francis apprehended that "the natural conclusion in the mind of the native must be that the judicial is the first power and the judges the first persons in the state".⁽²⁾

Hastings could reasonably hope to have no troubles from the judges, for his school-day friend Impey was their leader.⁽³⁾

When Impey reached Madras he received a letter from Hastings, congratulating him on his appointment: "I need not say how much I rejoice in the prospect of seeing so old a friend, independently of the public advantages which that friendship, cemented (if it required it) by the same connections, cannot fail to produce in the conduct of such affairs as are likely to fall to our respective or common lot.

"With respect to my own situation, I shall say nothing till we meet, but that I shall expect from your friendship such assistance as the peculiar circumstances to my new office and connections will enable you effectually to afford me for the prevention and removal of the embarrassments which I fear I am

(1) P and M; 'Memoirs', Vol.I, p.12.

(2) Busteed's 'Echoes', p.59.

(3) Sullivan to Hastings, 10 January 1774; Weitzman's, H and F; p.212.

unavoidably to meet with."⁽¹⁾

In reply to the above letter of Hastings', Impey expressed his inclinations to co-operate entirely with him independently of any orders or instructions he might have received to that purpose.⁽²⁾

The judges and the councillors landed at Chandpal Ghat of Calcutta and were officially welcomed on 19 October 1774.⁽³⁾

(1) Gleig's, Vol.I, Hastings to Impey, 24 August 1774, p.453.

(2) Has. Papers, Add.29135, p.417.

(3) Cotton's, Calcutta, p.104; Busteed's, Echoes, p.60.

CHAPTER II

Impey and Nandkumar: The Conspiracy Case.

The Early Conflicts between the Court and
the Council: (Oct. 1774-Mar. 1775)

Mutual distrust and jealousy lay behind the early conflicts that ensued between the judges and the new Councillors immediately after their arrival in India. The new Councillors considered themselves "the representatives of Government deputed to act generally for the nation, in contradistinction to Mr. Hastings and Mr. Barwell who may be supposed to act for the Company".⁽¹⁾ The Indians thought that these three men "had authority to act both on the part of the King, and on the part of the Company, as Directors of all the transactions of the Committee, and as enquirers into the Governor's conduct and that of Barwell".⁽²⁾ The new Councillors being in majority in the Council, were, as such, inclined to identify themselves with the Supreme power in the Settlement. Their hostility to the Court originated with its inception; it was founded partly in jealousy, partly in principle; but characteristically it degenerated into a matter of personal rancour.⁽³⁾ Francis wrote in his memorandum that Clavering,

(1) Francis to D'oyly, 1 Mar. 1776; Weitzman's, H and F, pp. 271-74.

(2) S.E.I.R.; vol.111; pp.71-72.

(3) Weitzman's, H and F, p.40.

inflamed by Joseph Fowke, was for immediate war with the judges, and a declaration against the establishment of the Supreme Court.(1)

'I resisted Clavering's importunities to attack the Supreme Court until I thought there was public ground for taking such a step'.(2)

The judges, on the other hand, were conscious of their dignity and power which originated from a superior authority and were, as such, given to resent and oppose any encroachments by the Council upon the independent exercise of their power.

The early conflicts started on such matters as court-building, salaries of the judges, and the salaries and fees of the officers of the Court.

The Directors had instructed the Governor General and the Council to provide a house for the Court and to pay from the treasury the salaries of the judges and the salaries of the officers of the Court, though in approving the latter they were to observe "strictest frugality".(3)

On the requisition of judges for a spacious Court house, the Council offered them the old building in which had been sitting the Mayor's Court.(4) This house had not sufficient

(1) P and M, Memoirs, 11, pp.56-57.

(2) Ibid.

(3) Instructions of the C. of D. to G.G. and C., L.B.I., vol.16265, pp.1-2.

(4) Council to Court, 21 November 1774; L.B.I., vol.16265, p.4.

apartments for the Court (the Court needed at least 21 rooms), many apartments in it needed repair, and a few apartments were occupied by private persons.⁽¹⁾ The judges reluctantly agreed to use the house as a court building until a new house was built for that purpose.⁽²⁾

As regards the mode of the payment of the salaries of the judges, the Council, taking into account the frequent fluctuations in the rate of exchange struck up an average exchange rate of two shillings per Sicca rupee, and offered to pay the salaries of the judges at that rate.⁽³⁾ The judges did not agree to the above rate of exchange. They proposed to be paid in silver and worked out an alternate mode of payment which was unacceptable to the Council.⁽⁴⁾ The Council referred the whole matter to the Directors for necessary instruction; in the meantime the judges were to receive their salaries at the rate of 80000 current Rupees for £6000.⁽⁵⁾ The judges felt obliged to give provisionally their assent to the proposal of the Council, declaring their resolution at the same time that they were not to be bound by the determination of the Council for all time.⁽⁶⁾

As regards the salaries and fees of the officers of the

-
- (1) Court to the Council, 22 December 1774, L.B.I., vol.16265, pp.6-8.
(2) Ibid.
(3) Council to Court, 21 November 1774, L.B.I., vol.16265, p.4.
(4) Court to Council, 24 December 1774, L.B.I., vol.16265, pp.5-6.
(5) Council to Court, 28 December 1774, L.B.I., vol.16265, p.9.
(6) Court to Council, 10 January 1774, L.B.I., vol.16265, p.10.

Supreme Court, the judges submitted to the Council for their approval a table of salaries and fees of the various officers.⁽¹⁾ The Council hurt the pride and dignity of the judges, by approving the table of fees for only one year, and withholding their ascent to the salaries proposed until they were furnished with an amount of fees actually received by the officers.⁽²⁾ The judges wrote a strong protest to the above decision of the Council.⁽³⁾ Objecting to the Council's decision to allow the fees for one year only and their being again laid before them for approval, the judges observed that the Act of Parliament gave the Council "a simple power of allowing or disallowing without any limitation or restriction whatsoever".⁽⁴⁾

As regards the Council's decision to withhold their approval of the proposed salaries, until furnished with actual amount of fees received by the officers of the Court, the judges observed that it was contrary to the sense of the Legislature and the Court of Directors. They denied any authority in the Council to ask the Court's officers to furnish information about the fees received by them. The judges observed that it was natural that the Court's officers should pay the most ready obedience to those from whom they are to look up for their daily support especially as it will be in the

(1) L.B.I., vol. 16265, pp.11-13.

(2) Council to Court, 2 March, 1775; L.B.I., vol.16265, pp.14-15.

(3) Court to Council. 10 March, 1775; L.B.I., vol.16265, pp.15-21.

(4) Ibid.

Council's power whenever they pleased to stop the payment even of the scanty sums proposed to be advanced.

'What effect the Government of a country having in their power the officers of a Court of justice instituted to control the arbitrary exertion of power must have in the common sense of Mankind is too obvious to be insisted upon; an observation which had it occurred to your Board we are very sure would have prevented a proposal which we are unanimously of the opinion it would be a breach of Duty in us to accept'.⁽¹⁾

Concluding their remarks the judges asked the Council either to finally disapprove or approve the 'salary-list'.

On the above representation made by the judges the Council hastened to approve the salaries of the Court's officers.⁽²⁾

To sum up, the early conflicts between the Court and the Council were caused by the Councillors' attempts to dominate the Court. They wanted to outdistance the Court in the eyes of the Indians. The judges, who were acutely conscious of their independence and powers, showed their readiness to fight every issue than to acknowledge even a slightest interference of the Council in their affairs. It was in this state of growing bitterness between the Court and the Council that Nandkumar came to be tried in the Supreme Court for forgery.

x x x

(1) Ibid, p.19.

(2) Council to the Court; 13 March 1775; L.B.I. vol.16265, pp.22-23.

The trial and execution of Nandkumar for forgery was a decisive event in the career of Impey. This is made clear by the nature of accusations later levelled against him by the House of Commons and the charges which were revived by Macaulay and Mill.(1) Impey was accused of having conspired with Hastings to take away the life of Maharaja Nandkumar, who had preferred charges against Hastings in the Council.(2) In furtherance of this conspiracy Impey illegally and unjustly tried Nandkumar for forgery, passed a sentence of death and refused to reprieve and suspend the execution of the sentence until His Majesty's pleasure was known.

In order to establish whether the charges against Impey were well-founded, it is necessary to describe the circumstances of the trial and the various points involved therein. Thus, before describing the Commitment and trial of Nandkumar for forgery, we shall first examine Nandkumar's accusations against Hastings for bribery and corruption, and then Hastings' prosecution of Nandkumar in the Supreme Court for conspiracy.

(1) Par. His. vol.26, pp.1335-41; also Commons Journals vol.XLIII, pp.114-119.

(2) 'Articles of Charge against Impey with Minutes, 1782'. Par. Bra. 8; First Charge; pp.1-7.

Nandkumar's accusation of Hastings, March 1775.

It is necessary to give a bare skeleton of Nandkumar's past career. In the time of Siraj ud-Dowla he was governor of Hoogly. From then, during the several changes of government in Bengal, he led an "intriguing, aspiring, and unprincipled career".(1) He was once confined in 1762 by the President and the Council on a charge of forging certain traitorous letters with an intent to compass the ruin of his enemy Ramchurn.(2) Hastings was appointed to inquire into the matter and he found that the charges were well-founded.(3)

Due to his influence on Henry Vansittart he got himself appointed as the Diwan of Mir Jafar in 1764. It was at that time that the title of Maharaja was conferred upon him by the Emperor Shah Alam.(4) Vansittart soon lost confidence in Nandkumar, and before leaving for England he drew an account of Nandkumar's misdemeanours and bad qualities and handed it to his brother George Vansittart with orders to produce it in the Council after Clive's arrival.(5) The Council summoned Nandkumar to Calcutta and ordered him not to leave the town. After the arrival of Clive, Nandkumar was dismissed from his office and his rival Mahammad Reza Khan was appointed in his

(1) Busteed's 'Echoes', p.67.

(2) Forrest's, vol.1, p.xxxix; also Secret proceedings relating to Nandkumar, 1762, R.168; vols. 16, 17 & 18.

(3) Forrest's, vol.III, app. Hastings letter to Board, 27 September, 1762.

(4) Busteed's 'Echoes', p.67.

(5) Seir, vol.III, p.3.

place as the Naib of the Nabab.(1)

In 1772, at the orders of the Directors, Mahammad Reza Khan was removed from his office for mismanagement and corruptions and an inquiry was commenced against him.(2) The Directors had required Hastings to employ Nandkumar in counteracting the designs of Reza Khan and to eradicate that influence which he still retained in the government of the province and more especially in the family of the Nabab.(3) At the same time Hastings was advised not to trust Nandkumar with any office in the Government. Nandkumar, on the other hand, was hopeful to be appointed in the place of Reza Khan. With that end he furnished Hastings with facts and figures, false or true, against his rival. He was therefore disappointed when the Board appointed Munny Begum the widow of the late Nabole, as the guardian of the infant Nabab. However, the Board indirectly rewarded him by appointing his son Raja Gurudas to the office of the Dewan of the Nabab's household.(4) Naturally enough, from then onwards Nandkumar had nothing to expect from Hastings.

The rift in the government that followed immediately after the arrival of the new Councillors in 1774, afforded a most welcomed opportunity to Nandkumar. What the majority members

(1) Ibid

(2) Bengal Dis., vol.6, Dis. of August 1777, p.67.

(3) H.P. vol.9076, proceedings of the Committee of Circuit, 11 July 1772, p.55.

(4) Ibid.

of the Council wanted was to insult and degrade in the most public manner their adversary; Warren Hastings. Any formidable accuser of Hastings could expect to be amply rewarded by the majority members of the Council. Hastings' powers seemed to be at their lowest ebb in the early months of 1775. Lust for power being the chief vice of Nandkumar, he threw in his lot with the majority and infected them with a spirit of violence.(1)

As regards the character and personality of Nandkumar, in the words of the contemporary historian, Gulam Hussain. "he was a man of wicked disposition and a haughty temper, envious to a high degree, and upon bad terms with the greatest part of mankind, although he had conferred favours on two or three men, and was firm in his attachments".(2) Sullivan called him 'a snake'.(3) In appearance, he was tall, "majestic in person, robust, yet graceful".(4) He was nearly seventy in 1775.

Turning to Nandkumar's accusations of Hastings, it was on 11 March 1775, that Francis produced in the Council a letter, which, he said, he had received that morning from Nandkumar.(5) Being asked by Hastings whether he knew the contents, he replied in the negative, but added that he did "apprehend in general

(1) P & M II, Francis Memo, p.49.

(2) Seir, vol.III, p.79.

(3) Sullivan to Hastings, 20 December 1774, Weitzman's, H & F, p.210.

(4) Busteed's, 'Echoes', p.67.

(5) H.P., vol.29103, pp.61-64.

that it contained some charge against him".(1) In his letter, Nandkumar had first recalled his long services to the Company, then mentioned the reasons that obliged him to prefer charges against Hastings and finally laid a specific charge of bribery against him.(2) The reasons for preferring the charges against Hastings, as mentioned in the letter, were Hastings' refusal to introduce Nandkumar to the newly-arrived members of the Council, his taking into confidence Nandkumar's deadliest enemies, Graham, Jagatchand and Mohan Prasad, and finally, his having had turned Nandkumar out of his house with a warning not to visit him again. The allegation against Hastings was that of bribery; that he had received from Nandkumar a sum of Rs.104105 and from Munny Begum Rs.250000, for appointing Gurudas, Nandkumar's son, and Munny Begum to the Niabet and guardianship of the Nabab respectively.

At a meeting of the Board held on 13 March 1775, a further letter from Nandkumar was received and read. In this letter, he had offered to produce Vouchers in support of his charges against Hastings. Monson moved that Nandkumar should be called in. Hastings opposed the motion and stated that he would not sit at that Board in the character of a criminal nor did he acknowledge the members of that Board to be his judges.(3) 'I am reduced on this occasion to make the declaration that I look upon

(1) Secret. Consult., R.A., vol.27, pp.1349-50.

(2) Ibid, pp.1345-48.

(3) Secret. Consult. R.A., vol.27, p.1456.

General Clavering, Colonel Monson, and Mr. Francis as my accusers'. (1)

Barwell opposed the motion and suggested that Nandkumar be asked to file his complaints in the Supreme Court for it was the Court and not the Council which should entertain such accusations. But the motion of Monson was carried by majority votes. Thereupon, Hastings dissolved and quitted the Council; Barwell followed the suit. Clavering took the Chair and Nandkumar was called in. He produced a Persian letter, purported to be of Munny Begam and addressed to Nandkumar. (2) In that letter Munny Begum had requested Nandkumar to pay to the Governor General on her behalf a lakh of rupees, which amount she undertook to pay him back in due course. She informed him that when she offered Hastings, when he was at Moorshidabad a present of a lakh of rupees he asked for two lakhs which, he said, Nandkumar had promised him on her behalf. As she was raising a lakh and could not manage more than a lakh she requested Nandkumar to lend her a lakh by paying the same to Hastings when he returned to Calcutta.

The majority members of the Council then briefly examined Nandkumar, during which examination, such a leading question as, was he ever approached by Governor-General or his men for the letter, was put to him. Nandkumar replied that four months

(1) Ibid.

(2) Forrest's 'Selections', vol.II.

Letter of Munny Begum to Nandkumar; pp.53-54.

back Kantoo Balu, the *Bavian* of Hastings, came for the letter, but he was refused the original. Kantoo Balu was summoned to appear before the Board but as Hastings forbade him to attend, he did not. Nandkumar was dismissed and the majority members hastened to record their finding that the several sums of money specified in Nandkumar's letter, amounting to Rs.354105, "have been received by the Governor-General and that the said sums of money do of right belong to the Hon. East India Company".(1) They resolved that the Governor-General be required to pay into the Company's treasury the amount of those sums.(2) On Hastings' refusal to receive the resolution, they ordered that the proceedings of the Board, and all the papers relative to Nandkumar's charges be delivered to the Company's attorney that he may lay them before the Council for their opinion of how to proceed in recovering the several sums of money from the Governor-General.(3)

So much about Nandkumar's accusation of Hastings. A few questions must be answered before we proceed to examine Hastings' prosecution of Nandkumar.

Were the majority members a competent and proper authority to inquire into Nandkumar's charges against Hastings? Was the inquiry fairly conducted and did it merit the decision made thereon? Did the charges of Nandkumar expose Hastings to such

(1) Secret. Consult., R.A., vol.27, pp.1478-79.

(2) Ibid.

(3) Ibid.

dangers that nothing less than murdering the accuser by the hands of Impey could save his life and fortune?

On the first question, we can see that the majority members of the Council were not the proper and competent authority to inquire into Nandkumar's charges against Hastings. Shortly after their arrival in India the new Councillors had belied their hostile and envious attitude towards Hastings. Long before Nandkumar came up with his long list of charges, the new Councillors had been intriguing and complaining against Hastings. Nandkumar's accusations were the outcome of existing dissensions in the government. They are evidences to show that the new Councillors not only encouraged but actively collaborated with Nandkumar in bringing charges of corruption and bribery against Hastings. Nearly a month before actually being accused by Nandkumar, Hastings knew that such accusations were drafted by Nandkumar and corrected by Monson at latter's house. Hastings was shown a copy of the paper containing several charges against him, which, he was told, was carried to Monson for alterations.⁽¹⁾ Barwell had a copy of the same paper.⁽²⁾ As early as 25 February 1775, Hastings wrote to Sullivan:

'Nandkumar, whom I have thus long protected and supported, whom, against my nature, I have cherished like a serpent till he

(1) Secret. Consult., R.A., vol.27, p.1461.

(2) Ibid.

has stung me, is now in close connection with my adversaries; and the prime mover of all their intrigues, and he will sting them too, or I am mistaken, before he quits them'.(1) Even Francis, as he belies in his memorandum, knew long before Nandkumar handed over to him his letter of accusations, that Nandkumar was intriguing and plotting with the new Councillors against Hastings.(2)

In view of the above circumstances, which Hastings was thoroughly aware of, it appears quite natural and justified on his part to have had refused to admit the competency of the majority members to inquire into Nandkumar's charges. Mill disapproved of the conduct of Hastings in dissolving and quitting the Council, and commented that what Hastings alleged as an excuse for his conduct was the "dignity of the accused, and the baseness of the accuser."(3) We have seen that the utter uncandidness of the members of the enquiry committee more than his own dignity and the baseness of the accuser determined Hastings' conduct at the Board's meeting. It is the basic principle of justice that the judges must be impartial. In this case, even if the majority members were not the accusers, though Hastings rightly believed them to be, they were so much prejudiced and hostile to the accused that they could not in all fairness constitute an impartial tribunal.

(1) Glig's, 'Memoirs'; vol.I, p.506.

(2) P & M; vol.II, Francis Memo; p.49.

(3) Mill; vol.III, p.637.

On the second question we can see that the enquiry was not fairly conducted and the decision of the majority was hasty, rash and unjust. The only evidence which Nandkumar could furnish in support of his several charges was the letter of Munny Begam. The very implicating style in which the letter is vouched together with certain circumstantial evidences cast heavy suspicions on its genuineness. In his letter to Graham and MacLean, 25 March 1775, Hastings wrote:

'The letter produced by Nundkumar as Munny Begum's is a gross forgery. I make no doubt of proving it. It bears most evident symptoms of it in the long tattling story told with such injunctions of secrecy, and a word to the wise pertinently added to the end of it, when the sole purpose of the letter was to order the payment of a lac of rupees, and Nundkumar's son and son-in-law were with the Begum and daily informing him of all that passed.(1)

The letter contains a narrative of circumstances which Nandkumar, being the middleman between Munny Begum and Hastings, could be expected to know better. Furthermore, it is doubtful that Munny Begum was in such a financial position that she could not manage a sum of two lakh of rupees and had to borrow a lakh from Nandkumar. A contemporary Indian Chronicle writes that Munny Begum had a large fortune and in order to keep Mubarak-ul Dowla at her sway she at times threatened to squander her money

(1) Ghaig's, 'Memoirs', vol.I, p.515.

among the poor or Europeans.(1) A most reliable evidence is Munny Begum's written declaration that she never gave anything by way of bribe to Hastings.(2) In the same document she admits, 'The sum given to Mr. Hastings is according to old custom by way of entertainment in lieu of victuals. When the Nabab Nadjum-ul-Dowla and the Nabab Seij-ul-Dowla went to Calcutta they received this mode of entertainment there and so when any of the Governors come to Moorshidabad they receive it every day from the Nizamat'.(3)

Taking into account the character and life history of Nandkumar, the style and contents of the letter produced by him in the Council, the financial condition of Munny Begum, and her emphatic declaration, made at a time when she might have secured rewards and favours from the majority members of the Council by an admission to the contrary, we may be inclined to believe that the letter purported to be of Munny Begum was a forgery.

A fair and impartial enquiry should have proceeded with a closer scrutiny of the letter produced by Nandkumar. What the Councillors did was simply to ask a man from the Persian department whether the seal on the letter was of Munny Begum;

(1) Seir; vol.III, p.76.

(2) Vanst. Papers; Add. 48370; Munny Begum's account of her relations with English. The document is an English translation of the original; it is not dated. But it might have been made sometime before George Vansittart left for England, that is in 1775.

(3) Ibid.

he said it was. After this brief examination the original letter was returned to Nandkumar. Why the Councillors were in a hurry to return the original to Nandkumar?

Supposing that the letter was genuine, even then it did not prove more than two lakh of rupees received by Hastings. What other evidence, except the written and verbal assertion of Nandkumar, "who was not only an avowed accomplice in the alleged corrupt acts but one who professed himself to be actuated by motives of revenge and suspicion against the man whom he accused", the majority members of the Council had to satisfy themselves that the several sums of money as stated by Nandkumar, were received by the Governor-General. If they meant to hold a fair inquiry, they should have summoned the several persons referred in Nandkumar's charges, viz. Munny Begum, Jagarnath, Balkissen, Nur Singh, Sevaram, Chetan Nath, and Sadanaud; the last two were in Calcutta at that time. On the contrary, the only person they pleased to summon was Kantoo Babu, the banian of Hastings. What other motive than to insult their adversary, could be imputed to their requisition. Even Nandkumar was not examined on many of his statements. Only leading questions were put to him.

'Are you sure that the Governor's two Gumastas received the money on account of the governor?'

'They undoubtedly took it for the Governor-General. I asked

the Governor if it had reached him and he said it had.'

It appears as though Nandkumar was being examined by his own counsel. In all fairness he should have been cross-examined. It seems that the whole purpose of the enquiry was, not to retrieve back for the Company the sums of money Hastings was alleged to have received, but to disgrace and insult him in the eyes of Indians at Calcutta and of the Directors at home.

Coming to the last question, to what straits, if any, Hastings was reduced by Nandkumar's accusations, it can be observed that neither the exhibition of charges against him in the Council nor the decision of the Council thereupon, took him unawares and by storm.

It is incredible that Hastings might have received any present or bribe from Nandkumar for appointing his son Gurudas to the household of the Nabab. On the contrary, the appointment was made in consideration of Nandkumar's services in counteracting the influences of his rival, Mahammad Reza Khan.⁽¹⁾ It was a consideration far less than what Nandkumar had expected in return for his services. Negatively, it can be argued, if Hastings had received bribes from Nandkumar, he would not have acted so imprudently as to alienate Nandkumar's fidelity to the opposite camp by turning him out of his house, as he did in the early months of 1775, when rewards were offered to those who came forward with complaints against him. In spite of his being

(1) H.P., vol.29076, p.55.

deprived of most of the power, it was always within his means to keep Nandkumar in good humour. He knew months before Nandkumar charged him with corruption, that such charges were being prepared by Nandkumar at Monson's house. If these charges were to render him so desperate that only Impey's hands could save him from utter ruination, he might have taken precautions, and, at any rate done everything in his power to silence Nandkumar.

Furthermore, Hastings, upon the supposition of his guilt, would not be saved by Nandkumar's ^{death from the only danger which his} charges had exposed him to, the danger of being recalled in disgrace by the Directors and of being sued in the Chancery Court for the recovery of a sum of about £40,000 on his return. (1) In order to prove that Nandkumar's charges had terrified Hastings to an enormous extent, Beveridge refers to one of his letters addressed to his agents Graham and MacLean on 27 March 1775. (2) In that letter Hastings informs them of his resolution to leave his place, and return to England on the first ship of the next session, "if the first advices from England contain a disapprobation of the treaty of Benares or of the Rohilla War, and mark an evident disinclination towards me." (3) It is evident that he was worried, but the main reason does not seem to be Nandkumar's charges against him. A man was hardly likely to plan a judicial murder "in order to avoid the possible loss of an office which he had

(1) Stephen's, N & I, vol.I, p.74.

(2) Beveridge's; Nandkumar; p.126.

(3) Ghig's, 'Memoirs', vol.I, p.521.

authorised his agent to resign upon a contingency unconnected with the person to be murdered".(1) In his letter of 18 May, 1775, to his agents, he appears happier and secured, of which one of the reasons might be that Nandkumar was 'in a fair way to be hanged', but had he been actually engaged in a conspiracy with Impey to murder him, he would not have chuckled over the matter to his agents.(2) The tone of the letter is rather that of a man "who has met with a piece of unexpected good luck than that of a murderer who has taken the first step towards the execution of his design and sees its consummation."(3) That the prosecution of Nandkumar for conspiracy and his trial and execution for forgery were not the outcome of a conspiracy between Hastings and Impey, shall be evident when we examine the circumstances out of which they arose.

Hastings prosecution of Nandkumar for
conspiracy; April, July, 1775.

We have seen in the preceding pages how rashly and in utter disregard of the principles of justice the majority members of the Council conducted themselves on the charges preferred by Nandkumar against Hastings. Hardly a month had passed that Hastings and Barwell bound themselves before the judges of the

(2) Glig's, 'Memoirs', vol. I, p.532-33.

(1) Stephen's, N & I, vol.I, p.75.

(3) Stephen's, N & I, vol.I, p.76.

Supreme Court to prosecute Nandkumar, Fawkes and Radhacharn for conspiracy. Quite naturally this makes one conjecture that only motives of retaliation and possibly a vile plan to disgrace the accuser of the Governor-General might have prompted Hastings and his loyal friend Barwell to prefer this prosecution against Nandkumar and others. At any rate this was how it was understood by Sir Gilbert Elliot and other accusers of Impey as is evinced by the first part of the first article of charge against Impey. (1)

It is, therefore, proposed briefly to examine the facts and circumstances of this case in order to establish the truth of the matter.

The trial of Nandkumar for forgery and that of Joshep Fawke, Francis Fawke, Radnacharn and Nandkumar for conspiracy against Hastings and Barwell was first printed in London by Cadell in 1776 under the authority of the Supreme Court of judicature at Calcutta. (2) The supposed author of 'Travels',

(1) 'Articles of Charge'; Par. Bra. 8, First Charge; pp.1-7.

(2) Cadell's deposition before the House. 16 April 1788, 'Speech', App.III, pp.218-22: The trial of Nandkumar and others for conspiracy covers 115 pages of quarto size of Cadell's 'Trials'; each page containing about 680 words on the average.

The same version of the trial as published by Cadell was later inserted verbatim in the State Trials. (State Trials, vol.20, pp.1078-1226, Conspiracy Case; pp.923-1078, forgery case.)

A verbatim report of the trial was published by P. Mitter with his introduction in 1906 in India. (Tracts, 1035).

Mackintosh, referring to Cadell's edition, wrote - "The trial published in England, is universally declared, on this side, to be spurious and false."⁽¹⁾ This allegation as based on rumour is untenable. Elliot, who acted as interpreter during the trials, left India in 1775, and the judges gave him an authenticated account of the trials and authorised him to get that printed in London.⁽²⁾ Thus, it was Elliot who was virtually responsible for the publication of the 'Trials' of Elliot's honesty and integrity not only Impey but Francis, Farrer, Bogle and even the author of 'Travels' himself had the highest admiration.⁽³⁾ Could a man of such ability and integrity be deceived and duped as to any part of a business in which he was both an eye-witness and an actor?

Turning to the facts of the conspiracy case, its

(1) 'Travels', vol.II, p.198.

(2) Letter of the judges to Elliot, 10 August 1775; 'Speech' App. Par. III, no.11, p.219.

(3) Impey in his speech before Commons referred to Elliot as a 'Gentleman of known honour'. ('Speech' p.138-39). George Bogle in his letter to Impey dated 30 Sept. 1778; mourning the death of Elliot, wrote: "He possessed every virtue that the warmest imagination could draw; and I have often tried to discover one fault or defect in his character, in vain." ('Speech, p.141).

Francis, when asked before the Committee of the Whole House as to what was the general character of Elliot, ~~he~~ said, "As far as I know he bore a remarkably good one". ('Speech', App. Par.III. N.11, p.243).

Mackintosh wrote of Elliot "of the most amiable characters, and elevated geniuses that ever dignified humanity". ('Travels', vol.II, p.311).

circumstances date back to the month of December, 1774. One Banarsy Ghosh, a tenant of Kamaluddin Khan, had made a complaint against the latter to Clavering.⁽¹⁾ Clavering summoned both parties and referred them to Fawke.⁽²⁾ Shortly after the matter had been referred to Fawke for inquiry, Kamal went to Hastings one day and complained to him orally and then in writing against Fawke, alleging that Fawke had threatened him with punishment if he did not declare what sums of money he gave to the Governor-General and others to get that contract from the Government, the contract which was the matter of dispute between him and Banarsy Ghosh.⁽³⁾ A written complaint against Fawke was handed over to Hastings. On the basis of that complaint, which was entered in the revenue proceedings of 13 December, Hastings moved in the Board that Fawke should be deprived of the authority which had been given him by Clavering to inquire into disputes of such nature. Hastings' motion was over ruled by the majority members of the Council, the reason given was that Fawke must be heard before he was condemned.⁽⁴⁾ Fawke answered to Kamal's charges by a letter received in the Council on 16 December, 1774.⁽⁵⁾ He wrote - "the charge of Commul ul Dien Cawn is loaded with falsities and misrepresentations from beginning to end."⁽⁶⁾

(1) Rev. Consult. 1774; R.49. vol.48. pp.113-115.

(2) Ibid.

(3) Ibid.

(4) Rev. Consult. 1774; Francis' minute; R.49. vol.48. p.130.

(5) Ibid, pp.156-160.

(6) Ibid.

Nearly four months after the above event, on 19 April, 1775, Kamal came to Hastings for the second time complaining against Fawke for having extorted from him violently accusations against Hastings and others.⁽¹⁾ Hastings referred Kamal to Impey, who heard Kamal, called the other judges at his residence and issued summons to the parties concerned.⁽²⁾ On 20 April, 1774, Kamal, Nandkumar and Fawke deposed before the judges; five witnesses were examined.⁽³⁾

Kamal's version of the circumstances, under which an accusation against Hastings and others was forcibly extorted by Fawkes and others, is a long one and can be pieced together from his depositions made before the judges on 20th April, his examination thereon, and his examination-in-chief and cross-examination during the trial which commenced on 19 June 1775, three days after the trial of Nandkumar for forgery. Having a demand on the Dewan of the Calcutta district, Ganga Govind Singh, for the sum of Rs.26,000 to frighten him, Kamal deposited with Nandkumar three 'argees', two against the said Dewan, and the third against Archdekin; told him to keep the two 'argees'

(1) 'Trials' - Depositions in the Conspiracy Case - p.1.

(2) Ibid.

(3) Ibid, pp.1-19. The witnesses examined were as follows:
Sheikh Yar Mahammad - Servant of Nandkumar.
Khadar Newaz Khan - Writer of Kamal.
Mathew Miranda & Timothy Pareira - Two Portuguese Writers of Fawke.
Herrasantulla - Writer of Francis Fawke.
Akermannu - Servant of Joshep Fawke.

against the Dewan with him till Moonshy Sudder O Deen's arrival from his country-side home and through his good offices Kamal's getting the payment from the Dewan. When he would receive the said payment, he promised, he would give Rs.6000 to Nandkumar and take back his petitions against the said Dewan. He desired that Nandkumar should proceed with his petition against Archdekin and lay the same before the Council.

Next morning when Kamal visited Nandkumar, the latter desired him to become reconciled to Fawke who would introduce him to the majority members of the Council and get for him the appointment to Furnia. Accordingly Kamal called upon Fawke the next day and Fawke treated him very kindly.

When he next met Nandkumar, the latter asked for a copy of the 'argee', if not the original, which Kamal gave to the Governor-General in the previous December. On the following day, Kamal got it written from whatever he could remember, sealed it and carried it to Nandkumar.

About a week ^{past} ~~previously~~, during which Kamal by the intersection of Sudder O Dein got the payment from Ganga Govind Singh. He, therefore, went to Nandkumar for the return of his 'argees' against Ganga Govind Singh. Nandkumar told him that his petitions were with Fawke, that Fawke would be pleased to return them to Kamal if he could write a petition stating that Hastings and Graham exhorted from him that 'argee' which he filed the

previous December against Fawke.

"I was then remediless, and considered in my own mind how I should get back the two argees; and came home, and wrote down whatever occurred to me, i.e. I caused it to be written."⁽¹⁾ Examining what Kamal had written by himself, Nandkumar told him that it was insufficient and asked him to meet in the evening, with his writer, when it would be properly written. That evening while the petition was being drafted at Nandkumar's house under the latter's direction, Kamal felt pain in his stomach and returned home. The same night when Kamal was at home, Yar Mahomed came to him with the final draft of the petition and asked him to seal it. Kamal refused to seal because that was not in the agreement.

Next morning Kamal visited Fawke; he was sitting on his bed. Fawke showed him the petition and asked him to seal it. Kamal repeated that it was not in the agreement whereupon Fawke grew angry. Kamal being afraid put his 'jamma' around his neck, fell at Fawke's feet and entreated him not to get it sealed because it was all false. Fawke in anger raised a book in his hand and called him bad names. Kamal in fear agreed to seal; Fawke cooled down, and the 'argee' was sealed and witnessed by two persons who were around the room. Fawke then read out another paper, a 'Furd', to him and asked him to sign. The 'Furd' stated various sums given by Kamal as 'nazzar' to

Hastings, Barwell and others.⁽¹⁾ Upon some of the names Kamal wrote 'I had given', upon others he wrote 'I delivered'. Fawke asked him to go away. Kamal came out in distress, met Francis Fawke, son of Joshep Fawke, intreated him to get back those papers which his father had just taken from him by force. Francis asked him to come next day when Nandkumar would be there. Kamal first went home, then to Sudder O Dein, to whom he told what had happened at Fawkes and asked him to acquaint Vansittart and Barwell of the same.

Next morning when he went to Fawke, Nandkumar was there, and he told Kamal that Fawke could not be persuaded. Kamal cried in disappointment, tore his upper garment, boarded his palanquine and went to the Chief Justice's house.

Nandkumar in his deposition asserted mainly two points:⁽²⁾ first, that the written complaint alleged by Kamal to have been forcibly extorted from them was in fact willingly sealed by Kamal at his house, and at his desire the same was attested by two witnesses at Fawke's house.

Second, that Kamal desired that his complaints against Ganga Govind Singh were first put before the Council and not the petition which implicated Hastings, to which Fawke did not

(1) 'Trials' - Depositions in the Conspiracy Case - p.3.
Rs.45,000 to Barwell within a period of three years
Rs.15,000 to Hastings
Rs. 7,000 to Raja Rajballab
Rs.12,000 to Vansittart
Rs. 5,000 to Kantoo Bahu, banian of Hastings.

(2) Ibid, pp.4-5.

agree. Hence Kamal went to Hastings, complaining.

Joshep Fawke deposed that the petition in question came to his hand ready sealed and Kamal acknowledged that in the presence of two witnesses.⁽¹⁾ But as soon as Kamal had quitted the chamber he came back and declared his unwillingness to have that petition presented to the Council; he fell at the deponent's feet and embraced his leg with such violence as to give him pain. Being provoked at this, he did lift a book and with difficulty restrained himself from striking him with that. He further deposed that every word of 'Furd' was false, that he never saw or heard of such a paper. Barwell in reply said something upon the subject of this part of the accusation; on which Fawke, addressing himself in a very earnest and pointed manner to him, said, "Will you, Sir, declare upon your honour, or your oath, that you never received that money (meaning the 45,000 rupees said to have mentioned in the 'Furd' as received by Mr. Barwell)".⁽²⁾ Barwell replied, that "he did deny it upon his honour and oath."⁽³⁾ Then, said Mr. Fawke, "I must acquit you".⁽⁴⁾

The examination of the witnesses being closed, the judges required of the persons affected by the supposed conspiracy to declare, whether they would prosecute the authors of it at the

(1) Ibid, pp.13-14.

(2) Ibid, p.13.

(3) Ibid.

(4) Ibid.

next session of Oyer and Terminer; and the morning of the 23 April was appointed to receive this determination.(1) Barwell, Vansittart and Hastings, attending at the time appointed, declared their intention to prosecute Fawke, Nandkumar and Radnacharn.(2)

The first session of Oyer and Terminer was held by the Supreme Court in the first week of June. And it was the forgery-case and not the one for conspiracy which was proceeded, with, though the discovery of the latter was made earlier than that of the former. Why was the forgery-case tried before the conspiracy? Giving reasons for the same, Impey said at the Bar of the House of Commons:

"No order was made as to the priority of the trials; the indictments came on for trial in the usual order. Felonies are in general tried before misdemeanours: but it is the universal practice at every session which I have attended, either in England or Bengal, when an indictment for felony, and another for a misdemeanor, is found against the same person, to try him for felony first, because, if found guilty of that, it would be unnecessary to put him to answer for the latter offence."(3)

(1) Ibid, p.13.

(2) Ibid. George Vansittart withdrew his indictment on 17 July 1775, two days after Nandkumar and Fawke had been declared guilty on Barwell's indictment. (E.H.R., vol.LXXII, No.284 July 1957, Vansittart Journal, pp.438-465).

(3) 'Speech', p.66.

Farrer, the counsel for Nandkumar in the forgery case, while giving his evidence before the Committee of the Whole House in 1787 assigned a somewhat different reason.

"The second or third day of the session, on the instance of Mr. Fawke, I moved that the trial for the conspiracy might be brought on, supposing the bills to be found, before the trial for the forgery. The motion was rejected, that is to say, that the Court would make no order, but that the prosecutors must bring on the trials as should best suit their own convenience."(1)

Though the prosecutor in the forgery case was Mohan Prasad and he was under the influence of Hastings, yet the judges, it can be observed, seem to have no hand in giving the priority. It is probable that Hastings and Mohan Prasad agreed among themselves as to the order of their prosecution. As Hastings himself was a prosecutor such an agreement, if any, should be deemed as a matter of course.

Separate indictments were framed by the jurors, one on Hastings and the other on Barwell's prosecution. About twenty-one witnesses deposed during the trial, General Clavering, Colonel Thornton and George Vansittart included.(2)

An attempt to examine the various phases of the trial for

(1) 'Speech', App. Par.III, No.1; Farrer's deposition; p.112.
(2) 'Trials', Conspiracy Case; on Hastings' prosecution, pp.1-34; on Barwell's Prosecution pp.1-31.

conspiracy should provide answers to the following questions: first was the charge of conspiracy against Nandkumar and others a premeditated design on the part of Hastings, to discredit Nandkumar and thereby defeat his accusations against him pending in the Council? It may be recalled that the accusers of Impey and Hastings did allege that Hastings first tried to ruin Nandkumar on a conspiracy charge, but having realised that it did not sufficiently implicate Nandkumar, he got him capitally indicted on a charge of forgery preferred ostensibly by Mohan Prasad. Second was the 'argee' at issue extorted from Kamal? If it was sealed at his house then it was not extorted from him. On the other hand if it was sealed at Fawke's house then either it was sealed under force and threat or at free will. Third, if the petition was not really extorted from Kamal, what motive and purpose had he in mind to prefer it and what led him immediately afterwards to ask for its return?

Regarding the first question, it is to be observed that Hastings until the last hour, had no knowledge as to what was going on between Kamal, Fawke and Nandkumar. There is evidence to show that it was only on 19~~th~~ April when Kamal narrated to him his story, true or false, that he came to conceive the possibility of prosecuting his avowed enemies in the Supreme Court. Yet he spared no pains to convince himself about the

truth of his charges.

To his most trusted and intimate friend, Vansittart, Hastings wrote on 21 April 1775:

'C. O'Din has been with me. He persists in his story. I have begged and entreated him to reveal the whole truth to me, and not to deceive me. I have told him if it must be discovered if the matter is led to a trial, and will bring shame on him if he is false. He swears that every syllable is true, and has told the whole over again with additional circumstances, and a variation in the manner and expression, but with so exact a consistency, that I cannot refuse my credit to it. If you know any way to look into a man's heart, I wish you would take a peep at his, for unless I was morally certain of the fact, I would not for the universe proceed in it; and if I was certain, I would not for the universe drop it'.(1)

Coming to the second question, quite a few statements made by Kamal seem incredible. What is the logic in his depositing with Nandkumar two petitions against Ganga Govind Singh, when no action was to be taken on them until the arrival of Sudder O Dein? He says - to frighten him to come to terms. He might have frightened him by holding out to him the threat of filing a complaint if he did not pay him back. Why did he

(1) Van. Papers; Add 48370; Has. to Van.; 21 April 1775. A similar letter was written by Hastings to Graham and MacLeane on 29 April 1775. (Glug's - Memoirs - vol.I p.523)

actually file the complaint? As he professes throughout the trial to distinguish between perjury and falsehood, he might as well have spoken a hundred lies to Govind Singh rather than gone to Nandkumar of whose intriguing character he was well aware.⁽¹⁾ Again, what made him so remediless as to agree to give a petition, implicating the first magistrate of the settlement? Nandkumar's refusal to return his 'argees' until he gave such a petition seems a lame excuse. What harm would those 'argees' have caused him or Govind Singh if they had been left with Nandkumar or Fawke? His accounts with Ganga were settled, they were almost reconciled; to Nandkumar and Fawke those 'argees' were of no use at all. It does not seem natural, rather it is incredible, a big lie, that a man would implicate the Governor-General in order to keep a Dewan safe from remotest possible dangers.

However, he agreed to give a false petition but subsequently refused to seal it, because it was not in the agreement. Here it may be argued of what use, if any, would that petition have been to Fawke and Nandkumar if it was not to be authenticated by Kamal either by his seal or signature. The agreement would have been a farce if signing or sealing the document did

(1) Kamal deposed during Nandkumar's trial for forgery that he had come to know years before that his seal was affixed on the forged bond by Nandkumar without his consent; also Nandkumar had confessed to him of the forgery.
('Trials' - Forgery Case - pp.9-10).

not constitute a necessary part of it. Supposing that sealing the document was not in the agreement. It follows then that the exclusion of such a term, must have been expressly agreed upon. In that case Nandkumar would not send the document to Kamal at the latter's house for getting it sealed by him without having had conversed with Kamal on that subject before he left Nandkumar's house. It would have been sheer foolishness for Nandkumar to hope that the document would be signed by Kamal at his free will, when the sealing or signing was expressly excluded from the terms of the contract. But the person by whom and the circumstances under which the petition was presented to Kamal for his seal or signature strongly suggest that authentication by seal or signature constituted a necessary part of the agreement. When the final draft was ready it was carried to Kamal's house late at night by Yar Mahomad, an ordinary servant of Nandkumar, who by his status was humble enough to persuade Kamal to do something which he had expressly agreed not to do. If Kamal was to be persuaded or forced to affix his seal on the document, which was so laboriously prepared at Nandkumar's house until late that night, which by its very nature and purpose ^{it} was designed to serve, needed authentication by Kamal, the best place was the house of either Fayke or Nandkumar in the presence of both or either, but it was certainly not Kamal's house where he had the

fullest control on his fears and apprehensions.

In view of the fact that Kamal was a man of wavering disposition it can be argued that though he had agreed to make such a declaration under his seal, yet due to lack of confidence and fear of being exposed to greater dangers, he was all along trying to evade the issue and, therefore, it is likely that he evaded affixing his seal on the document that night when he was approached by Yar Mahomed. Why then and for what reason did he visit Fawke next morning? He ought to have reasonably presumed that Fawke would either force him to sign the document or would refuse him the return of those 'argees'. The person he ought to have visited next morning was neither Fawke nor Nandkumar; it was either the Governor-General or Ganga Govind Singh.

In order to prove by direct evidence that the petition was not sealed at his house, Kamal produced a witness, Hussein Ali, his cook.⁽¹⁾ Hussein Ali deposed that he met Kewdernawaz the writer of Kamal on the staircase and the latter asked for the ink-pot and the seal as his master was going to seal a document. Hussein Ali, who had the custody of the seal, brought it down, handed it over to Huttoo, another servant of Kamal, asking him to stand by the side of the door until he was asked to bring in the seal, and he himself went in the room where

(1) 'Trials', pp.23-24.

he saw Yar Mahomed sitting beside his master and his master's writer. After a few hours, when Yar Mahomed left Kamal, Hussein Ali came out and informed Huttoo that the seal was no longer required.

Why did Hussein Ali hand over the seal to Huttoo and go into the room? He might as well have carried the seal with him. He, being a cook of Kamal, was not expected to attend such meetings as his master was holding at that time. If Kamal was very informal even with the humblest of his servants then the formality of giving the seal to Huttoo and asking him to stand by the side of the door should not have been observed. The deposition of Hussein Ali, therefore, is suspicious and sounds like a fairy tale.

Supposing that the document was not sealed at Kamal's house. Then it must have been sealed at Fawke's house. Was it then sealed under such threat or force as amounting to extortion? Had Kamal no option but to seal the document? According to his own version, when Fawke raised a book in his hand he apprehended his life and reputation in danger and being remediless sealed the document and signed the 'Furd' while remaining prostrate on the ground. The whole emphasis is on Fawke's raising the book to strike him. When Kamal was asked, "Do you know, or think, that the four people....were set on you as guards?"

"No."

"Did you ever attempt to go away before you actually did go?"

"When Mr. Fawke told me to go, I did go." (1)

Kamal, who could say to Nandkumar in his face that his preferring charges against Hastings was a shameful act, (2) grew so timid at Fawke's raising a book against him that he apprehended the loss of his life and reputation and sealed a false document which a normal man would seal only at the point of a pistol. Raising of a book and calling of names in anger do not amount to a sufficient threat to life and reputation. Wherever the petition was sealed, either at Fawke's or at Kamal's, it was not sealed under force or threat; it was sealed at the free will of Kamal.

The court, therefore, verily held on the prosecution of Hastings that the accused were 'not guilty', which meant that the petition, alleged to have been extorted from Kamal by Nandkumar and others, was really given at his free will. Why then did Kamal ask for its return? This leads us to the last question.

Kamal being a farmer and revenue-collector, his prosperity very much depended upon the favour of the government. Since the arrival of the new members of the Council, the government

(1) Trial Barwell's prosecution, p.8.

(2) Trial Hastings' prosecution, p.5.

was divided into two opposite factions, each intriguing and plotting against the other. The notable gentry of Calcutta and the servants of the company, as is natural, became followers and supporters of one or the other group.⁽¹⁾ Among the public there are always many who follow power, not men. Kamal was one among them. In March, after Nandkumar had preferred charges against Hastings, the power of the government, in the eyes of the public, seemed shifted to majority members of the Council. Hastings seemed deprived of all powers. Many deserted his camp. Enrolment in the other camp was easy through Fawke and Nandkumar. So it was quite natural for Kamal to seek the favour of Nandkumar. But he had some special difficulty. In the previous December he had accused Fawke, maybe to please Hastings and retain his favour. Reconciliation with Nandkumar was not possible until Fawke was reconciled. Kamal had to pay the price. He deposited with Nandkumar complaints against Nandkumar's enemy - Ganga Govind Singh. And in order to become reconciled to Fawke he first gave a document which purported to be a copy of his original petition given to Hastings in the previous December. This copy of the original petition did not contain even a word of complaint, while the petition which was actually filed complained that Fawke with a show of threat wanted to extort accusations against Hastings. The letter of Fawke to the Council, dated 18th April 1775, also enclosed this

(1) E.H.R., Vol.LXXII, No.284, July 1957, p.442.

paper besides the one which was at issue in the trial for conspiracy. While referring to this Fawke stated that that was the copy of the original petition which Kamal gave to the Governor-General; thereby inferring that the Governor-General altered it so much so that it became a complaint and passed as such in the minutes of the Council. During the trial referring to this document Kamal deposed that when Nandkumar asked him for a copy of his complaint filed against Fawke in the previous December he caused it to be written by guesswork and after due authentication gave it to Nandkumar. Supposing that Kamal's memory was very weak, even then it is unbelievable that he would forget that the 'argee', the copy of which he was making, which was filed only three months back, was in essence a complaint and that too against a white man of means and influence.

But that did not bring complete reconciliation. Nandkumar and Fawke wanted him to give in writing something more which could ~~recom~~ reconfirm his former allegations against Fawke and implicate Hastings as well. And Kamal consented to do so accordingly. The prospect of being appointed to Purnia might have been the additional reason. Something happened at the eleventh hour, which it is difficult to find out from the records of that period, which changed his mind and he wanted to take back his 'argee'. Probably Sudder O Dein might have persuaded him not to change camps, take back his 'argees' and stick to

Hastings. Or he might have given that 'argee' under certain conditions, that it was not to be referred to the Council until he got some appointment, and perceiving that Fawke was going to send that 'argee' soon to the Council, which Fawke did send, he protested and finally broke away.

One more point needs an examination before we close this subject and pass on to the next. Why was Nandkumar held guilty on Barwell's indictment?(1) The sole charge in Barwell's case was about the 'Furd', and Nandkumar in no way was connected with the extortion of the 'Furd'. Either the jury committed a mistake in their verdict, or they did not think Nandkumar in any way affected by their verdict because at that time he was confined under a sentence of death. Yet, there can be a third reason, perhaps more tenable. While arguing in his speech before the bar of the House of Commons as to why and on what grounds mercy could be granted to Maharaja Nandkumar, Impey said:

"Should the circumstance stated in the charge of his having been indicted by Mr. Hastings and others on a conspiracy of bringing false accusations, have been assigned as reasons for mercy? A jury had, on one of those indictments, found the charge to be true, and there was no apparent relation between

(1) On Hastings Charge which was based on the extortion of the 'argees' the accused were held not guilty, but on Barwell's Charge Nandkumar and Joshep Fawke were held guilty.

the two prosecutions."(1)

Here Impey appears making capital out of Nandkumar's conviction on a conspiracy charge. His being held guilty on Barwell's indictment is unsupported by evidence. Was he, therefore, held guilty to let the people in England and India know that the forgerer was a conspirator too?

(1) 'Speech', p.91.

CHAPTER III

Impey and Nandkumar: The Forgery Case

Commitment of Nandkumar: (May 1775)

It is proposed to treat this commitment in some detail partly because it has not been done before and partly because it explains the severity of the judges' cross-examination of the defence witnesses on the trial of Nandkumar for forgery.

On 6 May 1775, Hyde and Le Maistre, acting in their capacity of the justices of the peace and upon the depositions of Mohan Prasad, Kamaluddin, Kissen Jaun Das and others, committed Nandkumar for having feloniously uttered as true a false and counterfeit writing in order to defraud the executors of Bulaki Das deceased.⁽¹⁾ Kissen Jaun Das deposed that he had been in the service of Bulaki Das for nearly thirteen years and had seen him executing bonds, that he always signed bonds and did not put his seal on them, and the bond purported to be executed by Bulaki Das did not seem to be executed by him.⁽²⁾

In the warrant, Mohan Prasad is mentioned as a witness and not as a prosecutor. This led Beveridge to doubt whether the original prosecution was initiated by Mohan Prasad.⁽³⁾ This

(1) Secret. Consult., 1775, R.A., vol.28; Proceedings of 8 May; Warrant; p.2144.

(2) 'Speech'. App.Par.II, No.6, Deposition of Kissen Jaun Das, pp.98-99.

(3) Beveridge's, 'Nandkumar', pp.189-90.

doubt is ill-founded. Had Mohan Prasad not been the prosecutor the judges would not have taken from him on 7th May a bond to prosecute Nandkumar on the first day of the next sessions of Oyer and Terminer.⁽¹⁾ Besides, there is evidence to show that Mohan Prasad visited Vansittart as early as 26 April 1775 and told him that he wanted to prosecute Nandkumar for forgery but he would not confide in Farrer as the prosecution-counsel.⁽²⁾ Thereupon, Vansittart advised him to hire Durham.⁽³⁾ We may, therefore, reasonably say that it was on the prosecution of Mohan Prasad that Nandkumar was committed on 6 May on a charge of forgery. As Macrable, the sheriff, was out of the town on 6 May, the under-sheriff, Samuel Tolfree, received the warrant and a letter from Le Maistre; as the letter directed him to confine the prisoner in the common gaol, he accordingly sent the prisoner to Mathew Yeandle, the Keeper of the public gaol of Calcutta.⁽⁴⁾ The letter of Le Maistre was in consequence of a decision taken by the judges on the petition of Jarret, Nandkumar's

(1) Ibid, p192: The bond given by Mohan Prasad on 7 May 1775 is in the High Court Record room at Calcutta² is quoted by Beveridge.

(2) E.H.R., vol.LXXII, No.284, July 1957, 'Indian Journal', pp.438-465.

(3) Ibid.

(4) Forrest's, vol.II, Secret Proceedings of 8 May 1775, pp.368-70. From Samuel Tolfree's depositions before the "Committee of the Whole House", it appears that he was first under-sheriff, then joint attorney with Nayler, and finally attorney to the East India Company, which post he held until 1780. It was he who compiled the account of the conspiracy and forgery trials from the notes made by the judges.
(Minutes of Evidence, pp.32-36).

attorney, that the prisoner should be confined elsewhere and not in the common gaol.⁽¹⁾ In his affidavit, Mathew Yeandle, deposed:

"That he quitted his bedroom in order to accommodate the said Maharajah Nandkumar therewith, and gave up the use of an outer room thereunto adjoining, for the accommodation of the attendant of the said Maharajah Nandkumar."...⁽²⁾

On being examined by members of the Council on 8 May Macrable, the brother-in-law of Francis, deposed:

"He has a small room in which the jailor used to sleep, who removed his family on that account." To that Tolfrey added, "it is without the prison gate and has no communication with the other people in the jail."⁽³⁾

From the above-mentioned statements it is obvious that Nandkumar was confined in a special and quite comfortable apartment of the jail. Yet he was not contented. He informed the Council on 8 May that he could not perform his ablutions and other religious ceremonies in a place like that where people of different castes and religions were living together.⁽⁴⁾ The majority members of the Council summoned the sheriff and the under-sheriff and examined them as to the

(1) Secret Consult. R.A. vol.28. p.2146.

(2) This affidavit was made on 18 January 1776, and was produced before the Committee of the House.
('Speech' App.III, No.7, pp.180-83)

(3) Forrest's, vol.II, 370.

(4) Secret Consult., R.A., vol.28, letter of Nandkumar to the Council, pp.2136-38.

authority by which they had confined the prisoner in the common jail. And when the warrant and the letter of Le Maistre were tendered as constituting sufficient authority for confining the prisoner in common jail, the Council decidèd to order the sheriff and the under-sheriff to wait upon Impey and inform him that the prisoner had refused to take sustenance for fear of being polluted and losing his caste and ask for a relief consistent with his safe custody. In his letter of 9 May 1775, Impey informed the Council that he had examined the Pundits in the presence of Chambers and Le Maistre, who deposed that by eating eight times the meat cooked by a Mussalman a Brahmin was liable to lose his caste and after having visited the place of Nandkumar's confinement at his request the Pundits further deposed that if Nandkumar remained in such confinement for forty-one days, he could purify himself by fasting for two days and making a gift of Rs.1000 to Brahmans.(1) The Chief Justice further added that there were so many Brahmans employed by the Company and many confined in the prison, if such concessions as claimed by Nandkumar were granted the purpose of law would be defeated. In conclusion Impey said:

"But I must make it my request that the prisoner may be acquainted by the Board that if he has any further applications to make for relief that he must immediately address himself to

(1) L.B.I., vol.16265, p.36.

the judges, who will give all due attention to his representation. For should he continue to address himself to the Board that which will and can only be obtained from principles of justice may have the appearance of influence and authority. The peculiar turn of mind of the natives being to expect everything from power and little from justice."⁽¹⁾ In reply to the letter of Impey, the majority members of the Council wrote to him that on the examination of the sheriff and the under-sheriff and the president of the ~~chaste~~-cutcheaharry they were convinced that the facts represented by Nandkumar were true, and they further added:

"As the government of the country is vested in us, we consider the natives of it as the immediate objects of our care and protection.we cannot refuse to receive any petitions presented to us; and, if they relate to the administration of the justice, we conceive we are bound by duty to communicate them to the Judges."⁽²⁾

As compared to Impey's letter, the letter of the Council seems vouched in arrogant and assertive style. Their assertion - that by examining the sheriffs and the president of the caste-court they were convinced of the truth in Nandkumar's representations - is far from the truth. What Kantoo Babu, the baniyan of Hastings and in that capacity president of the caste-court, deposèd was that by mere confinement, except on a

(1) Ibid.

(2) L.B.I., vol.16265, pp.36-37.

charge of robbery or murder, a person did not lose his caste.(1) Could this statement in any way convince anybody that a confinement on a charge of forgery would cause the prisoner to lose his caste? Impey did not ask them to receive ^{no} ~~any~~ petitions. He asked them not to receive such petitions like that filed by Nandkumar. Nandkumar was confined by the order of the court; a petition for relief, therefore, should have been addressed to the Judges. By moving the court on behalf of the prisoner, the Council virtually interfered in the jealously guarded sphere of the Supreme Court and thereby caused the Judges to take self-assertive measures. In a way, the Judges were challenged to prove their strength and independence before the citizens of Calcutta. The Judges were watchful, and quite sensitive of what the people thought and said in Calcutta and Impey in good faith, conveyed his impressions to the Council in his letter of 15 May. While explaining as to why he asked them to direct Nandkumar to move the Court if he needed any relief in future, the Chief Justice wrote:

"The particular reason which called upon me in this case to make that requisition was the reports publically circulated in this town that if the judges would not be prevailed upon to release the Maha Raja, he would be delivered by force."(2)

(1) Examination of Kantoo Baboo - Secret Consult., Range A, vol.28, pp.2151-2154.

(2) Secret Consult., Range A, vol.28, p.2221.

This statement of Impey was supported by the affidavits of Alexander Elliot and Hercules Durham, made before Impey on 19 May 1775.(1)

The majority members of the Council sent to Impey their affidavits, swearing separately that they never intended to release Nandkumar by force nor heard of it until they saw the letter of Impey and they declined to send a copy of Kantoo Babu's examination, which Impey had asked for.(2)

Hyde and Le Maistre having come to know that their conduct in committing Nandkumar as justices of the peace, on 6 May had been censured by the members of the Council on the 8 May, asked the Council for a copy of its proceedings wherein their names might have appeared.(3) The Council refused to send them a copy assigning several reasons, none convincing, each provoking. Hyde and Le Maistre renewed their requisition in their letter of 25 May and this time in a different style and language:

"We considered your not having offered us copies of those papers....as an uncandid proceeding and a considerable aggravation of the secret injury which we conceive to be intended to us by those minutes....We shall hold every individual at your board who joins in such defamation as personally responsible to us, to the utmost extent of the law of England."(4)

(1) 'Speech', pp.97-99.

(2) Secret Consult., Range A, vol.28, pp.224-27.(Affidavits of

(3) Ibid, vol.28, pp.22-56. Monson, Francis and Clavering).

(4) Secret Consult. R.A., vol.29, pp.59-62.

Indeed, the letter of the two judges lacked moderation. But the reply sent by the Council was nearly in the same style as that of the judges:

"At all times, however, you may assure yourselves that we shall observe your conduct as magistrates with an attentive eye, and that we shall not be deterred by the menace, which you are pleased to hold out to us, from making a due representation to our superiors of every occurrence, which may appear to us to affect the welfare and good government of these provinces."(1)

On the above claim of the Council, Impey commented as follows:

"Though the natives without question are under your general protection; they are more immediately so under that of the laws, one great end of the institution of our court is their protection, particularly against British Subjects vested with real or pretended authority. I have no doubt but the laws will be found to be in practice what they are universally esteemed in theory, a better security to this people than the discretionary power of any Council of State..... I think it my duty on the part of the judges to assert "That there doth not reside in the Governor-General any legal authority whatsoever to revise and control any judicial acts of the judges done either in or out of court, be those acts were so erroneous."(2)

(1) Secret Consult. R.A., vol.29, pp.64-65.

(2) L.B.I., vol.16265, Impey to Council, 25 May 1775, pp.46-47.

From the above correspondence between the Council and the Court, it is clear that the commitment of Nandkumar occasioned a struggle for supremacy between the Council and the Supreme Court. The Council claimed a general power to supervise the judicial conduct of the judges in general and their conduct as justices of the peace in particular; while the judges claimed absolute independence and supremacy in their judicial conduct. Both parties felt humiliated - the judges because they had been refused ordinary courtesy and copies of certain papers, and the majority members of the Council, because being the executive power of the settlement they could not change Nandkumar's place of confinement from the common gaol to the fort or other special place, and although some concessions were granted to Nandkumar on 10 May they were granted by the Chief Justice and in such a manner that they could not be construed to have been done in compliance with the Council's instructions or as a result of their interference.(1)

(1) From the affidavit of Mathew Yeandle it can be gathered that on 10 May when the condition of Nandkumar was reported to be very bad in consequence of his having refused to take sustenance since the day of his confinement and after his examination by the physician of Impey, the Judges at the instance of Impey and in spite of Le Maistre's reluctance, ordered the gaoler to allow Nandkumar to go out of the prison gates to perform his ablutions. This order was received at 10 p.m. on 10 May and was conveyed to Raja by Yeandle but the Raja did not avail of it until next day between the hours of ten and twelve in the morning.
('Speech'; App. Part III, no.7; pp.180-83)

The Trial and Execution of Nandkumar: (June-August 1775)

The trial of Nandkumar for forgery started on 8 June 1775, and without any break of a single day, lasted until the morning of 16 June. The trial was held in the old Mayor's court.(1) A very brief account is given in the printed Trial of the early proceedings, especially about the plea of jurisdiction taken by the prisoner's counsel. It is from Farrer's evidence given before the committee of the Whole House in 1788 that we gather the details.(2)

Farrer had intended to take as broad a defence as possible - "to make the prosecutor fight his way, inch by inch; and to interpose every objection I could possibly devise".(3) He put in a plea to the jurisdiction of the court. The plea was

-
- (1) Pending the erection of a new court house the Supreme Court held its sittings in the old Mayor's court. This building was pulled down in 1792. ('Echoes', p.72-73).
- (2) Thomas Farrer had arrived in Calcutta 'two or three days previous to the arrival of the judges' in October 1774. He was the first person admitted an advocate of the Supreme Court. He acted as an counsel of Nandkumar in his trial for forgery. He left India in 1778 for England and afterwards sat in Parliament for Wareham. He gave his evidence before the Committee of the Whole House constituted to receive evidence on the motion to impeach Impey. (Busteed's 'Echoes', p.72).
About him Impey in his letter to Lord Lefford dated 4 January 1778, wrote as follows:- "One Gentleman whose name is Farrer had already made a large fortune, but that arose from very fortunate incidents on our first arrival, and his being pushed forward by Gen. Cl. and (x) Monson. His success has relaxed his diligence;....has nearly given up his attendance at the Bar and I believe does not mean to continue long in the country."
(I.P. vol.16259, p.137).
- (3) Minutes of Evidence, pp.5-6.

declared by the judges to be in no respect supportable and he withdrew the plea. The reasons why he withdrew the plea were stated by him in 1788 before the committee of the Whole House.⁽¹⁾ There were two main reasons. According to the then existing law, if the plea to the jurisdiction were decided against as upon a record, then the defendant would be precluded from pleading over not guilty to the indictment. Secondly, he thought to avail of it later on by a motion in arrest of judgement, if the judgement went against the defendant.

As one of the articles of charge against Impey was based on this point, that Nandkumar was not under the jurisdiction of the court because he was not an inhabitant of Calcutta when the offence was alleged to have been committed; a further enquiry into the matter seems desirable. The charge is based on a far-fetched hypothesis, that Nandkumar was not the inhabitant of Calcutta when the offence was committed and that if he was living in Calcutta at that time and since then, it was under force and compulsion. It is hard to believe that a man who accused the Governor-General and was holding **Durbars** was actually residing in Calcutta under compulsion. However, an argument on that line is cut short when we come across the original draft of the plea of jurisdiction which was produced by Farrer before the committee of the House. The following abstract taken from

(1) Ibid.

the draft clears all doubts about the inhabitancy of Nandkumar:

"And that at the time when the said offence in the said indictment contained is therein supposed to have been committed, and long before that time, and ever since, he, the said Mahah Rajah Nandkumar, was resident and commorant within the said province of Bengal, to wit, at Calcutta in the said province."(1)

The plea of jurisdiction was taken on all together different grounds. It was alleged that before the advent of Supreme Court the natives of Bengal, were tried by their own men in their own criminal court and, as the offence is alleged to have been committed before the advent of the Supreme Court, Nandkumar in justice be tried by Fowjdary Adalat and not by the Supreme Court. Verily, therefore, Impey said before the House that "...he was proved to be a settled inhabitant of Calcutta; no such objection was ever suggested, nor was any attempt made to take him out of the jurisdiction of the court as not being an inhabitant of the town."(2)

After the plea of jurisdiction was dropped by the prisoner's counsel, Chambers immediately called for the indictment and after pursuing it for some time proposed from the bench, that that indictment should be quashed, and that the prosecutor might

(1) Ibid.

(2) *Par. His.*, vol. 26, p. 1365.

be at liberty to prefer a new one on the 5th of Elizabeth, or otherwise, as he should be advised; giving as reasons for his motion, he stated that 2 Geo. II was particularly adapted to the local policy of England, where, for reasons as well political as commercial, it had been found necessary to guard against the falsification of paper currency and credit, by laws the most highly penal, that he thought the same reasons did not apply to the then state of Bengal. (1)

No notice is taken in 'Printed Trials' of this proposal of Robert Chambers. All we know about this is from Farrer's evidence and Impey's speech recorded in the proceedings of the House.

This omission in the trial prompted the members of the opposite camp, the author of Travels being one among them to circulate widely that the 'trial' was a gross misrepresentation and suppressed those facts which reflected on Impey's conduct. The reason why Chamber's proposal was not printed was very rightly conjectured by Farrer. Many more evidences taken during the course of the trial on the state of commerce, paper currency and credit in Calcutta, were not recorded in the

(1) Minutes of Evidence, p.7.

Nandkumar was indicted under the Act of 1729, which rendered forgery a capital offence in England ('Collections', vol.2 - Act of 1729 - pp.69-70). The indictment had several counts, charging the prisoner for having forged and uttered a Persian bond, knowing it to be forged, in order to defraud Seth Bulaki Das, his executors, and persons who took benefit by his will. ('Trials', pp.3-8).

'Printed Trial'. Farrer, therefore, deposed: "I have concluded in my own mind, that as no notice is taken in Sir Elijah Impey's printed trial of this proposal of Sir Robert Chambers', that may be the reason why no notice is taken therein of any evidence given to that point, in as much as such evidence did not at all apply to the merits of the alleged forgery, and therefore was not evidence to the jury, but applied simply to the point of law, or discretionand was therefore a matter of consideration for the court only."(1) To this it may be added that Chambers might have become so much convinced by the arguments of the Chief Justice, that he agreed with the Chief justice to make no mention of his proposal in the 'Trial'.(2)

However, Chamber's proposal was taken notice of by the framers of charges against Impey in order to support their allegation that the statute of 2 Geo. II, which rendered forgery a capital offence, did not extend to India, not even to Scotland.

(1) Minutes of evidence, p.8.

(2) The trial was published with the concurrence of all the judges. The judges wrote to Elliot the following letter:-

'Sir,
We give you full power and permission to print and publish, if you think proper, the trial of Maha Rajah Nundcomar, as authentic from the copy which has been delivered to you.

We are,
Sir,

Your most humble servants.

E. Impey; R.B. Chambers; S.C. Le Maistre; John Hyde.
('Speech'; App. Part III, no.11, p.219).

The opinion of Impey on this point is grounded on a clear cut distinction between the political state of the inhabitants of Calcutta and political state of the inhabitants of the province at large.⁽¹⁾ The Charter of 1774 gave a personal Criminal jurisdiction over part of the inhabitants answering to certain descriptions in the provinces, but the jurisdiction given over the inhabitants of Calcutta was territorial. Only those inhabitants of the province who were directly or indirectly in the service of the Company were subject to the criminal jurisdiction of the Supreme Court. But the inhabitants of Calcutta irrespective of their caste, religion, colour and service were universally under the criminal jurisdiction of the court. Thus as regards the provinces at large, the charter introduced for the first time a criminal jurisdiction over inhabitants of certain descriptions. As regards Calcutta it introduced nothing new, for, long before the erection of the Supreme Court there had existed in Calcutta courts in the nature of oyer and Terminer and Gaol delivery, administering the criminal laws of England with a territorial jurisdiction over Calcutta. In support of his statement that long since criminal law of England had been administered in Calcutta by English courts, Impey referred to the Charter of 1753, the instructions sent out by the court of Directors with the charter, and the case

(1) 'Speech'; pp.30-36.

of Radhacharn Metre.(1)

Radhacharn was indicted in 1765 for having forged the codicil of a will of one Cojah Solomons and was sentenced to death.(2) This case was cited by Impey to prove not only that English criminal law was administered in Calcutta since long, also that the Statute of 1729 which rendered forgery a capital offence was applied as early as 1765. It may be remarked that

-
- (1) The Charter of 1753 empowered the governor and Council to be justices of the peace, to hold quarter sessions of the peace, to be commissioners of oyer and Terminer and Gaol delivery, for trying and punishing all offences (high treason excepted) committed within the town of Calcutta or factory. 'Charters E.I.C.'; Charter of 1753; p.266. These instructions of the Court of Directors direct the new court how to proceed against prisoners not understanding English, tell what crimes are misdemeanors, what simple felonies, what are within clergy, what are capital; how to proceed in each case, and specify the punishment for various types of thievery, and further direct the governor and Council to "enlarge on His Majesty's princely goodness, who on the humble application of the Honourable Company, has thought fit to extend his case and the benefit of his laws to his most distant subjects in the British settlements in the East Indies."
('Speech', App., Part I, No.1; pp.1-8)
- (2) Charles Stafford Playdell presided and John Burdett and George Gray served as judges. Ninety-five Indian inhabitants of Calcutta and adjoining areas petitioned the President and Council for pardon on the grounds of the convict being ignorant of the English law which rendered forgery a capital offence and which was not sufficiently publicised, also that the prisoner belonged to a respectable family of Calcutta. (Bengal General Consultation, 11 March 1765). It appears from the Company's General letter to Bengal dated 19 February 1766 ('Speech, pp.43-45) that the pardon was granted mainly for lack of form in the indictment and 'slender legal evidence to ground a conviction of the prisoner upon'; from this it is evinced that the directors had no doubts about the applicability of 2 Geo. II in Calcutta.

between January 1762 to October 1774 two cases were tried for forgery, one of Radhacharn Metre and the other of Fra Russell, and in both, the accused were found guilty, but the punishment awarded to Fras Russell in 1764 was 'whipping round the town at the court's tail.' This case was not referred to by Impey. If 2 Geo.II was in force in Calcutta in 1765 it must have been so in 1764.

After making this distinction between the personal and territorial jurisdiction of the Supreme Court and furnishing sufficient evidences to prove that English criminal law was long since administered in Calcutta, Impey proceeded to state that 2 Geo.II was in force in Calcutta. He thought it was undeniable that when the King introduces his laws in a conquered dominion all such laws as are in force in the realm of England at the time when the laws are so introduced, are ipso facto the laws of the dominion; though laws made subsequently may not extend to that new dominion, except it be expressly mentioned in those laws that they shall.

"That His Majesty King George the First, in the 14th year of his reign, granted a charter of justice for the town of Calcutta, and thereby introduced the English law; and that on the surrender of that charter, the same was done by his late Majesty King George the Second, in the 28th year of his reign, has been proved before the committees of this house: it is a legal consequence, that all the criminal laws in force in England

at that period thereby became the laws of the town of Calcutta. The 2 Geo.II the year in which this Statute was passed, being prior to the 28th of his reign, when the charter was granted, this Statute was there established by that charter."(1)

Explaining why Chambers moved from the bench to quash the indictment, Impey stated that by natural leniency of his disposition and thinking it optional in the court to adopt the Statute of Elizabeth instead of 2 Geo.II, Chambers proposed that the indictment might be based on the former.(2) But Impey thought it impossible, on clear principles of law, for, he understood it to be an undoubted maxim in law, "that whenever a Statute constitutes that offence which was a misdemeanour to be a felony, the existence of the misdemeanour is destroyed and annihilated; or, as lawyers express it, the misdemeanour is merged in the felony."(3)

This much is clear that Robert Chambers acquiesced in the reasoning of Impey and concurred in almost all the subsequent proceedings.(4) Not only that much, the day Nandkumar was executed, being the 5 August, he wrote to Impey "Whether the Sheriff should not be immediately ordered to seal up this day

(1) Par. His., vol.28, p.1360.

(2) 'Speech', pp.77-78.

(3) Ibid.

(4) He sat through the trial; concurred in the sentence, signed the calender, and concurred in over-ruling the motion for the arrest of the judgement. (Ibid, p.79).

(if he has not done it already) not only the books and papers of the malefactor, but also his house and goods."(1)

Whether the Statute of George II, according to strict tenets of law, was applicable in the case of Nandkumar, is not as material to our consideration as whether the judges in general and Impey in particular firmly believed that it was so applicable. If they genuinely believed that 2 Geo.II was in force then no criminal motive can be imputed to them. On an examination of the evidences we find that the judges thought and believed that the only law under which Nandkumar could be tried for forgery was 2 Geo.II. The first to conceive that law was Le Maistre and Hyde, for, it was they who committed the accused for having 'feloniously uttering as true' a false document. Farrer, the counsel for the prisoner himself admitted before the House that he should not have entirely concurred with Chambers as to the introduction of the 5th of Elizabeth, but he was extremely happy to find that such a motion was moved by one of the judges, for, he was sure to make it a ground of appeal if the judgement were against the prisoner and he revealed his plan to the prisoner and his friends - Monson, Clavering, Fawke and others.(2)

The same arguments which refute the allegation that the Statute of George II did not extend to Calcutta equally render untenable the other allegation that Nandkumar was tried under an ex post facto law. This allegation is based on the

(1) 'Speech': Letter of Chambers to Impey, p.82.

(2) Minutes of Evidence, p.18.

assumption that the Statute of George II if at all was introduced into India, it was introduced by the charter of 1774; as the offence was alleged to have been committed in 1770, the accused was virtually tried by an ex post facto law.

Impey's stand before the Committee of the House on this point was the same as on the above point. He believed and pleaded that the Statute of George II was passed in 1729 and introduced in Calcutta in 1753 by the charter of George II. As Nandkumar was tried as an inhabitant of Calcutta and not as an inhabitant of the province at large, the 2 Geo.II quite justifiably applied in his case. This subtle difference as pointed out by Impey can be discerned in the various clauses of the charter relating to the criminal and civil jurisdiction of the Supreme Court. The charter maintains a difference between the town of Calcutta and the provinces.

Did the Regulating Act confer on the Supreme Court any criminal jurisdiction over the native inhabitants of the provinces? The article of charge against Impey stated that it did not, though the charter did to some extent and therefore it was void to that extent, which Impey being well conversant in law ought to have known. In this connection the first point to be observed is that the Regulating Act⁽¹⁾ did confer on the Supreme Court a criminal jurisdiction over the inhabitants of

(1) By 13 Geo.III it was enacted "That the Supreme Court of Judicature at Fort William in Bengal....shall be a court of oyer and Terminer, and gaol delivery, in and for the town of Calcutta...." ('Collections', Act of 1773; p.148)

Calcutta but not over the inhabitants of the provinces at large. As Nandkumar was tried as inhabitant of Calcutta the trial was not inconsistent with the spirit and provisions of the Regulating Act. The charter granted in 1774 went a step further and conferred on the Supreme Court a criminal jurisdiction over the native inhabitants of the provinces who answered to a certain description.⁽¹⁾ If the charter was void it was void only to the extent of introducing criminal jurisdiction of the court in the provinces. Supposing that it was void to that extent, even then it did not affect the case of Nandkumar. However, Impey did not believe and think that the charter was void even to that extent. He contended that the act of 13 Geo.III assumed a civil jurisdiction over certain inhabitants of those provinces; "the legislature had thereby recognized those provinces to be part of the dominions of the Crown; and the King in fact has done no more than exercise his undoubted prerogative through those dominions, by giving a criminal jurisdiction over the persons answering to the same descriptions as those over whom the Statute had before exercised a civil jurisdiction."⁽²⁾

(1) T.C.R. Gen.App. No.1; Charter of 1774; pp.65: The provisions of the Charter conferring on the Supreme Court a criminal jurisdiction over the inhabitants of the provinces: "And in like manner, to inquire, hear, and determine, and to award judgement upon similar cases committed" in the districts, provinces, or countries, called Bengal, Bahar, and Orissa, by any of the subjects of us....or any other persons, who shall, at the time of committing the same, directly or indirectly, in the service of the said united company."

(2) 'Speech', p.28.

Now we must turn to the trial.

Being asked whether the parties wanted to challenge the jury, the prisoner challenged nineteen and the counsel for the crown one. The panel of twelve jurors was sworn in; John Robertson was elected their foreman.⁽¹⁾ As the Persian bond alleged to have been forged by Nandkumar is the most important document of the trial it is reproduced in its entirety as follows:⁽²⁾

'I who am Bolauku Doss

'As a pearl necklace, a twisted Kulghah, a twisted Serpache, and four rings, two of which were of rubies and two of diamonds, were deposited by Rogonaut Roy Geoo, on account of Maha Raja Nundocomar, Bahader, in the month of Assar, in the Bengal year 1165, with me, in my house at Moorshedabad, that the same might be sold; at the time of the defeat of the army of the Nabob Meer Mahomed Cossim Cawn, the money and effects of the house, together with the aforesaid jewels, were plundered and carried away. In the year 1172, Bengal style, when I arrived in Calcutta, the aforesaid Maha Rajah demanded the before mentioned deposit of jewels; I could not produce the deposit when demanded, and, on account of the bad state of my affairs, was

(1) 'Trial', p.2; the panel of jury consisted of the following:

Edward Scott	John Ferguson
Robert Macfarlin	Authur Adie
Thomas Smith	John Collis
Edward Ellerington	Samuel Touchet
Joseph Bernard Smith	Edward Satterthwaite
John Robinson	Charles Weston

(2) 'Trial', pp.8-9.

unable to pay the value thereof; I therefore promise and give it in writing, that when I shall receive back the sum of two lacksof rupees, and a little above which is in the Company's cash at Dacca, according to the method of reckoning of the

Company, I have agreed and settled, that the sum of forty-eight thousand and twenty one sicca rupees is the principal of the amount of the said deposit of jewels, which is justly due by me, and over and above that, a premium of four annas upon every rupee. Upon the payment of the aforesaid sum from the Company's cash, I will pay that sum, without excuse and evasion, to the aforesaid Maha Rajah.

It is witnessed
Mehab Roy

It is witnessed
Seilaubut
the Vakeel
of Seat
Bolakel Doss

I have, for the above ^(X) of a bond under my signature, that when it is necessary it may be carried into execution.

It is witnessed
Abdehoo
Commaul
Mahomed

Alabd
Bolaukee
Doss

'written on the seventh day of the month of Bhadoon, in the Bengal year 1172'.

The counsel for the Crown produced altogether nine witnesses, besides those who were sworn in to prove official documents and public transactions. The evidences were given to prove among others the following points:

a) That the seal of Bulakidas and the signature of Silabut were forged,

b) That the seal of Kamal was affixed without his knowledge and consent,

c) That in 1765 when the bond was alleged to have been executed, the financial condition of Bulakidas was found, hence it was quite improbable that he should write such a bond;

d) That from the letter of Bulakidas granting power of attorney jointly to Mohan Prasad and Padmohan Das and dated in the year 1768, more than two years after the alleged date of the execution of the bond, it is evident that he was at that time indebted to Nandkumar only in the sum of Rs.10,00;

e) That Bulakidas never mentioned to anybody the deposit of the jewels or their loss and, there is no entry of it in his books;

f) That Nandkumar knowing the bond to be a forged one, uttered it and received payment of money on it.

It is proposed to examine in brief the nature of evidences produced to prove the above points.

The prosecution did not furnish any direct evidence to prove that the seal of Bulakidas and the letter 'Alabd' were forged. Mohan Prasad deposed that Bulakidas did not write, read or understand Persian; suggesting an inference that it was quite unlikely that he caused the bond to be written in Persian.⁽¹⁾ He further deposed that the jewellers in Calcutta do not seal a bond, they sign it.

(1) 'Trials', p.22.

Another prosecution witness, Raja Nobkissen, when asked as to what were the customary ways of authenticating a document said, that writing 'Alaubd' and affixing the seal under it was mostly practised by Mogul Mussalmans.(1)

In order to prove that Silabut's signature was a forged one, the prosecution produced one Saboot Pathak who deposed that he had lived with Silabut since his childhood and was well familiar with his seal and signature and that the signature of Silabut on the bond was not in Silabut's handwriting.(2) Being asked whether he had ever seen Silabut attest any bond, he said once, when he had gone with Silabut to Jagranath he saw Silabut affix his seal on a receipt for money given him by Bulakidas. It is hard to believe that Saboot Pathak could remember the impression of Silabut's seal and signature when he happened to see them once only and that too many years back since then. It is equally doubtful whether Silabut who was the 'Valeel' of Bulakidas would give him a receipt duly signed and sealed for a little sum of money. However, when several papers were shown to him he rightly selected three as being in the handwriting of Silabut. Raja Nobkissen, likewise denied that the signature of Silabut on the bond was a genuine one and pointed out to those three papers, which were picked up by the

(1) Ibid, p.27.

(2) Ibid pp.28-30: As deposed by Mohan Prasad, Silabut died in 1767, two years before the death of Bulakidass whose Vakeel he was.

previous witness, to be in the handwriting of Silabut.(1)

To prove that the seal of Abdul Mahammad Kamal was affixed on the bond by Nandkumar without his knowledge and consent, the prosecution produced Kamaluddin Khan, who deposed that his original name, Abdul Mahammad Kamal was changed to Kamaluddin Khan by a Royal title.(2) Though the title was granted to him at the time when 'King and Colonel Coote were at Patna', it was formally conferred upon him by Nabab Nutchum-al Dowlah, 'ten or fifteen days before Mahomed Reza Cawn was appointed Naib Subah'. The seal on the bond was his old seal, which he on one occasion, 'fourteen or fifteen years ago, when was between Jaffier Ally and Cossim Ally Khan subsisted', had sent to Nandkumar so that a petition in his name could be presented to the Nabab by Nandkumar, and, Nandkumar never returned his seal though requests to that effect were frequently made to him. The witness produced a letter which Nandkumar had written him after the receipt of his letter and seal.(3) The letter does not acknowledge the receipt of the seal but it refers to the letter and the 'nazzar' Kamal had sent to Nandkumar. From the printed trial it appears that the prisoner's counsel admitted that letter to be of Nandkumar. But Farrer while being examined by the committee of the Whole House deposed - "This part of the printed trial is to me quite

(1) Ibid.

(2) Ibid, pp.9-13.

(3) Ibid.

unintelligible - I am stated to have offered to admit that Nandkumar had the letter - there is no evidence stated of any letter being written to him."(1) ...

Kamal further deposed that it was through Mohan Prasad that he first came to know that his seal was affixed to that bond.(2) On being informed of that he went to Nandkumar who told him:

"It is true; having confidence in you I have fixed your seal, which was in my possession, to the bond of Bollakey Doss. Having sworn, you will give evidence of this before the gentlemen of Audaulat."(3)

Kamal produced a paper sealed with his old seal and bearing his original name. The jury compared this with the impression on the bond and thought them the same; each of the impressions showed a small flaw which was in the original seal.

We have already examined Kamal's depositions in the conspiracy case and found that it does not bear the mark of truth and is mostly a concocted tale. Here again it can be observed that his story suffers from certain improbabilities. According to his own version the Royal title was granted to him when 'King and Coote were at Patna'; that means in the year 1761. And he did not use the title until it was formally conferred upon him by the Nabab 'ten or fifteen days before

(1) 'Speech', App: Part III, No.4, p.161.

(2) This happened according to Kamal's deposition, two months before Palk confined Nandkumar, which means sometime in 1772. ('Trial, p.11).

(3) 'Trial', p.11.

Mahomed Reza Cawn was appointed Naib Subbah'; which means not later than February or March of 1765. We find that the bond purports to have been executed in August 1765.

Supposing that the bond was forged, even then it might not have been forged earlier than in August 1765; in all probability it was forged after the death of Bulakidas which occurred in 1769, for, Nandkumar would not forge such a bond in the life time of Bulakidas unless he was certain as to when Bulakidas was to die and when the Company was to pay his debts. In any case the bond, if forged, was forged after Kamal had started using his new title and new seal and Nandkumar knew all about that, for, it was he, as Kamal alleges, who had delayed the formal conferring of the title upon him by the Nabab. Is it possible then that Nandkumar while forging the bond would use the obsolete seal of Kamal?

It is equally doubtful that Nandkumar would confess to Kamal that he had forged a bond and affixed Kamal's seal without his consent. Kamal further deposed that he told Nandkumar flatly that he would not swear before the Adalat as to his seal on the bond as desired by him whereupon Nandkumar refused to be his security for the Tecca collieries. After this final rupture, knowing that Nandkumar was a forgerer, why did Kamal go to Nandkumar for a loan of money; why did he deposit with him his petitions against Ganga Govind Singh, in one word, why was Kamal during the early months of 1775 so solicitious of

Nandkumar's favour?(1) The only explanation which can be suggested is that Kamal had acquiesced in and thereby become a collaborator in the forgery. It is a pity that such a perjured witness as Kamal was so confidently relied upon by Impey. Had the conspiracy been tried before the forgery, probably Impey would not have placed such confidence in him.

In order to prove that in 1765 the financial condition of Bulakidas was not so bad as to occasion the writing of such a bond for such a sum as mentioned therein, the prosecution tried to prove by an entry in the book of Bulakidas that he drew a draught on Banaras in favour of Lord Clive for a lack of rupees.(2)

The letter of Bulakidas, dated in the year 1768, granting power of attorney jointly to Mohan Prasad and Padmohan Doss, and giving a brief account of some of his outstanding debts and credits, was produced by the prosecution to prove that at that time Bulakidas was indebted to Nandkumar in the sum of rupees ten thousand only.(3) Although the various sums are purported to have been written by guesswork it is improbable that such a large sum as Rs.48,021 for which the bond was executed in 1765, might have escaped the memory of the writer, especially when we find on the debt-side the entry of such small sums a

(1) All these facts were deposed by Kamal in the conspiracy case.

(2) 'Trial', p.23.

(3) Ibid; p.16.

Rs.506.(1) This indeed was a very formidable document and taken upon its face value it did cast indelible reflections on the genuineness of the Persian bond. But its formidability is lessened when we observe that only one witness, Kissen Jaun Das, testified to the signature of Bulakidas to that letter and he deposed further that the letter and the various accounts mentioned therein was written by him as the clerk of Bulakidas and carried to Bulakidas at Chandernagar by Padmohan Das for his signature.(2) Kissen Jaun Das who had impressed the court from the beginning till the latter stage of the trial, subsequently appeared to the court a grossly perjured witness and the prosecution on the commendation of the jury undertook to prosecute him and other defence witnesses for perjury. It was this witness who deposed to the fifth point - that Bulakidas did not

(1) Ibid: "Accounts whatever concerns debts.

'Maha Raja Nundcomar	10000	
'Doolub Ram Twarry on account of a bill in Muxadabad	3025	
'Gou Mullick	2707-8	
'On Roy Mohun Sing's house at Moorshedabad)		35000
on account of a Bill)	
'Golab Doss Palate	1000	
'Raganaut Deu Shroft, one bill	506	
'Nurbaram on bill	850 "	

(2) It does not appear whose witness Kissen Jaun Das was, of the prosecution or of the defence; though Impey in his 'Speech' (p.116) referred to him as a defence witness, from the nature of evidence he gave during the trial, which was mostly against the defence, he does not seem to have been called by the defence. It is also on record that he swore before Le Maistre and Hyde against the genuineness of the bond on 6 May. A person on whose oath Nandkumar was committed would not in all probability be called by the defence. Probably he was summoned by the court.

mention of the jewels to anybody, that he was plundered of everything at Buxar and not at Murshidabad as mentioned in the bond, and, at Murshidabad only a small quantity of jewels were mortgaged to Bulakidas by a local 'Sharoff', which were lost.

Coming to the last point, it was Mohan Prasad, the prosecutor, who deposed as to when and where and under what circumstances the bond was produced by Nandkumar and payment received on that.⁽¹⁾ The letter of Nandkumar acknowledging the receipt of the payment was produced in evidence.⁽²⁾ As the receipt of payment was not disputed by the defence it is needless to enter into any detail on this point. We shall have occasion to examine the deposition of Mohan Prasad when discussing the summing up of the evidence by Impey. We, therefore, must now turn to the defence case.

Durham, the prosecution-counsel, closed his case on the 11th of June and the very day Farrer opened the case for the defence, producing eighteen witnesses to depose among others to

(1) Gangabissen was the only surviving executor of Bollakidas in 1775, when the case came up for trial and it was he who could be the prosecutor. But as he was ailing at that time he granted power of attorney to Mohan Prasad, who in that capacity became entitled to prosecute Nandkumar.

(2) Letter of Nandkumar, acknowledging the receipt of the payment on the jewel-bond:

"Formerly the jewels belonging to me were deposited with Seat Bollakee Doss. In the Bengal year, 1172, he gave me a bond as the value thereof, for the sum of rupees, forty eight thousand and twenty one, and a premium. I having delivered over the said bond to Gungabissen, who is the nephew and manager of the business of the aforesaid Seat; he paid all together the sum of current rupees sixty-nine thousand six hundred and thirty, in bonds of the English Company, which is the amount of my demand, as principal, premium, and batta." ('Trial', p.27)

the following main points:

- (a) The bond was executed by Bulakidas and his seal on the bond was a genuine one.
- (b) The bond was authenticated by three witnesses who were dead.
- (c) There was a letter in Bulakidas's handwriting, admitting the bond and the circumstances of the jewels.
- (d) There was an account signed by Mohan Prasad and Pudmohan Das, in the presence of Gongabissen, in which account reference is made to the bond-money.
- (e) The prosecution was false and malicious.

It may be observed that the bond purports to have been authenticated by three witnesses, namely Mehtab Roy, Silabut and Kamal. The prosecution denied any knowledge of Mehtab Roy and tried to prove that the signature of Silabut on the bond was a forgery and the seal of Kamal was affixed without his knowledge and consent. The defence produced Tagee Roy and Roopenarain Chowdree to prove that Mehtab Roy was a real person who died some time in 1772. Tagee Roy, who professed to be the son of Saheb Roy and grandson of Bangoolal deposed that Mehtab Roy was his elder brother who died in 1772 at the age of thirty-three, that Kashinath and Hazurimal knew Mehtab Roy, and his brother had once gone to Burdwan with Kashinath.⁽¹⁾ Hazurimal and Kashinath were summoned, probably on the initiative of the court. Hazurimal

(1) 'Trial', pp.35-37.

deposed that about ten years ago he knew one Mehtab Roy who was nearly fifty at that time.⁽¹⁾ Kashinath deposed that he knew one Mehtab Roy who was son of Bangoolal (not of Saheb Roy as deposed by Tagee Roy), and that Mehtab Roy whom he knew would be ~~of~~ fifty if alive; he did not know any other Mehtab Roy but he knew one Bangoolal of Mancor of whose details he was unaware.⁽²⁾ Thus we find that the Mehtab Roy of Tagee differed in age and parentage with the Mehtab Roy of Huzurimal and Kashinath. Here it may be asked why the court did not call for Sam Buchy. Tagee Roy had referred to this man as the man in whose service his brother, Mehtab, was. Huzurimal had deposed that Sam Buchy was for some time his 'goomasta' and was still alive.

The defence produced a set of four witnesses, namely Joydeo Choube, Chaitnya Nath, Lollau Doman Singh and Yar Muhammad, who had seen the bond being executed by Bulakidas and witnessed by Mehtab Roy, Silabut and Kamal.

Joydeo Chaube, Chaitnyanath and Yar Muhammad deposed that when Bulakidas came to Nandkumar's house in Calcutta, Nandkumar asked him for his money, whereupon Bulaki told him that he was almost broke and intreated him to accept a bond instead, to which Nandkumar agreed at last.⁽³⁾ Bulakidas then asked Kamal and Jaideo Chaube to accompany him to his house where he would

(1) Ibid, p.37.

(2), ~~pp.37-39~~, Ibid.

(3) Ibid, pp.40-44, pp.48-52, pp.67-77.

write the bond in their presence. Chaitnyanath and Yar Muhammad joined them and they all went to Hazurimal's house where Bulaki was living. There they saw Silabut, Mehtab Roy, a 'Munshi' of Bulaki, and Bulaki himself sitting together. The bond was then written by the Munshi, sealed by Bulaki, then attested by Kamal, Mehtab and Silabut. When it was duly executed it was given to Kamal to be carried to Nandkumar. The very completeness of the story as narrated by these four witnesses makes it highly suspicious and a concocted one. Each one of them repeated the same story, in the same style, and almost in the same language, as if they had crammed all that they had to say. They remembered approximately the amount of the bond, they remembered the order in which all were sitting in the room while the bond was being executed, the order in which the bond was attested, the position of the inkstand, the time of the day when the bond was executed, and many such minute details which ordinary human memory is less likely to retain after such a long period of ten years.⁽¹⁾ And what they did not remember is more surprising. They did not remember the name of the writer and the name of the month in which the bond was written.⁽²⁾ It is to be observed that they remembered alike and forgot alike. One incident renders further their account a doubtful one.

(1) They all deposed that it was Kamal who attested the bond first but they do not remember who attested next, Silabut or Mehtab.

(2) They said it was the rainy season but did not name the month.

When asked to repeat what passed between Bulaki and Nandkumar in the house of the latter, Yar Muhammad declined to answer. When pressed again and again he said:

"If I begin at the beginning I can tell, I cannot begin in the middle."⁽¹⁾

Thereupon the court allowed him to begin again. He repeated a paragraph of what he had said before. Obviously, this must have gone far to convince the judges and the jury of a perjury in these witnesses.

The same witness, Yar Muhammad, deposed that he had seen many such bonds executed, but he failed to name any when asked by the court to mention at least one. It can be also seen that they were all dependants of Nandkumar. On his cross-examination, Yar Muhammad confessed that for the last ten or fifteen years he had been in Calcutta with Nandkumar. Lollau Doman Singh was at that time in the service of Roy Radnacharn, son-in-law of Nandkumar. Chaitnyanath admitted that he had been in the service of Nandkumar and Nandkumar had promised to employ him again when he himself got a job, which he was expecting. Jaideo Chaube was a Brahmin by caste and moved around Nandkumar.

Jaideo Chaube and Yar Muhammad further deposed that Abdalu Kamal was a different man who died nearly six years ago.⁽²⁾ Jaideo Chaube saw some day people carrying a dead man, he asked whose body it was, of a Hindu or Mussalman, and somebody told him

(1) 'Trial, p.69.

(2) Ibid, pp.47-48, p-67.

that it was the body of Kamal.(1) It can be observed that the manner of carrying the dead body of a Mussalman is different from that of a Hindu and a native hardly needs to be told whether a Hindu or a Mussalman is being carried. After having made this statement, Jaideo wanted to retract or disown it. That might have further prejudiced the court against his testimony.

In order to prove that Bulaki's seal on the bond was a genuine one, the defence produced Mir Ausad Ali, who deposed to have had received a receipt from Bulakidas, under his seal, for the treasures which the deponent on the order of Kasim Ali Khan, had carried to him from Rohtasgarh in 1764.(2) The treasures were conveyed to Bulakidas at Durgavati; the receipt which Bulaki gave him had since been with the deponent. The receipt was produced in the court. The impression of Bulaki's seal on the receipt was similar to that on the bond. The receipt was dated on 14th of Rubussanee, 1178 Hijra which coincided with the 8 October 1764. Colonel Goddard, Hurst, Major Auckmuty, Captain Carmac and Williams were examined and on their evidence it appeared that Kasim Ali was not at Rohtasgarh a month or so before the battle of Buxar, that in all probability he should not have been at Buxar.(3)

Ausad Ali was misunderstood to have stated that Kassim Ali

(1) Ibid.

(2) Ibid, pp.59-63.

(3) Ibid, pp.63-67; Col. Goddard was the officer who captured Rohtasgarh in 1764; Hurst captured Patna in 1763.

himself was at Rohtasgarh. If he really meant what was alleged to him, then his statement stood sufficiently refuted by the testimony of the afore-mentioned army officers. But on a careful perusal of his examination we can observe that he does not seem to suggest that Kasim himself was at Rohtasgarh!

"Q. Where did you carry it from?

A. Rotasgarh.

Q. To what place?

A. I was carrying it from Rotasgur to the Nabab Cossim

Ally Cawn: he ordered me to carry it to Bollakey Doss.

Q. Where was Bollakey Doss?

A. In a tent at Doorgauty."⁽¹⁾

It is clear that he started with the treasures from Rohtasgarh and was going to Kasim Ali Khan. He did not mention where Kasim was living at that time, nor was he asked. It appears that before he reached Kasim Ali he was ordered to proceed towards Durgavati and deposit the treasures with Bulakidas.

Where was Bulakidas at that time? Was he really at Durgavati as deposed by Ausad Ali? Kissen Jaun Das was examined on this point and he deposed that since a month before the battle of Buxar, Bulaki was with the army of Kasim at Buxar, that he was with Bulaki during those days, that he did not know of any such treasure received by Bulaki from Kasim and he had made no entry of them in any of his books.⁽²⁾

(1) Ibid, p.62.

(2) Ibid, p.65.

In order to prove that Bulakidas himself had admitted the bond and the circumstances of the jewels, the defence produced letters purporting to be of Bulakidas. These letters were placed in three separate open covers with the seal of Bulaki affixed on each cover. The court rejected them as evidence, observing: "There being no signature from Bollakey Doss to the papers enclosed, nor any proof, whose hand-writing they were, or that those papers were originally enclosed in the envelopes; because, if they were allowed to be given in evidence, they might impose what papers they pleased on the court, by putting them into the envelopes."(1)

It was on the 14 June that Kissen Jaun Das deposed to the famous 'Kararnama'. When asked did he see in the hands of Bulaki any papers concerning his accounts with Nandkumar, he said that while drawing up the accounts of 'Rozeinama', (day to day account book) he asked Padmohan about the account of the jewels for which the bond had been paid; Padmohan showed him a Kararnama (an agreement in writing) which was signed by Bulakidas; he, the deponent, recognizing the signature of Bulakidas on that Kararnama, made entries from that in Bulaki's books.(2)

(1) Ibid, p.59.

(2) Bulaki's books were produced and the following entries were found: on the credit side:- "The jamma of Maha Rajah, 69630:7, the bond of which Bollakey Doss wrote the particulars, 48021 rupees, a bond bearing the date 7th August, 1765, in English words, but Nagree characters: the date of the bond is the 7th Baudon, 1172, Bengal style; 1205: 4 the account of the interest Sewawy has been settled: which seems cost up make 60.026:14-9604:3:16 per cent on account of Secea rupees added to that, makes 69630:7; there is an end of the account." (Trial, p.78).

If Kissen Jaun Das was believed by the Court, his deposition as to Kararnama might have been a sufficient evidence to merit Nandkumar's acquittal. The court had been very much impressed by him since the beginning of the trial until 14 June. But on 15 June the court had to change its opinion about him. On that day at the desire of the prisoner, Kissen Jaun Das was further examined on the Kurarnama.(1) He then deposed that Mohan Prasad took him to the house of Nandkumar; Nandkumar showed him the Kararnama, and Mohan Prasad was present when the deponent read it. What Kissen Jaun Das had asserted the previous day was that Mohan Prasad did not know of the Kararnama; it was Padmohan who showed it to him. On 15 June, as is obvious from his deposition, he made a grand revelation that Mohan Prasad knew of the Kararnama. On being asked why he did not state it the previous day he told the court that he was afraid of Mohan Prasad, and Mohan Prasad had asked him not to disclose anything about the Kararnama. On cross-examination he lost his previous boldness, simplicity and confidence and started wavering and retracting. The impression he gave to the court was that of a perjured witness and evidence was given to show that he had been influenced by Nandkumar on the previous night.

'Exhibit M' being an account of Bulakidas, signed by Padmohan and Mohan Prasad, and containing an entry of the

(1) Ibid; pp.107-110.

bond-money, was produced by defence to prove that Mohan Prasad had himself acquiesced in the payment of the bond.⁽¹⁾ Mohan Prasad being examined on Exhibit M deposed that he was persuaded by Padmohan to sign that account and his signing the document did not mean that he consented to the forgery, for, Exhibit M was an account of the money already paid to the creditors of Bulakidas.

The defence produced Manohar Munshy to depose that Mohan Prasad had tried to suborn him.⁽²⁾ Manohar stated that three days before the commitment of Nandkumar Mohan Prasad showed him the bond and asked whether it was in his handwriting. When the deponent replied in the negative Mohan Prasad asked him to find out a man who could depose that it was in his handwriting. A day or two afterwards, Durham showed the deponent the Persian bond and two other papers and asked him whether they were written by him. He denied, whereupon Durham asked for certain Persian papers written by the deponent; compared them with the bond and observed that the Persian bond was not in the deponent's handwriting. Mohan Prasad denied having met Manohar Munshi three days before the commitment of Nandkumar. Durham, the counsel for the prosecution did admit having met Manohar three days before Nandkumar's commitment (not two days as deposed by Manohar) and asked him whether the bond was in his handwriting. The statement of Manohar Munshi, though not relevant to the main

(1) Ibid, pp.46-47.

(2) Ibid, pp.89-91.

question, whether the bond was a genuine one, is indirectly supported by certain entries made by Vansittart in his 'Indian Journal'.⁽¹⁾ From these entries made during the latter part of April and first week of May 1775, it can be inferred that the Persian bond was for some time with Mohan Prasad and then with Durham and that Mohan Prasad believed that the bond was written by Manohar Munshi. It is, therefore, quite possible that Mohan Prasad went to Manohar to find whether it was he who drafted the bond for Nandkumar. The nature of the entries and the fact of their being made in a highly confidential private journal, suggest that Mohan Prasad, Vansittart and men of their camp believed that the bond was a forgery. If the prosecutor was led to believe, no matter rightly or wrongly, that the bond was a forged one, the prosecution could not be said to be malicious.

So much about the defence case. The widow of Bulakidas, and Gangabissen were alive but could not appear as witnesses. The widow was at Banaras. As Banaras was out of the jurisdiction of the Supreme Court she could not be summoned by the Court. Neither of the parties to the trial seems to have tried for her appearance in the Court. Gangabissen was in Mohan Prasad's house, seriously ill and confined to bed.

On 11 June, Le Maistre suggested that Gangabissen might be brought in the court on a cotta to give evidence. The court held, 'Gangabissen having a great interest in the estate of Bollakee Doss..

(1) E.H.R.; vol.LXXII, No.284, July 1957, p.452.

the counsel for the Crown would not be entitled to call him.'⁽¹⁾
Fearing that Gangabissen was living under the influence of Mohan Prasad, the prisoner first hesitated to call him but afterwards at the desire of the jury consented to call him.

Dr. Williams and Starke were sent by the court to examine him and report whether he could be safely brought to the court.

Dr. Williams on his return deposed that Gangabissen feared he would die if he was taken to the court and in his own opinion "the man could not be brought here, and carried home again, without imminent danger of expiring from fatigue."⁽²⁾

X

X

X

Did Impey, as alleged by his accusers, misconduct himself during the trial of Nandkumar by severely cross-examining the defence witnesses?⁽³⁾ Was he partial in his summing-up of the evidence, "discrediting the witnesses of the defence and hardly touching upon the credibility of the witnesses for the prosecution?"⁽⁴⁾

Regarding the first question, it is a fact that the defence witnesses were severely cross-examined by the judges, but they

(1) Trial, p.32.
(2) Ibid, p.33.
(3) 'Articles of Charge'; First Charge; pp.5-6.
(4) Ibid.

were so examined "by Mr. Justice Le Maistre principally, Mr. Justice Hyde next, and Sir Elijah Impey least of all".⁽¹⁾ Farrer deposed before the House that when Nandkumar told him that the judges were very hostile to his witnesses he went to the judges to convey the apprehensions of his client.⁽²⁾ The answer of the judges, in words of Farrer, was as follows:

'First, that the nature of our defence, after the plain tale told by the prosecutor and his witnesses, was in itself suspicious. Secondly that they found the prosecutor's advocates wholly unequal to the task of cross-examining witnesses, prepared as ours appeared to have been; and that, had they not acted; and did they not continue to act, in the manner they had done, it would be in effect, suffering the purposes of justice to be entirely defeated.'⁽³⁾

Thus, it was not Impey, but Hyde and Le Maistre, who severely cross-examined the defence witnesses, and such an examination was intended to serve the ends of justice. It may be recalled here that Le Maistre and Hyde had been sufficiently humiliated by the majority members of the council on the score of Nandkumar's commitment. They saw the councillor standing behind Nandkumar in shining armour. That might have been the additional reason for their being so critical of the evidence given by the defence.

(1) Minutes of Evidence, Farrer's deposition before the Committee of the House, p.11.

(2) Ibid, pp.11-13.

(3) Ibid.

The second question leads us to a critical examination of the summing up of the evidence by Impey.

Before Impey started summing up the evidence, he was approached by the defence-counsel, who wanted to submit his observations on the evidence to the jury. By the laws of England, such observations could not be made direct to the jury by the counsel of the prisoner charged with felony. But Impey told the defence-counsel that if he would deliver to him any observations he wished to be made to the jury, he would submit them to jury and give them their full force.⁽¹⁾ Accordingly the defence-counsels submitted their observations to him and he forwarded them to the jury with his comments.⁽²⁾ In his comments on those observations Impey does not appear to be unduly critical. On one of the observations, for example, that "the witnesses are dead, the transaction is stale, and long since known to the prosecutor", Impey remarked that those were objections of Wright, and desired the jury to keep that observation in consideration for the purpose of 'forming the verdict'.⁽³⁾

In his summing up the evidence, Impey does not seem to have given any undue weight to even the most tenable evidences produced by the prosecution to prove the guilt of the prisoner. Commenting on Bulaki's letter, granting power of attorney to Mohan Prasad and Padmohan, and produced by prosecution as an evidence to prove that Bulaki owed only Rs.10000 to Nandkumar

(1) 'Trial', p.109.

(2) Ibid, observations made by Farrer and Brix, pp.109-111.

(3) Ibid, pp.110-11.

and no more, Impey wrote: "but I think no great stress can be laid on that, as it contains a reference to such other debts as may appear by his books." (1) We have observed before that it was unlikely that such a large sum of money could be forgotten to be inferred in the letter granting power of attorney. But Impey's remarks deprived this evidence of its force and decisiveness.

Furthermore, on the evidence given by the prosecution to prove that Bulaki had lent a lakh of rupees to Clive in 1765, the year in which the bond purports to have been executed by him in favour of Nandkumar, Impey commented:

"...a much larger sum would no doubt have been paid on Lord Clive's credit alone; and it is certain, that Bollakey Doss was at that time a debtor to Maha Rajah Nandkumar." (2)

Turning to Impey's observations on the creditability of witnesses, it is evident that the defence-witnesses, as compared to prosecution-witnesses, were highly perjured. We have observed elsewhere that the defence-story about the execution of the bond was too tidy to be true. The defence had failed to establish the identity of Mehtab Roy, it had also failed to prove that there existed a different Kamal who had attested the bond and was dead. On the other hand, Kamal, the prosecution witness, had sworn that his seal was in the possession of Nandkumar who had affixed it on the bond without his consent. Coja Petruse, a Portuguese by nationality and a well reputed

(1) Ibid, p.112.
(2) Ibid, p.112.

citizen of the town, had deposed that three or four years ago Kamal had a conversation with him in which conversation he said that his seal was affixed on a forged bond by Nandkumar without his consent.⁽¹⁾ Impey appears to have believed in the creditability of Coja Petrusse and for that reason in the allegation that Kamal's seal was affixed to the bond without his consent.⁽²⁾ The failure of the defence to establish identity of a different Kamal did strengthen Impey's belief in the prosecution story. Likewise, Impey appears to have believed that Mohan Prasad would not prosecute an innocent Brahmin maliciously.⁽³⁾

We may here pause to make certain independent observations upon the creditability of two witnesses, Mohan Prasad and Kissen Jaun Das.

Mohan Prasad, according to his depositions made in the court, knew that only Rs.10000 were due from Bulaki's estate to Nandkumar.⁽⁴⁾ A period of about three weeks intervened between the payment of Bulaki debts by the Company and the payment of bond-money to Nandkumar. During this period Mohan Prasad, as he deposed, had occasion to know that a much larger amount than Rs.10000 was fraudulently demanded by Nandkumar, and Padmohan and Gangalissen were going to pay that amount from the bonds received from the Company. He further deposed that he was

(1) Ibid, p.14.

(2) Impey's family was quite intimate with the family of Coja Petrusse and Lady Impey used to pay visits to the Petruses. (H.M.S. 121, p.587)

(3) 'Trial', p.117.

(4) Ibid, p.21.

present when payment was made to Nandkumar on the Persian bond by Padmohan and Gangalissen. Here it may be asked why Mohan Prasad acquiesced in the payment of such a large amount of money on a document, the genuineness of which he had reasons to suspect? Could a man, who from the beginning was so suspicious about Nandkumar's bona fides, become so much devoid of curiosity as not to even ask why and on what account the payment was made to Nandkumar of a sum of money larger than he knew justly belonged to him?

It may be recalled that he was one of the attorneys appointed by Bulakidas in his will. He had every right and reason to oppose the payment until he was told on what account it was being made. His silence amounted to an acquiescence in the commitment of a crime.

One of the witnesses who shocked Impey most was Kissen Jaun Das. As remarked elsewhere, this witness had impressed the court from the beginning of the trial until 14 June. It was on 15 June, when he was further examined on Kararnama, at the desire of the prisoner, that perjury was suspected in him. Supposing that Kissen Jaun Das' deposition which was made on 15 June, was a gross falsehood. Might be that the previous night he was influenced by Nandkumar's men at Jarret's house and he agreed to depose falsely the following day that Mohan Prasad knew of the Kararnama.⁽¹⁾ What then about the

(1) 'Trial', p.108.

first part of his deposition to the Kararnama which he made on 14 June. On 14 June he had deposed that Padmohan Das did show him a document (Kararnama) bearing the genuine signature of Bulakidas and admitting the bond-money due to Nandkumar. Impey seems to have disbelieved in all his statements which related to Kararnama, without making any distinction between what he said on 14th and what on 15th of June. If Impey did not believe in his statement made on 14 June, he should have warned the jury against all his statements made during the trial. Here it may be recalled that this witness had proved many facts for the prosecution during the trial. He had verified the signature of Bulakidas on the power of attorney. He had deposed that during the stormy days of 1764 he was with Bulakidas and he did not know of any treasure being conveyed to Bulakidas by Ausad Ali. He had further deposed that Silabut knew Persian and on the basis of his deposition Impey argued in his summing up that when Silabut knew Persian why Bulaki would ask for a writer. The whole story about the loss of jewels as put forth by defence was refuted by the single testimony of Kissen Jaun Das who deposed that he never heard of such a loss; had it happened he must have heard it; and a thousand people must have known it.⁽¹⁾ The above statement was made by Kissen Jaun Das on 14 June, the day he gave the first version of his Kararnama story. There is no reason why a part of his depositions made on 14 June and relating to Kararnama should have been treated as

(1) 'Trial', p.82.

a perjured one and a different part relating to jewels should have been allowed to pass uncensured.

From what he observed and what he failed to observe in his summing up it can be inferred that Impey was thoroughly convinced of the prisoner's guilt. Yet, he does not seem to have conveyed his conviction to the jury. Concluding his summing up of the evidence he wrote: "You will consider on what side the weight of evidence lies, always remembering that in criminal cases, you must not weigh the evidence in golden scales; there ought to be a great difference of weight in the opposite scale before you find the prisoner guilty. In cases of property, the stake on each side is equal, and the least preponderance of evidence ought to turn the scale; but in a capital case, as there can be nothing of equal value to life, you should be thoroughly convinced, that there does not remain a possibility of innocence before you give your verdict against the prisoner."⁽¹⁾

The jury retired for about an hour and brought in their verdict of Guilty.⁽²⁾

* * * * *
We may now turn to give a systematic and brief account of the post-trial events leading to the execution of Nandkumar - of the various attempts made by the prisoner and his counsel, first to assess the judgement, then to secure the Court's permission to appeal and finally to obtain a respite until His Majesty's pleasures were known.

(1) Ibid, p.118.
(2) Ibid, p.119.

As Farrer deposed before the Whole House, the following courses were agreed between him and Brix to undertake to save the life of the prisoner:

'First, the motion in arrest of judgement.

'In case that should fail;

'Secondly, a petition of appeal.

'And in case that should also fail,

'Thirdly, an application to the jury to recommend the

'prisoner to the Court for a respite, so as to give

'His Majesty an opportunity of extending to him

'His Most Gracious Mercy.

'Fourthly, another Petition to the like purport from

'the defendant himself.

'Fifthly, Another through the medium of the

'Governor General and Council.

'Sixthly, Another through such of the

'Native inhabitants of Calcutta and the neighbouring

'Districts as might be disposed to sign the same.

'Seventhly, Another from the Nabob of Bengal,

'Mowbareck ul Dowlah, and in short from every Quarter

'which it might be supposed might be of the least use.' (1)

It was on '22 or 23 of June' that Farrer moved the Court in 'Arrest of Judgement'. His motion was based mainly on one ground, which, in his own words, was as follows:

(1) Minutes of Evidence, p.15.

"... the defendant having been indicted, tried, and convicted capitally on an English statute, 2 George II, it was necessary to have proved that the instrument alleged to be forged came strictly within the received legal Definition and Description according to the Laws of England.....

That the instrument stated in the indictment, and found by the verdict to have been forged or published, was neither Bond, writing obligatory, or Promissory Note, according to the received Descriptions of these Instruments respectively by our Law Books and Courts of Justice;"(1)

The motion was rejected by the Court and the Chief Justice remarked that it was unnecessary to determine whether it was either a Bond or Promissory Note; he was of the opinion that it was one or the other.(2) The Chief Justice, therefore, passed sentence of death on the prisoner.

From Farrer's disposition made before the Committee of the Whole House, it appears that after the sentence of death had been passed on the prisoner, he consulted Brix on a petition of appeal and both agreed that they could assign no legal reasons which they thought were likely to weigh with the Court, nor could they safely venture to say that the Verdict was contrary to evidence, after the Court had ordered several of their witnesses to be apprehended and indicted for Perjury. Therefore

(1) Ibid, p.16.

(2) Ibid.

they decided to make the petition general, relying upon the Charter which had granted the Court discretionary power to grant or refuse appeals in criminal cases without requiring particular legal reasons to be set forth. Therefore, they stated in the petition that the prisoner being a Hindu native of Bengal and ignorant of English law had not defended himself as fully as a British subject in a similar case would have done.⁽¹⁾ This petition was rejected by the Court for its being general and not mentioning any specific reason for the appeal. The Court further added that the prisoner could not plead ignorance of English law which rendered forgery a capital offence, for he ought to have known the case of Radha Churn Metre.⁽²⁾

It is from the above evidence given by Farrer before the House on 14 February 1788, that we learn that a petition for appeal was filed by Brix. Impey in his speech before the Bar of the House doubted whether any appeal was ever made on behalf of the prisoner.

He said - "That any appeal was presented I have no recollection; and it is extraordinary that such a fact should have escaped my memory, and then suggested - "Yet I have great reason to believe, that a petition delivered by the prisoner, desiring to

(1) Ibid, p.17-18. It is not clear on which date the petition was filed. A letter of Brix to Farrer enclosing the petition of appeal is wrongly dated.. '3 of June 75'.

(2) Probably it was dated on 23 June, the number '2' omitted by mistake of print. If it is 23rd of June then the appeal was most probably filed on 24 June. Ibid.

be respited and recommended to His Majesty's mercy, has been after a long lapse of time, confounded with an appeal."(1)

But Farrer does not seem to have confused a petition of appeal with a petition for respite. On the contrary, he deposed -

"Mr. Brix, I very well remember, had so far mistaken my idea, that as we had determined on a petition of appeal and in case that should be refused, a Petition for a respite, that he had joined the two things together in the same petition; and had therefore, after praying Leave to appeal, further prayed, that in case the Court should not think proper to grant such Appeal, then that they would be pleased to respite the Petitioner. I well remember striking the latter Part out, as the appeal was a Proceeding under the Charter, but the Application for a respite stood on a different ground. This done, I returned the Draft to Mr. Brix, desiring him to get it fair copied, and present it in Court the then next day."(2)

And referring to Impey's denial of any appeal having being made by the prisoner, Farrer further deposed - "That I cannot take upon myself to say that Mr. Brix stated to me, whether he, Sir Elijah Impey, was present or not when the Petition of Appeal was presented, nor what judges in particular were present on that occasion;"(3)

(1) Par. His. vol.26, p.1385.

(2) Minutes of Evidence; p.18.

(3) Ibid.

We feel inclined to believe Farrer for, his statement on this point is definitive whereas Impey's is indecisive.

From Farrer's narrative it is clear that he drafted three applications for respite, one in the name of the jury and the other two in the prisoner's name. He approached the foreman of the jury, Robinson, probably on 31 July; but the foreman declined to sign the petition.⁽¹⁾ Only one of the jury, Edward Ellerington, came to Farrer's house and signed the petition.⁽²⁾ This petition was, therefore, not presented to the judges. Of the two petitions drafted in the name of Nandkumar, one was to be presented to the Governor-General and Council and the other to the judges. Before presenting it formally to the Council, Farrer at a private party at Monson's house on 1 August conversed with Francis, Monson and Clavering on the propriety of sending the petition to the Council; Francis agreed but Clavering objected, Monson concurring with Clavering. In Farrer's own words - "the General, without hesitation, preremptorily refused, assigning as a reason, that it was a private transaction of Nundkumar's own, that it had no relation whatever to the public concerns of the country, which alone he, the General, was sent out to transact, and that he would not make any Application in Favour of a man who had been found guilty of Forgery;"

(1) Ibid; pp.19-20: Robinson complained to Impey against Farrer, for pestering him unduly and illegally on behalf of the prisoner. When Farrer appeared in the Court at its next sitting, Impey reprimanded him for his behaviour which was derogatory to his professional character and reminded him that his duty as an advocate of Nandkumar had finished with the *cause*. (L.B.I., vol.16265; pp.131-32).

(2) Ibid.

Forgery;"(1)

Therefore the application to the Council was never sent. Another petition addressed to the judges was presented by Radnacharn, Nandkumar's son-in-law, to the Chief Justice in person or left at his house.(2) Two other petitions were sent to Farrer by Fawke; one was in the name of Sambhunath Roy, who for the first time was reported to Farrer as Nandkumar's brother, and the other in the name of the inhabitants of Calcutta, Moorshidabad, and other places. Farrer advised against sending to judges the petition which was ⁱⁿ the name of Sambhunath Roy; the other petition could not get subscribers.(3)

(1) Minutes of Evidence; p.22.

(2) Ibid, pp.22-24. Petition to the judges stated almost the same grounds for respite as the one addressed to the Council. It alleged that the law rendering forgery a capital offence was not introduced with that degree of certainty and notoriety which all laws so highly penal ought to be; that the offence was committed about seven years ago and during the whole of the intervening period the prosecutors knew of the offence; that should the sentence be carried into effect the whole of Brahman community to which the convict belonged shall be subjected to a perpetual infamy and disgrace and as a consequence a great disorder would ensue among the men of inferior castes.

(3) Ibid, p.24.

In Vansittart papers there is an account of persons who signed a petition in favour of Nandkumar. (Add. MS.48370). According to this account the petition was signed by sixty-three, of which twenty-five were inhabitants of Calcutta and thirty-eight of Burdwan and Hoogly. Of the twenty-five inhabitants of Calcutta, nine were Brahmins and the rest of low caste. Of these sixty-three subscribers, most were men of no substance and of doubtful character and a few of them were relations of Nandkumar.

The above account refutes Farrer's statement that the petition could get no subscribers. However, it can not be traced as to what happened to this petition.

So we glean from Farrer's narrative that ^{out of} ~~only~~ five petitions for respite, only one could be presented to the Chief Justice and that too by Radhacharn.

We have observed while pursuing Farrer's narrative that he had a plan to secure from the Nabab an application for the grant of respite. Though he does not mention whether such an application was ever made by the Nabab, we learn from the Secret Consultations of 27 June 1775, that a letter of Nabab was received by the Council on 27 June and entered in the proceedings of the same date. (1) In that letter the Nabab recalls the services of Nandkumar to English settlement during the stormy days of 1764, ^{when} the Kassim Ali was determined to ruin the English settlement, warns of the disaster that would follow the execution of Nandkumar, alleges that those who are concerned in the prosecution of Nandkumar were his ~~dis~~posed enemies and desires that taking into consideration the welfare of the people the Raja's sentence be suspended until the pleasure of His Majesty be known. The Council resolved to forward this letter to the Supreme Court and the letter was accordingly forwarded without any request or prayer on behalf of the Council. (2)

Nandkumar himself wrote to Francis on 31 July, 1775, asking him to interpose on his behalf with the justices and ^{secure} respite. (3) Francis did not pay any heed to Nandkumar's

(1) Secret Consul. 1775, R.A., vol.29, pp.379-80.

(2) Ibid.

(3) P and M, vol.1, Nandkumar's letter to Francis, pp.37-38.

entreaties. Nandkumar wrote another petition, a libelous one, to the Council.⁽¹⁾ This petition was received by Clavering on 4 August 1775, a day before Nandkumar's execution.⁽²⁾ In all fairness, this letter should have been presented to the Council immediately after it was received. But Clavering did not present this petition to the Council until 14 August 1775; nine days after Nandkumar's execution.⁽³⁾ After it was read in the Council, Francis proposed that, as it was of a libelous nature it should be expunged from the proceedings of the consultation.⁽⁴⁾ His proposal was carried by the majority votes; the petition was accordingly expunged from the proceedings of the Council and burnt publically by the common hangman.⁽⁵⁾ On 28 August, the judges wrote to the Council for a copy of the above petition.⁽⁶⁾ The Council, in its reply to the above letter, declined to furnish any copy as

(1) Van. Papers. Add. MS. 48370; Petition of Nandkumar to the G.G. and C. with the original in Persian and a copy of the translation; also, "A Refutation by Impey" pp.5-8; in this petition Nandkumar alleged that he had been illegally and maliciously tried by Impey and other judges for a crime which never proceeded from him and requested the Councillors to represent his case to His Majesty.

(2) 'Francis' answer', pp.7-11;
In their letter to the Court of Directors the majority members of the Council wrongly maintained that this petition was received by Clavering after Nandkumar's execution.

(Has. Papers, Add. 29103, C to C of D, 20 Nov. 1775; p.136)

(3) 'Francis' Answer', pp.7-11.

(4) Ibid.

(5) Ibid.

(6) H.M.S. 121, p.141.

it did not exist on the consultation and further, wanted to know wherefrom the judges got its intelligence. (1) Impey in his speech before the House disclosed that Hastings had supplied him with a copy of the petition. (2)

These were the measures taken by Nandkumar and his counsel from 16 June to 4 August 1775 to obtain permission to appeal and for a suspension of the execution of the sentence. We find that every petition was grounded on prisoner's ignorance of law; every time the Court was moved, (it was moved twice) it referred to the case of Radhacharn Metre as one having sufficiently publicised the enforcement of 2 Geo.II in India. None of the petitions was grounded on prisoner's having preferred a charge against the Governor-General. We further find that the majority members of the Council, who had supported Nandkumar before and during his trial and had interfered with the processes of the Court on his behalf, abandoned him altogether after he was found guilty. If they believed that the prosecution was malicious or the punishment was severe, they had more than one opportunity to move the Court for a respite of the sentence. If they really suspected a conspiracy between Hastings and Impey behind the trial of Nandkumar, if they really believed in the facts alleged in the libelous petition of Nandkumar, they ought to have done all they could to secure his respite. (3)

Nandkumar was hanged on Saturday, 5 August 1775, at

(1) Ibid; Council to judges, 11 September 1775, p.145.

(2) 'Speech', p.157.

(3) 'A Regulation by Impey', p.15.

8 a.m. (1) His execution took place at Cooly Bazar, "within a few paces off Fort William, and close to the modern Hastings bridge." (2) Two days after his execution, Frances wrote to Sir Edward Hughes at Madras:

"Whether he was guilty or not of the crime laid to his charge, I believe no man here has a doubt that, if he had never stood forth in politics, his other offences would not have hurt him" (3)

Before closing the story of the trial and execution of Nandkumar, it is necessary to refer to the addresses presented to Impey by the Grand Jury, free merchants, Armenians, and native inhabitants of Calcutta. (4) In these addresses the subscribers had expressed their satisfaction in possessing in Impey a Chief Justice from whose abilities, candour and moderation, they promised themselves all the advantages which could be expected from the institution of the Supreme Court. Impey was requested to sit for a full size portrait at full

(1) Macrabe's account of the execution of Nandkumar; Annual Register, 1788, F.N. pp.177-179, also published in 'Francis' Answer', App.VIII, pp.93-100: Macrabe, the brother-in-law of Francis was then the sheriff and as such an eye witness to the execution-ceremony. He published an account of his interview with Nandkumar on 4 August and his execution on 5 August.

(2) Cotton's - Calcutta - p.113.

(3) P and M, vol.1, p.36.

(4) H.M.S. 121; pp.203-220.

The address of the Grand Jury was signed by twenty-three of the grand-jurors who sat at Nandkumar's trial, that of free merchants signed by eighty-four, of Armenians it was signed by forty-four and of native inhabitants signed by one hundred and three.

length to the painter, which portrait was to be put up in the town-hall. Enclosing these public-addresses to their letter to the Council, 28 August 1775, the judges wrote:

'Knowing the satisfaction His Majesty and his ministers as well as the Hon. East India Company, who are deeply interested in the due administration of justice, must receive from the high reputation which the Supreme Court has acquired in this country, we thought, we owed it to ourselves and the State, to transmit to you the enclosed papers that they may stand recorded on your Consultations.' (1)

Likewise, Impey and Hyde forwarded the addresses to the Court of Directors. (2)

The majority members of the Council did not allow these addresses enter their Consultations without their comments. (3) The Councillors recorded in their minutes that these addresses were organized and led by men like Nobbkissen, Kantoo Babu, Santiram, Middleton, Playdelland, Robinson and Coja Pestrues, who were either banians or dependants of the Governor-General.

(1) Ibid.

(2) L.B.I. vol.16265; pp.94-95.

(3) H.M.S.120, Minutes of 15 September 1775; pp.586-87.

Certain Observations on Nandkumar's Case

After we have critically described the trial and execution of Nandkumar, it is now necessary to try to answer certain questions which have direct bearing on the character of Impey.

Was there any conspiracy between Impey and Hastings to bring about the ruination of Nandkumar? Is there any doubt that Nandkumar was really guilty of conspiracy and forgery? Did Impey conduct the trial illegally and unfairly? Had Impey any personal motive in rejecting Nandkumar's petitions for appeal and respite?

On the question of a conspiracy between Impey and Hastings, Macaulay wrote in Edinburgh Review:

'If we had ever had any doubts on that point, they would have been dispelled by a letter which Mr. Glig has published, Hastings, three or four years later, described Impey as the man "to whose support he was at one time indebted for the safety of his fortune, honour, and reputation". These strong words can refer only to the case of Nuncomar; and they must mean that Impey hanged Nuncomar in order to support Hastings. It is, therefore, our deliberate opinion, that Impey, sitting as a judge, put a man unjustly to death in order to serve a political purpose.' (1)

The letter on which Macaulay's deliberate opinion was based was the one which Hastings wrote to Sullivan some time in 1780. (2)

(1) The Edinburgh Review, Oct. 1841 - Jan. 1842; p.182.

(2) Glig's, 'Memoirs', vol.II, p.255.

In that letter Hastings complained against Impey in the following words:

'I feel an injury done me by a man for whom I have borne a sincere and steady friendship during more than thirty years, and to whose support I was at one time indebted for the safety of my fortune, honour, and reputation with a ten-fold sensibility.'⁽¹⁾

Which year and what event did Hastings have in mind when he used the phrase 'at one time'? According to Macaulay's intuition and Beveridge's arguments, Hastings, in the above letter, was referring to no other event but the case of Nandkumar, "and that he accidentally and virtually confessed that Impey had hanged Nandkumar in order to support him."⁽²⁾ Stephen, on the other hand, contended that it was the struggle for Governor-Generalship between Clavering and Hastings and the judges' decision in the latter's favour, which Hastings was referring in the above letter.⁽³⁾

In order to find out which of the two conflicting interpretations is true, it is necessary to refer briefly to the political crisis of 1777. It was on 19 June 1777, that the intelligence arrived from England that the 'proposed resignation' of Hastings, which had been tendered through his agent, Maclean, in 1775, had been accepted, and in consequence of the said acceptance Clavering had been appointed the Governor-General.

(1) Ibid.

(2) Beveridge's, Nandkumar, p.154.

(3) Stephen's, Nand S, vol.II, p.63.

Immediately after the letter of the Court of Directors was read in the Council, the majority members of the Council proclaimed Clavering as the Governor-General, they informed the provincial councils of the change in the government and asked Hastings to surrender to Clavering the keys of the forts.⁽¹⁾ Hastings denied having authorised his agent to resign and held himself legally entitled to continue in his office.⁽²⁾ As a result, two rival Supreme Councils started functioning in Calcutta, one of Clavering attended by Francis, the other of Hastings attended by Barwell and both claiming Supreme power of the government against each other. On 20 June, both parties referred the issue to the judges for their determination. A civil war was, thus, averted. The judges of the Supreme Court were unanimously, clearly and decidedly of the opinion that "the place and office of Governor-General of this presidency has not yet been vacated by Mr. Hastings" and the assumption of the powers of Governor-General by Clavering was 'absolutely illegal.'⁽³⁾ Clavering and Francis implicitly acquiesced in the decision of the Court.

Now, it can be seen that of the 'two events in Hastings' life - Nandkumar's accusations of him for corruption, and Claverings' assumption of the Governor-Generalship against him - the latter was more critical and consequential than the former.

(1) Letter of Francis and Clavering to the Supreme Court, 20 June 1777; I.P. vol.16267, pp.5-6.

(2) Hastings and Barwell to the Supreme Court; 20 June 1777; I.P. vol.16267; p.12.

(3) Judges decision, I.P., vol.16267, p.13.

Had Hastings been ousted from his office by Clavering, his fortune and reputation would have been seriously damaged. Had he opposed Clavering by force of arms his life would have been endangered. The favourable decision of the Supreme Court, was therefore a God-sent device to save his fortune, reputation and life.

Nandkumar's accusations, on the other hand, had hardly exposed Hasting's life, honour and fortune to any future danger. His accusations were designed solely to humiliate Hastings. That purpose was fulfilled by recording his accusations on the Consultations. If Hastings had employed Impey in 1775 to exterminate Nandkumar, it would have been very unlikely for them to quarrel on public matters, which they did in 1780 on Rossijurah issue and more unlikely to complain against each other to their friends at home. Hastings at any rate would have gladly submitted to Impey's will in case of a conflict on public matter. The relationship which existed between Hastings and Impey in the years that followed 1775, was not of a conspirator; they remained good friends to each other, but never allowed their friendship to grow thicker at the cost of their public duty, and when the differences arose on public matters they let their friendship to suffer a break, but did not compromise with their principles and public duty.

In support of the above contention that Hastings in his letter to Sullivan was referring to the crisis of 1777 and not to

the trial and execution of Nandkumar, we may further cite two letters of Impey, one to Dunning and the other to Masterman, written in the same year as Hastings wrote to Sullivan; in both these letters Impey accuses Hastings for ingratitude and complains against the exertion of his powers against the Court. To Dunning, he wrote:

'The power which is exerted against me would not have existed in the hands in which it is if I had not helped to keep it there.'⁽¹⁾

In the same language and with the same anguish he wrote to Masterman.⁽²⁾

It is obvious that Hastings and Impey were referring to the same incident. Impey's letters are more pointed; he appears to have had in his mind the crisis of 1777 and his unequivocal support given to Hastings as against Clavering.

Beveridge tried to base his charge of conspiracy against Impey and Hastings on another supposed fact, that no attempt had been made to prosecute Nandkumar for forgery until May 1775.⁽³⁾ Hastings, in order to defeat Nandkumar's charges which were pending in the Council, suborned Mohan Prasad to prosecute him in the Supreme Court. In Macaulay's words: "The ostensible prosecutor was a native. But it was then, and still is, the opinion of everybody - idiots and biographers excepted - that

(1) Impey to Dunning, Mar. 1780; I.P. vol.16259, pp.321-23.

(2) Impey to Masterman, 1 Mar. 1780; I.P. vol.16260, pp.13-14.

(3) Beveridge's - 'Nandkumar' - p.309.

Hastings was the real mover in the business."(1)

As to this, it can be said that a civil suit had been instituted against Nandkumar as early as 1772, by Ganga**f**issen, the executor of Bulakidas. It was for the recovery of a certain sum of money which Nandkumar, as it was alleged later in February 1774, had received on a forged Persian bond from the executors of Bulakidas. As the Persian bond together with other papers relating to the estate of Bulakidas were in the custody of the Mayor's Court, an application for their return was made on 25 March 1774, on behalf of Ganga**f**issen; it was stated in the application that the papers were needed in order to support a civil suit which the applicant had already instituted in the Dewanni Adalat.(2) The Mayor's court does not seem to have had given any consideration to the above application for a long time. Another application was made on 25 January 1775, a third one on 30 January 1775, and the final application on 24 March 1775; all these applications were made by Farrer, advocate of Ganga**f**issen, and at last the papers were returned on 27 April 1775.(3)

Thus we find that nearly three years before Nandkumar accused Hastings, a civil suit had been instituted against him on the same cause of action for which he was criminally prosecuted in May 1775. We may also infer from the repeated

(1) Edinburgh Review, 1841-42, p.189.

(2) 'Trial', p.86.

(3) Ibid, pp.86-87.

applications made to the Mayor's Court by Ganga~~l~~issen' advocate, from January to March 1775, that the applicant had an intention to prosecute Nandkumar for forgery in the Supreme Court. This inference is further strengthened by the fact that the suitor had failed to obtain any redress against Nandkumar in the civil court. Ganga~~l~~issen could get no redress from the Dewanni Court, firstly because the Court had no power to try a forgery case, which the original suit had virtually converted into, and, secondly because one of the native members of the Court was known to have been recommended to his office by Nandkumar, the defendant in the case. (1)

Why did neither the prosecution nor the defence give any evidence in the forgery case of the civil suit? The reasons were as stated by Farrer before the House, first that in the civil suit Nandkumar's (the defendant in the suit and the accused in the forgery case) witnesses had contradicted each other in several material points, secondly, that the plaintiff had preremptorily charged him of forgery, and finally, that when Nandkumar was asked by the plaintiff "either to leave the matter to arbitration, or to make oath that his demand was just", Nandkumar declined to both. (2)

(1) 'Minutes of Evidence', pp.30-32, Deposition of Rouse before the Committee of the House in 1788.

C.W.B. Rouse was the president of the Dewanni Adalat when the civil suit against Nandkumar came for hearing. This suit had been first instituted in Judicial Cutcheharry and then transferred to Dewani Adalat when the latter was established in 1772.

(2) Ibid, Farrer's deposition before the House, p.14.

Why then did the prosecution not give in evidence the proceedings of the civil suit? Taking into account the above deposition of Farrer, we can say that the prosecution might have been benefitted by referring to the proceedings of the civil suit, for, Nandkumar by refusing to either refer the suit to arbitration or to swear that he was innocent, had in fact proved his guilt. Here we may refer to Rouse's statement regarding the nature of the civil suit: he said:

'...there was a darkness in the whole conduct of both parties, which after much careful inquiry, prevented me from forming any decision perfectly satisfactory to my own mind, and indeed left an impression not very favourable to either one side or the other.' (1)

Darkness in the whole proceedings! Why? Had the executors of Bulakidas - Gangalissen, Radmohan and Mohan Prasad - for some reason or other, knowingly acquiesced in the forgery? We have observed while discussing the trial that it is doubtful that Mohan Prasad did not know of the Persian bond until after payment was made on it to Nandkumar. Apart from what has so far been said to suggest that it is likely that the prosecution had acquiesced in the forgery, here an entry from Vansittart's journal may be further cited to strengthen our supposition. On 30 April 1775, Vansittart wrote in his Indian Journal that Raja Nobkissen called upon him and informed him that after the

(1) Ibid, p.31.

the death of Bulakidas, Pudmohan came to him and complained that Bulaki by his will had left him very little, proposed that he (Pudmohan) should make out a bond in his (Nobkissen's) name, that the amount should be plain and they should share it between them; that upon his (Nobkissen's) refusing to be a prey to a forgery, Pudmohan went and made a like proposal to Nandkumar, hence arose Bulakidas's bond to Nandkumar for Rs.29000 (in the civil suit) and that afterwards Pudmohan complained to Nobkissen that Nandkumar had taken a bond from him and would not give him any part of the money. (1)

If Pudmohan and Nandkumar did forge the bond, it is doubtful that Ganga^Bissen and Mohan Prasad did not know if it. It is possible that Pudmohan silenced them by promising to share with them his illgotten money. It is equally possible that when Ganga^Bissen and Mohan Prasad were not given the promised reward for their acquiescence in and silence about the forgery they brought the civil suit against Nandkumar.

From what has been said above it follows that there is no direct or indirect evidence to prove that Hastings and Impey conspired to ruin Nandkumar. It is doubtful that Hastings was the real mover in the forgery case. Supposing that he was. Supposing further that he conspired with Mohan Prasad and the latter, in pursuance of the conspiracy brought up the criminal

(1) E.H.R., vol.LXXII, No.284, July 1957; p.452.

Pudmohan was one of the attorneys appointed in Bulakidas's will. He died in 1771; leaving Ganga^Bissen as the sole surviving executor.

case against Nandkumar. Could it then be said that Hastings suborned Mohan Prasad? A person is said to have been suborned when he is asked to commit perjury or any other crime. It was no crime to prosecute Nandkumar criminally, because a civil suit had long before been filed against him on the same cause of action.

On the second question - whether Nandkumar was really guilty - we cannot retry Nandkumar to-day, nor ascertain after two centuries the degree of his guilt. We have examined the trial-proceedings critically and found that there was sufficient evidence to prove him guilty. Nandkumar's witnesses were perjured and the defence story was concocted. The verdict of the Court was determined more by the falsehood of the defence story than by the soundness of the prosecution-story. Impey, at any rate, was convinced of the guilt of the accused. The author of SEIR reports that among other strange things found in the house of Nandkumar, after his execution, "there came out a small casket containing the forged seals of a number of persons of distinction."⁽¹⁾

As regards the third question - whether the trial was illegally and unfairly conducted by Impey - we have found that the judges, excluding Chambers, believed in good faith that forgery could be tried only under 2 Geo. II, that Chambers himself appears to have been subsequently convinced that 2 Geo II was

(1) SEIR, vol.III, p.79.

in force in India and that Farrer, the counsel for the defence, believed that the forgery case could be tried ^{only} under 2 Geo.II. We have also found that Nandkumar was legally under the jurisdiction of the Supreme Court, that Impey during the trial acted impartially, that he put least number of questions to the defence witness, that he warned the jury time and again, whenever the occasion demanded, not to take any prejudice against the prisoner and in his summing up the evidence, he very prudently and justly reminded the jury that in a criminal case the verdict must not go against the accused until the guilt was proved beyond doubts. We have noticed not a single instance when Impey deliberately misconducted the trial.

The legality of the trial was questioned, as is evinced from the impeachment proceedings of the House, on the score of the applicability of the act of 1729 in India. During the debate on the impeachment motion it was argued at great length by Sir Gilbert Elliot that the law rendering forgery a capital offence did not extend to India. (1) Macaulay, Mill and Beveridge held the same opinion. Even Stephen appears to have doubts on the legality of the case being tried under 2 Geo.II. (2)

Whether the Act of 1729 was in force in India in 1775, is now only a matter of juristic disquisition. The relevant points for our inquiry are - whether the judges could reasonably be led to believe that 2 Geo.II was in force in India and whether

(1) Par. His., Vol.27, pp.416-22.

(2) Stephen's, Nand g, Vol.II, p.84 f.n.

they in fact and in good faith so believed? As to this we have found that it was Hyde and Le Maistre, not Impey, who committed the accused under 2 Geo.II, that the case of Radhacharn Metre served as a strong precedent to commit and try the accused under 2 Geo.II, and Impey firmly believed that Nandkumar could be tried only under 2 Geo.II. In the absence of a specific direction as to which part of the English criminal law applied to India, the judges were legally entitled to find out by interpretations which law was applicable in the case before them. It may be added here that the Indian traditions held the judges quite blameless in the whole matter. (1)

Turning to the last question - what motive, if any, Impey had in refusing to grant appeal or suspend the execution of the sentence. At the outset it can be observed that if the judges had thought of respiteing the criminal or allowing appeal from the sentence of the court, there would have occurred to them several grounds for the same. The rank and status of Nandkumar, the fact that he had accused Hastings, the doubtful introduction of 2 Geo.II in India, and sundry other reasons would have been sufficient to serve the purpose of the judges if they had thought of saving the life of seventy-year-old Brahmin. The hands of Impey were not so helplessly tied up by the law that he could devise no means to save the life of Nandkumar. By influencing one of the judges and then exercising his casting

(1) Busted's, Echoes, p.100, f.n.

vote, Impey might have secured respite for the convict.

It is, therefore, quite apparent that the judges did not want to be merciful to Nandkumar.

Did they act in good faith or did they suffer from a malicious motive in refusing to respite the sentence?

According to Stephen, Impey and other judges acted in good faith:

'I think that in omitting to respite Nuncomar the judges exercised their discretion in good faith and on reasonable grounds, which was all that could be required of them.'⁽¹⁾

To Gilbert, Burke, Macaulay, Mill and Beveridge the omission to respite was motivated by the vilest design to accomplish the death of Hastings' accuser.

It was not in furtherance of any political conspiracy that the judges refused to respite the convict. All the same, it is not true that they were not motivated by private reasons in their conduct. The real motive of the judges in refusing to show mercy to Nandkumar was to establish the supremacy and the independence of the Supreme Court against a hostile executive government and to let the natives realise that the Court could not be dictated by the executive. In his letter to Governor Jonston, 18 August 1778, Impey stated the real reasons which prevented him against showing any clemency to the convict:

'The fabrication of new forgeries, and the most gross perjuries during the time of his confinement and even during the

(1) Stephen's, *N&S*, vol.II, p.85.

course of the trial was an atrocious aggravation of the original offence. No explanation would have made the natives understand that the escape from justice, if the sentence had not been carried into execution, had not been occasioned by the witnesses of the prisoner unless indeed it had been attributed to corruption or timidity in the judges, or a controlling power in the Governor General and Council; I leave it to your consideration the effect any of these opinions must have, on the institution of a new court of justice, among inhabitants.

'Had the criminal escaped no force of argument, no future experience would have prevailed on a ~~single~~ native to believe that the judges had not weighed gold against justice. In India it was universally believed that large sums were offered to the judges, and perhaps a rumour of the kind may have reached England.

'When charges were first exhibited against the Rajah, those who ought to have used their authority to strengthen employed it to insult and weaken the administration of justice and to overawe, to threaten the judges compliments, such as were never received by natives of a rank much above his from Europeans were paid to him,

'.... the prison was converted into a Durbar ladies of the first rank condescended to send condolences The assurances made too great impression on the unhappy man, they gave him and his dependants a security and indolence ill-suited to his circumstances, they gave out the judges dare not execute

the sentence The Governor-General and Council interfered in the process, claimed a power to protect, examined the officers of judges, some of the members at that Board openly threatened to procure the dismissal of the judges, if they did not relax the sentence. It was afterwards confidently asserted by one member that he had effected the dismissal of those judges who were most obnoxious to him, and that it would be brought out by the ships of this session.

I found myself urged to carry into execution a sentence against a prisoner, whom taking into consideration his original crime only I most ardently desired to have saved, and would have done it even under the aggravated circumstances, had it been reconcilable to the trust committed to my care. (1)

By snubbing the court, censuring the conduct of the judges and publically sympathising with the prisoner to the extent of making him expect everything from power and nothing from justice, the majority members of the Council, in fact, compelled the judges to vindicate their powers and independence by rigidly adhering to the strict letters of the law. (2) Nandkumar, until the last moment of his life expected that the Council would force the judges to deliver him. By fabricating false evidences during the trial and ignoring the judges after the trial, he had made

(1) I.P., vol.16259, pp.196-200.

(2) The majority members of the Council had paid a courtesy visit to Nandkumar on 20 April, a day after he had been accused of conspiracy.

('Answer of Francis', p.62)

them merciless. Had these special circumstances not attended his case, his original guilt would not have brought about his destruction.

Note to Chapter II

Radnacharn's Claim for Diplomatic Immunity

During the trial of Nandkumar, Fowke and Radhacharn for Conspiracy against Hastings and Barwell, the majority members of the Council raised a point of law, by claiming diplomatic immunity for Radhacharn who was, as they stated, the 'vakeel' or ambassador of the Nabab. This claim was based on the assertion that the Nabab was a sovereign prince. Thus the Court was, preforce, led into an inquiry into the political status of the Nabab.

Radhacharn had appeared before the judges on 20 April and furnished bail to appear in the next session ofoyer and Terminer on a charge of conspiracy. When the trial for conspiracy commenced, the Majority members of the Council in their letter of 20 June, 1775, to the Supreme Court, claimed diplomatic immunity in his behalf, alleging that he was the public minister of Nabab Mubarak ul Dowla and as such entitled to privileges of an ambassador. The letter concluded with a desire that "the process against him may be void, and that the persons suing out and executing such process may be proceeded against in such a manner as the law directs."⁽¹⁾ Here it may be remarked that the councillors well knew that the prosecutor was Hastings who, except for certain offences, was not subject to the jurisdiction of the Supreme Court. The letter of the

(1) Trial, p.2.

Council enclosed a memorial from Radhacharn wherein he stated that he had been the 'Vakeel' of the Nabab for the past two years and not knowing his privileges as such under English law, he had appeared before the judges on 20 April and given a bail.

The claim made by the Council on behalf of Radhacharn led the court to inquire into the political status of the Nabab.⁽¹⁾ The Court asked the Council to verify by affidavit the following circumstances:

- a) 'that the Nabab Mubarikul Dowla is a sovereign independent prince.'
- b) 'that he is in a situation to make war and peace with this settlement.'
- c) 'that he appoints his ministers, and performs all acts of sovereignty, independently, and without the control of this government.'
- d) 'that a 'vakeel' is a public minister, and that the Gentlemen of the Council have always treated Roy Radhachurn as a person invested with all those rights which they claim on their behalf.'⁽²⁾

Farrer, moving the court on behalf of the Council that Radhachurn may be exempt from the prosecution, stated the following points in support of his motion:

- a) Mubarak is a sovereign; he exercises sovereign power, signs death warrants, possesses a royal mint, keeps in pay a body of troops and has exercised the right of sending ambassadors from time immemorial.

(1) This inquiry took 4 days, June 21, 23, 28 and July 6th, 1775.
(2) Trial, pp.5-6.

- b) 'If the Nabab is not the sovereign, I should be glad to know who is?' If sovereignty was denied to him, a war between British and French would become inevitable.
- c) Radhacharn received his letter of credence in 1772 and since then, except for a brief period, from 22 May 1775 to 30 May 1775, he has resided in this settlement in that capacity. Thus, if the indictment was found after 30 May, it ought to be quashed. He received a salary of Rs.900 per month.

And Farrer produced the following documents in support of his statement:

- 1) Letter of Council, dated 20 June 1775.
- 2) Memorial of Radhacharn addressed to Council.
- 3) Affidavit of Radhacharn.
- 4) Copies of letters of Credence, dismissal and reappointment, from the Nabab, addressed to the Governor-General.
- 5) Articles of treaty and agreement between the Governor and Council on the part of East India Company and the Nabab Mubarakul Dowla.
- 6) A Sunnud from the Nabab Meer Jaffier, in consequence of a 'Fermaun' from the King, confirming a former Sunnud to the Company, for coining money in Calcutta, in the name of the King.

The letter of Dismission, received by the Governor-General and Council on 22 May 1775, weakened the claim made by the

Council. It read:

"As Roy Radhachurn has, for some time past, been an idle person, and considering his being retained as my vakeel entirely useless, I have dismissed him from the 1st of Suffer, in the 16th Sun (year of His Majesty's reign) and write this for your information."⁽¹⁾

The letter of reappointment was received on 30 May 1775. It can be argued, did Radhachurn within such a brief period as from 2 April to 30 May become so active that his reappointment was considered useful? From his reappointment, made about a month after his dismissal, it can be safely inferred that something different other than the utility of retaining his services dictated the Nabab to reappoint him. In all probability he was urged, rather asked, by the members of the Council to do so; obviously to evade the course of law.

The articles of treaty and agreement instead of establishing the sovereignty of the provinces in the Nabab prove just the contrary. Under the article the Nabab had agreed, "that the protecting the provinces of Bengal, Bahar and Orissa, and the force sufficient for that purpose, be entirely left to their (Company) discretion and good management," in consideration of their paying King Shah Aalum by monthly payment Rs.216666-10-9 and Rs.3181991-9 to the Nabab.⁽²⁾ It appears surrender rather than assumption of sovereignty by the Nabab. The clauses of the

(1) Ibid, p.8. 1st Suffer coincides with 2 April 1775.

(2) Ibid, p.9.

treaty deprived him of the right to maintain a regular army, except a few attendants for his 'savary'. The stipend allowed to the Nabab under the treaty was in the ensuing year, by order of the Court of Directors, reduced to the sum of sixteen lacs per annum. Did these acts of and power in the Company show a sovereign independency in the Nabab, and ability to make war and peace with the settlement?

The counsels for the prosecution, Newman and Brix, elucidated the point further by bringing to the notice of the court that Mubarak ul Dowla did not obtain the Subbanship by the regular line of appointment from the Mughal whose officer the Nabab originally was, that there had been no lawful Nabab since the death of Sujah Cawn in 1739, and the present Nabab was the son of Meer Jaffier who was made Nabab by Clive. Brix added -

"It is evidence before the court on a late trial, that Rajah Goordass Roy received the investiture of Dewan to his household from Mr. Hastings, when at the head of the late administration, and the same hath been confirmed by the present Governor-General and Council."⁽¹⁾ Brix further questioned:

"How can he be called a sovereign independent Prince, whose subjects are at liberty to evade his civil or criminal jurisdiction, by becoming directly or indirectly the servants of the English Company, or of any British subject?"⁽²⁾

In his affidavit taken before Impey on 28 June 1775,

(1) Ibid, p.13.

(2) Ibid, p.13.

Hastings verified the above facts and added that the President and Council in August 1772 did plan and constitute regular and distinct courts of justice, civil and criminal, by their own authority, for administration of justice to the inhabitants throughout Bengal, without consulting the said Nabab or requiring his concurrence, and the said criminal courts were put under the inspection and control of the Company's servants, although ostensibly under the name of the Nazim.⁽¹⁾

In his letter to the Court of Directors, dated 31 July 1775, Hastings wrote:

"Where was this nice sensibility for the Company's honour and the security of the Nabab's privileges when the majority took upon them to arm a junior servant of the Company with a power independent of all law to deprive the Guardian of his household of that office held under your express authority to expel her from her own apartments to deprive her of her own servants, to imprison or send them to Calcutta and to make the Nabab himself the wretched and passive instrument of his own disgrace."⁽²⁾

The court decided that Radhachurn was not entitled to ambassadorial privileges.⁽³⁾ Impey remarked that the privileges and rights of ambassadors are not based on fictitious principles,

(1) H.M.S., vol.125, pp.45-46.

(2) Ibid.

(3) The decision was unanimous, Chambers differed a little with Impey in his reasoning. Hyde and Le Maistre concurred in the reasoning of Impey.

such as, that he represents the body of the Prince. These are fictions devised to satisfy the reasoning of the municipal law.

"The main great business, which chiefly operates to give this right, is that of making Treaties, more especially such as concern war and peace, among powers capable of making real Treaties, and making wardand peace, it is absolutely necessary that there should be intermediate Agents, whose persons should be protected even from the laws, lest the laws should be made the instrument of defeating negotiations."⁽¹⁾ And he observed that the Nabab being not in a position to declare war and peace with the settlement, the right of sending ambassador did not rest with him. Impey further observed, even if it was supposed that Radhachurn was the public minister of the Nabab, it is clearly proved that he was not so when the offence was committed, for he was dismissed from the first of Suffer, which corresponded with the 2 April, the offence being committed after 2 April. And Radhacharn was resident in Calcutta before he was appointed, hence he was answerable there in Calcutta. While concluding, Impey remarked:

"If any material consequences follow from it, the Gentlemen should have been backward in forcing us to a decision; for we must give such an opinion, whatever may be the consequences, as we think founded in Law. They were to judge the Politics we must judge by laws not by Politics."⁽²⁾

(1) 'Trials', p.16.

(2) Ibid, p.20.

Though Impey affirmed that the Nabab was not in a position to send the ambassador, yet the decision was mainly based on Radhacharn's being out of employment during the period when the offence was committed. In his letter ^{to} ~~of~~ Bathurst, 20 September 1776, he refers to Radhacharn's case and writes, ".... in that case he was not in the service of the Nabab at the time the crime charged on him was supposed to be committed."⁽¹⁾

(1) L.B.I., vol.16265, pp-239-40.

CHAPTER IV

The Hastings-Impey plan for the better administration of justice, 1776.

The trial and execution of Nawdkumar registered the first victory of the Supreme Court over the executive government of Bengal. But it was the beginning and not the end of the quarrel between the Court and the Council. The triumvirate was determined to wreak vengeance on those who had shown their allegiance to Hastings and Impey during the trial.

Impey realised more than his adversaries that the root cause of the growing dissensions between the Court and the Council was the absence of a constitution which could define, regulate and limit the powers and functions of the various organs of the government. Thus, in collaboration with Hastings he drew a comprehensive plan for the better administration of justice in the provinces. This plan was dispatched home to be enacted by the parliament, but it seems scarcely to have been taken into consideration by Lord North's government.

In this chapter, it is proposed first to describe in brief a few occurrences which widened the gulf between the Council and the Court. Though such occurrences grew in number and significance from year to year until a deadlock was reached in 1779, only those which occurred in 1775 and occasioned the drafting of a plan by Impey and Hastings, shall be discussed in this chapter, we shall then examine the plan itself. Lastly, we shall describe how Impey, after realising the failure of his plan to receive the attention of the home government, manoeuvred and tried his level best to get a seat in the Council.

Kamaluddin's Case, April-October, 1775.

The first case in order of time and significance is that of Kamaluddin. As we have seen in the preceding chapter, Kamal was

the principal witness for the prosecution in the trials for forgery and conspiracy. Immediately after the execution of Nandkumar he came to the limelight. At the instance of the majority members of the Council, the Calcutta Committee of Revenue imprisoned him for arrears of revenue and the Supreme Court set him free for want of form in the proceedings of the former. Once again the Court and the Council (excluding Hastings and Barwell) were arrayed against each other; each party sending to home government and the Court of Directors a long list of complaints against the other, justifying its own stand, and, auguring a ruination of the Company's affairs if the other party persisted in its misdoings.

In order to understand the points involved in this case, it is necessary to give a brief account of the facts leading to the present dispute.⁽¹⁾ Kamal rented from the Company in the middle of September 1772 the farm of Hidgelee, in Calcutta division, as a farmer.⁽²⁾ Afterwards, he transferred the farm to one Condopdas in whose possession it remained until 24 December 1773, when it was surrendered back to Kamal. Kamal then entered into an agreement with Bussant Roy and appointed him as his under-tenant.⁽³⁾ Since then, September 1774, Bussant Roy took the entire charge of the farm, and, Kamal in the presence of his vakeel represented to the presiding member of the Calcutta Committee and Ganga Govind Singh the Dewan, that Bussant Roy would now pay the revenue and be answerable to the Government for all

-
- (1) The facts relating to the case have been pieced together from the various letters which passed between Calcutta Committee of revenue and the Supreme Council, between Hastings, Impey, majority members of the Council and the Court of Directors.
- (2) Has. Papers; vol. 29112; Has. to Directors, 22 Sep. 1775; pp. 203-13. ~~pp. 483-97.~~
- (3) In every such transaction, when the company let out a farm, the farmer had to give a security. He could then sub-let the farm to anybody who would then become the under-farmer. In this case Sukhdeo Mallik was the security for Kamal and Bussant Roy was his under-farmer.

demands on the farm. (1) Since then onwards Bussant Roy had possession of the farm, collected the rents, paid the Kists (or instalments) to Government, and all the demands of the Committee were invariably made on him and on him only until the month of May 1775. (2) In all that time Kamal never "interfered in the collections, never paid a rupee, was never called upon for payment, nor ever appeared before the Committee as the farmer of Hidgely". (3)

Besides being the ostensible farmer of Hedgelee district, Kamal had also the contract for Teeka collaries of that district. (4) Here it may be observed that these two transactions did not form part of a single contract; they were two different contracts, hence could not be blended together for any purpose.

On 27 April 1775, nine days after Kamal had preferred charges against Fawke and others, the Calcutta Committee, which was functioning under day to day supervision and control of the Supreme Council, ordered their accountant to prepare the accounts of Kamal-uddin. (5) On May 1, 1775, the Accountant-General laid before the Committee the accounts of Kamal, in consequence of which orders were ordered to be put on him, his security, and Bussant Roy, the under-farmer. (6)

-
- (1) *Ibid*; Petition of Bussant Roy; p. 214. Though this fact is alleged by Hastings it is not contradicted by the majority members of the Council. There are also independent evidences to support this statement, for example, the petitions of Bussant Roy to Calcutta Committee. As an explanation as to why this fact was not recorded in the minutes of the Calcutta Committee, Hastings states that it was a matter in the ordinary course of the business which according to the existing practice of the Calcutta Committee was usually not recorded.
- (2) B.Rev. consult. R.49, vol.54; Examination of Cotterell by the Board 25 July; 1775. pp. 1293-1313.
- (3) H. to Director, 22 Sept. 1775; Has. Papers, vol. 29112; p.205.
- (4) *Ibid*. Teeka collaries were the collaries where salt was manufactured by hired workmen belonging to other districts.
- (5) Cal. Rev. Committee consult; R.67, vol.59. Proceedings of 27 April, 1775; pp. 481-82.
- (6) *Ibid*, Proceedings of 1 May, 1775; pp. 500-503.

On Committee's having asked for instructions, the Board issued orders to make a demand on Kamal and report his objections.⁽¹⁾ Accordingly on 30 June the demand was made, which demand Kamal objected, his objection was based on the fact that the farm had been sub-let by him to Bussant Roy, who as under-farmer had been paying the rents to the Government and had as such been recognized by the principal officers of the Committee.⁽²⁾ Kamal's plea was rejected by the Committee; no reason, except that Bussant Roy might have paid the rents as Kamal's agent, was assigned to their decision and no canoongo or any such revenue officer supposed to be well versed in the customs and usages of the people was consulted.⁽³⁾ The Committee while reporting to the Council suppressed the principal objection made by Kamal to their demand for arrears of revenue.⁽⁴⁾

On 11 July, when the trial of Hawke and others was in process, Kamal was called before the Committee for the first time since September 1774 as the farmer of Hidgelee; his Vakeel on that day ~~was~~ confined and remained in confinement until 15 July.⁽⁵⁾ On 16 July 1775, a day after the verdict in the conspiracy case was given - declaring Hawke and Nandkumar guilty of conspiracy - Kamal was arrested, allowed to go home every evening with guards attending him. On 24 July, the Committee again made the demand and Kamal again objected on the same grounds adding that Company's having made advances of money to Bussant Roy was an additional proof of the latter's being accepted as a tenant.⁽⁶⁾ This plea was rejected by the Committee and on 25 July, he was ordered into strict confinement.⁽⁷⁾

(1) Ibid, Proceedings 12 June, 1775, pp. 729-30.

(2) Ibid, R. 67, vol. 59, Proceedings of 30 June, 1775, letter of the Committee to the Board; pp. 850-55.

(3) H.M.S. 424, Impey to Directors, 19 Sept. 1775; p.349.

(4) Ibid.

(5) Cal.Rev. Committee. Proceedings of 12 July 1775, R.67, vol.59, p.921.

(6) Ibid; Proceedings of 24 July, 1775, R.67, vol.59, pp.968-69.

(7) Ibid.

On 28 July 1775, the Court was moved on behalf of Kamal; Impey and Hyde issued a writ of Habeas Corpus.⁽¹⁾ In his letter to Lord Bathurst, Impey writes on what legal authority the Supreme Court had been exercising the right to issue writs. "The power of granting them has been founded on Mr. J. Blackstone's opinion that the judges of the Kings bench have a right by common law to allow them. We found it highly expedient in a country where every man assumed a right to imprison his debtor."⁽²⁾ The return made to the writ stated the rights of the Company as Dewan of the provinces; but it was defective in form, for, it did not mention a power in the provincial council to commit a revenue debtor without bail or manprize. Impey and Hyde ordered Cottrell, the President of the Calcutta Council of revenue, to accept bail for Kamal's appearance in the Dewanni Court and required him not to take Kamal again into custody until his under-renter had been called upon to pay the rents and had proved insolvent.⁽³⁾ Thereupon Kamal was released on bail on 9 September, 1775.⁽⁴⁾

The Supreme Council after deliberating over the matter on 13 and 15 September directed the provincial council of Calcutta to summon Kamal and his security again before them, to keep them in custody until they satisfied the demands of the Government, and also that they should give no attention to any order by the Supreme Court or any of the judges in matters which solely concerned the revenue.⁽⁵⁾ Hastings and Barwell did not assent to the resolution of the Council.

In pursuance of the above directive and in utter breach of the undertaking given by Cottrell to the judges of the Supreme Court, Kamal was again taken into custody on 23 September 1775.⁽⁶⁾ On 27 September he again obtained a second writ of Habeas Corpus but was ~~not~~

(1) Ibid; Proceedings of 29 July, R.67, vol.59, p.999.

(2) L.B.I, vol. 16265, Impey to Lord Bathurst, 20 Sept. 1776; p.239.

(3) Cal.Rev. Committee Proceedings of 9 Sept, 1775, R.67, vol.60, pp.1360-61.

(4) Ibid.

(5) B.Rev. Consult.; R.49, vol.55; Proceedings of 13 Sept.1775. pp.729-30, Proceedings of 15 Sept.1775, pp.770.

(6) Cal.Rev.Committee Proceedings of 23 Sept. 1775; R.67, vol.60. p.1466.

brought up before the Court until 25 October, when he was finally discharged.⁽¹⁾ While the second writ of Habeas Corpus was pending the Fowjdar of Hoogly seized the house and effects of the prisoner.⁽²⁾

On 25 October, while delivering the judgement of the Court on the 2nd Habeas Corpus petition of Kamal, Impey remarked that it was not clear to the Court as to why the two sums separately due from Kamal on account of Teeka colaries and Hidgellee farm had been blended together by the Committee and why the sum due from Teeka Colaries which Kamal was ready to pay had not been accepted by the Committee.⁽³⁾ The Court warned the members of the Calcutta Committee against any further attempt on their part to arrest Kamal until all efforts were made to realize the revenue from the under-tenant, lest, the members would be guilty of the contempt of Court and be liable to pay fine and suffer imprisonment.⁽⁴⁾ Upon the payment of Rs 9033 annas 7, on account of Teeka Colaries, the prisoner was discharged by the Court.⁽⁵⁾

The above account brings us to the end of the first phase of the case. The further developments in the case, being irrelevant to our present purpose, can be summarised in a few lines.

After getting his second release from the Supreme Court, Kamal enlisted a plaint in the same Court and on the same cause of action against Charles Goring and other members of the Calcutta Committee for assault and false imprisonment in Zilla Cateheharry in the town of Calcutta.⁽⁶⁾ On 24 January 1776, the defendants appeared before the Supreme Court and pleaded not guilty. The trial commenced on 3 April 1776 and the judgement of the Court was given on 21 January 1777

-
- (1) Ibid; Proceedings of 28 Sept. 1775, R.67, vol.60, 2nd writ of Habeas Copus; pp.1496-97.
(2) Ibid, Proceedings of 25 Oct. 1775, p.1618.
(3) T.C.R. 16A, Gen.App.no.3, Ref.no.29; Judgement of the Court in Rex vs. Budder ul Dien; pp.125-126; also, B.Rev. Consult.; R.49, vol.56, Proceedings of 27 Oct. 1775; pp.304-318.
(4) Ibid.
(5) Cal.Rev.Committee; Proceedings of 27 Oct. 1775; R.67.vol.60, pp.1642-43.
(6) H.M.S. 135; Kamal's Petition for appeal; pp.7-24. The defendants were Charles Goring, John Shore, Peter Moore and Budderuddin.

in favour of the defendants.⁽¹⁾ Kamal petitioned the Supreme Court for an appeal to Privy Council against the judgement of the Court. On 22 March 1777, the appeal was allowed on Kamal's furnishing security for costs to the defendants.

So much about the facts of the case. Mainly two points were involved in this case. First, whether the Supreme Court was empowered to interfere in revenue matters and in the judicial proceedings of the Revenue Council? Second, who, according to the established practices and customs of the country, was first responsible for the payment of the Company's dues - Kamal or Bussant Roy?

Turning to the first question, in their minutes and protestations to the Court of Directors, the majority members of the council maintained that the ordering and management of the revenues of the country were vested in the Governor General and Council by the Regulating Act.⁽²⁾ They alledged that in the case of Kamal the Supreme Court, by interfering in the judicial proceedings of the revenue committee, had acted illegally and unjustly.⁽³⁾ On the representation made by the majority members of the council, the Court of Directors accused the Supreme Court for having "taken cognizance of matters both originally and pending the Suit, the enclusive cognizance of which we humbly conceive it to have been the intention of the King and Parliament to leave to other courts."⁽⁴⁾

(1) H.M.S. 134. pp. 544-45.

Extract from the judgement of the Court, delivered by Impey: '...for tho' I must give judgement for the defendants as having the strict on their side I must at the same time declare that that right has been harshly, rigorously and carelessly exercised. I do not mean this as to the mode of imprisonment which was far from being rigorous, but as to persisting in enforcing their claims against the plaintiff when they could with better effect have proceeded to extremities against Bussant Roy.'

(2) B.Rev. Consult., R.49, vol.55; minutes of the Council, 15 Sept. 1775; pp. 731-778.

(3) T.C.R. Gen.App.3.No.14; petition of the council to the Directors; pp.97-98.

(4) T.C.R., 16A, Directors to Weymouth, 19 Nov. 1777, Gen.App. no.3., p.82.

To the above allegation of the Council against the Court, Impey answered as follows:

"This only I must observe, that they industriously confound the "ordering and management of the Revenues" with the conduct of the Company's servants, in the collections of them. The Calcutta Committee, is no more, than a collector. They are substituted in his room by the late regulations of the late President and Council, they have no more authority than the collector had; the court do disavow and always have disavowed every interference in the ordering and managing of the Revenue. They admit solely and exclusively vested in the Governor General 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 if the Supreme Court must not interfere who is to punish them?"⁽¹⁾

Impey's viewpoint can be put in these words: It is not the concern of the Supreme Court to decide on the propriety of the Company's rules and practices. What concerns the Court is whether the servants of the Company act according to those rules and practices. If they are found defaulting, the Court must correct them. In his letter of 19 September, 1775, to the Directors, he elucidated the above points in the following words: "The Gentlemen do not make the distinction, which is most obvious, between claiming a jurisdiction over the original cause, and preventing their ministers, under the colour of legal proceedings, from being guilty of the most 'aggravated injustice For the Court allowing the custom and usage of the collections to be the law of the country, have only compelled the officers of the Government to act conformable to those usages, and not to make use of the colour and forms of law to the oppression of the people. No cause could be more pregnant with causes of suspicions of that sort, than the present, the prisoner had made himself obnoxious to several

(1) L.B.I.; Impey to Directors, 20 Jan. 1776; pp. 165-67.

members of the Council, by an information which he exhibited before all the judges on the 19th of April, in a matter in which the several members of the Council were either parties, or had much interested themselves."⁽¹⁾

While concluding we may remark that Impey genuinely and quite reasonably realised that Kamal was being harassed by the majority members of the Council for having given evidences against Nandkumar and Fawke. He, therefore, thought it was his moral and legal duty, to protect the man. And in order to protect him he invoked the aid of certain legal principles which had been firmly established in the English legal system, but were quite unknown to the native system.

That behind the Board's proceedings against Kamal, lay the malicious motive of the councillors to punish him for his having given evidences against Nandkumar, is further clarified by an inquiry into the Second question. Who, according to the rules and practices of the Company, was liable for the arrears of the revenue - Kamal or Bussant Roy?

In his letter of 22 September 1775, to the directors, Hastings stated that it had been the common practice of the Company to realise the revenue from the under-farmers or the securities and not necessarily from the ostensible farmer.⁽²⁾ He cited the example of Raja Kishenchand, who though in law was only the security, and his son, Seochand, the farmer, the Committee from the commencement of the lease made their demands on the former and treated him as the real possessor of the farm.⁽³⁾ He further cited the case of Kali Prasad and stated that though he was the farmer the Committee had received rents from Ranny Jannueky who was the under-farmer and on her failure to account for the rent, the surety, Banarssy Ghose had been next made answerable.⁽⁴⁾

From these uncontradicted statements of Hastings, at least this much is apparent, that there was no hard and fast rule that the revenue

(1) T.C.R., 16A, Impey to Directors, Gen.App.3., Enc.25; pp.106-7.

(2) H.M.S. 424; Hastings to Directors; pp. 361-75.

(3) Ibid.

(4) Ibid.

in all cases must be realised from the farmer and farmer alone. The real test to determine as to who - the surety, the farmer or the under-farmer - was to be held accountable for the arrears of the revenue, was to find out who in fact possessed and managed the farm, for, it was he who would suffer any loss in the event of the farm being reclaimed by the Company on account of the arrears of revenue. In this case Bussant Roy, the under-farmer, appears to be the person who in fact possessed and managed the farm, not as agent of Kamal but in his own right, and it was he who would suffer should the farm be reclaimed by the Company for the balances of the revenue. In his examined before the council, Cottrells, who was then the president of the Calcutta Committee, said "in the end Bussant Roy is the only person whose property can in the end be in any way affected by balances due from the district."⁽¹⁾

From one of the petitions of Bussant Roy to Calcutta Committee, dated 5 December 1774, it is evident that since he took over the farm from Kamal he acted as the principal and not as an agent of Kamal.⁽²⁾ Though Kamal remained the ostensible farmer, to all intents and purposes it was Bussant Roy who really possessed and managed the farm and paid the revenues to the Calcutta Committee. Therefore it was Bussant Roy who as before should have been first approached for the arrears of the revenue. Why was he not first dealt with? What was the motive of the council and the Calcutta Committee in harassing Kamal without having exhausted their remedies against Bussant Roy?

Impey in his letter dated 19 September 1775 to the Court of directors suggested the real reason as to why Kamal was so harassed.⁽³⁾ Kamal had made himself eye-thorn to the majority members of the Council by being principal witness in two cases. "Before and during the trial the pretended claims of Government was used for the purpose of intimidation, and after for that of punishment, and the whole influence of Government is now drawn down on this Court for not submitting to so manifest an outrage of justice."⁽⁴⁾

(1) B.Rev. Consult.; Proceedings of 25 July, 1775, R.49, vol.54, pp. 1293-94.

(2) L.B.I., vol. 16265; pp. 106-67.

(3) T.C.R. 16A; Impey to Directors; Gen.App.3, Enc.25, pp. 106-7.

(4) Ibid.

John Stewart's Case

Kamal was made the first victim, but the Council failed to teach him a lesson. He escaped; though sufficiently harassed, yet unpunished. The majority members of the Council, concentrated next on the ruination of John Stewart.

Stewart had for the past four years held the two offices of Judge-advocate and Secretary to the Supreme Council. He was the avowed friend of Hastings and had sat as grand jury during the trial of Fawke. The triumvirate ^{separated him from} ~~launched their~~ judge-advocatership and then dismissed ^{him} ~~from~~ the Secretaryship. The rash and vindictive conduct of the Council once again galvanized the Supreme Court into action and, Impey came to the rescue of the victim.

In order to assess the propriety of the Supreme Court's intervention in such an ostensibly domestic affair of the Council, it is desirable to trace in brief the history of the case.

In their letter of 10 April 1771, to the President and Board in Bengal, the Court of Directors had appointed John Stewart to the newly created post of judge-advocate, to hold court-martial for all forces in the British settlements in India. (1) He was to remain in that office "until a vacancy happen in the Secretary's office, for as this Gentleman has filled with reputation a station in the Secretary of State office here, we have been induced to appoint to succeed to the first vacancy of Secretary at your presidency" (2)

John Stewart, on his arrival in Bengal, was accordingly appointed judge-advocate and shortly afterwards in 1772 when the office of Secretary fell vacant he was appointed Secretary to the Board. He continued to hold both offices; neither the Court of Directors nor the late President and the Board questioned the propriety of his holding

(1) Has. Papers. Vol. 29108; Gen. Letter of C. of D. to Board, 10 April 1771; pp. 89-90.

(2) Ibid.

two important offices. (1)

It was on 14 August 1775, that for the first time in a meeting of the Council, Clavering asked whether the office of the judge-advocate was not vacant on Stewart's succeeding to the post of Secretary. (2) That phrase in the Directors letter, that Stewart was to remain in the office of judge-advocate "until a vacancy happen in the Secretary's office", was construed by Clavering, Monson and Francis to be in the nature of a positive order according to which Stewart must have relinquished the post of judge-advocate immediately after succeeding to the office of Secretary.

Here the narrative of the case maybe interrupted to mention a few anecdotes which in fact had brought the wrath of the 'Triumvirate' upon Stewart.

In the previous June, Stewart was summoned by the Supreme Court to sit on the Grand Jury ^{in the trial} of Joshep Fowke and others on a charge of conspiracy against Hastings and Barwell. Stewart tried his best to be relieved of juryship but the Supreme Court would not spare him. Therefore he attended the trial risking Monson's resentment, for Monson was a close friend of Fowke. On 26 June 1775, Monson brought against Stewart a charge of remissness of duty and he was censured accordingly. The charge was that Stewart had neglected to see that a certain Persian document was duly translated in the Persian office and sent to the Company's attorney without any delay. (3) No inquiry was made by the councillors whether any unnecessary delay had actually

-
- (1) In March 1773, when Stewart was holding both the offices, he wrote a letter to Court of Directors in his capacity of judge-advocate. If the Court had deemed it illegal they might have directed him to relinquish his office of judge-advocate. Conversely, ⁱⁿ their letter of 30 March 1774, the Directors seem to have acquiesced in Stewart's holding both offices, for, they do not disapprove of it.
- (2) Pub. consult. of 14 August. Range 2, vol.11, p.64.
- (3) Pub. consult. 26 June 1775, R.2. vol.10, pp.370-71: The Persian document was the Petition of Radhachurn to the Council. He had claimed ambassadorial privileges by virtue of his being the Vakeel of Nabab and had requested the Council to ask the Supreme Court to stop proceedings against him in the conspiracy case. That petition was in Persian, hence the Council asked the Secretary to get it translated from the Persian office and send the same to the Company's attorney.

been made. Stewart was censured for suffering a delay in an office over which he had practically no control.⁽¹⁾

However, the first censure was passed, without even a show of circumspection and decency and in spite of the opposition of two councillors, Hastings and Barwell. And that made Stewart apprehended a more shocking pitfall for himself in future, for his friendship with Hastings was a well-known fact.

With this little background we can well understand the motive with which Clavering posed the question in the meeting of the Council on 14 August. Hastings opposed the motion and argued: "that Mr. Stewart has held this office for almost four years of which ten months have passed, since the assembly of the present Council, in all which time, the same reasons must have been equally in force and ought to have operated equally for the removal of Mr. Stewart from his office, if he held it illegally or improperly."⁽²⁾ He pleaded that it was not the positive order of the Directors that Stewart must relinquish his office of judge-advocate on resuming the office of Secretary. It was left to the Board's option and the late board acquiesced in his continuing in both offices. Barwell argued on the same lines and stated: "If there was any irregularity in Mr. Stewart's continuing in the office of judge-advocate, the company themselves have authorized it. They very well know, that he filled that station, and if they had thought it in the least inconsistent with his post of Secretary, they certainly would have noticed it."⁽³⁾

But these arguments could not stand against the predetermined mind of the majority and Stewart was deprived of the office of judge-advocate by majority decision.⁽⁴⁾

(1) Ibid, p.394.

(2) Pub. Consult., 14 August 1775, Range 2, vol.11, p.65.

(3) Ibid. p.74.

(4) Ibid, pp. 77-78. It was resolved by the majority "that the office of judge-advocate General was vacated, on Mr. Stewart's succeeding to the post of Secretary. And that this Board can appoint another person, to be judge-advocate, without any infringement of the orders of the Court of Directors."

Johnson was appointed judge-advocate on 21 August 1775, hence it was since that date that Stewart ceased to hold that office. And in the very meeting of the Council on 21 August a successful attempt was made by the triumvirate to remove Stewart from his remaining office.

In their meeting of 21 August, the majority members of the Council censured Stewart a second time for inattention in writing a letter to one Motte; the letter did not convey the Board's resolution which it was intended to convey.⁽¹⁾

A comparison between the Board's resolution and Stewart's letter to Motte written in consequence of the former, may establish how far the councillors were justified in censuring Stewart on that score.

On 10 February, 1775, the Board ordered "that the Secretary give notice to Messrs Motte, Scott and Fowke that the license granted them to remain at Banares is continued until receipt of the next advices from the Court Directors."⁽²⁾ On 13 February 1775, Stewart in consequence of the Board's order wrote to Motte: "... I am nevertheless directed to acquaint you that you are permitted to remain there until the pleasure of the Court of Directors shall be known on your former license or till further orders."⁽³⁾

After sometime when Motte was asked by the Council to return to Bengal, he wrote to the Council on 10 August setting forth various reasons for his inability to comply with the Council's order. One of the reasons which he put forth was that according to the Board's letter of 13 February, his license had not yet expired. "On recurring to your letter of the 13 February, Gentlemen, I find it thus written "you have our permission to reside at Banaras until the pleasure of the Court of Directors with respect to your former license shall be known", and beg leave with all due submission to presume from hence that the indulgence you were pleased to grant me on the 10 February last is not expired."⁽⁴⁾

(1) Ibid, Proceedings of 21 Aug., 1775, p. 115.

(2) Ibid.

(3) Ibid, p. 116.

(4) Ibid; p. 113.

From the letter of Motte it does not appear that he based his claim to stay longer in the Banaras area solely on Stewart's letter of 13 February. His having entered into contracts with several local businessmen and having invested a considerable sum of money in his diamond business necessitated the prolongation of his stay for a further period during which he could wind up his business. However, the construction he put to Stewart's letter was wrong and unjustifiable, for, in the said letter it was clearly mentioned that he was to stay 'until the pleasure of the Court of Directors shall be known on your former license or till further orders.' Motte carefully omits to quote the phrase - 'till further orders.'

It maybe, therefore, observed that Stewart's letter sufficiently conveys the Board's resolution of 10 February.

In spite of the opposition of Hastings and Barwell and absence of any prima facie case against Stewart, the three councillors by their majority votes resolved "that Mr. Stewart be censured for this second instance of inattention to the orders of the Board and informed that a third transgression will not meet with the same indulgence from them."⁽¹⁾

Stewart knew that a third censure lay for him in the near future and that would occasion his dismissal from the only office he held at that time. The reply he gave to the resolution of the three councillors was rough but not as unjustified as the resolution itself:- "The unanimous and unprejudiced censure of the Board even where I might think it in some degree unmerited would fill me with the deepest affliction, but under the present circumstances it does not affect me in the same manner. I look upon these repeated attacks upon me as only preparatory to some decisive stroke on the idea that undermining my character first will make my afterfall more easy. I am prepared for the worst."⁽²⁾

The worst followed instantly. His remarks were construed as contumacious and disrespectful and the triumvirate asked for a proper submission and apology.⁽³⁾ Stewart declined to apologise. The councillors in their meeting of 24 August again asked for an apology

(1) Ibid, p.129, p.164.

(2) Ibid, p.165.

(3) Ibid, p.138.

and Stewart again declined. Thereupon he was dismissed from his employment of Secretary to the Board.⁽¹⁾ Hastings reminded the majority that according to the Company's instructions of 29 March 1774, a company's servant could not be removed from his office unless acquainted in writing with the accusation preferred against him and summoned to make his defence.⁽²⁾ But the majority members of the Council did not deem all these formalities necessary in the present case. On 30 August, Auriol was appointed Secretary.

There was nothing left for Stewart but to seek legal remedies against the injustices done to him. And in the Supreme Court he had a sympathizer who was Impey, for Impey knew the real cause of his dismissal.

"I have little doubt that the true cause of his dismissal was his attachment to Mr. Hastings, with whom he is closely connected." - thus wrote Impey to Thurlow on 28 December 1775, and requested the latter to reinstate Stewart in both of his last offices.⁽³⁾

To resume the narrative in its chronological order, Stewart first moved the Supreme Court for a writ of Mandamus to reinstate him in his office of judge-advocate. The writ of Mandamus being a prerogative writ the Court held that it had no power to grant it and desired him to find his remedy otherwise. He therefore brought an action in October against his successor, Auriol, for a sum of Rs.1800, which the latter had received as his salary for the month of September.⁽⁴⁾ Such an action as brought by Stewart against Auriol was based on an equitable principle of English law. According to that principle the person who is in possession of money which in conscience belongs to another must be compelled to refund it. "For that purpose the English law raises an equitable and justifiable fiction that the defendant did what in conscience he ought to have done, contract to refund; and will not allow him to controvert it. The civil law does the same thing without

(1) Ibid, Proceedings of 24 August, 1775, p.154.

(2) Ibid; pp. 150-51.

(3) I.P.; vol. 16259; Impey to Thurlow, pp. 13-15.

(4) H.M.S. 122, Stewart to Directors, 21 Nov. 1775; pp. 815-65: He did not bring the same action against Johnson who had succeeded him in the office of judge-advocate, because Johnson was not drawing any salary or allowance for his new office.

a fiction. It says though you made no contract, yet as natural justice requires you to pay the money you should be as much bound as if you had made a contract for that purpose."⁽¹⁾ According to the principles of natural justice the dismissal of Stewart from his post being illegal, the succession of Auriol to that post was likewise illegal. Hence any amount which Auriol received while occupying that post he ought to refund to Stewart.

On 23 November, 1775, Stewart's attorney addressed a letter to the assistant Secretary to the Council, requiring him to produce in the Supreme Court on the 28th following sundry papers belonging to the records of the office and said to be necessary for the information of the Court in the case between Stewart and Auriol.⁽²⁾ The Council refused to supply the required documents. Thereupon the prothonotary of the Supreme Court appeared before the Council on 28 November and placed a formal demand on behalf of the Court.⁽³⁾ The Council agreed to send only such papers which had direct bearing on the case pending in the Supreme.⁽⁴⁾ And on the following day, the 29 November, the majority members of the Council complained to the Court of Directors about the proceedings, of the Supreme Court and the conduct of Impey in the following words:

"It seems to us, Gentlemen, that the proceedings of the Supreme Court in this case, and the declaration made by the Chief justice from the Bench, constitute a precedent of the greatest consequence to the conduct of your affairs here, of which it will be necessary for you to take into your most serious consideration...This doctrine is general and indefinite. It makes no distinction in the nature of the papers

(1) H.M.S. 124, Extra. from the judgement as given by Impey in Stewart vs. Auriol, p.549.

(2) Pub. consult. of 28 Nov. 1775, R.2, vol. 12, pp. 47-48: The following documents were asked for:-

(a) Letter of the President and Council dated some time in 1770 to the Court of Directors, requesting them to send out a person for the Secretaryship of their Board.

(b) The general letter of the Court of Directors, 10 April 1771, appointing John Stewart to the office of Secretary.

(c) The proceedings in Council of the 26 September 1772 relating to Stewart's taking to the office of Secretary.

(d) The instructions of the Court of Directors sent out to the Council in pursuance of the act of 1773.

(e) The consultations of the Council of the 21-24 Aug. 1775.
(3) Ibid; pp. 54-55.

(4) Ibid.

to be produced and leaves no discretion to us to judge of the consequences, which may attend their being divulged." (1)

The remarks made by Impey on 28 November, of which the councillors complain in their above letter, do suffer from intemperance.

When on 28 November Bruere, assistant Secretary to the Council, told the Court that the Council had refused to supply their records as required by the plaintiff's attorney, Impey asked him to disclose who were the members who consented to the refusal. The Company's council objected to this; upon which the chief justice said that Bruere ought to answer, because "as the Board was no corporation, the individual members who had concurred in the refusal were liable to an action." (2) The Chief justice knew it all right that the councillors were not subject to the jurisdiction of the Supreme Court except for such serious offences as high treason. Yet his caustic comment on the status of the councillors was not as shocking as the unjustified conduct of the councillors in dismissing Stewart from Secretaryship.

The case was tried in December but the judgement of the Court was given on 13 March 1776. The judgement was given in favour of Stewart. Robert Jarrett, attorney to the company, wrote to the Council on 13 March about the opinion of the different judges in the case as follows: "...Mr. Justice Chambers and Mr. Justice Hyde was fully of the opinion that judgement ought not to be for Mr. Stewart and the Chief Justice and Mr. Justice Lemaistre of a contrary opinion, therefore the Chief Justice's casting vote carried it of course." (3)

As the judges were divided in their opinion and the defendant was keen on appealing to the Privy Council against the judgement of the Court and the amount of Rs. 1800 for which the action was brought by Stewart being insufficient to enable the defendant to appeal to Privy Council, it was agreed between the parties with the permission of the Court, after the evidence in the suit had been gone into, that the defendants be allowed to admit the receipt of Rs. 3600 as his salary for

(1) L.B.I., vol. 16265; Council to Directors; 29 Nov. 1775, p. 127.
(2) Bruer's depositions; Council's Minutes of 29 November 1775; H.M.S. 424, p. 546. Pub.Consult. of 29 Nov. 1775, R.2, vol. 12, pp. 57-60.
(3) Pub.Consult. of 1 April, 1776, Jarrett's letter; Range 2, vol.14, p.30.

the month of September and October for the purpose solely of enabling such appeal to be.⁽¹⁾ The petition of appeal was received on the 19 August 1776 and the appeal was allowed.

This brings us to the close of the narrative of the case. Impey played a dominant role in the whole affair. It was his casting vote which decided the issue in favour of Stewart. He based his judgement solely on the 20 paragraph of the Company's instructions of 29 March 1774.⁽²⁾ In his letter of 20 January 1776, to the Court of Directors, while justifying his stand on several causes of conflict between him and the Council, he referred to Council's minutes of 20 November on Stewart's case and refuted the allegation made thereon against him. The Councillors complaints ran as follows:-

"If we dismiss the judge-advocate, he applies to the Supreme Court for a Mandamus to reinstate him in his office. If we dismiss the Secretary of our Board we see him encouraged to bring an action for the salary against his successor."⁽³⁾ Impey answered these charges in the following words:

"It can hardly be imputed as a crime on the judges, that an application is made to the Court. Had they been candid, they would

-
- (1) Pub. Consult. of 28 August; Auriol's petition of appeal; Range 2, vol. 15, p. 1067: Hence the judgement was given against Auriol for the sum of Sicca Rupees Three thousand six hundred with the costs of suit amounting to six hundred and sixty six and twelve annas' which was a sum exceeding in value the sum of one thousand Pagodas, for which an appeal lay to the Privy Council.
- (2) Bengal Despatches, vol. 7, pp. 58-59. It runs as follows:-
"we also further direct that before the removal of any company's servant from any office, the party be made acquainted in writing with the accusation preferred against him, that he be summoned to make his Defence, having a reasonable time allowed him that purpose, and that you proceed on all such occasions, with the greatest tenderness and circumspection, and we further direct, that all such charges made before you against any of our servants in your department with all proceedings thereas, be regularly entered upon your consultations, and with them transmitted to us." - H.M.S.123, pp. 114-15.
- (3) H.M.S.424, Minutes of the Council 21 Nov. 1775; p. 313.

have stated, that the Mandamus was refused, and on grounds which would ever after prevent application on that nature.

"They should have stated that the sole question in that cause is, whether the 20th Paragraph in the Company's Instructions, doth not inhibit the Governor General and Council, from suspending or dismissing the Company's servants, without giving them a copy of a charge in writing, and calling upon them, to make their defence, which the instruction requires, shall be transmitted to the Court of Directors. The Court have "already declared, that they will not try whether the cause of the dismissal is proper or not...

The Court have given no judgement, they are at present deliberating, on the force of the Instruction, whether it is simply directory and the dismissal good, if it is not complied with; or is in the nature of a condition precedent."⁽¹⁾

The latter part of his statement explains why the judgement was given nearly three months after the trial. Chambers and Hyde believed that the Company's instructions were directory and Impey and Laimestre took them to be mandatory. Yet, in January Impey was not certain of the judgement which he gave in March. He was certain of only one thing, that injustice was done to Stewart, that Stewart would not have been dismissed had he not been the friend of Hastings. Therefore, Impey was determined to resort to all legal means in order to rescue the victim of party-politics, for, had there been no division in the Council Stewart would not have been dismissed. "In this situation had no division arisen in the Council, I should certainly have remained in the station in which by your favour I was placed, unmolested and contented with my lot,...but unhappily for me, unhappily for your service and for the country in general, a decided division soon took place, and a spirit of faction and violence to which I am at last made a sacrifice," - thus wrote Stewart on 21 November 1775, to the Court of Directors.⁽²⁾

(1) Ibid; Impey to Directors; 20 Jan. 1776. pp. 67-8.

(2) H.M.S., 122; Stewart to Court of Directors, 21 Nov. 1775, p. 822.

We may therefore conclude that in Stewart's case as in the cases of Kamaluddin and Nandkumar, Impey's judicial conduct was motivated by certain extra-judicial considerations. Yet he does not seem to have ever misapplied or misinterpreted any law to serve his private considerations or to vindicate his personal prejudices. Had he been inclined to help Stewart by any means whatsoever, he might have reinstated him in the office of judge-advocate by issuing a writ of Mandamus, which he resolutely refused to issue.

x x x x x x x x

Before we pass on to Impey's plan, a brief reference may be made to the suspension of the Sudder Dewanni Adalat. As under the Charter, the Supreme Court was granted exclusive jurisdiction over Calcutta and the factories in both civil and criminal matters, two of the Company's Courts, *viz.*, Sudder Diwanni Adalat and Diwanni Adalat of Calcutta division had practically ceased functioning since the inception of the Supreme Court in October 1774. The Sudder Diwanni Adalat consisted of Governor-General and the councillors and the Diwanni Adalat of Calcutta of the members of the Calcutta Council. Calcutta used to be the seat of these two courts. As no other Court could possess concurrent jurisdiction with Supreme Court over the town of Calcutta, these Courts ceased to function since the establishment of the latter. But no official decision was taken on their legal status either by the Council or Court until May 1775. On 23 May 1775, on the proposal of Hastings that the Sudder Diwanni Adalat should resume its sittings, the Council decided to seek Supreme Court's opinion on certain legal points involved in its functioning. Accordingly a letter was addressed to the judges asking - "whether supposing the above Court should resume their proceedings an appeal from their decree will lie to the Supreme Court, whether the cognizance of any cause brought by appeal before us can be removed by your authority to the Supreme Court of judicature or whether the decrees of the Court of Dewanny Sudder Adawlut will justify the ministerial officers of the Court in carrying those decrees into execution."⁽¹⁾

(1) L.B.I., vol. 16265, Council to Court; p. 26.

On 28 May 1775, the judges replied as follows:

"No.1 ... If the Dewanny Sudder Adawlut should resume their proceedings an appeal from their decrees will not lie to the Supreme Court.

"No.2 The cognizance of any cause brought by appeal before that Court, can not be removed by our authority into the Supreme Court.

"No.3 The decree of the Dewanny Sudder Adawlut will justify the ministerial offices of the Court in carrying those decrees into execution, in all cases in which the provincial Dewanny Adawlut had legal jurisdiction in the original cause."⁽¹⁾

The answer of the judges was quite plain and simple. The councillors could have resumed the proceedings of the Adalat without any apprehension of any encroachment from the Supreme Court. But they did not. Possibly they wanted to keep Sudder Diwanni Adalat as a suspended show in order to make another addition to their list of grievances against the Supreme Court. Hence, on 20 October 1775, the Council resolved to abolish since 1 November following the Sudder Dewanni Adalat and Dewanni Adalat of Calcutta, for no apparent reasons whatsoever.⁽²⁾ Also, the direction and the control of the criminal jurisdiction over the provinces was transferred to Naib-Nazim who was to exercise all these powers at his own risk.

The Plan

At the close of 1775 the councillors and the judges had reason to believe that a harmonious functioning of the judiciary and execution was impossible under the system set by the Act of 1773.

Impey did not believe in the myth of Nabab's sovereignty over the provinces. Though, he refrained from interfering in Company's revenue matters, he considered it the duty of the Court to receive complaints against the oppressions and corruptions of the revenue officers. As, he believed in the 'Rule of Law', he would compel, as far as it was judicially possible, all the servants of the company, including the Supreme councillors, to act in accordance with the rules and regulations as laid down by their superiors.

(1) Ibid. Court to Council; 28 May 1775, p.32.

(2) T.C.R. 16 A; Gen App. 3. Ref. no. 17; p.100.

On the otherhand, the three councillors, having failed in their attempt to subordinate the Court and browbeat its judges, held the Court blameworthy for the disorder and congestion that had set in the revenue and judicial administration of the country.

Under the circumstances, the Court and the Council stood against each other, there were only two alternate solutions for preventing the quarrel from getting violent. The first was to curtail the powers and jurisdiction of the Supreme Court and let it function ~~under~~ under the general supervision and direction of the Council. The second was to extend the jurisdiction of the Supreme Court over the entire provinces and let the company courts functions under its direct supervision and control. Whereas the three councillors upheld the first solution, Hastings, Barwell and the judges believed in the ~~efficiency~~ efficiency of the second.

While writing to the Directors on 18 January 1716, Hastings drew upon the main defects of the judicial administration in the provinces: "The distribution of Justice to these provinces is yet very defective in two essential points: first in the want of a provision for cases which are excluded by the late act of Parliament from the jurisdiction of the Supreme Court of judicature, and secondly in the limitation of the powers of that Court."⁽¹⁾ A limitation which, he says, is impracticable in many cases and if practicable would defeat the ends of its institution.

Writing on 13 March 1776 to Lord Rochford, Impey boldly attacked the fallacy of treating Mubarak ul Dowla as the Sovereign of the country "who by the printed reports of the House of Commons is published to all the world to be no more than a prisoner to the Company is such a piece of mockery as can no longer deceive any foreign state... The whole purpose of erecting the Supreme Court of judicature at Fort William in Bengal is defeated the instant it is admitted that it is sufficient answer to that Court to any charge of oppression or other enormity done by persons described in the act to be under the jurisdiction of the Court that it was done under the authority of the Nazim, or to a civil suit against the persons described in His Majesty's charter as objects of its civil jurisdiction that the defendants are

(1) H.M.S. 122, p. 493; Hastings to Directors, 18 Jan. 1776.

servants of the Nazim; at present both these claims are set up and insisted on."⁽¹⁾

Hastings had planned ⁱⁿ 1772 and had worked it out through the period intervening between 1772 and 1776. Impey had contributed his own to the drafting of the charter of 1774 and was aware of the scruples and whims of the legislators in London. Hence their combination was an ideal one for the task they had set for themselves. In concurrence with Hastings Impey drafted the plan; it was sent home by Barwell and Hastings in the style of a bill - a bill for the better Government of Bengal, Bihar and Orissa and administration of justice therein - to be enacted by the parliament. In their letter accompanying the plan, Hastings and Barwell summarised the underlying principles of the plan:

"It is to extend the jurisdiction of the Supreme Court to all the parts of the provinces without any limitation, to confirm the Courts which have been established on the principles of the ancient constitution of the country by the names of Nezamat and Dewanny to the judges of the Supreme Court with the members of the Council in the control of the latter, and to give the provincial Councils a legal authority in the internal Government of the country and in the collection of the public."⁽²⁾

The salient features of the bill maybe briefly summarised under the following headings:⁽³⁾

(A) Sovereignty of the provinces.

The Sovereignty of the provinces which has so far been exercised by the Company in the name of Great Mughal or Nabab, should now be vested in His Majesty saving such rights as are enjoyed by Nazim at present.

(B) Supreme Court.

The Supreme Court shall have jurisdiction over all the British and American subjects of His Majesty, persons under their employ and those natives, residing in the three provinces, who are directly or indirectly in the service of the Company.

It shall try all civil suits, the causes of action arising anywhere

(1) H.M.S. 123, pp. 482-83.

(2) H.M.S. p.143.

(3) HAs. Papers; vol. 29207; The bill of 1776; pp. 72-117; also H.M.S. 124, pp. 97-410.

in the provinces, against the Company, any European or American subject of his Majesty.

It shall also try suits between natives if the subject matter of the suit is worth a greater sum than five thousand current rupees or the plaintiff by a written affidavit satisfied the Court that the defendant is justly indebted to him or the judges think it a proper suit to be determined by the Court.

It shall have admiralty jurisdiction over all persons and ships in all cases, civil or criminal, arising on the high sea or public river, harbour or place.

It shall try principal felons not ordinarily under its jurisdiction if the accessories are subject to its jurisdiction.

It shall grant letters of patent or administration in respect of property within its jurisdiction, the owner of which has died outside its jurisdiction.

On the petition of the party or ex officio the Supreme Court may transfer to itself any suit pending in any Court in which no definite decision has been given and for that may issue writ of prohibition, Habeas Corpus or Mandamus as required. It shall be further lawful to transfer cases lying in the Supreme Court to other Courts for determination.

It shall have superintendence and power of coercion and control over several inferior Courts and magistrates and full power to issue to such Courts writs of all descriptions, except any control over Sudder Dewanni Adalat or over the Governor General and Council than is given over to them as justices of the peace by the charter.

The processes of the Supreme Court shall be served by the Sheriff, within twenty miles from the seat of the Court; outside that limit it shall be served by the Presidents of the Court of provincial Council.

No suit for the recovery of debts or otherwise to be filed in the Supreme Court or any Court within the provinces if the cause of action occurred before the 12 August 1765, the date when the provinces passed into Company's management. The maximum rate of interest shall be twelve per cent. per annum; those charging more than that shall be

awarded exemplary punishments.

There shall be in the Supreme Court a clerk of the Crown to exhibit informations before the Court about misdemeanors or oppressions. Three to five Pundits and the same number of Moulvies shall be appointed by the Supreme Court to attend the Court and expound and interpret the laws, customs and usages of the natives.

The compiled code of Hindu law with its English translation shall be kept in the Supreme Court for reference and a copy of each shall be kept at provincial Court, Only such usages, customs and laws shall be recognized which have existed before the territories were taken over by the Company, were binding and are not opposed to natural justice.

(C) Superior Court: Sudder Diwanni Adalat.

It shall be a Court of records and shall consist of Governor General, four councillors, Chief justice and three pusne judges of the Supreme Court. This Court shall sit at Calcutta and its business can be carried on by at least three judges of which one must be the Governor General or a councillor and the other a chief justice or a judge of the Supreme Court.

It shall receive appeals in suits of certain descriptions which shall have been instituted in any of the Courts of the provincial Council or in any Court of Adalat Dewanni Jellajaut. (1) *The decision of*
~~No appeal~~
~~brought before~~ this Court shall be final. The Governor General and the Chief justice, or in their absence the senior councillor and the senior judge, shall have the casting voice.

This Court shall "...make, frame and enact, and issue such Laws Statutes, Acts and ordinances, for the civil Government of the said Kingdoms or provinces and countries as they shall deem just and necessary, ...impose and levy such reasonable taxes and assessments on Houses and Lands within the Town of Calcutta as the police, good Government and order thereof may require and... levy such reasonable Duties and Customs, Taxes and assessments on all goods, wares and merchandizes, imported and conveyed, exported in, through or out of the said provinces...erect new Courts."(2)

(1) In suit concerning Malguzarry lands or lands paying rent exceeding 1000 Sicca rupees or free lands of which the rent amounts to a sum exceeding 100 Sicca rupees.

(2) Has. Papers; vol. 29207; p 87.

The acts and the rules as passed above shall not be valid until registered in the Supreme Court. It shall be lawful for His Majesty in Privy Council to confirm, annul or make void all such laws and acts.

(D) Courts of the Provincial Council.⁽¹⁾

This Court shall consist of one President and three councillors. The judges can be removed by the Supreme Court. They shall try all revenue cases and for that shall seat three days in a week.

(E) Adalt Dewanni Jillagaut

This shall be another Court of record in each of the seven divisions, shall consist of one judge to be chosen by the Governor General and Council from among the senior servants of the Company, who shall be removable by the decree of the Supreme Court.

This Court shall try all civil suits and complaints concerning trespasses or injuries against persons residing in the division.

(F) Adalat Dewanni Mufussil.

It shall sit in each of the twenty-nine districts of the provinces of Bihar, Bengal and Orissa.⁽²⁾

It shall consist of one Naib-Diwan, Canongoe, one Moulvi, and one Pundit, to be appointed and liable to removal in like manner as the judge of the Adalt Dewanni Jillalaut.

This Court shall try all suits, and complaints concerning trespass or injury, rent, debit, duty, demand, interest or concern against persons resident in the district. It shall not try suits concerning any right, title, claim or demand to any houses, lands or other things real or touching the possession of the same, and suits concerning debt or interests due to Company.

(G) Appeals

Appeals shall lie in Dewanni Jillalaut from the judgements of Diwanni Mofussil and in Sudder Diwannii Adalat from the judgements of Dewanni Jillalauts and Courts of the Provincial Council. Appeals from

(1) Ibid, p.90. This court was established in each of the seven divisions, viz., Calcutta, Dacca, Burdwan, Moorshidabad, Patna, Dinajpur and Chittagong.

(2) Ibid, pp. 95-96; the 29 districts were as follows: Houghly, Jessore, Nuddea, Hidgellie, Belorea, Bossna, Rajmahl, Baughalpur, Bhurbhoom, Pacheet, Bishenpoor, Midnapur, Jellapore, Jungtetessry, Silhat, Buzzojomedhorr, Allasing, Memmensingh, Bellsa, Poornea, Runypoor, Cooch-Bihar, Beria, Sircar-Sayrum, Jirhoot, Shahabad, Rohtas, Ramgosh, Tripurra.

the judgements of Supreme Court shall lie in the Privy Council.

(H) Administration of Criminal justice

At Calcutta, shall sit the Superior Court of criminal jurisdiction, styled as Nizamut Sudder Adalat.

This Court shall consist of a Daroga, who shall be the principal judge, a chief Kazi, a chief Muftee and Moulviés.

It shall revise and review all and every charge, information or complaint preferred in Subordinate Criminal Courts. It shall be lawful for the Supreme Court to mitigate or aggravate the punishment for certain crimes.

In each of the districts shall be a Court of Fowjdary consisting of a Daroga, Kazi and two Moulvies to be appointed by Governor General and Council. This Court shall try all capital offences, trespass and injuries of all kinds.

(I) Miscellaneous Provisions

(i) About the prosecution of the judges in the Supreme Court:-
If any judge of any Court is shown guilty of wilful oppression, corruption or extortion under colour of his office, he may be proceeded against in the Supreme Court and when found guilty may be fined, imprisoned or removed from his office.

(ii) Punishment of Revenue Collectors by Supreme Court:-
When the revenue collectors have extorted from the tenants more than what is due to the Company under the terms of the agreement, the Supreme Court may fine, imprison or remove them from office and declare them incapable of serving the Company or the Government in any capacity.

(iii) Rules of conduct for the judges:-
The Judges of the Fowjdary Adalat shall try the cases in the open Court and shall not correspond with the parties.

The Judges of all the Courts are prohibited to accept gifts, gratuities or rewards on any pretence whatsoever.

No Judge shall in any way be engaged in commerce or traffic of the country.

Any breach of the above rules shall render the offender liable to be prosecuted in the Supreme Court.

(iv) Head Farmers in sub-divisions are authorised to hear cases concerning debt not exceeding ten rupees.
~~Exception was made for the seven divisional towns - Calcutta, Moorshida-~~

(v) Justices of the Peace:-

Besides the members of the Council and Judges of the Supreme Court who are justices of the peace, members of the board of trade and superintendant of police shall be justices of peace for the town and factories of Calcutta and judges of the provincial Council and Dewanny Jilalaut shall be justices of the peace for their respective divisions.

(vi) Appointments:-

Superintendent of Police, Coroner of inquisition of deaths and the Kotwal shall be appointed by Sudder Dewanny Adalat. Appointments to all other offices shall be made by the Governor General and the Council. (1) The Supreme Court may issue writ of Mandamus to Governor General and Council and require them to appoint any officer or judge, when the appointments of the same being incumbent upon the Council have been neglected without sufficient cause.

The Governor General and Council shall refrain from trying any suit or cause other than judges of Sudder Dewanny Adalat or justices of peace, on pain of fine for high misdemeanor in the Supreme Court.

This in brief was the plan. It mirrors the experiences and ambitions of Impey. During his 'over an year stay' in Bengal, Impey realised the fallacy of treating Mubarak the titular sovereign of the provinces. This 'political fiction' had very often been used to defeat the very purpose of the Supreme Court, Hence in his plan Impey suggested that the Sovereignty of the provinces must be now vested in His Majesty.

He had further realised that the Supreme Court and the Company's Courts could not function independently and at cross purposes with each other. The Company's Courts must be graded under a Superior Court, and their powers and jurisdictions properly defined. In the bill, as we have observed, Company's civil and revenue Courts with a defined status and power are placed under the supervision and control of

bad, Burdwan, Dacca, Dinajpur, Patna, Chittagong - where Diwanni Jilalaut was to sit.

(1) "I have in all instances made the power of appointment reside in the ~~Governor General and the Council~~ and the outwards which I have placed in the Sudder Dewanny Adawlat" Impey to Hastings; 28 March 1776, H.M.S. 124, p. 416.

the Sudder Dewanni Adalat.

Impey had also observed the evil consequences of the exercise of both civil and revenue jurisdiction by the members of the provincial Council. Hence it was planned to create at provincial levels two Courts with two different sets of judges to administer revenue and civil jurisdiction separately. The provisions relating to the punishment of Revenue collectors by the Supreme Court in cases of corruption and oppression are noteworthy. Impey nourished a sincere feeling for the tax-payers and knew how shockingly they were exploited by the revenue collectors.

Criminal justice was planned to be administered directly under the supervision of Sudder Nizam^{ad} Adalat, and the judges of the latter Court were made accountable to the Supreme Court for their conduct. It was in this branch of the judicial administration that natives were to be appointed to certain offices. Yet, Impey like Hastings and Cornwallis, had no faith in 'black judges', as he would call them. Referring to native judges in his letter to Hastings he writes: "You are so much better instructed than I am, in the manner of thinking of the people, and what power it is safe to trust to black judges in that control. My small experience has already shown me, the natives should not much be confided in."⁽¹⁾

Certain provisions in the bill, on the other hand, seem contrary to the principles of English legal system, of which Impey was an ardent advocate. The judges of the Supreme Court and the councillors while sitting jointly in the Sudder Dewani Adalat were to exercise legislative and a certain amount of executive powers. They were to enact laws and pass ordinances for the better Government of the provinces. Thus the judges were virtually to enact, execute and administer the laws, a proposition which the English traditions would on no account approve of. Commenting on this aspect of the plan, on 21 March 1776, Clavering, Monson and Francis minuted: "The Governor General and Council and the judges are to frame laws for the Government of the country, that is, the legislative power is to be lodged in the same hands with the judicial, in order that the judge may execute his own laws."²

(1) H.M.S. 124, p. 416.

(2) L.B.I., vol. 16265, p. 192.

~~in order that the judge may execute his own laws.~~ (1)

The plan gives Supreme Court enormous powers, possibly more than would be deemed necessary for due administration of justice. It makes Supreme Court an all-pervading body, every branch of the Government comes directly or indirectly under its supervision. "It is proposed to give the Supreme Court a complete control over every part of the country, and this measure is supposed to be the more necessary from the alarming contests, which have already arisen between this Government and the Supreme Court concerning the extension of its authority. The complaint is, that they have assumed more than they have a right to, the redress proposed is, to set no limits to their power.", thus commented Clavering, Francis and Monson on 21 March 1776. (2)

Naturally, the plan was not acceptable to the three councillors. They believed that a thorough union between the Council and the Court would undoubtedly strengthen the Supreme Court. But to them, the only way in which this union could be brought about was to subordinate the Court to the Council. (3) Under the plan the Supreme Court was to act as a check on the executive government of the provinces. This the councillors were bound to oppose. They questioned - "How are millions to be governed by hundreds, if the same principles, on which the superior state acts to its subjects at home, are applied to its foreign acquisitions?" (3)

Though the plan did not receive the concurrence of the majority members of the council, Barwell and Hastings sent it home in form of a bill to be enacted by the Parliament. It was never taken into consideration by North's Government. However, it was a sincere attempt on the part of Hastings and Impey to find a solution for the day to day conflicts between the Court and the Council. Though it was an ambitious project, yet, many of its underlying principles teemed with justice and wisdom. At any rate, by drafting the plan in form of a bill, Impey gave sufficient proof of his technical abilities and

(1) Ibid, p. 190.

(2) 'Original Letter'; p. 26.

(3) Ibid, p. 34.

forsightedness. To ~~Vansitt~~ Hart, Hastings wrote:

'I never before had so high an opinion as this has given me of Sir Elijah's abilities, which are indeed great, and his knowledge of his profession equal to them. He is a pleasant man to contest an opinion with, and the other judges pay great deference to his judgement.'(1)

Impey's attempts for councillorship:

Right from 1776 to 1781, Impey seized every opportunity to get a seat in the Council. Immediately after the death of Monson in 1776, Impey wrote to Thurlow about the necessity of a judge, preferably himself, being appointed as a member of the Council. "Sometime or other the inconveniences of not having a member of the Court a member of the Council will be felt. Misapprehensions, misrepresentations and jealousies which could be easily cleared up as they arise with immediate explanation do, will and must ferment into animosity and enmities ... I still hope you will endeavour to promote me ... I really think that it is necessary for the tranquillity of the settlement and the united powers of Government in this country that one judge of the Court should be admitted into the Council."(2)

When Clavering died of dysentery on 29 August 1777 and for the second time a vacancy fell in the Council, Impey did not miss even a single day to put forth his claim before Thurlow, Weymouth, Dunning and Bathurst. In his letter to Dunning, 20 August 1777, he thus wrote: "I most sincerely think that the chief judge have a place in Council will contribute much to the strength, care, and harmony of the Council and Court. If there is any way in which you can assist me I am sure I need not direct you."(3) On the same date he wrote to his brother, Michael

(1) Vansitt. Papers; Has. to Vansitt. 30 March. 1776.

(2) ~~Impey to Thurlow~~; I.P., vol. 16259; 20 Oct. 1776; pp. 52-54.

(3) Ibid; Impey to Dunning; 30 August 1777; O.P. pp. 82-83.

Impey, asking him to meet Dunning and others and canvass his case.

Again in 1778, when it was secretly conveyed to him that Barwell would resign his post and sail for England, Impey solicited Thurlow to secure his appointment to the vacancy that might occur.⁽¹⁾ He told Thurlow that he preferred to return home and practise law than to stay in India, that his present financial condition was very poor, hence by getting promoted to the council he might be able to make some savings, which shall eventually enable him to quit India before long and start a career in England.⁽²⁾ In the same letter Impey wrote: "...but I do not pretend such patriotic a ~~thrust~~ as not to confess that my private interest operates more with me in this address than public good."⁽³⁾

Asking his friend Sutton to canvass his case, Impey wrote: "You may promise anything in my name that is consistent with honour and I believe I need not say that you may depend on my preferring your promise."⁽⁴⁾

To Dunning and Sullivan he wrote that his having a seat in the council would not only forward his return, but would be of public utility, for, notwithstanding his past differences with Hastings he would support him in the Council.⁽⁵⁾

All his prayers fell on deaf ears; he does not seem to have received any reply from those in whom he confided so much. Yet he did not give up renewing his claims from time to time. He wrote to Thurlow twice in 1780 on this matter. In his letter of 2 March he apprised him of the hostility which the Governor General and Council had given the Court without any provocation and requested him to secure for himself a seat in the Council in order to protect the interests of the Court and His Majesty.⁽⁶⁾ In September of the same year he was writing to Thurlow again about the rumour that Chambers would be given a seat in the Council. "...Something had been said in England that made him (Chambers) think he had Lord North's promise to be put in Council on

(1) Ibid. Impey to Thurlow, 12 Aug. 1778; pp. 194-206.

(2) Ibid.

(3) Ibid.

(4) Ibid; Impey to Sutton, 22 Nov. 1778, pp. 214-15.

(5) Ibid; Impey to Dunning, Mar. 1780; p.249-50.

(6) Ibid; pp. 396-400.

the first vacancy, which was kept no secret here; this instance of His Majesty's notice of him, was pointed out as a pledge of his future success in both, a mark of my having incurred displeasure. Every token of Royal favour has more weight given to it here than in England; the English are less accustomed to see them, the natives do not understand the nature or degree of them. A Red Ribbon distinguishes more here than a blue one at home, and the natives do not know the different dignity which is attached to the different colours. They being used to power exercised by a single person look up to a president of a board or Court and to him only, and are easily taught that when an inferior member receives an honour, the superior who does not receive one at the same time is disgraced."⁽¹⁾ In this letter, Impey is virtually asking Thurlow to see that such a grave error as to promote Chambers to councillorship is not committed, for, that would disgrace the Chief Justice in the eyes of the natives.

After Francis had resigned his post in the Council in 1780, Impey promptly wrote to Barwell, asking him to meet Sullivan and Thurlow and secure for him a seat in the Council, next to Hastings, and assuring him that he would fulfill most punctually any engagement he might make for him.⁽²⁾

Neither Impey nor Chambers was given a seat in the Council. Impey's attempts to get a seat in the Council were motivated mostly by private interests and ^{less} by a sense of public utility. In essence, it was an attempt to get greater powers and larger emoluments.

The proposition of giving chief justice a seat in the Council was inconsistent with the principles of English jurisprudence; it was also ~~most~~ likely to bring a functional harmony between the Court and the Council. A real harmony between the judicial and executive organs of the government could be achieved only by clearly defining their powers and jurisdictions, rather than uniting them into one whole, which would defeat the very purpose of an independent judiciary.

(1) Ibid; pp. 147-49.

(2) Ibid, Impey to Barwell, 27 Jan. 1781, p. 384.

Impey's plan, inspite^{ting} of its certain objectionable provisions, if inacted, would have solved the problem more amicably than his having given a seat in the Council.

CHAPTER V.

The Quarrel between the Court and the Council;

The Patna Case - (1777 - 1779.)

Due to the indigence of the Regulating Act and its concomitant Charter in providing adequate provisions for the smooth and proper functioning of the executive and judicial organs of the Government, the councillors and the judges were left to interpret and define for themselves the nature and extent of their respective powers and jurisdictions. The judges conceived that the intention of His Majesty's Government in establishing a Supreme Court in Bengal was to stop the oppressions of the natives by the Company's servants. Hence, any oppressive or corrupt act of a Company's servant of any rank whatsoever, committed in his private or public capacity, if complained of in the Supreme Court, was bound to be scrutinized most sternly by the judges. The councillors; on the other hand, considered themselves invested with the exclusive power of managing the Government and the revenue of the three provinces and in the exercise of this power they thought themselves accountable to none but the Court of directors. From their standpoint, the Company's servants either employed in the collection of revenue or in the administration of civil or criminal justice, were in no way answerable to the Supreme Court for any of their acts done in the discharge of their

duty. Hence the jurisdiction of the Supreme Court, according to the majority members of the Council, should have remained confined to the limits of Calcutta. The judges would not agree to this, for, that would mean exclusion from their jurisdiction, of a large number of potential oppressors. Contending from these two diametrically opposed standpoints the Court and the Council were bound to enter into a long series of conflicts until their powers and jurisdictions were clearly defined and well regulated by an act of the Parliament. The Home Government being partly busy with the American affairs and partially indecisive in their attitude towards the settlements in India withheld their serious consideration of the Indian affairs until they were compelled to do so in 1781. Until then the quarrels between the Court and the Council were to pass through many ugly phases, involving various issues and assuming diverse forms.

It is proposed to discuss in this and the following two chapters, Impey's role in some of the leading events in the quarrel between the Court and the Council. How he led the team of judges through this period of conflict and crisis, what principles he propounded and what initial contributions, if any, he made, consciously or unconsciously towards the gradual implantation of English legal system in India, which has to this day remained as

one of the best legacies of British rule in India.

The Patna Case (1777-1779-1789).

The famous Patna Case, in its significance to Impay's career in India as Chief justice, ranks second to none except the trial and execution of Nandkumar. Several issues were involved in the trial of this case. Whether the farmers and sureties residing in remote parts of the provinces were amenable to the jurisdiction of the Supreme Court? Whether the provincial Dewanni Adalats established under the regulations of the President and the Council in 1773 were Courts of justice in the strict sense of the term? If they were legally constituted Courts of justice, whether their judges and officers could be sued in the Supreme Court for irregular and corrupt discharge of their duty? Apart from these legal issues involved in the case, it casts a light upon the administration of justice in the provinces outside Calcutta. Last but not ^{the} least, this cause was the subject of the second article of impeachment against Impey.

It is proposed first, to give a fuller and systematic history of the case and then to observe generally upon the significance and the consequences of the trial.

This action was brought in the Supreme Court in the latter half of 1777 by Nederah Begun, a widow, against her husband's nephew, Behdar Beg, and against the Kazi of Patna,

and two Muftees of the Provincial Court of justice there, for injuries alleged to have been done to her, in consequence of the orders, and of a decree of the Chief and Council at Patna, acting as a Court of justice. (1)

We shall begin with a short account of the circumstances which gave rise to the proceedings in the Council at Patna, complained of by Naderah Begum.

One Sahbaz Beg Khan who came from Kabul to Bengal and served the Company for sometime, retired at a fairly advanced age and settled at Patna. (2) At this age he married Naderah Begum by whom he had no children. His brother Allum Beg came to Patna, and after staying for some time with him, on his return to Kabul, either left or sent Behdar Beg, one of his sons, to live with

(1) T.C.R., 16A, p.5.

(2) Ibid. He was for some time in the service of Watts, a member of the Council at Calcutta, then joined the English army and rose to the command of a body of horses about the time of ~~Mr.~~ Jaffier's succession; in the course of his service he obtained from the Great Mugal the grant of an ultumghaw (revenue free land) in the province of Bihar; when the war with Kasim Aly ended he left the army and took up a residence at Patna; about this time he married Naderah Begum by whom he had no issue (Bogle's Report - Law Consult. R.166, vol.82, p.1 - 190). After his retirement he continued to receive some allowance (about Rs200 per month) paid to him as half-pay from Calcutta. (Law's deposition before Committee of the House: T.C.R., p.13).

(1)
Sahbaz Beg Khan. Behdar Beg remained with Sahbaz Beg Khan until latter's death which occurred after several years in either November or December, 1776. (2) Sahbaz Beg Khan having died without issue, his widow, Naderah, and his nephew, Behdar, disputed his inheritance, each pretending to the whole; the widow under a Hiba and other deeds, alleged to have been executed by the deceased in his lifetime, and the nephew as an adopted son, a 'sharer' or a 'Residuary'.

In his first petition of 2 January, 1777, to the Patna Council, Behdar Beg stated that Sahbaz Beg Khan had called him from Kabul, treated him as his adopted son during his lifetime and assured him that after his death his property should devolve upon him, that now after his death his widow Naderah Begum was illegally removing the effects of the deceased, which lawfully belonged to him; he prayed that orders should be given to prevent the removal of the goods, and to recover such as had already been carried away; and that the Kazi should be directed to ascertain his right, and acquaint the Council therewith. (3)

(1) Allum Beg had four sons, Behdar was one among them; Behdar Beg was married to the daughter of Naderah's sister. (Proceedings of the Council, 7 September 1779 - Petition of Behadar; H.M.S. 422, pp. 720-730).

(2) Impey in his judgment stated that Sahbaz died on 10 December, but Bogle in his report calculated it to have occurred in November - "The event happened on the 28 Shaweel in the 1190th year of the Mussulman era, or the of November 1776." - (Bogle's Report, p.3, Law Consult R.166, vol. 82).

(3) Petition of Behdar, v pp 679-80. Law. Consult, R.166. Vol. 82.

Thereupon the Patna Council (then composed of Simeon Droz, Law, Golding, Young and Bird) issued a Perwana to the Kazi of Patna (Sadee) and two Muftees (Gulam Mackdoom and Baractoolah) to take an inventory of the property of the deceased, to collect and take charge of them jointly with the parties, to allot the shares of each claimant, strictly adhering to the Mussalman law of Inheritance and give to the Council an account of their proceedings. (1) Accordingly, the law officers went to the spot, investigated into the facts of the case and submitted their report on 20 January (2) 1777.

As the proceedings of the Patna Council and their law officers were deemed corrupt and irregular by the judges of the Supreme Court it will be worthwhile to describe them in a little detail. As regards the proceedings of the Patna Council, it can be observed that without bothering to summon the other party and acquainting themselves with her contentions and allegations, they issued a Parwana on the representation of a single party. The law officers while investigating into the facts of the dispute admitted such evidences which in justice should have been held inadmissible. At the outset it can be observed that the

-
1. Ibid, Proceedings of Patna Council, 2 Jan. 1777; pp. 681 - 83.
 2. T.C.R., PAT.App. No. 2; Report of Law Officers; pp. 229 - 30.

duty of these law officers who were attached to the Provincial Council was to expound and declare the Mussalman law and not to investigate into the matters of fact, From their report, it can be gathered how the inquiry was made. It was alleged before them by Behdar Beg, the petitioner, that the deed of gift (Hibbanama) and the will (Wasiyatnamā) on which the widow based her claim to the entire inheritance of her husband's property, were forged by her cousin Cojah Zekeria, after the death of Sahbaz Beg Khan and in support of his allegation he put forth the following arguments;

- a) that the deeds were not in the usual form like the one executed by the deceased in his lifetime in the favour of some Moulvi Semautuddin, bequeathing a house and some beghas of lands upon the latter,
- b) that the deeds were not produced by the widow within three days after the death of the deceased; the law and customs enjoin that they ought to be published within three days,
- c) that the widow being in possession of the seal of the deceased, the likelihood of her forging the deeds was
(1)
more proximate.

It was further deposed by Syed Zulficar Ally, Vakeel of Behdar, that the deeds had been forged after the death of the deceased, that pains were taken by Zekeria to procure

(1) Ibid.

people who could witness them, that men of character had refused to do so, and Gyurut Beg, one of the witnesses to the deeds, had acquainted Malcolm, an Armenian, a little while after the death of the deceased, that SahBaz Beg had left behind him no paper of bequeathal to anyone. (1) The law officers then interrogated one Selaubut Khan, there present, and the latter deposed that twelve days ago Zekerea came to him and desired him to attest a paper which he evaded. (2) The law officers sent notes to certain persons to which verbal answers and notes were received and admitted in evidence. Malcolm, as referred above, in his note affirmed that he had heard from Gyurut Beg that the deceased had not left behind him any written Will whatever, that the peon who had carried the note to him, verbally deposed that he had been further informed by Malcolm that Gyurut Beg had told him that the Will had been written after the deceased's death. (3)

Cojah Zekerea on behalf of the widow stated that the latter based her claim on a deed of gift and the Will which were executed by her husband in her favour and witnessed by himself, Gyurut Beg, Enayatullah, ~~XXXXXXXXXXXXXXXXXXXX~~ Kazi-Mouzzam and Muhammad Avaz. (4) Zekeria and Enayatullah, who were present further deposed to the authenticity of the deeds. The Hibanama and the Wasiyatname, as appears from

(1) Ibid.
(2) Ibid.
(3) Ibid.
(4) Ibid.

the report of the law officers, were produced for their
(1)
inspection.

This was, in brief, the procedure the law officers followed and the evidence they admitted. Then they proceeded to prepare their report which they concluded in the following words:

"As in short, everything urged on the part of Cojah Zekeria seems to want support, and, on the otherhand, as Behadar Khan's story appears clear and explicit, we would recommend that, exclusive of the Ultumghaw, which does not compose a part of the inheritance, all the deceased's property be divided into four shares, whereof three should be given to Behdar Khan, his father being the legal heir of the deceased, and himself the adopted son, and the
(2)
remaining one to Naudera, the deceased's widow."

On the receipt of the report, the Patna Council ordered that the decision of the lawofficers should be carried into execution and the Ultumghaw be delivered over to the charge of Behdar Beg, who was to allow the widow
(3)
one-fourth of the produce for her maintenance. The Council further on the consideration of the circumstances

(1) T.C.R. 16A; Hibbanama, Pat. App. 3; p.231.
Wasiyatnama, Pat. App. 4; p. 232.

(2) Ibid, Report of the Kazi, Pat. App. 2, p.230: According to Mussulman law of inheritance, if the husband dies leaving a widow and no child, the widow is entitled to a fourth of his estate.

(3) Law. Consult., R.166, vol. 82, p.699. Proceed. Pat. Council, 20 Jan. 1777.

reported, agreed that the persons involved in the alleged
forger - Cojah Zekeria, Gyruat Beg, Enayet Ulla Kazi
Mouzzam and Mohammad Avaz - be put in confinement until the
effects said to have been secreted were produced, after
this being done and the division made, "they be delivered
over to the Fouzdary to take their trial for forgery, of
which the Will and the Ekrar-aum, produced in order to
invalidate the claim of Behdar Khan, bear evident marks." (1)

The Kazi and the Muftees again proceeded to
enforce the decree of the Patna Council. They appointed
Zekeria as the attorney of the widow, took the inventory
of the effects of the deceased, employed appraisers to
evaluate the effects and finally divided the effects into
four shares. The widow resisted the proceedings of the
law officers from the very start and in protest or under
humiliation sought refuge in the Durgah of Shah Arzaum,
the habitation of Facquiers, with the Ultumghaw Sunnuis and

(1) Ibid.

(2) Ibid, p. 6.

(3) Law. Consult., R. 166, vol. 82, p. 701.

(1)
her female slaves. As, she had refused to take her share it was locked up by the law officers; Behadar had taken possession of his shares of the effects.

Behdar Beg presented his second petition to the Patna Council on 30 January 1777, stating, that the widow had refused compliance with the decree of the Council and had disgraced the family by absconding in a Durgah; and (2)
praying that she might be delivered up to his care.

Thereupon the Council passed an order - "That Bahader Khan's request be complied with, and that she be constrained to return to the House under his protection, and deliver up (3)
to the Sunnuds and other papers of the estate."

(1) T.C.R. 16A. p.5: In his report to the Supreme Council, N. Naylor, Company's attorney gives a short description of this Durgah - "The Durgah of Shaw Azim which in several parts of the proceedings is improperly translated a monument, and conveys an unpleasant idea to the reader as a place of confinement, is a public seminary or college founded by Shaw Azim - The walls enclose a space of more than a mile English, in which are spacious buildings, large pieces of water, and public walks, to which the people of Patna resort for pleasure." (Pro. Council, 2 May 1780; Naylor's Report; Law Consult. R.166, vol. 83, p. nil). The above facts are verified by the deposition of Naderah Begum's witness, Golaum Hossain Shaw, in her second suit against the members of the Patna Council. The above witness who was a Faquier of the Durgah deposed that the Durgah was a very large place and there was no place equal to it for magnificence in all Hindostan. (Law Consult., R. 166, p.83).

(2) Ibid, p. 6.

(3) Law. Consult., R. 166, vol. 82, p. 701.

The above order of the Council having been not carried into effect by the Kazi, the Council for the third time was petitioned by Behdar on 20 March 1777, whereupon the Council reprimanding the Kazi for the delay, and ordered him to carry their orders immediately. (1) The Kazi reported that the widow paid no attention to his requisitions and suggested that under the circumstances as existed it would not be contrary to customs to use force for compliance. On this report the Patna Council agreed to station a guard of sepoy on the widow and to prohibit people having any intercourse with her, so that she was forced to surrender the slave girls. (2) The guard was continued until the 5th May following, when the widow, still refusing compliance, it was withdrawn. (3)

These transactions at Patna gave occasion to the following proceedings in the Supreme Court.

Naderah Begum, when set free, came down to Calcutta and brought an action in the Supreme Court against Behdar Beg, Kazi Sadee, Muftee Baractoolah, and Muftee Galam Makhdoom (the Kazi and Muftees to whom the provincial Council had referred the cause at Patna). (4)

-
- (1) Ibid - p.702.
 - (2) Ibid - pp. 702-4.
 - (3) Law Consult. R. 166, vol. 79, Pat. Council to G.G.S.E. 15 Dec. 1777, p.71.
 - (4) 'The action was for assault and Battery, false imprisonment, breaking and entering her house, seizing her effects, and other personal injuries, as expressed in the declaration; for which she laid her damages at at 600,000 Sicca Rupees, or about £66,000'.

The first process of the Supreme Court was a Capias, with a bailable clause, against all the defendants. (1)
A bailiff from Calcutta arrested Behdar Beg and Kazi Sadee (2)
on 13 Dec. 1777. The bail required was of 400,000 rupees. (3)
On 15th December the Patna Council offered bail for the Kazi, which was not accepted by the bailiff (4)
for its being meant only for one of the defendants.
Hence the Bailiff had to wait until 29 December 1777 for further instructions from the Supreme Court; the Kazi and Behdar during this period remained confined on a boat in the river Ganges. It was on 29th that the bail was offered for all the defendants by the Patna Council and the two (5)
already confined were set free on that date. The Governor-General and the Council resolved on 13 January 1778 to defend the suit. The reason assigned for this resolution was that the defendants were prosecuted for a regular and legal act of the Government, in the execution (6)
of a judicial decree.

The case was tried in November 1778 and the judgment was delivered on 3 February 1779. (7)

-
- (1) T.C.R. 16A; p.9. (2) 9612
(2) Ibid.
(3) Ibid.
(4) Ibid.
(5) Ibid, p.10.
(6) Law. Consult., 13 Jan. 1778; R.166; Vol. 80,
pp. 36-38.
(7) I.P. Vol. 16259, Impey to Weymouth, 26 Mar. 1779;
p. 163.

First, proofs were furnished on the part of the plaintiff to support her plaint. Then Behdar, one of the defendants, entered a plea to the jurisdiction of the Court. (1) The judges unanimously overruled Behdar's plea to the jurisdiction and held him subject to the jurisdiction of the Court on account of his being a farmer of the company. (2) Whether the farmers of the revenue were subject to the jurisdiction of the Supreme Court is a significant point. Hence the narrative of the case may be here interrupted to enlarge on this point.

It was argued on behalf of Behdar that he was not the principal farmer, he was surety for one Zulficar Ally who farmed the revenue of Gidore and Amertoo, the two villages in the province of Bihar; and a farmer was quite differente from a collector of revenue, the latter being in the service of the Company, the former not. While dwelling on the difference between a farmer and a collector, the defence witness William Young, who was one of the members of the Patna Council, deposed that a farmer was a person who entered into a specific engagement to pay a certain sum for the revenue of the country,

(1) Law. Consult; R.166, Vol. 82; Bogle's Report, p.21.

(2) T.C.R., 16A; Pat. App.11; pp. 238 - 239.

besides that stipulated sum the government had no other claim on him, and a collector was a person who for a fixed salary was to be employed in collecting the revenue of the government which was fixed at a certain sum; if he collected more he was liable to be called to account for it, in the case of a farmer it was not so. (1) The

judges on the otherhand found no difference between a farmer and a collector, as Behdar was proved to be vitually concerned in the collection of the revenues of the aforementioned two farms, he was deemed by the judges to be a farmer and as such amenable to the jurisdiction of the Supreme Court. (2) Impey put forth his opinion on this point in the following words:

"The person authorised by Government to collect the revenues of Government, whether he is employed by the name of collector, who is answerable to Government for the sum he receives over and above the stipulated sum he is ordered to raise, and receives a monthly salary as a compensation for his trouble; or by the name of Farmer, who rents the revenues of Government for a stipulated price, which he is to pay to Government, and upon whom the Government have no other claim after the payment of that

(1) Ibid, Pat. App. 8; p. 237.

(2) Ibid, Pat. Appl. 11; p. 239; Justice Chambers was inclined to maintain a difference between a farmer and an ancient Zemindar in possession of hereditary lands, but not between a farmer and a collector.

price, and who expects to indemnify himself for his trouble by the surplus he may collect; is within the Act of Parliament and the Charter, a subject of the jurisdiction of this Court, as being a person employed by, or directly or indirectly in the Service of, the East India Company; and if this be not the case, by simply changing the name of the officer, and paying for his trouble in a different mode, every salutary provision of the Act of Parliament, intended to remedy oppression and extortions in the collections of the revenue, would be evaded." (1)

Behdar, being unsuccessful in his plea to jurisdiction joined in with other defendants in a plea of 'Not Guilty' and gave notices of justification.

The law officers tendered a notice of justification to the effect that before and after the coming into force of the Regulating Act the President and the members of the Patna Council have acted as a Court of justice on the authorisation of the President, latter Governor-General and Council at Calcutta; this provincial Council acting as a Court of justice in cases relating to Mussalman Law have been referring certain issues of law and fact to the Kazi and Muftees, known interpreters of Mussalman law, to be inquired into and returned with their opinion

(1) Ibid, pp. 238-239.

thereon; hence in the present case the Kazi and the Muftees had acted only as law officers on the orders of the Patna Council. ⁽¹⁾ In Behdar's notice of justification ⁽²⁾ it was contended that he had acted only as a suitor.

The plaintiff's counsel made eight objections to the notice of justification, the last one being that the Provincial Council of Patna having a delegated authority from the Governor-General and Council to sit and act as a Court of justice, had no right to redelegate their authority to the Law officers, for, according to English law a delegated authority cannot be redelegated (*Delegatus non potest Delegare*); hence the authority exercised by the Kazi and the Muftees had been exercised illegally and irregularly. ⁽³⁾ Impey rejected all ~~all~~ except the last objection, which prevailed against ⁽⁴⁾ the notice of justification.

He deplored the practice followed by the Provincial Council of Patna of passing on to their law officers the inquiry and decision in suits, which were filed in their Court and which they, not their law officers, in all fairness and justice ought to have tried. This practice involved too much trust being put in 'Blackjudges';

(1) Ibid; Pat. App.13; pp. 242-243.
(2) Ibid; Pat. App.12; pp. 240-241.
(3) Ibid, Pat. App.15; pp. 245.
(4) Ibid, Pat. App.16; pp. 245-248.

they were not only to interpret and expound the law but also to inquire into the matters of fact, a power which in law should never have been delegated to them. He argued, ".... would it be endured by the King and Parliament of Great Britain, that we, to whom they have delegated the administration of justice, should when such a cause was instituted in the Court, instantly refer it to those officers of the Court, with all its dependent incidents and emergencies, and in the end only add our authority, not only to their opinion, but to what they please to state to be facts in the cause."⁽¹⁾

On the authority of the Provincial Council to sit as a Court of justice he said: "I am exceedingly glad, by looking into the constitution of the provincial Courts of justice, to see that this decision does not at all affect their authority; it tends to the contrary; it will oblige them to execute that Authority which they have waived, as I shall always believe until I am convinced to the contrary, that principles of justice are more deeply rooted in the minds of my own countrymen than in the corrupt natives of this country, and especially than such natives as are generally attendant as officers on Courts of justice. I trust that this decision, by restoring to the Provincial Officers what I think to be

(1) Ibid, p. 247.

their legal authority, will strengthen the power of Government, give vigour to the administration of justice, and add security and stability of property in this country, and create, what is highly wanted in the natives of this country, a confidence in the provincial administration of justice I said, that the constitution of these Courts was not affected by this judgment, by the constitution in the administration of civil justice, subject to an appeal; and for that purpose, to try, hear, and determine, is vested in the chief and provincial Council." (1) Thus, we find that Impey really affirmed the judicial powers in the provincial Councils; what he reprobated was the practice by which these Courts had declined to exercise the power. On the Behdar's plea Impey held that his plea did not cover all the counts of (2) the plaintiff's declaration, hence it was insufficient. All the same, the Court allowed the defendants to furnish proofs on their plea of justification for the purpose of appeal. But the defendants do not seem to have benefited by this concession, for, the plaintiff's counsel insisting on the admission of only strict legal proof, the defendants found it impossible to prove even the existence of a (3) Council at Patna.

(1) Ibid.

(2) Ibid, p.278.

(3) Law. Consult. R.166, Vol. 82; Bogle's Report, p.175.

The defendants having thus failed in supporting their justification, were obliged to betake themselves to the plea of not guilty, and to go simply in mitigation of damages.

We can briefly sum up the evidences, as given by both parties during the trial, under the following heads:-

a) Regarding the appointment of Zekeria as the Vakeel of the Begum:

It was tried to be proved on behalf of the plaintiff that she never freely consented to appoint Zekerea or anybody else as her Vakeel. The defence Counsel tried to prove that two men of her family declared before the law officers that she had appointed Zekeria as her Vakeel. These two men were Zulficar Khan and Meer Khan. The Court insisted that the defence must prove that these men heard the widow declare Zekeria as her attorney. ⁽¹⁾ The defence failed to prove it; therefore the defendants were disenabled to prove certain admissions alleged to have been made by Zekerea before the Kazi. It may-be here observed that Zulficar Khan was one of Behdar's men, it was he who accused Zekerea of forgery before the Kazi and the muftees. How could the widow confide in him, knowing that he was one of her enemy's men?

b) Regarding taking of the inventory and division of the effects:

(1) Ibid, pp. 36-37.

Plaintiff's witness, Zekerea, deposed that he was brought from the prison to witness the inventory being taken and the division made, that he came two days after the law officers had started taking the inventory, that he did not know how the inventory was taken, and he never received the widow's share after the division was made. (1) The defence wanted to prove the contrary, that Zekerea as the Vakeel of Naderah was present when the inventory was taken and the division made, and he received the share on behalf of the widow. However, this much is proved by the testimony of the defence witnesses that Zekeria was not present for some time when the division was made and he later on objected to taking the widow's share. Defence witness, Anundram, stated that Zekeria was not present on some of the days of the division and he made many objections at the time of the division. (2) So deposed another defence witness, Hajee Hatim, "that Zekerea was present the five days of the division; that he first objected to taking a share, but being told that 'it was the Council's order', he took one of the shares, and ordered Ismael to put it into a room." (3) However, the allegation that the plaintiff never acquiesced in the division is supported by the fact

(1) Law. Consult. R. 166. Vol. 82; Deposition of Zekeria; pp. 353-362.

(2) Ibid; Bogle's Report, p.43.

(3) Ibid, p. 46.

that she never took her share, which remained in the house at Patna until the case came up for trial. (1)

A rough copy of the inventory was in the possession of both parties besides the one authenticated by law officers and the Patna Council. (2) Why neither of the parties produced a copy is to be accounted for its being in Persian, for, without a translation a Persian document could not be given in evidence. The Court did not allow the inventory authenticated by the law officers to be produced in evidence, for, the Court did not consider them legally appointed law officers; they were deemed private individuals; and it being also a maxim of the English law that verbal testimony cannot be given as to a matter if written evidence exists, the witnesses who were present at the division were, therefore, not allowed to speak as to the amount of the value of the effects. It being also a rule of English law that a plaintiff in trespass is entitled to the highest price of everything, the damages were estimated at Rs240,000, though according to the inventory it amounted to only Rs87906, excluding an elephant and two horses worth not more than Rs5000. (3)

(c) Regarding turning the widow out of the house and oppressions inflicted on her in the Durgah:

(1) Ibid. (2) Ibid.
(3) Ibid; Inventory; pp. 275 - 318.

It was tried to be proved on behalf of the plaintiff that the widow was forced by the defendants to leave the house and take shelter in the Durgah. The plaintiff's witnesses, however, do not seem to have deposed to any specific point on this score. In view of the fact that oppressions which were inflicted on her while she was in Durgah, were designed to force her back to the house, it seems highly improbable that the defendants had asked her to quit the house. It is probable that the desire or order of the law officers, requiring her to change rooms in order to facilitate the taking of the inventory, might have added to her general feeling of humiliation, disappointment and grief and she might have left the house partly in protest to what was being carried on there and partly in order to carry with her certain documents and female slaves to a place of better safety.

As to the injuries done to her while she was at the Durgah, George Bogle, the Company's Commissioner of law suits, in his voluminous report of the case argues, "from the evidence of what passed at the Durgah it does not appear that the Defendants ought to be considered as accountable for the injuries which the Begum alleges she suffered at that place," for, the injuries which were caused by placing harcurras and later a guard of Sepoys on her were done at the order of the members of the

(1)
Patna Council and not of the law officers. However,
this much is certain that the widow was rigorously
treated while she was at the Durgah. Law, who was one
of the members of the Patna Council when this case came
up for trial, deposed before the Committee of the House
in 1781 that: "She was certainly afterwards treated with
rigour by the Council, in consequence of her contumacy;
and the methods taken to enforce the decree of the
Council, were such as were pointed out by the advice of
the Mahomedan Lawyer's, expressly taken on the occasion." (2)

d) Regarding the deeds:

At the trial, the plaintiff did not enter upon the proof
of these papers as the grounds of her right, although they
were set forth by her counsel in opening the case; she
confined herself to the title which possession gave her by
the law of England. The defendants had, therefore, to give
their proofs in support of the forgery, before the plaintiff
produced her witnesses as to the authenticity of the deeds.

As, we have observed before, the deeds which were
produced in the Court and were alleged by the defendants
to be forged ones, were the Hibbanama and the Ekrrarum; the
former bore the seal of Sahbaz Beg Khan, Zekeria, Gyrut Beg,

(1) Ibid, Bogle's Report, p.55.

(2) T.C.R., 16A; Law's deposition; p.12.

Enayetullah Beg, Mouzzam and, Muhammad Avaz and the latter was authenticated and attested by the same persons except Enayetullah Beg.

It appeared on the trial that, besides these deeds, there was in the hands of Zekeria, after Sahbaz Beg's death, another Hibbanama either an original or a copy of the above, attested by one Syed Ahmed Khan. ~~The~~ To account for this paper it was said on behalf of the plaintiff that Zekeria being desirous of acquainting his friends at Kabul of the grant which Sahbaz Beg had made to the plaintiff, and in order to prevent the effects of the deceased at Kabul from being dispersed, after Sahbaz Beg's death, made a copy of the deed of gift from a rough draft which he found with Niaz Alli, the clerk of the deceased, and having attested it with his own seal and that of Gyrot Beg and Ennayet Ullah Beg, he got it attested by Syed Ahmad Khan and then sent it to Kabul; this paper did not bear the seal of the deceased. (1) It was further deposed by Zekeria that he made another copy of the Hibbanama, and this time not from the rough draft but from the original which all the time remained with the widow, and it was this copy not the original which was produced before the law officers. The law officers asked for the originals which was refused by the widow. Thereupon the Kazi and the Vakeel of Behdar

(1) Law. Consult. R.166. Vol. 82, Deposition of Zekeria, pp. 340 - 379.

declared that the documents were forged ones, in consequence of which the deponent with others was imprisoned by the Patna Council. The originals, as Zekeria deposed, were first time produced by him before the members of the Patna Council.

The circumstances of these deeds were stated on the part of the defendants in a very different light. It was deposed that some days after the death of Sahbaz Beg, Zekerea made a draft of a Hibanama and got Niaz Ali to copy it out fair, and having affixed to it Sahbaz Beg's seal as well as his own and having got Gyrut Beg and Enayetullah to affix their's to this forged deed, Zekeria carried it to Syed Ahmed Khan and others, solicited them to attest it, swearing by Koran that it was a true deed of gift, and that he had been present when the deceased executed it; that some persons refused to attest it, but Syed Ahmed Khan and one or two more were prevailed upon to affix their seals to it, cautiously writing at the same time a memorandum in Persian that they attested it on the faith of Zekerea. (1) Zekerea sensing that this deed would carry suspicion, suppressed it and employed Niaz Alli to make another copy to which he affixed the seal of Shahbaz Beg and having authenticated it with his own seal and that of others, set it up as the original deed of

(1) Ibid, Bogle's Report; pp. 63-65.

(1)

Sahbaz Beg.

Though the judgment in the case was not grounded on the genuineness or forgery of the above deeds, yet it will be worth-while to make certain observations on this point, before assuming the further narrative of the case.

Zekerea's depositions suffer from certain prevarications and contradictions. In his first statement he said it was that copy of the Hibbanama which bore the sealmark of Syed Ahmad Khan that he produced before the Kazi. In his revised statement he said that it was another copy which he himself had made from the original that he gave to the Kazi, the first copy bearing the seal of Syed Ahmad, he had dispatched to Kabul. Again, he first deposed that a month and three days before his death, Sahbaz Beg gave him the Hibanama and desired him to attest it. 'There was his own seal to it and that of no other person when he desired me to put mine. I never saw this paper again in Shahbez Beg Cawn's lifetime.'

(2) When Chief justice asked him who wrote the writing which was round the seals, Zekerea first said that what was written about his own seal and that of Gyrt Beg in the Hibanama he remembered writing himself,

(1) Ibid. In order to prove their respective contentions ^{regarding} ~~Soog ordering~~ the deeds, the defence produced four witnesses (Niaz Alli, Cojah Enayetullah, Meer Cullib Alli, Abdul Kadir) and the plaintiff five (Zekerea, Gyrt Beg, Ennayetullah, Mouzzam Beg, Hajee Muhammad Avoz; Coja Enayetullah, it should be observed, is different from Ennayetullah.

(2) Ibid, pp.96-97.

but the other three around the seals of Mouzzam, Hajee and Enayetullah, he did not remember writing. When questioned again and again he with much reluctance admitted that all the writing around the various seals were in his hand. (1) This admission is quite in contradiction with what he deposed earlier, that there were no seal marks and signatures except that of Sahbaz Beg when he first put his seal on the deed and he never again after that saw the deed during the lifetime of the deceased.

To account for the fact as to why he attested only the Hibbanama and not the Ekrarum, Enayatullah, another Plaintiff's witness, deposed that after attesting the Hiba he fell sick and fainted, with the result that he could not attest the Ekrarum. (2) He further stated that after he had attested the Hiba he heard Sahbaz Beg asking Zekeria to write under his seal, as the deponent's handwriting was not very good. (3) It sounds extraordinary that he should fall down in a fit, immediately on having affixed his seal, that he should recover so well as to hear Sahbaz Beg desire Zekeria to write over the seal, and yet

(1) Ibid.

(2) Ibid, Deposition of Znayetullah; pp. 629-31.

(3) Ibid.

that he did not attest the Ekrarum.

On the other hand, the defence story about the deeds is too tidy to be true. In order to prove an attempt on the part of Zekeria to secure certain attestations to the forged deeds, the defence witnesses attributed such conduct and behaviour to Zekerea which could be attributed to a person labouring under a feat of insanity.

Cojah Enayetullah, one of the defence witnesses, deposed that seven or eight days after the death of Sahbaz Khan, Zekerea sent for him at Syed Ahmad's house and asked him to attest the deed, which he refused to do. (1) Then Zekerea asked him to get it attested by Kazi Sadee and Muftee Mukhdoom for Rs4000; the deponant carried the deeds to them but they refused to attest it. (2) Why Zekerea, out of all, would commission Enayetulla, who had first refused to attest the deed, to approach the Kazi, bribe him and get his attestation to the deed? Is it conceivable that a man like Ennayetullah whose conscience did not allow him to attest the deed would come down to such a level as to approach the Kazi with bribes and persuade them to do something which he himself had refused to do? And why the Kazi and the Muftees did not mention this circumstance in their report?

Abdul Kadir, another defence witness, went a little further, and suggested that by force and deceit

(1) Ibid; Deposition of Cojah Enayetullah; pp. 563-70.

(2) Ibid.

(1)
Zekeria got his seal affixed on the deed. Some day
Zekeria came to his house, looked into his inkstand, asked
which of the two seals lying in the stand was his, and
being told by the deponant which was his, he picked up the
same, affixed it on the deed, and inspite of the deponant's
persistent objections went away. It is hard to believe
that a forgerer would seek attestations publicly and shall
act so desperately and unwarely as Zekerea seems to have
acted at Abdul Kadir's house.

(2)
The trial lasted for ten or eleven days.
A total number of forty witnesses appeared during the
trial and altogether fifty six depositions were made by
them. (3) The exhibits in all numbered twenty-four. (4)
The judgment was given on 3 February 1779, over two years
after the occurrence of the cause of action; it was for
the plaintiff against all the defendants, with Rs300,000

-
- (1) Ibid; Deposition of Abdul Kadir, pp.583-590.
(2) Bogle in his report dated 13 April 1779 states that it
lasted for ten days; Naylor, Company's attorney, in
his letter to the Board's Secretary states that it
lasted for eleven days - (H.M.S. 421, pp.112-113).
(3) Law. Consult, R.166, Vol. 82, pp.319 - 322; Depositions
made for the Plaintiff 24, and for the defendants 31,
and for the information of the Court 1. Among the
forty witnesses, ten were Englishmen, four for the
Plaintiff and six for the defendants.
(4) Ibid; pp. 328-330.

damages and Rs9208-8 costs, making together Sicca rupees (1)
309,208 annas 10, or about thirty four thousand pounds.

From Bogle's letter to the Governor-General and Council, dated 14 February 1779, it is gathered that the share of Sahbaz Beg had been decreed in favour of Allum Beg, and delivered over to Behader Beg only in trust; and Allum Beg having arrived from Kabul had taken possession himself of (2)
the estate.

Immediately after the judgment had been given, the Governor-General and Council by their letter of 5th February 1779, directed the Chief and Council at Patna to send down to Calcutta all the defendants for whom the Company had given bail for four lakh of rupees. (3)
Accordingly, the defendants were sent down from Patna to Calcutta, under a guard of sepoy, to be surrendered; Kazi Sahee, due to old age, expired on the journey. Law, being asked by the Touchet Committee, on the cause of Kazi's death, deposed; "He never heard his death attributed to his being taken down to Calcutta to Gaol; ... he was an infirm old man, about sixty years of age, and had been ill (4)
for some time before." By 17 March 1779, the three surviving defendants were surrendered to the Sheriff, and the Company's attorney applied for the cancellation of the

(1) T.C.R.; 16A; p.9.

(2) B. Rev. Consult. R.50. Vol.15; Bogle to Council, 4 Feb. 1779, pp. 629-33.

(3) Ibid, p.633.

(4) T.C.R.16A, Law's deposition, p.13.

(1) bond. They were committed to the common goal where they remained over a period of two years. When the Company as required by the act of 1781, executed a bond for the balance of the judgment debts in favour of Naderah Begum (2) on 12 August 1782, the judgment-debtors were released.

The Muftees while in gaol petitioned the Governor-General and Council for allowances being granted to them and their family. In their second petition as entered in the Revenue Consultations of 20 August 1779, they stated: "At Patna we received an allowance of twenty-four rupees. This was insufficient to support us; but from our dues on Fetwahs and Coballats and other public papers we were enabled to expend Rs150 each, the monthly charge of ourselves and families." (3) The board agreed that the Muftees be allowed Rs200 each per month for the maintenance of themselves

(1) B. Rev. Consult. R.50, Vol.16, Naylor to Board; 16 Mar 1779, pp. 686-7.

(2) Bond given by the Company to Naderah Begum; 12 Aug. 1782; H.M.S. 175, p. (nil); on 5 Mar. 1779, the Supreme Court had issued a writ of Fieri Facious on the said judgment against the lands, debts and other effects of the defendants. On 15 June 1779, the Sheriff had valued the affects of the defendants to the amount of Rs47574 - 10-0. Thus the balance of Rs261,634 remained due to be paid to Naderah Begum and it was for this balance that the defendants remained confined until the Act of 1781 directed the Company to secure their release by giving security for the balance of the judgment debt and the Company in consequence, gave bond to the judgment-holder on the above date.

(3) B. Rev. Consult. R.50, Vol.19; 2nd petition of the Muftees (no paging). Baractoolah.

and families to be paid partly here and partly at Patna. (1)

It may be here added that Behdar Beg and the Muftees were amply compensated under the Act of 1781, by (2) the Court of Directors.

The Governor-General and the Council having sought the opinion of Sir John Day, the advocate-general of the Company, on the propriety of Preferring an appeal in the Privy Council against the judgment of the Supreme Court, the latter in his report, dated 5 August 1779, advised against the filing of the appeal.

Sir John's advice was based on the untenability of the defendant's case. Commenting on the evidences as given by both parties he wrote - "Thro' the whole of the case before me, there appears such a complication of

(1) Ibid: The family of Baractoolah consisted of twenty-two members and that of Gulam Mukkdóm of twenty-one: (Pat. Coun. to Cal. Coun., 26 Aug. 1779; H.M.S.422; pp.735-36.)

(2) The Court of Directors in their minutes of 27 June and the 7 Dec., 1781, ordered the following compensations to be made to the defendants:-

£5000	To Mir Burcutulla) To each of them severally, or their order, on demand, in three months.
£5000	To Gulum Muckdum	
£2000	To Behdar Beg	
£5000	To the children or child (if any) of a certain magistrate called the Cadi or Cauzi Saadi of Patni within three months after arrival of the Act at Calcutta.	

A pension or Annuity to the widow of the said Cauzi Saadi, equal to the salary of her late husband, during the term of her natural life; also;

£1000 To the said widow, if the said Cauzi Saadi shall have died without issue; and

£1000 To his nearest male relation or relations in the same degree".

(First Report, 16A. pp. 380-81).

desperate villainy, such a Labyrinth of guarded and deliberate Perjury, of wary fraud, and subtle circumvention, as baffle all effort to trace, and detect them," and adds "...that to me it seems as if the most able, and upright judge might, without the smallest impeachment of his understanding, or violence of his conscience, have decided either for or against the Authenticity of those instruments....." (1)

However, the Council in its proceedings of 20 August 1779, resolved "that the petition of appeal in the cause of Naderah Begum against Begdar Beg's be filed, but with this express Proviso that it shall not be required to deposit the amount of the judgment." (2)

But no appeal was filed until the enactment of 1781; the Act by its 27th clause, recognising that the period during which an appeal should have been filed had expired, authorised the defendants to appeal to the Privy Council against the judgment of the Supreme Court within a period of six months. (3) The sources are silent as to the actual date when the appeal was presented to His Majesty in His Privy Council. It was referred to the Lords of the

(1) Law. Consult. R.166 vol. 82, Advocate-General's Report, pp. 993 - 1011.

(2) Ibid; pp.1029-30. Sir. John Day, having been appointed under Letters Patent as the advocate-general of the Company, and arrived lately in Bengal, took charge of his office on 16 February 1779. B.Rev.Consult.R.50, vol.16.

(3) Act of 1781: 21 George III: Chap.L.XX; 'Collections'; pp.203-207.

Committee of Privy Council by His Majesty on 28 July 1784. As it appears from the depositions of the solicitors of both parties, an attempt was made by Thomas White, solicitor for the respondent, to bring the appeal for hearing in 1786; but Smith, the solicitor for the appellants, not responding readily to White's proposal, the hearing of the appeal could not be secured until 1789. (1)

From the proceedings of the Privy Council in Behdar Beg and others vs Naderah Begum, it appears that the Committee of the Council was attended by Counsellors of both parties on 27 March 1789. The Counsel for the respondent "having prayed that in regard to the great length of time which has elapsed since the said judgment was pronounced and the appeal thereupon allowed by the said Supreme Court the said appeal might be considered as abandoned and dismissed for non-prosecution"; the Committee accordingly reported to the Privy Council on 27 March 1789 that the appeal be dismissed, and this report being read in the Privy Council on 3 April 1789, it was resolved to dismiss the appeal for non-prosecution without costs. (2) Morly remarks that the Privy Council of late 18th century was

(1) H.M.S. 413, pp.123.

(2) G.P.Vol.16271; Copy of the order of the Privy Council in Behdar and others vs Naderah Begum, dated 3 April 1789; pp.16-17 - present at the Court at Windsor were His Majesty and fifteen Privy Councillors.

neither interested in Indian appeals nor it possessed requisite judicial talents. He supports his remark by the fact that not a single appeal from India was heard between 1773 in 1779, and from 1799 to 1833 only fifty (1) from the Supreme Court, and none from the Company's Courts.

So much for the history of the case of Naderah Begum against Behdar and others. Sundry other events connected with the Patna case maybe here briefly summed up.

Naderah vs Members of the Patna Council: After securing a judgment against behdar and others, Naderah Begum directed her attorney, George Wroughton, in March 1779 to start a prosecution against Law, Young and Bird, the members of the Patna Council on the same cause of action as alleged in the former case. (2) The notice being served on the members of the Patna Council (Law, Young and Bird), they in consequence informed the Governor-General and Council of the same by their letter of 22 March 1779, suggesting that an action be brought against Naderah Begum for forgery "to show to the world that artful villainy, tho' triumphant for a time sooner or later meets with the punishment it deserves." (3) The Supreme Council, in consequence of the above letter, resolved on 2 April 1779, to direct the Company's attorney to defend the suit commenced

(1) Morley's digest, Intro., p.24.

(2) B. Rev. Consult., R.50, Vol.17, Wroughton to Patna Council, 13 Mar. 1779, pp. 24-25; This action was brought for false imprisonment caused by the orders of the Patna Council that a guard of Sepoy by placed on the widow to constrain her to return to Behdar's care.

(3) Ibid, Pat.Council to G.G.Sc, 22 Mar.1779, pp.17-24.

against Law and others and further directed that the opinion of the advocate-general be sought on the possibility of prosecuting Naderah Begum for forgery. (1)

This action came up for trial in the Supreme Court in the month of May 1779. (2) Notice of justification was given on behalf of the defendants and it was argued that the acts complained of were done by the members of Patna Council in their judicial capacity. The judgment in this case was given by the Chief justice on 13 January 1780, against the defendants in the sum of Sicca rupees 15000 damages, besides the costs. (3) The judgment was unaccompanied by any remarks on the evidence or the points on which the determination was founded.

On Prosecution of Naderah and others for forgery: The Governor-General and the Council on the advice of Sir John Day having resolved that the prosecution of Naderah Begum and others for forgery be not directed by the Government but left to Law, Young and Bird to act in the case as they thought proper, it appears that the last mentioned persons preferred an indictment against Naderah, Cojah Zekerea and others for the forgery of the two deeds. This indictment was quashed by the Supreme Court, for, the accused were neither the residents of Calcutta nor

(1) Ibid, p.25.

(2) H.M.S. Vol. 421, pp. 636-640.

(3) Law, Consult. R.166, Vol. 83, Proceedings of 2 May, 1780, Naylor's Report on Naderah vs. Law;

(1)
directly or indirectly in the service of the Company.
It may be here recalled that on the report of the Kazi and the Muftees, submitted to the Patna Council on 2 January 1777, the latter had ordered the confinement of Cojah Zekerea and four others on a charge of forgery. They were to take their trial in the Company's criminal Court. They remained confined for seven months. Whether any action was taken against them for the alleged forgery is doubtful. The Touchet Committee observes in its report that no action was taken against them. (2) On the other hand, the Patna Council in its letter of 15 December 1777, to the Governor-General and Council, observes that on 5th May 1777, the accused were delivered over to the Fowjdary Court, and "a trial has since taken place, and we are informed by the Phousdarry officers that the forgery has been fully proved before them, and an account of their proceedings sent to the Naib Subah that he might pass judgment thereon." (3)

It appears that the accused were sent down from Patna to Moorshidabad to wait the decision of the Naib Nazim, on the trial they had undergone before the officers of the Fowjdary Court. While at Moorshidabad they petitioned the Supreme Court for a writ of Habeas corpus against the

(1) T.C.R.; 16A; p.14.

(2) Ibid.

(3) Law Consult. R.166. Vol. 79, Patna Council to G.G.SC, 15 Dec. 1777, p.71.

seizure and imprisonment of them at Moorshidabad by Naib Nazim. In January 1779 a writ of Habeas corpus was issued against the Naib, and upon its not being served directly a writ of attachment was issued, the execution of which was suspended on the representation made by the Commissioner of law suits; the accused, however, had come down to Calcutta previous to any
(1)
judgment passed on them.

Having given above a systematic account of the history of the Patna case, it remains to observe upon the conduct of Impey in so far as it appears from the proceedings of the Supreme Court in the above case, and the remarks made by him in his judicial and private capacity, and also upon the consequences which followed the decision of the Court in the Patna case.

(1) T.C.R., 16A; Gen. App.13, p.146.

Certain observations on the Patna Case.

Impey appears to have believed firmly that the members of the provincial Councils were generally corrupt and that they resorted to all sorts of ignoble means in order to add to their private fortune. These English gentlemen at the provincial headquarters, Impey believed, committed extortions and rapines and administered, not law but their own will; and in all their misdoings they were assisted by their 'black agents'. Referring to the case of Bebee Sukun, which was tried on 29 March 1777 in the Supreme Court, many months before the trial of Patna case, Impey in his letter to Turlow wrote: "A charge without the least colour of truth was forged against her for having had, and murdered her bastard child. This was done for the purpose of giving a pretence of ~~putting~~^{treating} her with inhuman severity by the authority of the provincial Council and this was done until a large sum of money was extorted from her." (1) This case was filed against the agents of the Patna Council and Bebee Sukun recovered damages to the amount of 33575 Patna Sonaut rupees. (2) It is difficult to arrive at any conclusion regarding the truth of Bebee Sukun's charges against the agents of Patna Council. However, this much is apparent that the judges believed that the gentlemen of

(1) I.P., vol.16259, Impey to ~~Heerlaw~~^{Turlow}, 5 Mar.1779, p.163.

(2) Ibid.

the Patna Council had unjustly and unlawfully harrassed her to extort a large sum of money. With this precedent on record, the judges when called upon to decide upon the allegations of Naderah Begum, were bound to scrutinize severely the conduct of the gentlemen of the Patna Council. They did so and were led to believe that the proceedings of the Patna Council suffered from such gross irregularities that nothing short of corruption in the members might have occasioned them. That the proceedings of the Patna Council were irregular, indeed according to English standards of justice, is incontrovertible. Even Hastings, who had no legal training in the niceties of law, and who in fact approved of the legality of the decree passed by the Patna Council, could not reconcile himself to the irregularities involved in their proceedings. In his letter to the Chief of Patna, 12 January 1778, he wrote: "I cannot but take notice of great irregularity in the proceedings of the law officers, whose business was solely to have declared the laws, the Dewanee Court was to judge of the facts, their taking on themselves to examine witnesses was entirely foreign to their duty; they should have been examined before the adaulat." (1) As we have seen, it was these law officers who in fact decided upon the matters of fact and law and it was their decree which,

(1) T.C.R.; 16A, Pat. App. 7, p.236.

after receiving the formal sanction of the Patna Council, was put into execution. Were these persons competent and trustworthy enough to be vested with such judicial powers as they seem to have exercised in this case? "That they should be mean, weak, ignorant, and corrupt, is not surprising, when the salary of the principal judge, the Cauzee, does not exceed Rs100 per month; the five Muftees, who compose the other members of the Bench, are maintained for that time altogether of Rs120.... I doubt whether there is a country existing, how barbarous so ever, where there is the least idea, I will not say, of the forms of principles of justice, of honesty, whatever, did or ever will produce its parallel." So remarked Impey in his judgment. (1)

That, Impey did suspect strongly that Behdar Beg had bribed the members of the Patna Council and their law officers, is evident from North Naylor's letter to the Board and also from Impey's certain remarks made during the course of delivering the judgment of the Court. North Naylor in his report on the case of Naderah against Law and others, dated 20 February 1780, wrote: "I understand that since the imprisonment of Behdar Beg frequent attempts have been made to extort a confession from him that undermeans had been used by him to influence the Council to a decision favourable to his claims; and that a release

(1) Ibid, Pat. App.17; p.261.

from his confinement has been held up as the reward of
the disclosure." (1)

Impey believed that it was not the original Hiba but its copy which Zekeria gave to law officers for inspection, that the original Hiba and Ekrarum were, for the first time, produced before the Patna Council and subsequently taken possession of by the law officers, who fraudulently introduced them in their report. (2) He drew ^{two} references from his above statement first, that the law officers did not know the names of the subscribing witnesses to the deeds at the time of holding the inquiry. Second, that an alteration in their original report was made at the connivence of the members of the Patna Council.

Impey argued, had the originals been produced before the law officers they might have examined a few of the subscribing witnesses to the deeds. Ennayetullah and Zekeria, two of the subscribing witnesses, who were present at the spot, were not examined on the authenticity of the Hibbeneema, and no question was asked to them about the will. If the law officers were at that time "in possession of both ~~the~~ papers, why did they confine their examination to one of them and why did they not inquire as well to the authenticity of the Ekrarum, as of the Hibanama?" (3)

(1) Law. Consult, R.166, vol.83; Naylor to Board, (Page nil)
(2) T.C.R. Pat. App.17, p.267.
(3) Ibid, p.267.

Obviously, Impey believed in Zakeria's statement. We have stated earlier that Zakeria said in the Court that he produced the originals for the first time before the members of the Patna Council.

We have also observed that Zekeria's statements suffer from contradictions and prevarications. Bogle in his report which was meant for the Governor General and Council and not for the public, stated that he was privately assured by Law that no such conversation as alleged by Zekeria passed between him and the members of the Patna Council.⁽¹⁾

Supposing, that the original Hiba and Ekrarum were produced for the first time before the members of the Patna Council. From this, it does not follow preforce as Impay appears to have inferred, that the law officers, at the time of holding the inquiry, did not know the names of the subscribing witnesses to the deeds.

According to Zekeria's own statements, two copies of the Hiba were made by him, the first from a rough draft of the Hiba which lay with Niaz Ali and the second from the original Hiba which was in the custody of the widow. The first copy was attested by Syed Ali. As the first copy was made from a rough draft it is probable that it did not contain the names of the witnesses who had subscribed to the original Hiba. But the second copy, being made out of

(1) Law. Consult. R.166. Vol. 82, p.90.

the original Hiba, in all possibility should have given the names of the subscribers. According to Zekeriah's revised statement which was made in the court, it was the second copy which he gave to law officers for inspection. The first copy, he deposed, was sent to Kabul.

Supposing that a true copy of the original Hiba was given to the Law Officers and the latter knew the names of persons who had attested the deed. Why then the law officers instead of inquiring into the authenticity of the deed produced, directed their inquiry into the one which was attested by Syed Ahmad and either sent to Kabul or destroyed by Zekerea? To a jurist, well versed in English law of evidence, this is a most irreconcilible situation. Quite naturally, Impey could not think of anything else except that the deeds were not produced before the Kazi. But it may be observed here that Impey's arguments though weighty are not conclusive proof of what he believed. Several conclusions can be derived from a single set of circumstances. It is also probable that previous attempts on the part of Cojah Zekerea to secure attestations to a deed might have ~~achored~~ ^{appeared} to the law officers a more material circumstance to prove that the deed which was produced before them was a forged one. Hence they might have directed their inquiry solely into Behdar's allegation that since the death of Sahbaz Beg, Zekerea had been active in securing attestations to forged deeds, that a few had declined and

and a few attested with a reservation that they attested on the testimony of Zekerea, that Zekerea realising that such observations on the part of the attesting witnesses would cast suspicions on the genuineness of the deed destroyed it, forged another, and to this secured attestations of certain men in whom he could confide. On inquiry, the law officers found that Zekeria had secured Syed Ahmad's attestation to a deed, which being quite different from what was produced before them, they might have inferred that the deed which was produced before them might be a forged one. They might have argued, why, after all, Zekerea would secure attestations to a copy, when he was in possession of lawfully executed deeds? Zekerea admitted before the law officers and also in the Supreme Court that he had secured attestation of Syed Ahmad to a copy of the Hiba. He does not appear to have given to the law officers any reason for making a copy from the original, but in the Supreme Court he deposed that he sent that copy to Kabul. In the beginning he said that the copy which bore the sealmark of Syed Ahmad was the one he gave to the law officers. Later he said that it was the second copy which he gave to the law officers, the one attested by Syid Ahmad was sent to Kabul. This second copy is introduced by Zekerea in the latter stage of the trial. It is probable that in order to give a different colour to his previous attempts to secure attestations to a

forged deed, an attempt which some how or other due to unfriendly attitude of Syed Ahmad had become public, Zekerea was obliged to invent the story of the copies.

It is difficult to decide, whether the deeds were forged or genuine. The judgment of the court was not based on this point. All the same, a few general observations can be made on this point.

Why Sahbeez Beg Khan, owner of an ultumghaw worth forty or fifty thousand rupees a year, houses and property at Kabul and Patna, and living ⁱⁿ the City of Patna where he had several friends of status and learning, when he decided to leave his property to his wife ^{by a deed,} instead of calling the Kazi or any such public officer to witness such an important deed, choose men of low rank, many of whom did not know how to write. (1)

What purpose, if any, a copy of the deed authenticated by the witnesses was to serve if it was sent to Kabul, when it did not bear the sealmark of Sahbaz Beg Khan. Zekeria deposed that it was meant to inform the relations of Sahbaz Beg that they were cut off from any prospect of Sahbaz Beg's inheritance. If that was the end he had in view, the best course upon to him who professed to be well versed in Mussalman law, was to advise the widow

(1) P.Ws. Hajce Muhammad, Kazi Mouzzam Beg, and Gyru~~k~~ Beg deposed during the trial that they did not know how to write.

to publish these deeds, to prove them and thereby establish her rights, to get attested copies of them under the seal of the Kazi, to send such probate to Kabul, and appoint persons to manage her affairs there. Impey while delivering the judgment of the Court made the following observations on this point. 'As to the probability of his story, we can see but one objection; which is, that any attestations should be required to the copy sent to the Kabul: That it is a custom in the country so to do, is not proved. On the other hand, no observation is made upon it; and no evidence is adduced that there is anything extraordinary in it; and in a country, where customs and manners differ so much from our own, it would be hard, from our own customs, to draw a conclusion unfavourable to the plaintiff, which is even not suggested by the
(1)
defendants.

Again, why should the plaintiff refuse the originals to the law officers? If she had a bonafide claim, based on a genuine deed, then there occurs no reason which might have prevented her from causing the deeds exhibited before the law officers, except her apprehensions that the originals when handed over to the Kazi might be destroyed by them. This explanation can be sustained on the supposition that she treated the law officers as Behdar's men, hence her enemies. Why then attempts were made by her men, at her direction, to

(1) T.C.R., Pat. App.17; p.276.

furnish proofs in support of her claim? She ought to have represented to the Patna Council that the law officers were prejudiced, partial, or bribed by Behdar; and prayed the Council to appoint another set of investigators or to investigate directly into the matter. Again, the declaration of law officers and Zulficar Ali that the deeds were forged, was sufficient provocation for the plaintiff and her men to come out with the originals. A normal person under similar circumstances would have acted differently than the plaintiff did.

Now we must turn to the consequences that followed the decision in the Case.

The decision of the Court on Behdar's plea of jurisdiction and the final determination of the cause in favour of the plaintiff were followed, it is reported, by protests and remonstrances from renters and farmers of Bihar against the Court's assumption of jurisdiction on the farmers of the provinces. (1) The Patna Council received such a petition from the renters of Bihar and forwarded it to the Governor General and Council with the following remark: "We must in justice to them declare that we do not think their representation of the hardship of their situation is the smallest degree exaggerated." (2) Referring to this petition in his letter to Turlow, 30 April 1779, Impey wrote: "Petitions are procured here in

(1) Ibid, Pat. Appen. No.14, pp.243-45.

(2) Rev. Consult, R.50, Vol.16, p.141. Pat. Coun. to G.G. & C. 11 Feb 1779

the manner they are, to serve political purposes in England, with this difference only that the influence and power to procure them is greater." (1) As, the members of the Patna Council had sufficient reasons to feel hostile against the Court it is highly probable that they had been active in procuring such petition against the Court. Supposing that the petition was not procured, that it was spontaneously filed by the native farmers and the latter were genuinely alarmed at the jurisdiction of the Supreme Court. What importance, if any, are we to attach to this alarm and discontent among the natives? The timid natives, sunk in ignorance and superstitions, and having never heard of an independent judiciary, could hardly be expected to understand the decrees of the Supreme Court in their proper context. Reverence for the independence and dignity of the judiciary, in a well organized Government, is secured by the executive. The Supreme Court in India was put in a very galling situation; on one hand was the hostile executive, grousing and clamouring, and on the other an ignorant mass of people, having no tradition of an independent judiciary. The judges at the most could speak through their judgments, which hardly reached anyone except the parties concerned. No wonder then, if the nature,

(1) I.P.; vol. 16259, p.248.

purpose and functions of the Supreme Court remained a mystery among the masses.

The Patna case further brought to light how inefficiently and irregularly justice was administered by the Company's Courts. The Patna Council, like the other provincial Council sat in two capacities but did not maintain two separate records and whatever it maintained was found by the judges to be quite incomplete and scratchy. ⁽¹⁾

It functioned as Dewanni Adalat only in name; in fact their agents decided all the civil suits except those which concerned revenue. A plausible explanation for the above practice is given by Bogle in his report. He argues: "That the number of Englishmen acquainted with the language of this country is very small and even of these, few are so far master of it as to be able to write it, or to read it without difficulty; and if no fact were to be examined but by them, or in their presence, and no cause determined until all the papers, accounts and evidences had been translated, the administration of justice would be almost entirely stopped. ⁽²⁾

According to Bogle's calculations there were at that time in India not more than two to three thousand Englishmen, a

(1) T.C.R.; 16A; Pat. App.17; p.270.

(2) Ibid, pp.169 - 70.

very large proportion of them were engaged in different offices at the Presidency, and the greatest part of the remainder were taken up in collecting a revenue of three millions of money, that the number, therefore, of Englishmen qualified for the administration of justice would perhaps not exceed thirty. (1) If these thirty were to administer justice to ten and twelve million inhabitants of the provinces, it would be impossible to carry on the Government of the country.

Bogle was right in his calculations. But it does not follow that there was no alternative to what was being practiced by the provincial councils or no improvement could be made on the defective administration of justice in the provinces. It was lawful for Governor-General and Council to set up a network of Courts in the provinces, appointing qualified and competent native judges at reasonable handsome salaries in inferior Courts of first instance, and lay down procedure for a regular appeal in and supervision by a superior Court, consisting of qualified English judges. What shocked Impey and his colleagues in Patna case was that the first and the final decision virtually lay with the poorly paid and grossly incompetent Kazies and Muftees, who were highly susceptible to corruption and inducements.

Besides, the judgement of the Court was only a

(1) Ibid, pp.169-70.

pointer to the evils in the existing system, it could not claim to provide a remedy. The judges had given their decisions; it was up to the Governor-General and Council either to make amends to the existing system or to apply to the Home Government for remedy.

A remoter and rather unfortunate result of the trial was the second charge in the article of impeachment which was based on the Patna Case and exhibited against Impey in the House by his accusers. We have observed elsewhere how the motion of Sir Gilbert Elliot to impeach Impey on the first charge, was defeated by a vote of 73 against 55. Of the remaining five charges, the one and the only one on which a faint attempt was made to impeach Impey was the second charge, grounded on the trial of the Patna Case. (1) The article of impeachment among other things charges Impey of high crime and misdemeanor, for having illegally tampered with the jurisdiction of Dewanni Adalat of Patna, for his having arbitrarily rejected Behdar's plea of jurisdiction and defendant's notices of justification, for his having erroneously applied the English maxim of 'delegatus non potest delegare', and having maliciously stuck to English law of evidence and refused to admit many evidences and documents, which were attempted to be produced on the part of the defendants. And in all these

(1) The second charge runs into twenty pages of quarto size and is couched in a most defective style. It is most unprecise and suffers from unnecessary repetitions and distortion of facts. A basic mistake is committed with regard to the year: the action of trespass was brought in the Supreme Court. The year as stated is 1779. It should have been 1777. (Articles of Charge: Par. Branch: N. 8... pp. 8 - 27.)

misdoings, the article avers, Impey was "ac^tuated by a greedy, corrupt, and tyrannical motive of drawing all judicial proceedings in cases in which he had, and in cases in which he had no jurisdiction, within his own grasp."⁽¹⁾

In the light of what we have discussed above, the charges stand ill-founded. Human beings whether humble or great, tend to suffer from a lust for power. Impey was not a saint. He can be accused if it is found that the inherent lust for power assumed such abnormal magnitude in him that he became tyrannical and corrupt. As we have observed, there is no evidence to prove that Impey, being ac^tuated by a greed for power conducted the trial corruptly and arbitrarily. On the contrary, we have found that he, with a benign motive, to protect the natives against the oppressors, conducted the trial most candidly. It may be further observed that each and every proceeding of the Supreme Court in the Patna Case had the unanimous consent of all the four judges.

On 27 May 1788, an attempt was made by Sir. Gilbert to move the House to consider the second charge against Impey.⁽²⁾ This move was contended by the attorney-general on three grounds; first, that if it was

(1) Ibid, N.8., p.17.

(2) Par. His.; Vol. 27; pp. 599-604.

any charge against Impey it must prove equally a charge against the whole Court; second, that in 1780 the subject of the charge became an object of parliamentary consideration, and an Act had passed upon it; thirdly the case was coming up for hearing before the Privy Council. John Anstruther and Edmund Burke, referring to the bond of East India Company which had forfeited on the expiry of five years in January 1781 accused the Company for having entered a collision with Impey to delay the hearing of the case in the Privy Council, Edmund Burke warned the House not "to hold out to India, that Sir Elijah Impey; being one of their own colour, one of their gang as it were, should upon this account be protected by them. (1) On William Pitt's suggestion that the House should wait until the decision of the Privy Council in the appeal laying before them, it was resolved "That this House will, upon this day three months resolve itself with the said Committee." (2) The House did never resolve in the said Committee.

Since the trial of the Patna case, the provincial Councils became a little cautious and regular in their proceedings. The fear of being summoned by the Supreme Court on the suit of a native, worked as an effective check on the discretionary powers the members of the

(1) Ibid, p.602.
(2) Ibid, p.604.

provincial councils had exercised till then. This point among other things is well illustrated by the proceedings of the provincial councils in certain cases, which we shall take up in the next chapter.

In the light of what has been said above, James Mill's strictures on the conduct of judges in the Patna case, appear ill-founded. He concludes ^{his} scanty narrative of the Patna case with the following remark: "It was in this manner that a thirst for jurisdiction incited the English judges to interfere with the administration of justice in the native civil courts." (1)

We have seen in our narrative that it was not the lust for power in the judges of the Supreme Court but corruption in the members of the Patna Council that incited the former to interfere in the affairs of the latter. Mill has taken pains to enumerate the sufferings and hardships of law officers, but he has carefully avoided to look at the molestation, disgrace, humiliation and mortification the widow was made to suffer at the oppressive and corrupt exercise of judicial and executive powers by the members of the Patna Council. The moment we suppose that the deed of gift was genuine the sufferings of the widow appear manifold augmented. Mill's narrative of the case is

(1) Mill; vol. IV; p. 332.

entirely based on the Touchet Committee's report. And he does not seem to have examined the Patna Appendixes thoroughly. A careful perusal of Bogle's report and the judgment of the Supreme Court, which run in about fifty pages of quarto size, might have obliged Mill to soften his bitterness which he generally bore against lawyers and judges. It might have also presented before him the other side of the Case, which he seems to have ignored throughout his narrative.

The other writer, who seems to have consulted all the available materials on the subject, and who gives a fuller and candid account of the Patna case, is Stephen. He puts the blame on none of the parties involved in the episode. The farmers were right in saying that if they were subjected to the jurisdiction of the Supreme Court they would not be able to collect the revenue. ~~That~~ Behdar Beg, merely because he had farmed villages, should be liable to be sued at Calcutta for an alleged wrongdoing which had not the remotest connection with the collection of the revenue, was a cruel grievance. Similarly, he thinks, Impey was right in asserting the jurisdiction of the Supreme Court over those who farmed the revenue, for, it was the intention of the farmers of the Act of 1773 that the Supreme Court should protect the cultivators and proprietors against the oppressions of the collectors of the revenue. 'The fault lay', Sir James remarks, 'in the

clumsiness of the remedy provided by the establishment
of the Supreme Court.⁽¹⁾

Another writer, who has discussed the
subject in a legal context,⁽²⁾ is Wilson. He reflects upon
the then existing English rule of evidence, under which, the
plaintiff and the defendant were barred from appearing as
witnesses, and remarks "that this alone would be enough to
destroy all confidence in the conclusions arrived at by
the Court." He further laments upon the non-transplantation
in India of that part of English civil procedure which
provided trial by jury in all civil cases. Had the
case been tried by native jury, he conjectures, the judgment
in the case would have been different.

On the above remarks of Wilson relating
to the rules of procedure and evidence, no comments are
needed. It was not in powers of the judges to amend the
English rules of Procedure and evidence. All the same,
it is very hard to conjecture that the results would have
been different, had the Court followed a different rule
of procedure and evidence. The point at issue was,
whether the widow was or was not in the possession of the
property of her deceased husband at the time when the
trespass was committed? If she was in possession she
was entitled to damages. The Court held that she was in

(1) Stephen; N & S, Vol. 11; p. 184.

(2) Wilson, An Introduction to the Study of Anglo-Muhammadan
Law; pp. 94 - 108.

lawful possession of the property when the trespass was committed. They did not decide on her ownership of the property, thus whether the deeds were genuine or forged was not a point relevant for the determination of the suit. Wilson argues that the widow was a 'fractional heir', and anyone acting on behalf of the absent co-heir, had a better claim to 'possession' than she had. 'Actual possession' and 'a claim to possession' are two different points in law, and the law protects the person in actual possession against trespasses committed by anybody, even the real owner. And the actual possession of the widow was not based on the deeds. Even if the deeds were forged her possession was lawful.

That the defendants committed trespass sounds indeed, like a legal fiction. But it is to be observed that under the eyes of law and act can either be legal or illegal. The judges of the Supreme Court having once found the proceedings of the Patna Council and their law officers being irregular and illegal, they had no option but to declare that all acts done in the execution of their decree were trespasses. Had the inquiry into the facts of the case been held by the members of the Patna Council and decree consequent to the enquiry been passed by them, the judges of the Supreme Court, howsoever critical they appear to have been about the conduct of the gentlemen

of the provincial Councils, would have been obliged to give judgment for the defendants, as they did in a similar case - Gowry Chand Dutt vs Hosea, which we shall have occasion to discuss shortly.

Much has been said about the harshness involved in the imprisonment of the judgement - debtors (the Muftees and Behdar Beg) for such a large sum of money, which they would never have been able to pay. Wilson says that both Muhammadan law and modern English law, authorise imprisonment of a judgement debtor only when he has the means of paying and will not pay. While commenting on this point the critics seem to ignore the fact that the case was defended by the Company, and the Company was solvent enough to pay the amount of damages which was decreed against the defendants. We have seen above that the damages were paid by the Company. What pecuniary loss or physical pain, if any, the defendants sustained? A sum much larger than what they used to receive as their monthly allowance, was granted to the Muftees during their period of confinement. And under the Act of 1781, as we have observed before, more than adequate compensation was allowed to Behdar Beg and Muftees, and the family of the deceased Kazi. Not only this much; after their release. they were promoted to higher ranks in the service of the Company. The Kazi, as proved beyond doubts, died a natural death. It was a sheer

coincidence that the death occurred while he was being brought down to Calcutta to be surrendered. For this coincidence, the Company granted a life annuity to his widow over and above a sum of 1000 rupees; and an equal sum was sanctioned to his nearest male relations. The above facts tend to show that the defendants ultimately gained rather than lost anything from the judgment of the Court in the Patna Case. Their imprisonment for nearly two years, seems to have been adequately compensated. There is no reason to disbelieve that the judges in awarding the large amount of damages to the plaintiff had the Company in view as the defendants.

CHAPTER VI

The quarrel between the Court and the Council (continued)

In carrying further this analysis of the quarrel between the Court and the Council it is necessary to examine the following cases:

- (a) Gowrychand Dutt vs Hosea and others.
- (b) Durgacharn Chakravarti vs Calcutta Committee.
- (c) Seroopchand vs Dacca Council.
- (d) Feat and the Dacca Council.
- (e) Touchet Petition.
- (f) Grand vs Philip Frances.

The accusers of Impey have had charged him of having usurped to himself a large and unjustifiable share of power over cases in which the provincial Courts had exclusive jurisdiction.⁽¹⁾ This, it was alleged, he did by overruling the proceedings, superseding the commitments and intimidating the judges and other officers of the Dewanni and Fowjdary Courts.

Are the above charges well-founded? We have seen in the preceding chapter, under what circumstances and with what motive, the judges took cognizance of and proceeded with the trial in the Patna case. A few important cases are proposed to be discussed under this chapter to show what motive the judges had in entertaining complaints against members of the provincial Councils. Was it a sheer usurpation of power on the part of

(1) Par. Bra. No.8; Third Charge; Article of Impeachment against Impey; pp.28-33.

the judges or an extension of the protection of the Supreme Court to the remediless oppressed natives? Though Impey did not participate in the proceedings of the Supreme Court in certain cases, those cases shall be briefly discussed to show what the other judges thought about the administration of justice by the Company's Courts. Was it only Impey or all the judges of the Supreme Court, who felt so strongly against the irregular and corrupt administration of justice by the Company's Courts?

We shall further discuss under this chapter the reaction of British subjects of European origin, residing in the provinces, against the indiscriminate administration of justice by the Supreme Court. The determination of the judges to treat natives and British alike in the eyes of the law, threatened to undermine the power and prestige of the ruling class. The lead was taken by discontented few who had suffered individually at the even administration of justice by the Supreme Court and the result was the Touchet-Petition. This petition was presented to the Parliament against the Supreme Court in Bengal.

Lastly, we shall briefly refer to the case of Grand, a British subject of French origin, against one of the members of the Council, Philip Francis. Francis, it was alleged by the plaintiff, had committed adultery with his wife. The Case was proved and the judges awarded large amount of damages against Francis. This event turned Francis into one of the bitterest

personal enemies of Impey who had presided at the trial. This event has received only a passing reference by a few among the many historians of this period. This episode sufficiently explains why Francis after his return to England actively assisted in bringing charges against Impey, in the House, and may therefore be examined as one of the more significant events in Impey's career in India.

Gowry Chand Dutt vs Hosea and others (1779)

Though this case was in many respects similar to the Patna Case, the decision of the Supreme Court was not the same in both.

This action was brought in the Supreme Court by Gowry Chand against Hosea who was one of the members of the Moorshidabad Council, and Roy Dullaroy, Dewan of that division, on account of acts done in the execution of a decree of the Dewanni Adalat in which Hosea presided.⁽¹⁾ The action was defended by the Governor-General and Council and a plea of 'not guilty' with a notice of justification was given in by the defendants.⁽²⁾

The circumstances which gave rise to this action in the Supreme Court may be briefly summarised as follows:

Gowry Chand had filed a complaint in Dewanni Adalat of Moorshidabad against one Mirza Muhammad Ali, father of

(1) T.C.R., 16A, p.15. The plaint contained four counts, the first two for assaulting and imprisoning the plaintiff, the remaining two for entering the plaintiff's house, disturbing him in the quiet occupation and enjoyment thereof, and taking and carrying away goods and chattels of the plaintiff to the amount of Sicca rupees 32,822. (T.C.R.; 16A; Ge. App. 4; Report of the Company's Attorney pp.130-1)

(2) The trial started on 19 June, 1779.

Mirza Jelleel, for the recovery of a certain sum of money. Middleton, the then Chief of the provincial Council, referred the Case and not the original plaint to the Adalat. Long afterwards, David Anderson not finding the petition, asked the plaintiff for a new one and the plaintiff accordingly gave in a new petition and this time against Mirza Jelleel, for, his father was dead by then. In his second petition, filed in the Dewanni Adalat of Moorshidabad on 23rd October 1776, the plaintiff referring back to his original plaint asked for the recovery of a sum of Rs.700, being balance of several accounts between him and the defendants.⁽¹⁾ The suit was brought before John Hogarth sitting as the superintendant of the Adalat. During the course of the cause the defendant alleged that he was not indebted to the plaintiff and averred that upon the balance of the said account the plaintiff was indebted to him in the sum of Rs-18070. The Case was proceeded with and it was adjudged in the same cause by George Richard Foby, the acting superintendant of the Adalat, that the plaintiff should pay to the defendant a sum of Rs.11076, annas 8, pies 9.⁽²⁾

It appears from Khalsa-records that after the above decree was passed against Gowry in the suit which he himself had instituted against Mirza Jalleel, he came to Calcutta and filed another suit against Mirza in the Equity Side of the Supreme Court.⁽³⁾ Nothing seems to have come out of this suit except ^{that}

(1) H.M.S. 422; Proceedings of Supreme Court, pp.796-800.

(2) Ibid.

(3) H.M.S. 421; Khalsa records; pp.527-40.

Gowry and Mirza had to remain in Calcutta for a long time. When Gowry went back to Moorshidabad, Mirza petitioned the superintendant of Khalsa on 9 April 1778, praying that the chief of Moorshidabad were moved to execute the decree which the Adalat of Moorshidabad had passed in his favour. Thereupon a series of correspondence passed between the superintendant of Khalsa and the Chief of Moorshidabad; the latter ultimately executed the decree against the person and property of Gowry and informed the former of the same in the following words:

"...We are to acquaint you that Gowry Churn is confined in the Moorshidabad prison, that an inventory of all his effects hath been taken in order that they may be disposed of and every necessary measure for enforcing the decree consistently with the circumspection we are obliged to use since this matter is in agitation before the Supreme Court, hath been taken and consistently with the same caution we are proceeding to enforce it and to dispose of the effects."⁽¹⁾ The decree was executed by Hosea and the Diwan; Gowry was imprisoned on 26 September 1778 and he remained in the prison until the present action was brought in the Supreme Court some time in the First Term of 1779. He was in the prison during the course of the trial; when he was released is not known.

From the above account of the circumstances relating to the case, certain inferences can be safely made.

First, the proceedings of the Dewanni Adalat of Moorshidabad

(1) Ibid, p.540.

suffered from gross irregularities.

'In the present case, the Committee of Moorshidabad seem (without intending anything oppressive or unjust) to have gone those lengths of irregularity, for which, under all the circumstances of the case, it will not be an easy matter to frame that defence which may promise success - A brings suit against B to recover a small sum, stated to be due upon an unadjusted account - B affirms, that a much larger sum is, in fact, due from A to him; they each adduce their proofs; the cause is heard by different judges; ... and judgement goes for defendant; the operation and effect of which are not merely that he shall be discharged from plaintiff's demand, but that plaintiff shall pay him a much larger sum, in satisfaction of a claim, which formed no part of the original cause, - so commented Sir John Day, Advocate General of the Company when he was asked by the Board to express his opinion. (1)

Secondly, though the Moorshidabad Committee in the earlier stages of their proceedings had acted quite irregularly, their latter proceedings, relating to the execution of the decree, seem with caution and circumspection. This was caused by the proceedings of the Supreme Court in the Patna Case.

Thirdly, the acts complained of in the present case by the plaintiff were done by the members of the Moorshidabad Council in their executive and not in their judicial capacity.

(1) Ibid, pp.130-132.

'It was well worth the consideration of the Board, that the Acts which form the foundation of the Plaint in the Moorshidabad Case were done, not in the Adaulut (for that had long discontinued its functions, and shut its doors against the people) but in the exercise of the executive power of the Government: A circumstance which if established in proof, constitutes their illegality, and must, in my opinion, condemn them.' - so were reminded the members of the Council by Day. (1)

Here is brought to our notice the abuses of vesting in the same body the executive and judicial powers of the Government. Day, who was a friend and adviser of the Company, found that one of the provincial Councils had long since ceased to sit in Adalat and their so-called judicial acts were in fact done in their executive capacity. The way the original plaint of Gowry was passed by one member of the Moorshidabad Council to the other and the manner in which the final decree was passed, testify to what Day stated in his letter above.

Fourthly, Gowry brought the present action in the Supreme Court not with a view to recovering large amounts of damages from the members of the Moorshidabad Council but with a hope to secure his release from the confinement.

'That this action has been instituted by Gorachand Dutt, not so much with a view of recovering pecuniary damages, as from a

(1) Rev. Consult. R.50. vol.18, Proceedings of 1 June 1779; Sir John Day's Report of 31 May 1779; (no pagination).

hope that by establishing illegality of the procedure, he may procure release from his confinement; and, I shall imagine, that if his release is directed by the Board, it will put an end to the action.'⁽¹⁾ - So suggested North Naylor, the Company's attorney, to the Board in his letter of 19 June 1779.

Subsequent to the plaintiff having brought this action in the Supreme Court, the Governor-General and Council, with a view to explore proper grounds of defence, referred the Case to Day, who in his consequent report, commenting at a great length on the irregularities involved in the proceedings of the Moorshidabad Adalat, advised that the suit be compromised with because it could not be defended except on very feeble grounds.⁽²⁾ But the Board, being of the opinion that the suit ought to take its course, for the purpose of ascertaining, by a legal decision, whether the Dewanni Courts were or were not competent in their judicial powers, decided to proceed with the defence. On the Board's stand Day commented in the following words:

'The truth is, that their competency has never been denied neither has the exercise of their powers (so long as they have acted up to the end and principle of their institution) been once questioned. It is the abuse and not the exercise of those powers, which, to appearance, had brought their acts under the revision and control of a Superior Court.'⁽³⁾

(1) Ibid, pp.130-132.

(2) T.C.R., 16A, Gen. App., 4., Sir John's Report, 21 March 1779, pp.128-129.

(3) Rev. Consult. R.50 Vol.28, Proceedings of 1 June, Day's Report.

But Day's apprehension did not come true. The Court being convinced that the plaintiff was confined under a decree of the provincial Adalat, declined any inquiry into the irregularity of their proceedings, and hastened to give judgement for the defendants with costs. To the notice of justification, several objections were filed by the plaintiff's counsel on which Impey remarked:

"That in case of suits instituted before the provincial councils, except in cases of manifest corruption, the Court will not enter into the regularity of the proceedings."⁽¹⁾ It being observed by the plaintiff's advocate, that this was a case where manifest oppression and irregularity had been committed, the Chief justice added, "I do not think it the province of this Court, to enquire into the irregularity of the Court's proceedings."⁽²⁾

Thus, Impey set a limit to the jurisdiction of the Supreme Court by maintaining a distinction between irregularity and corruption. How the proceedings of the Patna Council were corrupt, and that of Moorshidabad Council only irregular? The members of the Patna Council had delegated their judicial powers to their law officers. This was tantamount to corruption and a gross neglect of duty on their part. The members of Moorshidabad Council, on the other hand, had themselves enquired into the Case and passed the decree thereon. Howsoever irregular their

(1) T.C.R., 16A; Gen. App. 4; P.131.
(2) Ibid.

proceedings might be, Impey believed that they had acted within their legal rights. Here it may be observed that neither the Regulating Act nor the Charter had vested Supreme Court with any supervising authority over the Company's Courts. Hence the judges and officers of the Company's Court were amenable to the jurisdiction of the Supreme Court only in their individual capacity, as persons directly or indirectly employed in the service of the Company. Thus, being sued in their individual capacity, these Company's servants could be held liable for only such of their judicial or executive acts which were highly oppressive, illegal and corrupt. Had the Supreme Court been granted a general power of supervision over the Company's Courts, the judges would have scrutinized the irregularities and procedural defects in the proceedings of the Company's Courts; and in such cases as that of Gowry Chand, they might have reversed or quashed the decree of the subordinate Court. Thus, by maintaining the difference between 'irregularity' and 'corruption' Impey tacitly recognized the fact that the Supreme Court had no jurisdiction over the Company's Courts, as such; it had jurisdiction over the judges and officers of the Company's Courts in their individual capacity, as servants of the Company; hence nothing short of manifest corruption in them would make them liable in the Supreme Court. In support of this statement, may be further cited the letter of Impey to the Earl of Rochford, dated 25th March 1775. In this letter Impey refers to the

rapidly growing population of Calcutta and a consequential increase in the number of Cases filed in the Supreme Court and suggests that it would be of great ease to judges, and of infinite advantage to the inhabitants, if a provincial Dewanni Adalat was erected, by His Majesty's authority in Calcutta, for the determination of suits of certain descriptions between the natives. 'If established by His Majesty's authority, they might be controlled by the Supreme Court. I hardly dare to propose the same for the chief towns in the provinces at large, as the legislature did not think fit in the last act of parliament to interfere with them; but I am authorized by the Governor-General to offer it as his opinion, that the establishment of circuits to be performed by English judges through the provinces, would much contribute to the advancement of justice, and the happiness of the people.'⁽¹⁾ Thus we find that Impey from the very beginning held that the Company's Courts, as such, were not subject to the jurisdiction of the Court.

It may be observed that though the judgement in the above Case went against the plaintiff, the Case amply proves that the provincial Adalats bore no semblance of justice. It was argued by Bogle, as observed above, that the main concern of the provincial Councils was the collection of the revenue, and this took so much of their time and energy that they could not satisfactorily discharge their additional function of administering civil justice among the natives. Taking Bogle's

(1) T.C.R.; 16A; Gen. App. 32, Impey to Rochford, 25 March 1775; p.187.

explanation into consideration, one is surprised to find that even in their revenue department these provincial councils maintained no regular record and file, and acted more at their discretion than according to rules and customs of the country. We have already discussed the case of Kamaluddin and found how irregularly and oppressively was this revenue jurisdiction of the provincial councils exercised. The case of Durgacharn against Calcutta Committee illustrates the point further, and may briefly be discussed at this stage.

Durgacharn Chakravarti vs Calcutta Committee (1)

The plaintiff was security for Bahooram Roy, the farmer; the latter having died his brother Kissendeb Roy became the farmer. The farm being in arrears, Kissendeb was taken into confinement. He in consequence sued the Calcutta Committee in the Supreme Court for false imprisonment, and by a judgement passed in his favour on 14 November 1777, recovered Rs.200 damages. Recourse was then had to security, Durgacharn, who on being confined by the Committee, secured his release by satisfying the claim of the Committee. Then he brought the present action against the Calcutta Committee in the Supreme Court, for trespass and false imprisonment. The suit was defended by the Company. The general issue of 'Not Guilty' was pleaded, and a notice of justification was given, stating that

(1) Ibid, Gen. App. 29; Bogle's report of the Case, 7 March 1779; pp.170-172.

the plaintiff was security for the farm, that the farm was in arrears, that the farmer being dead and means having been ineffectually taken to compel his administrator to pay, recourse was had to the plaintiff, as security, and he was imprisoned by the defendants, acting as members and officers of the Calcutta Committee of revenue; and asserting at the same time, their right and authority to collect the revenue, and to imprison in default of payment.

What could not be proved on the part of the defendants was that the farm was in arrears. Under the English law of evidence, a witness in giving testimony, must not speak of a paper without either producing it, or establishing the impossibility of producing it. The Company first called a writer who spoke that the full amount due under the agreement was not paid. As his statement was not supported by a written account of the exact amount due, it was deemed no good evidence to prove that the farm was in arrears. The Company then produced accountants who maintained the public account. One of them, Balloo Dass, e deposed that the farm was in arrears, but on being examined he said that it was not he but the banker who received the money; he prepared the accounts from what account the banker used to give him. The banker, being dismissed by the Company, could not be produced.

The Court distinguished a security from a farmer; if the latter had failed to pay the balance of revenue then only

recourse could be had to the farmer. and in the present case this being not proved that the farm was in arrears, no measures, as had already been taken against the security, were justified; hence the judgement was given in favour of the plaintiff, for the amount which he had paid, together with interest, and additional damages for false imprisonment, so as to make up the sum of Sicca rupees 12273, exclusive of the cost of the suit.

What opinion the other judges of the Supreme Court had about the administration of justice in the Company's Courts? Were they as anxious and zealous in extending the protection of the Supreme Court to the oppressed natives, as Impey appears to have been? Or, they generally disagreed with the principles and policies of Impey. The case of Seroopchand furnishes an example to show that the other judges too resented, rather more strongly than Impey, the excesses committed by the gentlemen of the provincial councils.

Seroopchand and the Dacca Council, 1777

According to the report of the Dewan of Dacca Council, the amount due from Seroopchand as security of a farm was Rs.10000-6 and as treasurer of the revenue department a separate amount of Rs.66745 annas 15 was due from him.⁽¹⁾ Seroopchand, when questioned and examined by the members of the Dacca Council, stated that he owed no money to the Company on account of the

(1) Ibid. Gen. App. 6; p.133.

pargana-revenue, for, the sum of Rs.10000, which was now demanded from him by the members of the Council on that account, had been admitted a short time ago, as a deduction from the revenue of his pargana by the members of the Dacca Council and therefore it should not be demanded of him. Seroopchand admitted that he as treasurer did owe to the Company the sum of Rs.66745, but as he had bonds to the extent of Rs.20000 on Shakespeare (one of the members of the Dacca Council), Day and Lodge, he desired to pay in bonds for Rs.20000, and the rest in cash. (1)

It appears from the proceedings of the Dacca Council that these gentlemen did owe certain amount of money to Seroopchand, for, there was no absolute denial of the fact on the part of Shakespeare, who was present, when the former was examined. (2)

The board asked Seroopchand to pay all the balance (except on account of Perganah revenue, which they had referred to the Governor-General and Council for their consideration) in ready cash. This was a hard demand indeed. Seroopchand refused to pay the balance in cash. Thereupon the Board dismissed him from the treasurership and confined him until he was obliged to pay off the balance.

On behalf of Seroopchand the Supreme Court was moved to issue a writ of Habeas Corpus. Hyde issued the writ on 20 August 1777, asking the members of the Dacca Council to produce in the Court the body of Seroopchand by 21st of the same month. (3)

(1) Ibid; pp.133-135.

(2) Ibid.

(3) Ibid.

As a proper and prompt return of the writ was not made by the Dacca Council, a new writ was issued on 19 November 1777.⁽¹⁾ The return was made on 20th November, the prisoner was discharged upon his giving a surety in a large sum of money to the Company, undertaking to appear and answer to any suit or suits to be instituted within one year from the 20 September 1777, by the Company, in any competent Court of judicature.

This is, in brief, the summary of the Case. Impey and Chambers were out of Calcutta; hence the return of the writ was determined by Le Maistre and Hyde. Some of the observations, made by Le Maistre, on the return of the writ, may be noted. It was stated on behalf of the defendants that the Governor-General and the Council and the various officers acting under them had a right, based on the practices of the late President and the Council, to imprison revenue debtors without bail or manprize. Observing on this plea Le Maistre remarked that the late Act was remedial in the sense that it was intended by the legislators to redress diverse abuses which had crept into the Company's affairs in India. Therefore, if the late President and Council exercised any such power to imprison a person without bail, it was a gross abuse of power, and the Supreme Court would not suffer it to be exercised. '... that the inferior officers and servants of the East India Company, at a distance from the Presidency, should exercise a ministerial power of imprisoning, without bail or manprize, all such persons as they shall deem indebted to the

(1) Ibid; Gen. App. 9; pp.138-139.

Company for rents and revenues, strikes me as the most arbitrary abuse of a power, which under the Dewan was, as we have been informed by the learned Moulavies, judicial.' - So remarked Le Maistre.⁽¹⁾ Commenting on the constitution of the provincial Courts in the same continuation, he observed:

'We would not scan with niceness and exactitude the title by which Courts are held within the provinces. We know that difficulties accrue from the unsettled state of the country, but the essential requisites of a legal proceeding, it is in the power of the Governor-General and Council to direct, shall be observed as well in matters concerning the revenues of the Company, as in matters of *menum and tuum*, between man and man. Nor can I think there is a country in the world so arbitrary and despotic, that a conscientious judge is bound to admit as lawful, a ministerial power to imprison, without Bail or manprize.'⁽²⁾

The above extract from the observations, made by Le Maistre in the above Case, fully express his sentiments and resentments on the general practice of confining natives for an indefinite period, which was so frequently and unhesitantly followed by the servants of the Company. Hyde nourished similar feelings against the above practice. Robert Jarret, the Company's attorney, in his letter to the Governor-General and Council, dated 31 August 1777, intimated the latter that Hyde seemed very displeased with the gentlemen of Dacca and was convinced that the

(1) Ibid; Judg. in the King vs Noor-ul-Dien; p.140.

(2) Ibid.

only reason of Seroopchand's confinement was that he had dared to prosecute in the Supreme Court, for, it had been reported to him that the gentlemen of Dacca had absolutely forbade persons to prosecute in the Supreme Court.⁽¹⁾ It appears from his letter that he himself, being the attorney of the Company, was doubtful about the legality of imprisoning any debtor without a bail.⁽²⁾

One more observation may be made here before passing on to other topics. The provincial Councils, exercising jointly the executive and judicial powers, were virtually the suitors and judges in the same case. Gross abuses were bound to emanate from this system. Putting persons in confinement without bail was the most daring abuse of power which was exercised quite frequently.⁽³⁾

We have seen above how, under what circumstances and with what motive the judges of the Supreme Court were moved to interfere in the administration of civil justice by the Company's Courts, and also how much the judges of the Supreme Court resented the exercise of almost despotic powers by the provincial Councils, in revenue matters. We have found that Impey took a leading role in the proceedings of the Supreme Court, in the above matters, and his feelings and principles were equally shared by the other three judges.

(1) Ibid. Gen. App. 6; Jarret's letter; pp.135-136.

(2) Ibid.

(3) A certain number of bankers were put in custody by the collector of Rungpore, for a certain sum of money due from them. They were released on an issue of writ of Habeas Corpus from the Supreme Court. (Shroffs of Rangpore: T.C.R. Gen. App. 22; pp.161-165).

We may now attempt to find out, under what circumstances and how, if at all, the judges of the Supreme Court interfered in the administration of criminal justice by the Company's Courts. Impey does not happen to have taken any leading part in this matter. All the same, a few leading events, which shall be described in this context very briefly, throw ample light on how criminal justice was administered by the Nizamat Adalats, and also, how a clash of jurisdiction gave rise to problems of some magnitude.

Peat and the Dacca Council (1777, July - October)

The Supreme Court had stationed Peat in the district of Dacca, and authorised him to act as Master-Extraordinary and attorney of the Supreme Court.⁽¹⁾ As a great number of persons at Dacca and elsewhere were subject to the jurisdiction of the Supreme Court, his stay there was meant to enable the suitors to give affidavits and seek legal assistance from him without incurring the trouble of coming to Calcutta.⁽²⁾ He also acted as deputy-sheriff and in that capacity executed the processes of the Supreme Court. He was at that time about twenty-one; quite youthful and assertive, and saturated with grievances against the corrupt administration of criminal justice in the division of Dacca. He believed that justice was frequently and notoriously set up to sale, to both the litigant parties in a suit, and the

(1) Peat had been for three years in the country; first he was clerk to Hyde, then attorney at Dacca. Later on he practiced as advocate in the Supreme Court.

(2) T.C.R.; 16A; Dacca. App. 4; Hyde to G.G. & C.; pp.303-4.

officers of the Dacca Court were notorious for their corruption, ignorance and incapacity. He was held with respect and veneration among the natives and such distinctions were paid to him which had never been shown for the members of the Dacca Council. (1) If Cap. Cowe is to be believed, Peat was treated by the natives as an agent or Vakeel of Impey.

The members of the Dacca Council, aggrieved by their jealousy, felt humiliated and let down. (2) Not only psychological, but practical considerations too, made Peat's regular presence in the district, most unagreeable to the members of the Dacca Council. Peat vigilantly watched the day to day proceedings of the Dacca Council, advised disheartened creditors to bring regular suits in the Supreme Court against their debtors, who in most cases were farmers and Zamindars and against whom no redress could be had in the provincial Adalats, and he effectively executed the processes of the Supreme Court, as the agent of the sheriff. The Dacca Council was indisposed to suffer all these checks on and censures of their exercise of absolute powers. Just a spark was needed to light the fire. The occasion for a direct encounter between Peat and the Dacca Council was provided by the interference of the former in the administration of Criminal justice by the provincial Criminal Court.

-
- (1) Depositions of Rouse and Cap. Cowe before Touchet Committee. (T.C.R., pp.20-21). Charles William Boughton Rouse was then Chief of Dacca and Cap. John Cowe was then stationed at Dacca as a Commander of Militia.
- (2) T.C.R. Dacca. App.3. Letter of Dacca Coun. to G.G. & C., 21 July 1777; p.303. The then members of the Dacca Council were C.W. Boughton Rouse, J. Hogarth, J. Shakespeare, and W. Holland.

A tailor named Francis Ford had flogged a native, Sahm Sardar, a procuress, on the latter's having refused to supply him with girls. (1) The matter was reported to the Provincial Council of Dacca and the Council referred it to Mirza Mazoom, the Daroga of the Criminal Court of Dacca. Mirza sent sepoy to seize Ford and the latter was confined, but released next day by Peat. (2) It does not appear how Peat effected the release of Ford. The Supreme Court does not appear to have issued a writ of Habeas Corpus for his release. It is probable that Peat might have brought to the notice of the officers of the Court, the fact that Englishmen were not subject to the jurisdiction of the native criminal Courts. Ford filed a suit in the Supreme Court against Mirza for false imprisonment and assault, and the process of the Court was served upon Mirza, who sought the shelter and protection of the Provincial Council. The Dacca Council reported the whole matter to the Governor-General and Council, the latter in reply asked the former to inform the officers of the Criminal Court that Peat while he remained at Dacca resided there on the same footing as every other inhabitant and further directed the provincial Council to send the plaintiff to Calcutta to seek redress from the justices of the peace. (3)

This is all about the Case of Ford against Mirza. No further account of the case can be gathered from the available

-
- (1) Ibid. Dacca App. 12; pp.329-336.
(2) Ibid. Dacca App. 1; p.302.
(3) Ibid. Dacca App. 2; p.302.

materials.

This Case suggested a question of magnitude to be decided by the wisdom of Parliament. Whether British subjects of any rank whatsoever, residing in the interior parts of the country, at a distance from His Majesty's Courts, shall in any respect be amenable before the native magistrates of police and Criminal jurisdiction? Under the Charter of 1774 the British subject could be prosecuted only in Supreme Court for any criminal offence. (1)

Thus, under the law, as it then existed, the Fowjdary Adalat of Dacca was not a competent Court to receive complaints against Francis Ford and to confine him for the alleged offence. The complaint was first lodged with the members of the Dacca Council. They showed their utter ignorance of the existing law by referring the case to the Daroga of the Criminal Court. Peat's role, in the whole affair, seems to have been nothing more than pointing to the members of the Council the illegality of their procedure.

Another case, more significant than the above, was of one Khyru Pyke against Jaggernath, the Dewan or principal public officer of the provincial Criminal judge or Fowjdar, of Dacca.

On an alleged charge of misdemeanor, Khyru had been arrested and put into confinement by the officers of the Criminal Court. (2) On behalf of the prisoner the Supreme Court was moved to issue a writ of Habeas Corpus in July 1777 against Baudull Singh, who

(1) Ibid. Gen. App. 1; pp.64-65,

(2) Ibid. Dacca App. 8; pp.310,311.

denied having the prisoner in his charge. The provincial council of Dacca in order to evade the writ of the Supreme Court, seem to have sent the prisoner from Dacca to Moorshidabad with a pretext that the prisoner had been summoned by the Naib Subbah to stand another trial in a different Case. However, the prisoner somehow or other made his escape to Calcutta and in September 1777, filed a suit in the Supreme Court against Jaggernath for false imprisonment and trespass. A process of arrest against the defendant was issued by the Supreme Court, and it was this process which Peat acting as deputy-sheriff tried to enforce against Jaggernath. From the letter of Peat to Dacca Council, it appears that Jaggernath tore the writ when it was shown to him and when he was arrested the militia was employed to rescue him.⁽¹⁾ The fray occurred on 20 September 1777, in the house of Syed Aly Khan, the Chief Officer or judge of the Criminal Court.⁽²⁾ Peat and his men had entered or attempted to enter the house in order to enforce the process of the Supreme Court. In the course of the fray, one Meer Hussain Aly, brother-in-law of Syed Aly Khan, was seriously injured by a pistol shot from Peat.

Complaints were filed to the Provincial Chief by both Syed Aly and Peat, each giving his own version of the occurrence. The Chief reported this incident to the Governor-General, stationed a military guard over Peat's house and sent a doctor to examine the wounds of Meer Mussain.

(1) Ibid. Peat to Dacca Council; Dacca App. 8; p.315.

(2) Ibid. Dacca Council to G.G. & C.; Dacca. App. 6; p.306.

The Governor-General and the Council first, directed the Chief of Dacca to take depositions upon oath of the wounded persons and of ten others and transmit those depositions to the Government at Calcutta; but, later, on finding that Meer Hussain did not die of the wound sustained, the Governor-General and his Council ordered the provincial Government to suspend the execution of their previous order, and leave Meer Hussain alone or other sufferers in the late fray, to seek redress from the Supreme Court, for any injuries they might have sustained.

The provincial Council of Dacca acted in accordance with the instructions of the Supreme Council, and also surrendered Jaggernath to Peat who on taking Bail bond from two members of the Dacca Council, released him without delay.

No further account of the Case can be traced from the available materials. Except a personal letter written by Hyde to Cap. Cowe, nothing is known about the proceedings of the Supreme Court. All the same, certain observations can be made.

Firstly, darkness covers the proceedings of the Provincial Criminal Court against Khyru and his subsequent confinement. Though the Dacca Council stated in their letter to the Governor-General and Council that he was confined under a regular order of the Court passed on a complaint brought against him for misdemeanor, they do not care to mention who filed the complaint, how the case was tried and what sentence was passed on the accused. Shortly before Khyru was accused, he seems to have brought an

action in the Dacca Criminal Court against somebody, for a rape committed upon his wife, but the case was neither properly enquired into nor the accused punished.⁽¹⁾ Furthermore, when the writ of Habeas Corpus was issued against the officer of the Fowjdary Court, Khyru was conveyed to Moorshidabad. All these unexplained circumstances tend to make one suspect irregularities and oppressions in the proceedings of the Dacca Council and their Fowjdary officers.

Secondly, the Fowjdary Courts, as such, did not function independently of the Government's control. The assertion that they functioned directly under Nabab and the Provincial Council had no control over them, was a myth, and the judges of the Supreme Court, as we have observed in a previous chapter, had sufficient reasons to disbelieve in this myth. The judges knew well that by means of this artifice, the Government wanted to exclude a large number of oppressors from the jurisdiction of the Supreme Court, for, anybody by claiming to be a servant of the titular Nabab and not of the Company, could exclude himself from the jurisdiction of the Supreme Court. However, it is hard to conjecture as to what decision the judges would have given, had the Case been brought to trial in the Supreme Court. They might have decided against the officers of the Fowjdary Court, as they did against the officers of the Dewanni Court in the Patna Case, if they had found that they were guilty of manifest

(1) This was one of Peat's complaints against the corrupt administration of justice by the Dacca Criminal Court.

corruption. Or, they might have dismissed the Case with costs, as they did in Gowrychand's case, had they found that the plaintiff was confined under an order of the Criminal Court of Dacca. Yet, it is just a conjecture. Besides, the Dacca Case arose long before the trial of the Patna Case and the Case of Gowrychand.

Lastly, there is no reason why the blame should be put on the Supreme Court for the alleged excesses committed by one of its officers. Supposing that Peat committed certain excesses in the course of enforcing the process of the Court. How, then, were judges in general and Impey in particular to be blamed for this? The proper course open for the Governor-General and Council was to bring a regular suit against Peat in the Supreme Court. On the contrary, we find that the Governor-General and Council, who in the beginning had decided to prosecute Peat on behalf of the injured persons, subsequently dropped the idea and left the injured persons to find out a remedy for themselves. Impey in his letter to Weymouth, 2 March 1780, while referring to the complaint of the Governor-General and Council against the excesses of the sheriff's officers, wrote, "I shall not take on me to say, that no abuses have been committed by the sheriff's officers, but I will, that they are in proportion to our business, much less frequent here than in England, where I have known the discussions of their offences take not an inconsiderable part of the business

of a Term in the Kings Bench."; and he argued in the same letter as to why, if the Governor-General and Council were so well-informed of their excesses, no action had been brought so far against them in the Supreme Court.⁽¹⁾ In his letter to Dunning, 15 June 1780, Impey repeated that no appeal had so far been filed against the judgement of the Court on any plea to jurisdiction and no report or written complaint has been lodged with the judges against the excesses committed by the Sheriff's officers.⁽²⁾

Touchet Petition, 26 February 1779

The inquiry, so far carried into the few leading events of the quarrel between the Court and the Council, has explained to us the motives and principles of the judges in entertaining complaints against the collectors of revenue, members of the provincial Councils, and officers of the provincial, civil and criminal Courts.

By tending to establish an equalising principle between the natives and the Europeans, the Court had alienated a large percentage of Europeans. Before the establishment of the Supreme Court these Europeans had swayed an unlimited power over the lives and property of the natives. Those Europeans, who were not in the service of the Company, had also been in possession of certain powers and privileges which usually occur

(1) T.C.R. Cossijarah App. 26. p.372.

(2) I.P. vol.16259; Impey to Dunning, 15 June 1780; pp.270-381.

to the members of the ruling class. The judges of the Supreme Court, determined to check abuses of power, made no distinction between a native and an European. The senior servants of the Company felt disgraced and hurt by being summoned by the Supreme Court at the suit of an ordinary native. However, they could not take any effective action against the Supreme Court. It was the other class of Europeans, not in the service, and free to do so or say anything that suited their designs, that could provide a leadership to a movement against the Supreme Court. When certain resourceful members of this class were found by the judges guilty of oppression against the natives, they turned into the bitterest enemies of the Court, spurred the European community of Calcutta into action, and made a common cause with the official class against the Supreme Court. The result was the Touchet Petition.

The immediate cause of the Petition was the Creasey's Case, tried by the Supreme Court in the summer of 1778.⁽¹⁾ James Creasy was the superintendant of the works carried on by Lieutenant-Colonel Watson, an army engineer, the former was 'dependant and creature' of the latter. Two actions of assault, battery and imprisonment were brought against James Creasy by two natives. Instead of pleading in the usual form, the defendant pleaded 'non-guilty' and desired to be tried by juryment. The Court declined his demand, for, the Charter

(1) I.P. vol.16259, Impey to Weymouth; 26 March 1779; pp.153-181. In this letter Impey gives a short description of the case, the persons involved, the judgement of the Court and its consequences.

did not provide for trial of Englishmen in civil cases by jury. As the Case was not defended by the defendant the Court after careful inquiry into the Case awarded Rs.200 as damages to each plaintiff.⁽¹⁾ On the evidence given in the Case it appeared that both the plaintiffs were carpenters, that the defendant had kept both of them in confinement for a night, had ordered servants to beat them and had himself beat them with a cane, "and this under pretence of obliging them to pay ten rupees which another person claimed; but in truth for the purpose of compelling them to desert the service of Mr. Lyons an architect with whom they were engaged, and to enter into that of Lieutenant-Colonel Watson."⁽²⁾

The day after judgements were given, hand-bills signed by Creasy were pasted against the Court house and in most public places in the town, on which he returned his thanks to those who had privately supported him against the power claimed by the Court over his person and property and went on to solicit more contributions. Thereupon, a committee was formed by the ballot; the avowed purpose of the Committee being to procure

-
- (1) It appears on the record that the advocates of the Supreme Court refused to defend Creasy on being asked by the Committee of the House as to why they refused to defend, William Hickey, who had practised for eighteen months as attorney of the Supreme Court and was in Calcutta at the time of the above trial, deposed: "Two of them refused generally, without assigning any reason; a third because he should not succeed; and a fourth because he would not fly in the face of the Court." (T.C.R.: 16A: p.56)
- (2) I.P. vol.16259; p.155.

trial by jury in civil cases; "and though great pains have been taken to conceal from us the particular subject which they agitate, yet we are sufficiently informed that their deliberations are not confined to this pretended grievance, but that they are, by all means in their power attempting to effect the destruction of the Court." (1)

The demand of the Committee being put forth before the judges, they returned their answer to the effect that the Court was not authorised to try civil cases by jury. The Committee then drafted a petition, the contents of which were kept secret from the judges, dispatched the same home to be put before the Commons assembled in Parliament. (2)

The petition, signed by six hundred and forty-seven Englishmen residing in the provinces of Bihar, Bengal and Orissa, and dated 26 February 1779, was placed before the House on 1 February 1781, together with another petition of Warren Hastings, Philip Frances and Edward Wheeler against the Supreme Court. (3) After a long argument and explanation the Touchet petition placed eight demands of the petitioners before

-
- (1) Ibid, p.156. The Committee consisted of thirteen members.
- (2) The Committee of thirteen had appointed John Touchet and John Irving, both of Middle Temple, as their agents to solicit the petition, and the petition was sent to these two gentlemen in London. The Petition took the name of one of the agents and is since then popularly known as the Touchet Petition.
- (3) Par. His. vol.XXI; pp.1161-1207. The Touchet Petition was presented to the House on 24 January 1781, was read on 1 February 1781 and debated on 12 February 1781. (Annual Register 1781, p.303, f.n.) The petition of the Supreme Council of Bengal related to Kossijurah Case and was sent home months after Touchet Petition; but it was taken into consideration by the House with the latter. (Petition of Hastings and others, Par. Hist.

the House, viz.,

- (1) to grant a trial by jury in all cases where it is by law established in England;
- (2) to limit the retrospective powers of the Court to the time of its establishment in Bengal;
- (3) to define beyond the power of discretionary distinction the persons who are and who are not amenable to the jurisdiction of the Court;
- (4) to declare what statutes shall not be in force in Bengal and what statutes shall be in force.
- (5) to direct and circumscribe the power of the Court in the admission and rejection of evidence so that all rejected evidence may accompany the appeal by way of affidavit or otherwise.
- (6) to appoint distinct and separate judges for the law and equity sides of the Court;
- (7) to restore the ancient and constitutional power of hearing appeals in the first instance to the Supreme authority in this government formerly vested in the President and Council and now vested in the Governor-General and Council;
- (8) to lodge a power of staying execution in criminal cases till His Majesty's pleasure be known in the Governor-General and Council. (1)

On the above facts relating to the petition we may offer certain comments.

(1) H.M.S.144; Touchet Petition; pp.327-336.

On the real causes of the agitation:

From the contents of the petition it is obvious that the petitioners wanted a large curtailment of the powers of the Supreme Court. The reasons why they were opposed to the Supreme Court is equally apparent. The Supreme Court had deprived them of the exercise of unlimited powers and privileges and punished them for oppressions and corruptions. Their ego and pride were sufficiently hurt by the equalising principle which the Supreme Court had established between them and the natives. Impey in his letter to Kerby, dated 26 March 1779, thus wrote:

"You can not imagine that the Gentlemen here either of the Council or in inferior Stations could with pleasure see the powers of the Court exercised with any effect; the first because before the arrival of the judges no other English power was known in India, but that of the Council; the others because they cut up many illicit sources of wealth, and make them liable to punishment for open violence and oppressions."⁽¹⁾

The above statement of Impey needs some explanation. Among those who were taking leading parts in the agitation against the Supreme Court and who had subscribed their names to the petition, were many members of the provincial Councils and ^{Board of} _h

(1) I.P.; Vol.16259, Impey to Kerby; 26 March 1779; p.182.

Commerce.⁽¹⁾ That the members of the provincial councils nourished grudges against the Supreme Court hardly needs any explanation. We have examined quite a few cases in which the members of the provincial Councils were arrayed as defendants and we have seen that the decision of the Supreme Court went against many of them. About the conduct and character of the members of the Board of Commerce, Impey, in his letter to Weymouth, commented in the following words:

"The corruption of the members of the Board of Commerce is a matter of public conversation and it is without doubt that the most gross frauds in relation to the sales and contracts which the Company have entrusted to them were formed into a regular system very early after their institution and have been uniformly practised ever since. We are convinced that a bill of discovery with proper interrogation pointed to this charge and brought against the members of that Board and their "black agents" would furnish matters to prove that they had great reason to wish for the non-existence of the Court."⁽²⁾ Impey's general strictures on the conduct and character of the members of the Board are to some extent, but not fully, testified by certain facts which he

(1) In the rough draft of his letter to Weymouth - (I.P., vol.16259; pp.127-152) - Impey mentions the names of a few signatories to the petition and also the posts they held. In the final draft of the same letter he omits to mention the posts the various signatories held. However, from the rough draft, can be gathered the nature of positions a few persons who had signed the petition held at that time. Philip Milner Dacres was President of the Board of Commerce; Petrie was the collector of Government Customs; and Shore, Evelyn and Henry Vansittart were members of the Calcutta Committee of revenue.

(2) I.P., vol.16259; p.165; Impey to Weymouth; 26 March 1779.

referred in the same letter. He referred to the Case of Henry Cottrell, who was a member of the Board and Keeper of Warehouse. An action had been brought against him by one Jugmohan Shaw, an opulent Hindu merchant who having bought coppers from the Company's sale and finding them to be short of weight appealed to Cottrell to have them reweighed. At this Cottrel was so much incensed that "without further provocation besides beating the merchant with other indignities, he struck him with his cane and turned him out of the warehouse."⁽¹⁾ The Case was tried by the Supreme Court in November 1778, and damages amounting to one thousand Sicca rupees were awarded to the plaintiff.

Among the six hundred and forty-seven signatories to the petition were many army officers. Why and how the army officers signed the petition needs explanation. It appears on the record that an army officer of Lieut.-Col. Watson rank and influence had been successfully sued in the Supreme Court. An ejectment had been brought against him for part of the land on which he proposed to make docks. It appeared on the evidence that the land had been forcefully taken by the government without any compensation to the plaintiff. The Court gave judgement in favour of the plaintiff.⁽²⁾ We have seen above that Creasy was Col. Watson's assistant. The pride and purse of the both having suffered at the hands of the judges they grew into personal enemies of the Court. 'So little conversant are the English here with justice

(1) Ibid; pp.171-172.

(2) Ibid; p.172; The Case was tried on 6 February 1779.

that every cause delcided against a British subject creates a personal enemy to the judge.' - so wrote Impey to Weymouth. (1)

We have made certain general observations on the real causes of the agitation against the Court and have found that the denial of a trial by jury in Creasy's case was the occasion and not the real cause of the agitation which started in the summer of 1778. Though ostensibly the petitioners complained against the technical and highly expensive proceedings of the Supreme Court, the real reason of the aritation was personal.

How were signatures procured to the petition?

Impey in his letter to Dunning wrote that most unworthy means were undertaken to procure signatures to the petition. (2) The original petition was drafted in the most moderate terms. On the contents of the original petition signatures were procured. After that had been done, additions were made in the margin of the petition.

In his letter to Weymouth, Impey mentions that the three high officials of the Army, Col. Ironside, Lieut.-Col. Watson and Col. Pearse, had *by* exerting personal influence and persuasion

(1) Ibid; p.178.

Mill, who was superintendant of police in Calcutta in 1777, and who later deposed before the Committee of the House against the technicalities and expenses involved in the proceedings of the Supreme Court, was in possession of seventy prisoners in the gaol of Calcutta. (T.C.R., p.57). On finding that these prisoners were committed without any written warrant or trial, the judges discharged them.

(2) Judges to Council; May 1777; pp.151-160, L.B.I.; vol.16266.
I.P.; vol.16259, Impey to Dunning; 15 April 1779; pp.241-243.

~~had~~ secured signatures of many officers and soldiers who served under their command.⁽¹⁾ That army officers should combine to procure redresses of grievances was an alarming situation. That Impey was alarmed at such a situation is evident from what he wrote to Weymouth and Thurlow:

'But we profess ourselves in some measure alarmed at the conduct of the military. In the firmest and most settled state of our constitution in England, combinations of the army to procure redress of grievances have ever been objects of great jealousy and in this country where everything has been acquired by and cannot be maintained without the sword, where the hands of the civil magistrates are weak and distant where many of the officers have no connections in England, do not entertain hopes nor desires of visiting their native land, any attempt to alter or interfere with the established laws by the army is of a much more dangerous tendency.'⁽²⁾

Impey knew well that in event of an open hostility between the Court and the Council the army would serve the Council. It was the army of the Company and not of the King which was stationed in India. In order to establish the authority of His Majesty in the settlements and protect the Court against the wanton attack of the Council, "A King's regiment", as Impey conceived in his letter to Thurlow, "perpetually stationed here,

(1) Coll. Ironside was the Commander of the Brigade, Lieut.-Col. Watson was in command of Engineers and Col. Pearse of the Artillery. Pearse as reported by Impey read out the petition to his men and asked them to subscribe.

(Impey to Weymouth, 26 March 1779, vol.16259, pp.159-181).

(2) I.P., vol.16259, Impey to Weymouth, p.176.

would I am convinced be very conducive to the maintenance of His Majesty's authority."⁽¹⁾ Impey's suggestion needs no serious consideration. If ever a King's army were stationed in Bengal, its command had been given to the Supreme Council and not to the Supreme Court, for, it was utterly inconveivable that the Home government would empower the judges to use military force in an event of an opposition to their judicial process. Thus a King's army was no remedy for the quarrels between the Court and the Council. All the same, Impey's apprehensions on which his suggestion was based were reasonable and true, as we shall see in the next chapter. About nine months after he wrote his letters to Weymouth and Thurlow, the Council employed army to resist with violence the process of the Supreme Court.

Probably great pains were taken by the agitators to prevail on the native inhabitants to sign a petition which was penned with greater acrimony against the Court than that which had been signed by the British subjects.⁽²⁾ However, no such petition seems to have been ultimately procured. Furthermore, the agitators seem to have planned to address the Governor-General and Council requiring them (as hostilities had been committed in India against the French) to proclaim that settlement was now under military law.⁽³⁾ It was by the exertion of Barwell that this move was checked. Impey wrote to Dunning that he had been approached by certain Hindus to dictate a counter petition to

(1) Ibid; Impey to Thurlow; 3 April 1779; p.194.

(2) Ibid; Impey to Weymouth; 26 March 1779, pp.174-175.

(3) Ibid.

the parliament but he refused. (1)

This is Impey's version of how signatures were procured to the petition. As there is no other material available to support or contradict what Impey has stated in several of his private letters, we cannot afford to be dogmatic on this issue. Taking human nature into consideration, it is highly probable that the signatures were procured by influence and persuasion. In view of the fact that the petition was signed by six hundred and forty-seven of the total five thousand British subjects who were at that time residing in India, it cannot be said that the Court had become unpopular with a large percentage of British subjects.

On the demands of the petitioners:

Here we shall comment on only a few of them. We have enumerated above the eight demands made in the petition. The first and the foremost is the demand for the trial by the jury in civil cases where Englishmen were concerned. '...That the trial by jury in all cases where it can be granted is one of these inherent unalienable and indefeasible rights of which neither time nor circumstances can deprive a British subject living under British lands.' - so ran the petition after declaring that there are certain rights inherent in Englishmen which no power on earth can legally deprive them of. (2)

(1) Ibid; Impey to Dunning; 15 April 1779; pp.241-243.

(2) H.M.S.144; Touchet Petition, p.327.

Howsoever inherent or fundamental that right might have been, we have observed before that it was not granted by the Charter. Under the Charter only criminal Cases were to be tried by jury. To extend to India the system of trial by jury in civil cases lay in the powers of the parliament and not in the judges of the Supreme Court. We have to examine, therefore, with what propriety the parliament or the Home government could introduce this system in India of seventeen seventies.

Impey did not think that this demand was either desirable or practicable. The grounds on which he seems to have based his contention were mainly four.⁽¹⁾

First, the Court would not get sufficient jurors to try civil cases throughout the year. Among the very limited population of the British subjects in the provinces, many had in the past declined to serve as jury in criminal cases.⁽²⁾ If the jury system were introduced in civil cases all the Company's servants had to serve for three-fourths of a year as jurors.

Secondly, the integrity of the British subjects was doubtful. In his letter to Kerby he wrote that British subjects would not constitute impartial jurors. 'I have heard it was not impolitic to set a thief to catch a thief, but it has never yet been proposed at the Old Bailey to try a Highwayman by a jury of

(1) I.P.; vol.16259; pp.153-181; Impey to Weymouth, 26th March 1779.

(2) Members of the Board of Commerce had petitioned the Supreme Court in 1775 to be exempted from serving on the jury. The Council had petitioned the Supreme Court to exempt certain officials from serving on the jury. Even James Creasy had once declined to serve as juror in a criminal Case. (T.C.R., p.57; Creasy's deposition).

Highwaymen. (1) All oppressions in India were committed by the servants of the Company and their agents. (2)

Thirdly, if this system, as claimed by the Europeans, was introduced in India, the natives might claim likewise. Why not trial by jury in all civil cases, whether the parties were English or Indians? On what principle this privilege could be extended to the British and denied to the natives?

Fourthly, the climate being hot, hours of work being long, it would not be feasible to keep watch on jurors till the day of judgement, as had been the practice.

The above four points seem quite formidable against the institution of trial by jury in civil cases. We may quote here the opinion of George Rous on this point. He was counsel to the East India Company and his opinion was sought by the directors on the Touchet Petition. He seems quite impartial and balanced in what he observed on this point:

'In Bengal, the conquering nation are few in number; and the terror of a power that must be maintained by the sword, gives to the individuals of that nation a personal superiority, which extends far beyond the exercise of public authority. This had been the source of much private injustice, while the timid native

(1) I.P., vol.16259, Impey to Kerly, 26 March 1779; p.187.

(2) Impey sent to Kerby a copy of the petition of English gentlemen at Calcutta, the answer of the Court thereon and the proceedings of the Court in various Cases wherein Englishmen were involved. He asked Kerby to publish all the documents in England in order to bring to the notice of countrymen that British subjects in India would not constitute impartial jurors; and that the Court had not been entirely useless.

(2) Ibid.

was unable to distinguish between the act of a private oppressor and the act of the government; or if he could distinguish, had no means to redress. This was one of the great evils which the Supreme Court justice was intended to remove. Admit the trial by jury in civil cases, and the oppressors themselves will decide the degree of compensation to be given for their own wrongs. (1)

The seventh and the eighth demands of the petitioner, that appeals from the judgement of the Supreme Court should in the first instance lie in the Governor-General and Council and that the latter should be vested with the power of staying execution of sentences until His Majesty's pleasures were known, were calculated to establish the supremacy of the Council over the Court.

In his letter to Thurlow, referring to the above demands, Impey reasonably observed that they were "merely for the purpose of diminishing the respect paid to the Court on account of its independence, by teaching the natives that it is subordinate to the Governor-General and Council." (2) If this was done, Impey argued, "the natives would no longer look up to us for justice, for they would consider all powers again centered in the Council." (3)

On the seventh demand that an appeal should lie from the Supreme Court to the Governor-General and Council, George Rous

(1) Report of Rous on the administration of justice by the Supreme Court, 5 December 1780; T.C.R., Gen.App.39; pp.208-10.
(2) I.P. vol.16259, p.234; Impey to Thurlow, 13 April 1779.
(3) Ibid.

remarked - "should this measure be adopted, it were better at once to abolish the Court; for the Court subsist no good purpose when its decrees were thus rendered wholly dependent on the executive power."(1)

The real grievance of the petitioners was against the independent exercise of judicial powers by the Supreme Court. 'Did we in our conscience believe, that their application to parliament proceeded from a just sense of real grievance, that it was prosecuted with upright intentions,' Impey observed in his letter to Weymouth, '...we should most willingly have concurred with the petitioners in promoting the success of this measure.'(2)

The debate on the petition in the House

Hardly any of the demands seem worthy of the attention of Parliament. But they were placed before the House at a time when the quarrels between the Court and the Council had reached a climax, and the Indian affairs had aroused concern in the hitherto otherwise occupied minds of the legislators. During the period intervening between the dispatch of the Petition from India to England and its presentation to the House, the Council had resisted by military force the process of the Supreme Court in the Case of Raja of Cossijurah and had petitioned the House against the jurisdiction of the Supreme Court, and prayed for an Act of indemnity. The petition of the Governor-General and

(1) Rous's report; T.C.R., Gen. App. 39; p.210.

Rous objected to all the demands except the last one.

(2) I.P., vol.16259, Impey to Weymouth, 26 March 1779; pp.153-181.

Council together with the Touchet Petition was placed before the House on 1 February 1781, and debated on 12 February. Thus, the events of the intervening period added some weight to the Touchet Petition.

General Smith moved the House to appoint a Select Committee to inquire into the petitions against the Supreme Court.⁽¹⁾ Boughton Rouse, who had served the Company in India for some time and now was a member of the Parliament, reminded the House of the experience dearly bought in America and warned the members "not to be neglectful of the petitions and remonstrances of our fellow subjects, situated in distant parts of our widely extended dominions."⁽²⁾

The American tragedy being fresh in the memory of the House, it seemed inclined to give ready attention to the Indian crisis.

We may here pause to examine whether certain remarks made by Rouse in his speech to the House were well-founded. His tirades against the introduction of English law in India through the instrumentality of the Supreme Court, were mainly based on the allegations that the customs and religious practices of the natives had suffered violation by the transplantation of the English legal system on the conquered soil:

'I presume we want to enjoy their trade; we want to maintain possession of their country; we want to remain master of its revenue; we want the fidelity and affection of their people to

(1) Par. His., vol.XXI; pp.1182-91.

(2) Ibid, p.1192.

supply our armies with recruits and strengthen us against the efforts of our rival powers in Europe. All these you will have, Sir, if we only allow them to go on in the track of their forefathers, with a free and undiminished preservation of all their ancient practices and distinctions. (1)

The above statement of Rouse suffers from calculated misrepresentations of facts. The customs, laws and religious practices of the natives had never been violated by the Supreme Court. The first point to be made in this connection is that the Supreme Court did never exercise universal criminal and civil jurisdictions over the natives. Its territorial jurisdiction was confined to the limits of the town of Calcutta. Outside Calcutta, its jurisdiction was personal and extended only to those who were in the service of the Company. Secondly, in civil cases where both the parties were Hindus or Muslims, the Supreme Court administered either Hindu or Muslim law, ~~as~~ the case might be, and not the property laws of England. In order to explain and expound Hindu and Muslim laws the Court had appointed learned Pundits and Maulvies who attended the Court when any custom, practice, religious scruple or law of the native was a point at issue. There is not a single instance to show that the Supreme Court ever deviated from this rule of procedure. We have examined a number of leading cases tried in the Supreme Court. Most of the complaints and suits were by the natives against the excesses committed by the Company's servants in

(1) Ibid, p.1201.

wanton and unregulated exercise of civil, criminal and revenue powers over their life and property. We may here recall the Patna Case to show that it was the Patna Council and not the Supreme Court which violated the customary law of the Muslims. Ulumghaw lands, under Muslim law, are not subject to division. The Patna Council, in contradiction to what the Kazi and Muftees had declared as the customary law of the Muslims, ordered its usufruct to be shared by both parties to the suit. It was not the natives but the British subjects and their 'black agents' who suffered from the institution of the Supreme Court in India. It was not the customs and practices of the natives, but of the ruling class, which suffered violations and checks at the hands of the judges. And we have seen in the preceding pages what ~~were~~ the manners, customs and ways of the servants of the Company ~~were~~ in their dealings with the natives. The Supreme Court in effect checked the abuses of power. It was not expected "that men who acknowledge no law but their own will patiently submit to new control, while they thought they had any means of getting rid of it." (1)

Regarding what Britain wanted from India, the judges of the Supreme Court held no different opinion than what Rouse declaimed in his speech. But the judges wanted to give in return justice and law.

Commenting on the equalizing principle which the Court tended to establish between the natives and the Europeans, Rouse argued

(1) I.P. vol.16259; Impey to Weymouth, 26 Mar. 1779; pp.169-170.

that the British power in India was more imaginary than real, that the natives had been in the past led to look up to an Englishman with awe and acknowledged superiority, hence, "if they see our government degraded in the public eye, and every Englishman of rank reduced to a level with the lowest native," they would soon find out that English were but men like themselves, or very little near.⁽¹⁾ The consequences, as Boughton Rouse predicted, would be a fall in the dignity and power of the British and any accident might produce a revolt which would be ruinous for the British empire in India.

In brief, Rouse wanted to let the House know that in case the powers and jurisdictions of the Supreme Court were not curtailed there would be another revolt, this time in India, and Britain would lose India in the way she had lost America. Rouse stretched his imagination too far in order to augur such drastic consequences that would follow if the Supreme Court were left to treat natives and Europeans alike in the eyes of the law. Rouse's predictions never came true. Justice in India was to be administered in future on those very basic principles of English legal system which the Supreme Court had applied since its inception. It maybe further observed that the sole view of the House, when it was inacting the Regulating Act, under which the Supreme Court was erected, "was to give a Court that would hold out equal justice to the native and Europeans; a Court much wanted at the time, and in the constitution of which the House had been to a

(1) Par. His., vol. XXI, p. 1203.

man unanimous."⁽¹⁾

The motion of Smith was debated and carried. A Committee of fifteen was appointed to inquire into the petitions against the Supreme Court.⁽²⁾ This was the ultimate outcome of the Touchet Petition. The demands of the petitioners, as such, were never fulfilled.

G.F. Grand vs Philip Francis 1778-79

This is a case in which no native was concerned, but in which ~~the~~ plaintiff and defendant were alike Europeans, and servants of the Company. Philip Francis, the defendant in the present case and a member of the Supreme Council, became in later years the originator of accusations against Impey. One of the reasons why he ultimately became the bitterest personal enemy of Impey is the present case in which Impey and Hyde found him guilty of criminal conversation with one Mrs. Grand and made him pay to the plaintiff a large sum in damages. Dwelling on the consequences of the trial, Busted writes: "It will not be difficult, for instance, to show that the incident in question was 'not merely a domestic episode in the life of Francis,' but one, the consequences of which tended to embitter his resentment against Impey - an incentive to action on the part of so good a hater as Francis, which bore fruit, a thousand fold a few years

(1) Par. His., vol.XXI; Lord North's Speech; p.1264.

(2) This Select Committee is popularly known as the Touchet Committee.

afterwards." (1) John Nicholls, M.P., who knew Hyde and Impey before they left for India had no doubt that the impeachment of Hastings and the accusation of Impey, both originated from Francis. (2)

In view of its important consequences on the later life of Impey, it is proposed to describe briefly the trial and the circumstances which gave rise to it. (3)

Grand, the plaintiff in the case was a French-born British subject; he had been in the service of the Company. Since 1766 he had been first a writer, then a lieutenant and afterwards the secretary of the salt department, Board of Trade. He held the last appointment when the ~~case~~ of action

(1) Busted, 'Echoes'; chap. IX; pp. 192-193.

(2) Nicholls', 'Recollections', vol. 1; pp. 280-284.

(3) It is surprising to find that Impey never mentioned the trial in any of his private letters. The plaintiff in the present case, G.F. Grand, published a 'narrative' of his life in 1814 at Cape of Good Hope. In that book a brief account of the case is given. For the first time the case was brought to the notice of Indian readers by Sir John Kaye in an article on Francis in the second volume of the Calcutta Review (1844). Kaye derived his information from Grand's narrative. Herman Merivale, who edited the 'Memoirs of Sir Philip Francis', and Barwell Impey who wrote the 'Memoirs' of his father, have touched on this subject quite summarily. For the first time the subject received a serious and candid consideration by H.E. Busted who consulted the original records of the trial which had been preserved among the archives of the Calcutta High Court. Certain documents relating to the subject were published in 'Bengal, Past and Present' and were later published by the Calcutta Historical Society under Appendix 2 of the new edition of Grand's 'narrative' (1910).

arose. (1)

This arose out of the following circumstances. G.F. Grand had married a French girl, Noel Catherine Werlee on 10 July 1777. At the time of her marriage she was about three months under fifteen years of age. (2) Madame Grand was a very young and a very charming French woman. In her picture, "there is more of feminine softness than of strength of character in her fair countenance; the sensual prevails everywhere over the intellectual." (3) The second wife of Philip Francis writes: "She was tall, most elegantly formed, the stature of a nymph, a complexion of unequalled delicacy, and auburn hair of the most luxuriant profusion; fair blue eyes, with black eye lashes and brows, gave her countenance of most piquant singularity." (4)

Madame Grand was singled out in the social life of Calcutta

-
- (1) Grand had secured the confidence of Hastings and Barwell. It was through their favour that he had got the secretary's job in the salt department, which he held together with certain other petty offices, which brought them altogether an income of Rs.1300 a month. After the trial of the Case, he was appointed by Hastings collector of Tirhoot and Hazipore, which post he held until Hastings left India in 1785. He did not find favours with Lord Cornwallis who replaced him by Robert Bathurst in the collectorship on 27 August 1787. (App. Grand's 'Narrative' p.206). During his collectorship Grand laid the foundation of the Indigo factory in Bihar. After his replacement, he was appointed, in 1788, Judge and Magistrate of Patna; this post as compared to his previous employment was 'totally bereft of every emolument'. He could not hold that post long, and left India for England in 1799. His life outside India was a chequered one. He held an important post a Cape of Good Hope under the Batavian Republic for a few years. It was at Cape that he started writing his 'Narrative' which was published there in 1814.
- (2) Mrs. Grand was born on November 21st 1762, at the Danish settlement on the Coromandal Coast. At the time of her marriage her parents were residing at Chandernagore.
- (3) Sir John Kaye in Calcutta Review; 1844, vol.11; p.576.
- (4) Busteed; 'Echoes'; p.200.

for the marked attention of Philip Francis. He also was strikingly handsome and had a tall, erect and well-proportioned figure. He was thirty-eight years of age at the time when the event about to be related occurred.

On 8 December 1778, Grand went out of his house at 9 o'clock to attend a party, leaving his wife at home.⁽¹⁾ While he was at the party, his servant came and whispered to him that Philip Francis was caught in his house and secured by his jemadar. On hearing this Grand became afflicted with grief and sent his servant home to inform the jemadar that he was coming. On his way he took with him his friend Major Palmer, with whom he conversed on his determination to challenge Francis in a duel.⁽²⁾ On reaching his home as Grand narrates in his book, he found to his great astonishment George Shee (afterwards Sir George); Shore (afterwards Lord Teignmouth); and an Archdeacon; all three entreating his servants to let them go.⁽³⁾ He did not find Philip Francis. His servant told him that he had secured Francis to meet the vengeance of his master, until Shee, assisted by the other gentlemen, occasioned Francis to escape. After interrogating the three English gentlemen for some time Grand ordered their release.

(1) 'Narrative'; p.83; Grand mentions that he had been to Barwells for supper. His servants deposed in the Court during the trial that he was at Le Gallais house.

(2) Cap. Palmer was the Governor's aide-de-campe and Captain of his horse guards.

(3) Shee was as much in Francis's official confidence as in his private. In the dispute between Hastings and Clavering as to Governor-Generalship, when every member was represented in the Supreme Court by a deputy, Shee acted as the representative of Francis.

Next morning Grand challenged Francis to a duel. Francis's refusal was conveyed to Grand through a letter.⁽¹⁾ Grand sent for Madame Grand's relations from Chandernagore. Until they arrived on the following Sunday, Mr. and Mrs. Grand occupied separate apartments in the same house and did not converse with each other. When Madame Grand's relations arrived, Grand gave her leave to part and they parted never to meet again in their life.⁽²⁾

Grand filed a plaint in the Supreme Court on 18~~th~~ December 1778. The complaint was against Phillip Francis, "that he, on the 8th day of December, 1778, with force and arms, on Noel Catherine, the wife of the said G.F. Grand, made an assault, etc. etc., whereby he the said G.F. Grand was deprived of, and lost

(1) Cal. His. Society; Grand to Francis, App.2, N.4, 'Narrative'

"Sir, the steps you took to dishonour me last night bind me to demand that satisfaction which is above open to me. If not with standing your unprincipled behaviour, you have yet one spark of honour left, you will not refuse me a meeting tomorrow morning. The time, place, and weapons I leave to your choice, and will only acquaint you that I shall bring with me a second."

G. Grand,
14 December, 1778.

Francis to Grand, App.2., No.5., Cal. His. Society, 'Narrative'

"You are certainly under some gross deception, which I am unable to account for. Having never injured you, I know not for what reason I should give you satisfaction. I must, therefore, decline your request."

Francis.

The above letters together with other documents relating to the Case of Grand against Francis were published for the first time in 'Bengal, Past and Present' and later published under Appendix 2 by Calcutta Historical Society Edition of the 'Narrative'.

(2) According to the 'Narrative' Grand never again saw his wife after they had parted a few days following the tragedy. Before parting they talked for three hours and Grand pitied her and sincerely forgave her. ('Narrative', p.86).

the help, solace, affection, comfort and counsel of his said wife."(1)

Two days before Grand moved the Supreme Court, Francis had written to Lord North informing him of the 'scandal' and the 'undue advantages' Hastings was taking of it. It was the time when Francis was hoping to be placed at the head of the Government. First he assures Lord North of his devoting every faculty he possessed to the service if he were placed at the head of the Government. Then he proceeds to write: "Permit me now, my Lord, to solicit your Lordship's personal favour and protection on a point purely and exclusively personal to me, of which the meanest and most ungenerous advantage has been taken by Mr. Hastings - you will probably hear of a supposed improper connection (of which I assure your Lordship no direct proofs ever did or ever can exist) between me and a French woman, whose husband is a writer here, and who I understand intends to prosecute for damages."(2)

The terms he has used in the above letter spell no emphatic denial of what had been alleged against him. The concluding lines of Francis's letter cause strong presumption of his guilt: 'Suffer me on this occasion to avail myself of the claim which, I trust, my conduct on every other ground has given me to your

-
- (1) Extract from the plaint, copied by Basteed from the records of the old Supreme Court of Calcutta - 'Echoes', p.206. An enormous amount of damages, 15 hundred thousand Sicca rupees, was claimed by the plaintiff in his plant.
- (2) EUR. MSS.; Francis Papers; E16; Francis to North, p.544.

Lordship's personal goodness to me.'⁽¹⁾ The reasons why Francis was taking this defensive measure are twofold. Grand had petitioned the Council, and prayed that his case should be dispatched home for the consideration of the Court of Directors.⁽²⁾ Hastings had consented to his request.⁽³⁾ Also, Grand was bringing this case for the consideration of the judges of the Supreme Court. All this was happening at a time when the long cherished plan of Francis to oust Hastings and become placed at the head of the Government was nearing fruition.

The actual trial of the Case did not commence until 8 February, 1779. The reason being the non-appearance of George Shee, on whose evidence the Case of the plaintiff rested and who was absconding to save his benefactor, Francis, from disgrace and conviction.⁽⁴⁾ On 18 January 1779, finding that George Shee was still kept out of the way by the defendant, Impey declared from the bench that the Court was under Charter empowered to punish the absence of witnesses, "not only by fine and imprisonment, but by punishment not extending to life or limb, which includes whipping, pillory and the like corporal punishments'.⁽⁵⁾ This declaration of Impey secured the appearance of

(1) Ibid, p.546.

(2) Cal. His. Society. 'Narrative' App.2., No.2, Petition of Grand; 14 December 1778; pp.254-255.

(3) Ibid, pp.261-262.

(4) The Court sat on 7th, 18th, 21st and 22nd of January 1779, but the trial could not be commenced due to non-appearance of George Shee. George Shee seems to have absconded to evade summons.

(5) 'Echoes'; Impey's remarks; Hyde's note of the Case, p.209.

Shee and the trial started on 8 February 1779. (1)

From the testimony of the principal witnesses who were examined during the trial, we can gather the following facts. (2) For the last ten or twelve months Philip Francis had been taking special notice of Mrs. Grand in social gatherings and balls. On 7th December, that is the night before the actual cause of action arose, Mrs. Grand had been to a ball and she returned at 11 o'clock Tuesday morning.

Mr. Grand used to go out every Tuesday night, leaving his wife at home. The defendant knew that Mrs. Grand remained at home each Tuesday and her husband away till midnight.

On 8 December, Tuesday, Francis walked up to his friend, George Shee's house, at 9 o'clock in the night. He told Shee that he was going to see Mrs. Grand at her house. Francis then changed the clothes he had walked in and put on black clothes which he had taken care to send to Shee's house some time before for this purpose. Shee, when asked by the Court as to why the defendant put on black clothes that night, deposed. 'I believe

(1) George Shee on his examination admitted that he was asked by the defendant to abscond, hence he went to Furnea; that on 27 January, Francis, the defendant wrote him to come down to Calcutta and appear in the Court; and the defendant during the intervening period knew where the witness was. ('Echoes' p.225).

(2) The followings were the principal witness in the case:

- 1) Meeru - servant of Grand
- 2) Sheik Ruzullah - doorkeeper of Grand
- 3) Bowanny - messenger of Grand
- 4) Ramlux - jemmeder of Grand
- 5) Anna Lagoorda - female attendant of Mrs. Grand
- 6) Gerard Gustavus Ducarel -
- 7) George Shee
- 8) Simeon Droze
- 9) Robert Sanderson

In one of his letters to Godfrey, Francis alledged that Sanderson and Cap. Palmer had prompted and advised the plaintiff.

it was because a man in black clothes is less exposed to view at night, less liable to be seen."(1) The defendant then took a bamboo ladder from Shee's house and left for Grand's house.(2)

By the help of the ladder Francis got into the lower apartments of the house, leaving the ladder standing against the wall of the house. Shortly after he had secured his entrance in the house, one of the servants of Grand, Meerum, noticed the ladder and raised an alarm. Ramlux, another servant of Grand, came at the spot. While both were talking in a state of surprise, the defendant came out of the lower apartment of the house, asked them to let him go with the ladder, and attempted to bribe them with gold mohars. The jemadar would not let him go. He asked Meerum to go and inform Grand while he himself took possession of the defendant. The defendant was led through the front to an apartment of the house and detained. While being led to the house, the defendant had whistled many times to seek help from Shee. Mrs. Grand had appeared on the scene and asked the jemadar in vain to set free the defendant. While the jemadar was in custody of the defendant, Shee and Decarel broke through the outer gate of the house and fell upon the jemadar.(3) During this scuffle, Francis effected his escape. But the jemadar and the other servants of Grand took possession of Shee and Ducarel and

(1) 'Echoes', Shee's deposition; Hyde's Note; p.22.

(2) Shee admitted that he had got the ladder made for the defendant at his desire. However, he denied any previous knowledge of the use it was put to on that night.

(3) Shee admitted that on hearing of the noise in the house of Grand, he thought the defendant had been caught. He therefore ran to Ducarel's house, got him out of bed and both ran to rescue Francis.

detained them until Grand arrived with his friend Palmer.

The above account of what happened at Grand's house on Tuesday night was proved in the Court by the testimony of the eye-witnesses. The admissions of Shee and Ducarel conclusively proved what was alleged by the plaintiff. These two witnesses were the bosom friends of Francis and so they remained long after this episode.

The case was tried by Impey, Hyde and Chambers. Impey and Hyde having found that the Plaintiff's Case was sufficiently proved, passed judgement against the defendant. Damages of fifty thousand Sicca rupees were awarded to the plaintiff.⁽¹⁾ Chambers held that the offence of adultery was not proved, hence the defendant should not be held liable. Chambers dissenting opinion, as published in Hickey's Gazette (1781) may be extracted from the same as follows:-

"I am fully of the opinion that the charge in the plaint is not proved:

"1st - because it appears to me that there is no proof, either positive or circumstantial, that Mrs. Grand knew of, or previously consented to, his (Mr. Francis's) coming for any purpose, much less for the purpose of adultery.

"2nd - because there is no proof, either direct or founded on violent presumption, that they were actually together, much less was there any proof that they committed any crime together.

(1) Francis Papers; EUR. MSS.; E.16; Francis to Godfrey; 7 March 1779; p.685. In Hickey's Gazette the damages are mentioned at 60 thousand. In 'Narrative it is mentioned at 50 thousand. This controversy is set right by this letter of Francis: 'I take the earliest opportunity of informing you that judgement was yesterday given against me in the immoderate sum of fifty thousand Sicca rupees with costs.'

"3rd - because the evidence appears to me to fall short of what is ordinarily considered as proof of any fact, and especially of any crime.

"4th - because it falls exceedingly short of what our common Law considers as proof of adultery.

"And lastly, because I have never read or heard of any action for Crim. Con. in which a verdict has been given for the plaintiff on such presumptions of guilt."⁽¹⁾

Chambers dissenting opinion seems to have been grounded on the lack of direct evidence to prove that Mrs. Grand had asked Francis to meet her that night and that the object of the meeting was fulfilled. Indeed, there is no direct evidence to prove the above facts. However, there is little circumstantial evidence to prove that Francis had entered the house not as a trespasser but as an invitee and that they were together for some time, say, for half-an-hour.

The evidence of Anna Lagoorda, the female servant of Mrs. Grand, throws some light on these doubtful points of the Case. After Grand had left the house at 9 o'clock she was sitting with Mrs. Grand in one of the rooms of the ground floor of the house. She asked Mrs. Grand to undress and retire. Mrs. Grand replied that she would wait until Mr. Grand came home at 11 o'clock. Evidently she did not want to undress, whether she wanted to wait for Grand or Francis, is a matter of conjecture. This much is obvious that she deviated from her usual routine and

(1) Hickey's Bengal Gazette; 1781 (January) to 1782 (March); no.V; 1st page, 1st column.

persisted waiting. After some time Anna was asked by Mrs. Grand to go and fetch a candle. Accordingly Anna left the room. When she returned, she found the room locked from the inside. She knocked at the door and called for her mistress but there was no response. She then retired into the servant's apartment and there she told Meerum what had happened. Meerum then started out on his usual rounds of the house. He found the ladder and shortly afterwards Francis appeared on the scene. If Anna's story is true, then Mrs. Grand had some knowledge of Francis's possible visit to her, and Francis was with her during the time intervening between the locking of the room and the discovery of the ladder, which may be calculated to be not more than half-an-hour. Whether actual adultery was committed that night is doubtful. Francis was with her only for a short time. However, this much is certain that there existed between Mrs. Grand and Francis some sort of licentious relationship before Francis was caught on that night. It may be safely presumed that Francis maintained this relationship, rather more firmly, after Mrs. Grand was divorced and sent back to Chandernagar and until she went back to France and became Lady Talleyrand. Mrs. Francis while giving her own version which is like a sentimental fiction of the escapade, admits that her husband's interests in Mrs. Grand had melted into love.⁽¹⁾ In his depositions before the justices of the Supreme Court, Shee

(1) P & F, 'Memoirs', vol.2. p.146-147.

admitted that for the last nine months Francis had been taking particular notice of Mrs. Grand, that at a ball held at Francis's house, the latter danced with her a country dance and paid no attention to any other lady present at the ball. Another point to be observed in this connection is that on the night of the occurrence Mrs. Grand pleaded with her jemadar for the release of Francis.

We may turn to examine Francis's reaction to the judgement of the Court.

While the Case was being tried Francis seems to have been certain of his success. On 16 February 1779, he wrote to Godfrey - 'I am assured by my Counsel, who are the first men in their profession here, that not the shadow of a proof exists against me, and that there is not a doubt that the plaintiff will be non-suited.'⁽¹⁾ The absence of any direct evidence to prove adultery might have made him hopeful of his successful defence.

After the judgement was delivered he took the earliest opportunity to inform his friends of his resentments against the conduct of the two judges, Hyde and Impey, and of his determination to appeal against their judgement. What he resented most was probably not the large amount of damages he was held liable to pay, but the brutal party politics which he sensed lay at the root of the prosecution. 'I do not regard the money, because six or eight months more in Bengal sets that matter to right, - but I am

(1) Francis Papers; Eur. Mss.; E.16, Francis to Godfrey; 16 February 1779; p.633.

not and will not submit to the barbarous and brutal persecution which I know is at the bottom of this business. (1)

He told to his friends that his enemies, in order to harrass him, had prompted this persecution and that the charges were not proved.

If Francis really believed that the charges were not proved and the judgement was biased and unjust, why did he not appeal against the judgement? We find that in the beginning the Court was moved to grant appeal in the Case but subsequently the whole idea was dropped. On 10 March he wrote to his friend Godfrey as to why he had withdrawn the appeal: "My appeal was drawn up and read this day in the Court, but mature considerations and the advice of some experienced men have induced me to withdraw it. All men agree that I have been most iniquitously treated; but what is my remedy? Another suit with enormous expenses attending it. My mind to be kept in anxiety for two or three years longer, my reputation in the meantime torn to pieces in the newspapers, and after all, as judges are constituted, who can answer for the event? Sir Elijah Impey and the Chancellor are sworn friends - you see the consequences. (2)

Explaining the reasons why he withdrew his appeal he wrote to his friend Even Law at Patna: 'The advice of friends, founded on consideration purely personal and domestic, and not at all on any differences of opinion respecting the judgement, or the least

(1) Ibid, p.686.

(2) Ibid, pp.689-90.

doubt of its being reversed - induced me to take ~~this~~ step. As for the rest, I have done enough to show this part of the world what I thought of the judgement, and for what reasons my Counsel deemed it unwarranted by the evidence. (1)

It also appears from the various letters of Francis, as quoted above, that he sent to some of his trusted friends each a copy of Chambers's opinion. This was obviously meant to let them know and through them others that at least one of the judges held that the charges were not proved. Enclosing a copy of Chambers's opinion to his letter to Doyly, he wrote, 'I now enclose you another copy of the conclusion of that opinion, which I am sure you will make use of to my advantage, I mean among my friends; for as to my enemies, I will not attempt to turn their hearts.' (2)

It may be here observed that there existed a close personal relationship between Francis and Chambers. Francis had secured this friendship long before the trial of the present Case. He had been trying to secure a seat in the Council for Chambers. As Impey and Chambers both were tapping all their individual resources to get a seat in the Council, it was quite natural for Chambers to try to win over Francis at a time when he could get no better man to serve his end. A definite start towards closer relationship was made in the October 1777, when Chambers, in

(1) Frans. Papers, Eur.Mss.; E.15, Francis to Law; 18 March 1779. p.316. From this letter of Francis it appears that the appeal petition was read in the Court on 10 March 1779 and then withdrawn.

(2) Francis to Doyly, 4 April 1779; Frans. Papers, EUR.MSS.; E.16; p.729.

reply to an offer of friendship and confidence set by Francis, wrote - "I write thus with the most absolute reliance on your honour, and must request that the purport of this letter may not be communicated to anyone, particularly not to either of the other judges, in whom I have no more inclination to place confidence than in the Chief Justice."⁽¹⁾ In the same letter Chambers desires to be of some practical help to Francis by becoming one of the members of the Council, of which event he appears to have been quite hopeful.

The friendship of Chambers and Francis, unlike that of Impey and Hastings, never suffered a break, even a short-lived one, and continued till the end of their life. Though Francis could not secure for Chambers a seat in the Council, he tried his level best, after his return to England, to exculpate Chambers from the Charges against his having accepted the Chief justiceship of Chinsura and also to secure for him the Chief judgeship of the Supreme Court.⁽²⁾

In view of this intimate friendship which existed between Francis and Chambers at the time of the trial of the present case, the dissenting opinion of Chambers causes but little surprise.

Turning back again to Francis's several excuses for his having withdrawn the appeal, it is to be observed that none of them sound tenable. The facts which were conclusively proved in

(1) EUR.MSS., Francis Papers, F.4, Chambers to Francis, 6 October 1777; pp.233-234.

(2) P & F; Echoes; p.233.

the trial and which were never denied by Francis in his private correspondences were briefly as follows:-

- (a) That, Francis had entered the house of Grand with an intention to commit adultery with Mrs. Grand.
- (b) That, he had made preparations to effect an unnoticed entry into Grand's house; it was not a sudden feat of lustful passion.
- (c) That, Francis had either explicit or implied consent of Mrs. Grand to their meeting on that night. In view of the amorous relationship that existed between them long before this event, it can be presumed that Francis's sudden appearance in her private apartment, if she had no prior knowledge of it might have been a very pleasant surprise.
- (d) That, Francis was caught by the servants of Grand and was rescued by his two friends, Shee and Ducrall.

The fact which was neither conclusively proved nor disproved was whether actual adultery was committed that night. Supposing that the adultery was not committed. What prevented it? It was definitely not the refusal of Mrs. Grand. But for certain unforeseen circumstances over which neither of the parties had any control, there was nothing to prevent their physical union. So far Grand's dignity and his affection for his wife were concerned they were irreparably damaged by Francis's mere entrance in the house. He realised that his wife was no longer faithful to him. The result was inevitable. Immediately after this

incident they separated for all time to come.

Supposing further, that the judgement had been reversed, if Francis would have filed the appeal. Could the reversal of judgement in any way let the people at home and in India believe that Francis was innocent, that he had no relation whatsoever with Mrs. Grand and the whole Case was a piece of trumpery? Francis was shrewd enough to realise that a reversal of judgement might save his fifty thousand but not his repute and character. Acquittal does not mean innocence. How was he going to prove his innocence? How could he deny the notorious fact of his having visited Mrs. Grand's house in a disgraceful manner? As we have observed above, it was not money which mattered with him. Hence he wisely decided to withdraw the appeal.

All the same, he tried to save his face. Chambers's opinion came readily to hand. He took full advantage of his friend's testimonial, forwarded it to his friends for wider circulation, without denying specifically any of the charges. He told them that the whole question had a political context. And to cap it all, a petition of appeal was drafted, ostensibly to be forwarded to the Privy Council, but really to be read aloud in the Supreme Court and then withdrawn. He did not want to fight the issue. Yet, he wanted the people to know that he could fight it successfully.

As we have referred above, Francis wrote to Godfrey that Impey's intimacy with the Lord Chancellor was one of the reasons

of his having dropped the idea of an appeal in the Privy Council.⁽¹⁾ He was in fact telling his friend that Impey being so low might prevail upon the Chancellor to reject the appeal. We have observed that Impey made no mention of Mrs. Grand's episode in any of his private or public correspondence. Neither in his public speeches nor in his writing Impey reflected on the character of Francis. He does not seem to have ever taken any advantage of Madame Grand's scandal. It is, therefore, hard to believe that Impey would have done any wirepulling in the event of an appeal filed in the Privy Council.

Francis was so much hurt and embittered by the judgement that he turned into a personal enemy of Impey and Hyde. This episode made his further stay in India uncomfortable. He wrote to his friend that nothing but the impossibility of getting a passage would prevent his return to England. He left India on 5 December 1781. And after his return to London, he busied himself in raising charges against Impey.

(1) Francis to Godfrey; 10 March 1779; EUR.MSS., Francis Papers, E.16, pp.689-690.

CHAPTER VII.

The quarrel between the Court and the Council. (cont.)

The Cossijurah Case. (1779-80).

In the preceding two chapters we have seen how, on what principles, with what motives and to what extent the judges held the servants of the company (the members of the provincial Council, the officers of the Company's civil, criminal and revenue courts, the native farmers of the revenue) answerable to the Supreme Court for oppressive and corrupt acts done in the discharge of their public duty. In this chapter it is proposed to discuss the last and ~~critical~~ phase of the quarrel between the court and the council. This took the form of a dispute on the amenability of the Rajas and the Zemindars to the jurisdiction of the Supreme Court. The leading event ~~which~~ we shall discuss in this context is the case of Cossijurah. On this occasion the Council for the first time openly and violently resisted the process of the Supreme Court, in consequence of which a stalemate was created. Impey appealed to the members of the Home Government; the Council petitioned the Parliament. The six years old quarrel between the Court and the Council culminated in a serious crisis. The Parliament, now free and eager to deliberate over Indian affairs, applied its legislative wisdom in formulating a solution for the

deadlock. The outcome was the Act of 1781.

In its implications and consequences the Cossijurah case was one of the most important events that occurred during the Chief Justiceship of Impey in India. Here it may be recalled that one of the articles of impeachment against Impey was based on the proceeding of the Supreme Court in Cossijurah case. Though the House never examined the charges contained in the article, they were revived and hurled against Impey by his contemporary and future accusers. We have therefore, to find out to what extent, if at all, Impey was responsible for the crisis occasioned by the case of Cossijurah, whether he could avert the crisis by any means whatsoever without forsaking his principles, integrity and uprightness?

It is proposed, first to give a brief history of the case, then to observe critically upon it and finally to describe its consequences.

(a) The Background of the Cossijurah Case.

Kashinath Baboo, a principal merchant at Calcutta and a man of considerable rank, had been manager of all affairs relative to the zemindary of Cossijurah, and also a security for the rents payable to the government. On the report of the chief of Burdwan, relating to the claims and accounts between Kashinath and the Government, a process was issued against him by

the Board for the recovery of the balance due to the Government, in consequence of which he was arrested and confined. He applied and obtained a writ of Habeas Corpus from the Supreme Court and was in effect set at liberty, though not by virtue of the writ. In the meantime, he had offered to deposit the balance, praying in his petition to the Governor General and Council for a further and more exact examination of the accounts. (1)

On 25 May, 1779, Kashinath again petitioned the Governor General and Council for a speedy decision of the matter in dispute. The petition was referred to the superintendant of the Khalsa records, whose report on the same was submitted on 28 May. (2) Kashinath being dissatisfied at the above report and realising that no redress could be had from the Government, commenced a suit on 13 August 1779 in the Supreme Court against Raja Sundernarain of Cossijurah. (3) In his petition to the Supreme Court, Kashinath swore that the Raja was indebted to him in Rs. 183405 - 13 - 8 for principal and interest upon two (4) written bonds executed at Calcutta by the said Raja. He further swore that the Raja was employed by the Company in the collection of the revenues, hence was

(1) T.C.R. 16.A. Coss. App. 1. p. 330.

(2) Ibid. Coss. App. 2. pp. 330 - 32.

(3) Sundernarain was the Zemeindar of Cossijurah. Cossijurah was situated in the district of Midnapore, Orissa. The Company realised from the Raja an annual revenue of one hundred and eight thousand Saicca rupees, or about £20,000 a year. (George Vansittart's deposition before the Committee of the House: T.C.R. 16A. P 29.)

(4) T.C.R. 16A; Coss. App. 3, P. 333. The bonds had been executed on 14 July 1774.

subject to the jurisdiction of the Supreme Court. Upon this petition Hyde gave a written order that a Capias should be issued against the Raja, authorising the sheriff to take bail to the sum of Rs. 300,000 (£35,000).

John Peiarce, Collector of Midnapore, by his letter of 4 September, 1779, informed the Governor General and Council of the above process of the Court and also that Raja was hiding himself in order to evade the said process. ⁽¹⁾ On being asked by the Council to give his advice, Sir John Day, the advocate-general, gave his legal advice on 17 October, 1779, the gist of which may be extracted as follows:

"..... I advise, that in the case now referred to me, the Zemindar ~~have~~ gave 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. I advise, that in all similar cases, as well as in the present, the power of the government shall not, if called upon, be employed in aid of the judicature, but that they be left to their own means of ⁽²⁾ executing their process."

In consequence of the above advice, the Governor General and Council directed Peiarce to refuse any military

(1) Ibid, Coss. App. 4, p.333.

(2) Ibid, Advocate. Gen. Report. 17 Oct 1779, Coss. App. 5, p.334.

assistance to Sheriff's officers as the Raja was not subject to the jurisdiction of the Supreme Court.

On 22 October, 1779, D'oyle, the Sheriff, returned the capias to the court on account of its having not been served on the Raja, who was absconding. Thereupon a writ of sequestration was issued, this time also by Hyde, on 12 November, 1779, to seize the effects of the Raja's house in order to compel his appearance in the Supreme Court. Under the Court's writ the Sheriff issued a warrant on 13th November, directed to William Findlay and other to seize and sequesterate the houses, land, goods, effects and debts of the said Raja. William Findlay with his men reached Cossijurah on 16 November; he was later joined by another batch of sheriff's men who had been dispatched by the Sheriff on 25 November, in order to help Findlay execute the process, for it had been reported to the Sheriff that Raja's servants were offering resistance to the execution of the writ. (1)

On 30 November, 1779, the Governor General and Council were informed by Naylor, the Company's attorney, of what had lately taken place since the capias was returned unserved, that a writ of sequestration had been issued and the Sheriff had dispatched about sixty men to

(1) Findlay Ibid, William Findlay affidavit; Coss. App. 11; pp. 338-39.

to execute it. It was then resolved by the Council to direct Lieut. Colonel Ahmuty, commanding the cantonments near Midnapore, to detach a sufficient force from the battalions to intercept and apprehend sheriff's men. (1)

On 3 December, 1779, a letter from Naylor, accompanying a representation from the Raja of Cossijurah, was laid before the Board of the Governor General, stating that a party of men headed by a sargeant of the Court, entered the house of the Raja in order to set their seal upon it and, in the process of entry inflicted injuries to his servants and committed outrages upon his place of worship. (2)

A letter from Peiarce further stated that the Sheriff had asked for his assistance in the execution of the writ. The Council, thereupon, directed Johnathan Duncan one of the civil servants of the Company, to proceed to Cossijurah and to take the depositions of all the persons present at the late disturbance. (3)

Col. Ahmuty was likewise directed to send to the presidency any person he might have apprehended. (4)

In consequence of the council's order of the 13 November, Col. Ahmuty had detached from his camp two

-
- (1) Ibid, Coss. App. 6; pp. 334 - 35.
(2) Ibid Coss. App. 7, pp. 335-36.
(3) Ibid, Coss. App. 7, pp. 335 - 36.
(4) Ibid.

companies of Sepoys under the command of Bomford, and the latter with the assistance of Swainston, assistant to Piecarce, had on 3 December 1779, seized the sheriff's men, numbering about a hundred. ⁽¹⁾ From the deposition of William Findlay it appears that they remained confined for three days and then were sent up to Calcutta as prisoners.

At this stage the council again sought the advice of their advocate general, who in his report of 6 December, 1779, approved the conduct of the Council and held that the active resistance offered by the Council to the process of the Supreme Court was unavoidable and necessary. ⁽²⁾ He further advised the Council to release the prisoners, who a few days after their arrival in Calcutta were accordingly released. The Council directed Col. Ahmuty to resist any process of the Court ⁽³⁾ meant to serve any writ on him or upon Lieut. Bomford.

On 18 January, 1780, Brix, the Counsel for the Plaintiff, moved the Supreme Court for attachment against William Swainston and Lieut. Bomford, for a high contempt of court, in having rescued the houses, lands, and effects, of the defendant out of the possession of the bailiffs of the sheriff by obstructing them in the execution of their duty, and overpowering them by

(1) Ibid; Coss. App. 8. pp. 336-37.

(2) Ibid, Adv. Gen. Report, 6th December, 1779, Coss. App. 9, p.337.

(3) G.G.C. to Col. Ahmuty; 10th December, 1779; Coss. App. 10. p.338.

means of an armed force, by seizing and imprisoning the
bailiffs. (1) Briz also moved that rules might be made
agaonst Hastings, Barwell and North Naylor to answer the
affidavits of the plaintiff and one Hyderam Banagee. (2)

From the above affidavits it can be gathered that shortly after Kashinath had instituted the suit against Raja Sundernarain, the latter had authorised his agent to appoint Wroughton to defend the suit. On hearing of this, Naylor and Barwell exercised their influence and prevailed upon the Raja to withdraw the power of attorney given to Wroughton and to abstain from defending the suit altogether, for, defending the suit in the circumstances as has arisen was tantamount to submitting to the jurisdiction of the Supreme Court. Consequently, the Raja revoked the power of attorney and left the suit undefended. Hastings, on the other hand, was alleged to have expressed his resentment at Kashinath's suit and asked the latter to withdraw it.

Attachments were granted against all except
Hasting and Barwell. (3) "As to the Governor General and

(1) Ibid, Coss. App. 19; pp. 345-48.

(2) The attachments motion and the application for summons to be served on Hastings, Barwell and Naylor were based on the sheriff's return and the affidavits given by the following persons:

(a) William Findlay. (d) William Lewin (clerk to
(b) William Saunders. Saunders)
(c) Kirte Chunder (sheriff's (e) Hyderam Bonagee
servant) (clerk to Wroughton, one of
the Attornies of the Supreme
Court)

(f) Kashinath Baboo.

(3) J.P., Vol.16259; Impey to Thurlow, 18 Jan.1780;
pp. 263-73.

Mr. Barwell, we will not include them in the Rule, because we will not grant a Rule we cannot enforce; and we are determined to enforce our Rule to utmost of our power". - declared Impey from the bench. (1) However, the Governor General and Council were served with copies of the Rule, that they might answer if they pleased, and the Sheriff was ordered to apply to the Council for assistance in executing the Rule.

The Sheriff wrote a letter to the Council requiring them to aid and assist in the service of the rules of the Supreme Court. On the advice of the advocate general, given on 30 January, 1780, the Council resolved to abide by the principles on which it had resisted the process of the Court. (2) In the meanwhile, on 24 January, an attempt was made by sheriff's officer to enter the line at Midnapore, for serving the rule of the Court upon Swauistan and Bomford, which was resisted by Col. Ahmuty.

The Council, on being applied by the sheriff for assistance in enforcing the Rule of the Court against Bamford and Swainston, again sought the advice of Day. (3) He advised the Council not to reply to the Sheriff's letter. (4)

-
- (1) T.C.R., Coss. App. 19, p. 347.
(2) Ibid, Advocate Gen. Report, 30 January, 1780; Coss. App. 18, pp. 344-45.
(3) Ibid, Coss. App. 19; p. 348.
(4) Criminal and Judicial consultations, 1780, N.50, Vol. 22; Advocate General's Report of 23 Feb. 1780; pp. 457-463.

Of the three persons who had been summoned to appear and answer to the charges exhibited against them by the several affidavits, only Naylor appeared, and on his appearance he was charged with the contempt of the Court. The two charges levelled against him were as follows:

(a) That he had obtained from the Sheriff's office information regarding the forces sent by the Sheriff to Cossijurah and forwarded the same to the Governor General and Council.

On receiving this intelligence the Governor General and Council dispatched a force large enough to outnumber the Sheriff's men.

(b) That Naylor had advised. Raja Sundernarain, the defendant, not to defend the case and to abstain from putting in an appearance in the Court.

In his letter to the Council, dated 22 February, 1780, Naylor dwelt upon what he called the real cause of his harrasment at the hands of the judges. It was "a deliberate and concerted measure to degrade the legality of the government, by the punishment of your public officer, and to impress the minds of the natives with an idea of criminality in your proceeding, under the authority of which he has acted."⁽¹⁾

As regards the first charge, he contended in the above letter: "it was my duty, and no wise criminal, to

(1) Ibid; Naylor to Board, 22 Feb. 1780; pp. 437-449.

communicate to the Governor and Council intelligence so important, as that a body of men had been marched to the interior part of the province".⁽¹⁾ As regards the second he argued "there are surely occasions in which an attorney might be justified in advising his client, either to avoid the process of the Court, or not to appear at it."⁽²⁾

The same arguments as above were put forth by Naylor's counsel when the 'contempt of Court charge' was tried on 3 March 1780. Impey while overruling the defence plea declared from the bench that it was not within the power of Governor General and Council, or their attorney to advise anybody whether he was or was not subject to the jurisdiction of the Court, especially when the Court had issued process against such person.⁽³⁾ On Naylor's having had refused to disclose certain secrets confided in him by his employer, which was the Council, Impey commented that the secrets, the possession of which had been acquired in course of appointment as attorney are not to be divulged, but no such protection can be afforded to such conversations which had been applied in resisting the very process of the Court.⁽⁴⁾ And he concluded: "I am of opinion, that every person who gives such advice, is

(1) Ibid,

(2) Ibid.

(3) T.C.R; Impey's opinions in Rex vs. Naylor, Coss. App. 21. pp. 351 - 56.

(4) Ibid.

a contemner of the King's Laws, and is punishable by this Court." (1)

Chambers and Hyde agreed with Impey. Naylor was committed to prison, no bail was accepted, because the punishment was inflected, in the words of Impey, as an 'exemplary one'.

In the meantime, Kashinath Baboo had filed another plaint, and this time against the members of the Council (Hasting, Barwell, Francis and Wheeler), for having had assaulted the Bailiff and his men from 3 December to 10 December and rescued the effects seized, with a motive to deprive the plaintiff of the recovery of his debts from the Raja of Cossijurah. (2) On 3 March, 1780, the Governor General and Council were severally served with a summons from the Supreme Court to answer to the above plaint of Kashinath; whereupon they directed the Company's counsel to plead in each article to the jurisdiction. The ground for such plea was to be the exemption of the members of that government from the jurisdiction of the Supreme Court upon any suit ^{filed} ~~pressed~~ individually against them for their concurrence in acts of the government.

After having first put their appearance through counsel, the members of the Council on a latter date resolved to withdraw their appearance; the reason alluded to the recession of their previous resolution being that

(1) Ibid.

(2) Ibid; Plaint of Kashinath against G.C. &c. Coss. App. 23; pp. 356-59.

(1)
the said acts were done in their public capacity. In their above resolution and declaration, which they asked their counsel to convey to the judges orally in the court, the Councillors asked the judges to follow a moderate policy in the present case, stop all proceeding, and agree to refer the matter to the Home government or the parliament. Their resolution and request was based on the following alleged facts:

- (1) That the government of Bengal was at war with a most powerful native state;
- (2) That the Home government being at war with their American colony could afford no protection to the Indian government;
- (3) That, in order to finance the war, the Bengal government depended solely upon the revenue of the provinces which shall suffer if the Zemindars were subjected to the jurisdiction of the Supreme Court;
- (4) That, in the event of heavy losses to the revenue, the government would fail to disburse the salary of the 'Sepoys' who might revolt against the government.
- (5) That if the Councillors were held answerable to the Supreme Court on the suit of a native, the

(1) Ibid; Board's resolution and declaration to Court. Coss. App. 24; pp. 366-67.

respect for the government in the mind of the natives would decrease and the administration (1) weakened.

On 11 March, 1780, the junior counsel of the Company (the senior counsel, Newman, having disapproved of the proceeding of Governor General and Council in the case of Cossijurah, had refused to act as their advocate in any part of the business) read in the court the above resolution of the Council to withdraw their appearance. (2)

The judges refused to allow the withdrawal, declaring that it was not in their power to allow it without manifest injustice to the plaintiff. (3)

In his letter to Weymouth, 12 March 1780, Impey commented on certain points raised in the Council's resolution and pointed out the reasons why the Court refused to allow withdrawal. Referring to the Council's suggestion that the matter might be referred to the Parliament, Impey commented: "That we knew of no individual mode (nor had we any other means) of bringing any question before the parliament, to take the sense of the legislature upon it." (4) Referring to the Council's

(1) Ibid.

(2) Impey to Weymouth, 12 March, 1780; Coss. App. 25, pp. 367-68.

(3) Ibid.

(4) Ibid, p. 368.

declaration that the Councillors were not subject to the jurisdiction of the court, Impey contended; "That if they thought themselves not amenable to the court, they ought to plead to the jurisdiction, or demur to the plaint; and if they were discontented with our judgements, the charter had given them a remedy by appeal".¹ As the Council was no corporation, the Councillors could be sued only as individuals.

A serious deadlock was created. The supreme Court, which had by now been sufficiently humiliated by the Council, would not compromise with the situation to which it had been reduced. It would not allow the Councillors to withdraw their appearance. The Councillors, on the otherhand, were obstinately adhering to the principles on which they had violently resisted the process of the court. They would not put their appearance and would defy all the orders and summons issued by the court. A compromise seemed impossible.

It was at this critical moment, on 12 March 1780, that Kashinath, the plaintiff, all of a sudden withdrew his suit against the Raja of Cossijurah and the

1. Ibid.

Governor General and the Council.¹ Naylor was released on bail.

Here we may bring to a close the narrative of the case. We may now turn to examine and observe upon certain facts of the case.

(b) Certain observations on the Cossijurah-Case

The questions raised by the Cossijurah Case were mainly two: First, whether the zemindars were or were not subject to the jurisdiction of the Supreme Court? Secondly, who was the competent authority to determine the above point, the Court or the Council?

The determination of the first question involved an enquiry into the status of the zemindars. Whether the zemindars were hereditary officers of the Company or absolute owners of their property? What difference, if any, existed between a zemindar, a farmer of revenue, and a collector of revenue? If their status was no better than a servant of the Company, they were certainly amenable to the jurisdiction of the Supreme Court: on the otherhand, if they were shown to be absolute owner of their property, they were outside the jurisdiction of the Supreme Court, for, the Charter had empowered the Court to exercise jurisdiction on only such natives who were directly or indirectly in the service of the Company.

Though the Council had been of the opinion

1. I.P. Vol. 16259; Impey to Sutton, 12 March, 1780, Pp. 431-41.

that the zemindars were not subject to the jurisdiction of the Supreme Court, yet it had never been certain of their legal status. That was one of the reasons why the Council had always been reluctant to submit the issue for the determination of the Court. The very appearance of a zemindar in the Supreme Court, even if the appearance was made to plead that he was not subject to its jurisdiction, was tantamount to an admission of a superior power in the Court, a power to compel appearance, which the Council was determined not to admit. Hence, whenever an occasion arose when the point could be determined one way or the other by the Supreme Court and the controversy could finally be set at right, the Council put all its might in preventing any decision being reached thereupon, with the result that the question could never be determined judicially.

In support of the above observation may be cited the Case of Futtu Singh, and the Cossijurah Case. In consequence of a suit by one Jugamohan against Futtu Singh for the recovery of a private debt, the Supreme Court gave a decree in favour of the plaintiff. In execution of the above decree the zemindary of the debtor was put on sale by the sheriff. The Governor General and the Council after consulting their law commissioner, applied to the sheriff to abstain from executing the decree of the Court against Futtu Singh and in return promised to defend the sheriff in case a suit was brought against him by the plaintiff.

The Council's overture to the sheriff was designed to prevent the Status of a zemindar from being inquired into and determined by the Supreme Court. If the zemindary was sold, the new purchaser would immediately endeavour to obtain possession, and if opposed, he would no doubt procure warrants, and bring suits against those who opposed him. In such a suit the rights and status of a zemindar were bound to be determined by the Court. On the otherhand, if the zemindary was not sold, the plaintiff would be reduced to the necessity of bringing a suit against the sheriff. Such a suit would not involve the determination of the legal status of zemindar.

The above alternatives were brought to the notice of the Council by George Bogle, who advised them to avoid the issue of the rights of the zemindars being determined by the Supreme Court.

"But a judicial enquiry into their rights and tenures, whenever it shall happen, is likely to have important consequences on the government of the country. Should it be determined, that a zemindar is a hereditary officer, who collects the revenue in trust for government, whose jumma is fixed only to prevent embezzlement, and who is liable to be removed at will, it will be argued, and on plausible grounds, that every zemindar is a servant of the Company, an officer of the government, and therefore subject to the jurisdiction of the Court. Should it, on the other hand be decided, that a zemindar is an absolute

(1)

proprietor of his zemindary, in every instance where he is dispossessed, he may reclaim his right thus established by a process in the Supreme Court against the Company, contest the grounds on which he is excluded from possession, or on which his land is assessed; in short, in whatever way the question maybe decided, it is likely to open a wide field for litigation." (1)

George Bogle's analysis of the question and his advice thereon were accepted by the Council in toto. In future as well as in the present case the Council was to evade any judicial inquiry into the rights and status of the zemindars. This policy, as is obvious, was devoid of any principle to protect and safeguard the interests of the zemindars. On the contrary, it was calculated to keep them in ignorance about their rights and status. The commercial interests of the Company required that their status remained undefined. There are evidences to show that zemindars were confined, dispossessed and harrassed for

(1) From the Petition of Bahadur Zamaun Khan, Rajah of Beerbhoon, (T.C.R., Gen.App. 23, pp. 185-86) it can be gathered how much dependent were these Rajas and (1) T.C.R.; Gen. App. 12, George Bogle Report, 13 November 1778; Fatty Singh's Case; p.144. (Deposition of William Rouse before the Committee, T.C.R. 7 pp. 30-31).

(2) T.C.R.; p. 29.

(1)
the arrears of the revenue. If it was declared by the Court that the zemindars were absolute proprietors, the Council could not in future dispossess, confine or oppress them. On the otherhand, if the Court determined that the zemindars were servants of the Company, they would at once become subject to the jurisdiction of the Court; any private creditor then could sue them for the recovery of his debts. The Council would not stand it, for, most of the zemindars having had contracted loans in enormous sums would become penniless if they were compelled to pay off their debts, and as a necessary result of this the revenue of the company would suffer tremendously. George Vansittart, who had for some time been the President of the Council, on being examined by the Committee of the House on the financial conditions of the zemindars, deposed;

"That it is very much the practice for the zemindars Talookdars, and Ryots, to borrow money for the annual charges

-
- (1) From the Petition of Behadre Zemaun Khan, Rajah of Beerbhoom, (T.C.R., Gen.App. 23, pp. 165-66) it can be gathered how much dependent were these Rajas and zeminders on the Council. ~~From the petition of Kali Prasad Singh, Dewan for the zemindars of Cherolea and Mudodea were sold for the arrears of the revenue.~~ (Deposition of William Rouse before the Committee, T.C.R. 3 pp. 30-31).
- (2) T.C.R.; p. 29.

attending their several concerns, that most of them have debts of an old standing to a very large amount - That money is advanced to them by the Shroffs, at interest, That if English process was immediately issued for the compulsory payment of all those debts, almost every zemindar in the country would be imprisoned, the Ryots would be dispersed, and the Company would not receive a fourth part of their present revenue." (1)

The private creditor had no remedy against the zemindar if the latter refused to pay him off. There is no instance to show that the Council ever forced a zemindar to be just towards his creditors. So long as the zemindar paid his rents to the Company, it was no concern of the Council to see how he treated his 'ryots'. The person who lent his money to a Rajah or Zemindar, must trust to the Rajah's honour, knowing that there was no jurisdiction which would enforce the payment. (2)

Thus we find that the groundwork of the Council's future policy towards the zemindars and the Supreme Court was laid by Bogle's analysis of the situation in the Case of Futtu Singh.

In the Cossijurah Case the Council followed its one-year old policy and was successful in preventing

(1) T.C.R.; p. 29.
(2) Ibid, p.30.

any judicial enquiry being held into the status of the zemindars. Immediately after the institution of the suit against him by Kashinath, Raja Sundernarain, the defendant, had granted the power of attorney to Wroughton and the latter was to defend him in the Case. This warrant was filed in the Court by the plaintiff to show that in the beginning the defendant had every intention of putting up appearance through his attorney and of defending the case but later he was coerced by Barwell and Naylor to withdraw the power granted to his attorney and abstain from defending the suit. (1) The very fact that the defendant withdrew his power of attorney at the instance of the councillors and their attorney, is suggestive of another fact that the Councillors had in return assured him of their protection and patronage. Having thus committed themselves to the protection of the Raja, the Councillors in any eventuality could not withdraw their protection without suffering injury to their pride and prestige and abridgement of their power. The Councillors assumed to themselves the power of determining whether the zemindars were subject to the jurisdiction of the Supreme Court, and declared that they were not.

We may, before passing on to other observations, examine judges' answer to the questions raised by the

(1) I.P.; vol. 16259, Impey to Weymouth, 18 January 1780; pp. 277. Naylor did not deny, rather admitted, the fact of his having asked Sundernarain or his Vakeel to withdraw the power of attorney. (Naylor to Council; 22 February 1780, Coss. App. 21, pp. 349-56).

Cossijurah Case. They never got the opportunity of inquiring into the first question, the amenability of the zemindars to the jurisdiction of the Supreme Court. Impey, as it appears from his private letters, does not seem to have held any decisive opinion on this point. On 12 March 1780, he wrote to Sutton: 'That the Court does not nor ever did claim any jurisdiction over zemindars simply as zemindars, but that their characters 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 of any other British subject! (1)

As regards the second question, by whom and how the first question was to be determined, Impey had a decided opinion. According to Impey the most competent authority to decide whether a person or a class of person was or was not subject to the jurisdiction of the Supreme Court, was the Court itself and not the Council. 'Natives, under the certain descriptions, it is said by the Act of Parliament and Charter, shall be objects of our jurisdiction. Where is that to be enquired into? Is the Governor-General and Council to make enquiry, to send mandates to the Court for us to stop proceeding, or to go on? This would be greater subjection than ever the Mayor's Court were under,

(1) Ibid; p. 436.

in whose place we are put; and to remedy the inconvenience
of which influence we came.'⁽¹⁾

In his letter to Thurlow, Impey argued the point further and stated that if it was the Court, and no doubt it was, to decide upon the issue of jurisdiction, it had no other means to know whether a person was subject to its jurisdiction except by hearing him plead to the jurisdiction.⁽²⁾ Referring to the Case of Cossijurah he wrote to Weymouth "That if the defendant was..... not an object of the jurisdiction, no prejudice could arise to him by pleading it, for he would have judgment in his favour, and would be no more molested; if against him, he might appeal."⁽³⁾

There can hardly be any two opinions on the second question. The Court was the most competent authority to delibe^rate on a dubious question. We may here refer to Council's letter to the Court of directors, 27 January 1780, to show a misrepresentation of facts. Dwelling upon the point as to why so far the Court has not been obliged to declare upon the status and rights of Zemindars and Rajas, the Councillors wrote: '...That the right itself has never yet been brought to a decision; for we believe, that in every instance in which it has been

(1) T.C.R. Coss. Abb. 21; Impey in Rex vs Naylor; pp. 354-55.

(2) I.P.; vol. 16259; Impey to Thurlow; 11 January 1780; pp. 294-320.

(3) T.C.R.; Coss. App. 26; Impey to Weymouth; 2 March 1780; p. 370.

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; (1) The above statement is a quibbling of a lower order. We have observed that it was the Councillors and not the advocates who prevented any judicial inquiry into the status of the zemindars.

Could the zemindars be treated as persons indirectly employed in the service of the Company and as such subject to the jurisdiction of the Court, is an open question. As this point was never determined it can hardly be alleged that the judges tried to bring them under the jurisdiction of the Court. What the judges claimed and demanded was the appearance of the defendant in response to a summon or writ of *capias* issued by the Court on the affidavit of the plaintiff. The defendant was at liberty to plead or surrender to the jurisdiction of the Court. In absence of a well regulated constitution and a coordinated and graded net-work of Courts in the settlements, this system was bound to result at times in unnecessary harrasments to the defendants. What, if it turned out that the defendant was not subject to the

(1) Ibid, Gen. App. 13, p.147.

jurisdiction of the Court? At least on one occasion the system brought hardships on the defendants. A few zemindars were brought prisoners from the province of Dacca to Calcutta, accused of murder; and after remaining eleven months in the English gaol, were found, upon their trial, not to be objects of the jurisdiction of the Supreme Court, and were discharged. (1)

Were the judges to be blamed for this? Probably not. '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 him, or the Governor-General and Council, I should most readily have adopted it.' (2) The Council had only one suggestion on this point, that on a question whether any person or class of person was amenable to the Court, their declaration should be taken as authentic and final by the Court. (3) For obvious reasons the Court would not trust the Council and their

(1) Ajoodram and Subbaram; Deposition of Farrer before the Committee of the House; T.C.R., p.47; also, Gen. Smith's speech; Par. His.Vol. XXI; pp. 1184-85.

(2) T.C.R., Coss. App.26, Impey to Weymouth, 2 March 1780; p. 371.

(3) Ibid, Council to Directors; 27 January 1780; Gen. Appl 13; p. 148.

subordinates. However, at least on one occasion Impey seems to have worked on lines suggested by the Council. In the case of Raja Raghunath Narrain, wherein the defendant had put a plea to jurisdiction, Impey referred the Case to Higginson, member of the provincial Council, asking him to take evidence upon oath on the point whether the defendant was subject to the jurisdiction of the Court. ⁽¹⁾ But this practice could not be repeated without incurring risks of injustices.

We may pause here to observe upon Impey's opinion on the status of zemindars, on the reasons why the Council was earnest in keeping them outside the Court's jurisdiction, why the Court was so violently opposed when it tried to secure the appearance of Raja Sundernarain, and why the Council discouraged private creditors to bring suits against the zemindars. Referring to the Case of Cossijurah, Impey wrote to Thurlow:

"Depend upon it my dear Lord, the opposition offered to the Court in this point as well as in many others does not arise from any zeal for the revenues or any affection for the natives. The protection of zemindars (who are almost universally collectors of revenue) is a much fruitful source both of power and of wealth, they are most admirable intermediate agents to execute all acts of despotisms and the protection from debts or compulsion to pay them, is

(1) Ibid; The Case of Raja Raghunath Narain; Gen. App. 24; p.166.

seldom procured without a pecuniary compensation of large sums of money paid on both accounts." ⁽¹⁾ Impey further informed Thurlow, in the same letter that it was currently reported that a sum of Rs75000 had been paid by the zemindar of Cossijurah to Pearse, the collector of Midnapore, in return for the protection given to him by the latter. 'I will not vouch for the truth, but believe the report is not without some ground.'⁽²⁾

The above letter was written in the month of January, 1780, when Impey stood as an injured party, a defeated one, in the ~~five~~^{six} years old quarrel between the Court and the Council. We may not, therefore, consider his statements literally true. Yet, they are not completely devoid of truth. The legal status of zeminders is a matter of controversy. But in practice they were more subservient to the Council than the subordinate officers of the Company. They could be stripped off their total belongings by one stroke of the Council. There was no law, rule, or practice to regulate the relationship that existed between the zemindars and the Company. Impey wrote to Weymouth about the real hardships of the zemindars and the Council.

'The real hardship to the zemindars, and Council is, that they should be submitted to any regular Tribunal, who can punish their crimes, and make them fulfil their

(1) I.P.; vol.16259; Impey to Thurlow, 11 Jan. 1780; pp. 310-11.

(2) Ibid.

contracts to the Governments; and the Company's servants.⁽¹⁾

It was argued by the Councillors that when these debts were contracted at high rate of interest by the zemindars, the creditors had no certain means of recovering them, for there was no justice. Therefore, it would be extremely cruel to render certain, by the means of the Court, that recovery which both parties intended should be contingent.

On the above argument, Impey commented as follows: 'That it was just, that the principal at least should be paid, and that it was in the power of the Court to mitigate unconscionable interest, that if the contingency had now turned out in favour of the lender by the patronage of His Majesty: it was but fair he should avail himself of it.

'I may safely aver, that there cannot be a more fruitful source of corruption, or stronger engine of arbitrary power, than a discretionary right to permit or prohibit the recovery of just debts, and to subject to, or protect, the most opulent and most powerful natives from punishment.'⁽²⁾

Before closing this point it maybe asked, with what reverence, respect and decorum the Council treated these so-called hereditary Rajas and Ranees? In answer, maybe put forward the affairs of the Ranee of Burdwan.⁽³⁾

(1) Ibid; Impey to Weymouth, 2 March 1780; p. 373.
(2) Ibid, p. 374.
(3) T.C.R., Gen. App. 17; pp. 153-55.

On account of alleged defaults made by the estate in the payment of the revenue, guards were placed around the house of the widowed Ranee and her infant son; a certain Bahadur Singh, of low rank, was introduced in her household to manage against her will her affairs and the Ranee was virtually deprived of her civil rights. Her Vakeel complained to leMaistre and the latter issued summons to the Chief of Burdwan and the Commander of the Sepoys and sent a constable to apprehend Bahadur Singh. In his letter to Higginson, Chief of Burdwan, 23 June 1777, LeMaistre declared, "Every disturbance of the peaceable enjoyment of a person's own house, is an enormous oppression; and while I stay in this country, I will to the utmost of my power, give the same redress, and the same measure of justice to the lowest of the people, which I hope to see given to the Ranee upon this occasion, be the oppressor ever so great or powerful." (1) It maybe observed in this connection that oppressions against the Ranee were commenced at the order of the Council. This order was carried with the consent of Barwell and Hastings and was opposed by Clavering and Francis. It may be recalled that it was the Ranee of Burdwan who had accused Hastings in 1775.

Thus, the policy of the government towards the Zimindars was determined sometime by the personal

(1) Ibid; Le Maistre to Higginson, 23 June, 1777, Gen. App. 17; p. 154.

prejudices of the councillors and sometime by the commercial interests of the Company. The Councillors observed no fixed rules and principles in their dealings with the zemindars. In order to maintain their absolute authority over them it was, therefore, necessary that the judges were prevented from inquiring into their status and liabilities.

We may now observe upon the propriety of open and violent resistance which the Council gave to the processes of the Court in the case of Cossijurah.

Writing to Wallace on 2 March, 1780, Impey observed:

"The Governor-General and Council without any provocation whatsoever, have directed open hostilities against the Court, have advertised to the natives to deny our jurisdiction not by plea but by neglecting to take notice of our process, have ordered zemindars not to suffer it to be executed in their districts."⁽¹⁾

Indeed, Impey might have been shockingly surprised at the open hostility commenced against the Court by the Council. It was Clavering, Monson and Francis who had been the traditional enemies of the Court. Now, Monson and Clavering being dead Francis wielded no real power. The new-comer, Wheeler, being no avowed supporter of Francis,

(1) I.P. Vol. 16259; Impey to Wallace, 2 Mar. 1780, p.404.

it was Hastings, the old friend of Impey, who with the support of Barwell and by the exercise of his casting vote carried the decisions of the Council. This time it was Hastings, who with the unanimous support of the Council, was leading the crusade against the Court. The fact that the final and decisive blow was given to the Court by his friend, did hurt Impey tremendously. 'This has hurt me much more than any anxiety which I felt during all the time that I knew Clavering was endeavouring to ruin me in England.'⁽¹⁾

However, there is nothing to suggest that the resistance offered to the Court was caused by a break in the friendship of Impey and Hastings. Impey and Hastings were friends on the eve of the crisis, they remained so during and after the crisis. After the hostilities had been commenced and before 7 January 1780, Impey and Hastings⁽²⁾ met several times in private and discussed the situation. Impey tried to persuade Hastings to think that it was not right in Governor-General and Council and the various zemindars to decide for themselves whether the Supreme Court had jurisdiction or not in a particular case, and Impey assured him that no action shall be commenced against anybody for what had passed if he prevailed upon the

(1) Ibid, Impey to Dunning, 2 Mar. 1780; p.322.

(2) T.C.R., Coss. App. 26; Impey to Weymouth, 2 March 1780: pp. 369-374.

defendant to ^{plead to} the jurisdiction of the Court. But Hastings did not agree to Impey's preposition, and evaded giving any definite answer. Yet, both remained friends.

'I shall undoubtedly keep my word with Mr. Hastings and even go beyond it with regard to our private friendship, for though I cannot with all my prejudices in favour of him, be induced to think, that he is now acting on sentiments of duty, yet I revere him for many notable qualities, and believe him, when he tells me, he is not left to himself in this business.' (1)

There are evidences to show that Hastings and his trusted friend Barwell took active and leading part in organising the 'resistance'. We have observed above that it was Barwell and Naylor who asked the Raja not to put up appearance in the Court. On 30 November 1779, Francis wrote the following in his private journal:

"Letter from Naylor our attorney giving notice of a military force having marched under the orders of the Sheriff to Cossijurah to execute a writ of sequestration against the Sheriff. Hastings takes fire and swears this is too atrocious to be born. Unanimously resolved to order Ahmuty, who commands at Midnapore, to march a force to Cossijurah, to intercept, seize and detain the rioters. This step seems to be decisive. We shall see in what manner

(1) I.P., vol. 16259, Impey to Thurlow, 11 January 1780;
I.P., vol. 16259, p.313.

(1)
it will be supported."

On 14 March 1780, Hastings wrote to John Purling;

"I sincerely lament our difference with the judges; but it was unavoidable. I think you will support us; if you do not, be assured Bengal, and of course India, will be lost to the British nation."
(2)

The evidences as cited above strongly suggest that the resistance was organized and led by Hastings. Why Hastings, who had been the ardent supporter of the court since its inception, all of a sudden changed his policy and violently resisted the jurisdiction of the Court?

A short-lived alliance between Hastings and Francis was partly responsible for a sudden change in Hasting's conduct towards the Court.

After the death of Monson and Clavering, the balance of power in the Council had turned on the side of Hastings. With the support of Barwell, he could carry the decisions of the Council. His only enemy left in the Council was Francis.

On the eve of the Cossijurah crisis Sir. John Day was trying to bring about a reconciliation between Hastings and Francis.
(3) Barwell's decision to resign his post

(1) Eur. Mss.; Francis Papers, E. 23; Journal; pp. ~~233-34~~
208.

(2) Ghig's - 'Memoirs'; Vol. 2; Hastings to Purling,
14 Mar. 1780; pp. 292 - 93.

(3) E.U.R. Mss, Francis Papers, E. 23; Journal; pp. 233-34
also
S.P. Vol. 16259; Impey to Dunning, 27 Jan. 1780;
pp. 290-93.

and return to England made Hastings keen on an accommodation
(1)
with Francis.

Since the decision of the Court in Grand's case, Francis had turned into a bitterest enemy of Impey and his Court. He was, therefore, willing to compromise his differences with Hastings if Hastings agreed to present a united front against the Court. The terms were agreed and the alliance was nearly complete before the Cossijurah
(2)
crisis.

Hastings' own desire to assert the powers of the Council against the Court, might have been the additional reason for the stand he took against the Court. Being most powerful in the Council, Hastings might have realised that his interests were identical with those of the Council. However, in the beginning he appears to have had tried to avoid a head-on-clash with the Court by persuading
(3)
Kashinath in vain to withdraw his plaint.

The immediate cause of the crisis was the advice given by Sir. John Day to the Council. We shall shortly see that during the period intervening between the Patna and the Cossijura events Sir. John had become

(1) EUR. MSS.; Francis Papers; E.14, Francis to Smind, 8 Mar. 1780; p. 365.

(2) Ibid; E.14; Coote to Francis, 26 May, 1780; pp. 447-453, also; E. 17; p. 585.

(3) ~~Hees~~. Papers. Vol. 29128; Hees. to Baber, 6 Jan. 1780, p. 224.

pregnated with personal prejudices against the Court.

It may be recalled that Sir. John first advised the government on 17 October 1779, to refuse any aid to the execution of the process of the Court against Raja Sundernarain. In essence his advise was that the government should maintain strict neutrality. On 30 November 1779, on receiving intelligence from Naylor that Sheriff had marched armed men to Cossijurah, the Council in a feat of passion and fury immediately resolved to order Ahmuty to dispatch force to apprehend, intercept and seize Sheriff's men. Their order, as we have observed above, was duly executed.

What state necessity compelled the Council to abandon the neutrality as advised by Sir. John? It was one thing to abstain from aiding in the execution of the Court's process and quite a different thing to resist such process by force. On a careful examination of the situation we find that the Council's order to Ahmuty was illegal, unjustified and uncalled for. Sir. John approved of the conduct of the Council in his two subsequent reports. The justification was based on the ground that the Sheriff's men, as they were composed of, were "not likely to show much regard to the peace of the country", hence in the interest of peace and good government it was necessary that they were
(1)
apprehended.

(1) T.C.R., Coss. App. 18, p.344.

It is hard to believe that a group of sixty men proceeding towards Cossijurah under the proper authority of the Supreme Court were likely to disturb the peace of the Country. It is a fact that they peacefully reached Cossijurah without causing any alarm or disturbance in their way.

There is nothing to suggest that these men on their arrival at Cossijurah caused alarm or annoyance to the inhabitants of the village. On the contrary, it was the Raja's men who put all sorts of obstacles in the peaceful execution of the Court's process.

The Council's order to Ahmuty was, therefore, motivated by other considerations than what was attributed to it by Sir. John. Being asked by the Committee of the House as to what state necessity obliged the Council to issue order to Ahmuty, Richard Barwell deposed that had the writ of sequestration been executed against the house and property of the Raja, "it would have afforded an excuse to every man dependant on him" to evade payment of the revenue. (1) Being further asked, if a plea to the jurisdiction might not have prevented the issuing the sequestration, and consequently that necessity, he said, it certainly might, because those acts of the Court were simply to compel an appearance to the jurisdiction. On

(1) Ibid, p. 26.

being asked why the Governor-General and Council did not recede from their position erroneously taken, Barwell added "that the Supreme Court was obliged to support its own authority; and the Governor-General and Council compelled, circumstanced as it was, to keep up the reputation of its powers throughout the provinces." (1)

Barwell did not think it proper that the government should have committed themselves by its notice to the zemindars. But once it had so committed, it could not afterwards recede, without producing evils of a nature that must have annihilated the authority of the government, by bringing their orders into contempt and disrepute. It maybe here observed that before leaving India on 3 March 1780 for England, Barwell had left direction with his attorney to appear in the Court in the case of Kashinath against the Councillors, in case the other councillors declined to do so. (2) Barwell's analysis of the situation is more candid and real.

Supposing then that the initial blunders were committed by the Council, who bore the major proportion of the responsibility for the error? It was Sir. John's advice given on 17 October, that bore the seeds of future crisis. As we have observed in the preceeding chapters,

(1) Ibid, p. 27.

(2) Ibid; Impey to Weymouth, 12 March 1780; TC.R., Coss. App. 25, pp. 367-68.

Sir. John's report on the Patna Case and then on Gowry Chaud's Case teemed with candour and a sense of reverence for the Supreme Court. This sudden change in his attitude towards the Court may to some extent be explained by what passed between him and Impey in the month of July 1779 on the issue of his admission to the Supreme Court. (1)

Sir. John had been appointed Company's advocate-general by a letter patent. He wanted to know from the judges whether he was to undergo the common procedure for admission in the Court or he had only to produce the letters patent. The Court refused to consider the question - whether he had a right to act as an advocate without admission, but agreed to admit him in the Court when he applied. Sir. John insisted on his right to appear in the Court without securing any formal admission. The judges, having no notice of any such precedent, were reluctant to concede Sir John's demand. In consequence Sir. John refused to appear in the Court. He had not put a single appearance in the Court until January 1780. On such a trifling matter of dignity, he appears to have turned into a personal enemy of the Court.

Thus, it were personal prejudices, which Day and Francis bore against Impey and certain private interests,

(1) L.B.I. Vol. 16267; correspondence between Impey and Day; pp. 37 - 43.

which Hastings wanted to further at any cost, which united them temporarily against the Court.

From our analysis of the Cossijurah crisis, carried so far, it can be inferred that in its final bid to overpower the Court the Council committed certain initial excesses which caused the present crisis. Could the judges in general and Impey in particular, by any means whatsoever, avert the crisis without compromising with their powers and functions?

Once the capias was issued the judges were helpless in controlling the course of events that followed. The capias was issued on the orders of Hyde. Impey was ill during the months of October and November. ⁽¹⁾ He was subject to violent attacks of cholera once or twice a year and disorders in his bowels and a nervous affection, which seized him about two years ago, and had deprived him of the use of his right-hand arm. ⁽²⁾ There is no reason why the capias should not have been issued. It was shown to the satisfaction of Hyde that Raja Sundernarain was indebted to Kashinath in an enormous sum of money; the bonds were executed in Calcutta, and the defendant was alleged to have been employed indirectly in the service of the Company. Nothing more was needed for the issue of a capias.

(1) I.P., vol. 16259, Impey to Thurlow, 11 January, 1780, pp. 294.320.

(2) Ibid; Impey to Dunning, 2 March, 1780, pp. 324-42.

Though Impey did all he could reasonably do to avert the deadlock yet he was fully girded to accept the challenge and unwilling to accept the defeat of the Court.

'I conceive it my duty, while acting within the line prescribed to me, to endeavour to the utmost of my power, to prevent it being diminished by any authority inferior than that from which it was derived, much less to suffer it to be controlled by that power it was meant to restrain. ⁽¹⁾ Delivering his opinion on Rex vs Naylor, he declared in the same spirit;

"I will not shrink from my purpose; I have no authority to command troops; but I can put those who do command them, in a situation to answer to His Majesty for ⁽²⁾ the contempt of His Authority."

And realising in the end that the Court could not fulfill its mission in face of a hostile council, he appealed to Thurlow, that the Court should be armed with additional terror.

'If any shadow of a controlling power over the Company and its servants is to remain, and if any justice is to be executed with effect in the country, it is absolutely necessary that the powers of the Court should be

(1) Ibid; Impey to Weymouth; 18 Jan. 1780, p. 288.

(2) T.C.R. Impey in Rex. vs Naylor, Coss. App. 21; p. 355.

extended, that it should be armed with additional terror.'⁽¹⁾

He detailed his requisition by adding that the jurisdiction of the Court should extend to all provinces that all inferior magistrates should be commissioned by His Majesty and be under the control of the Court, not of the Governor-General and the Council, that the Court should be empowered to entertain appeal and revision in all cases where the cause of action increase Rs1000.

The crisis of Cossijurah had made it known to all concerned that the defective system of government as devised by the Act of 1773 could no longer work. In order to hold the British settlements in India in peace and order, it was necessary either to abridge and define the powers of the Supreme Court or to enlarge them.

(1) I.P.; vol. 16259, Impey to Thurlow, 18 January 1780;
p. 266.

(c) Consequences of the Cossijurah Crisis.

The immediate result of the Cossijurah crisis was the abridgement of the powers of the Court. Its jurisdiction was in effect reduced to the town of Calcutta. Impey wrote to Dunning in March, 1780, that the Court had not yet been able to execute a single attachment out of Calcutta. "This will prove the truth of my assertion, the natives are taught that the powers of the Court had been by the authority of this government restrained to the town of Calcutta."⁽¹⁾

The notice given by the Council to the zemindars on 17 December 1779, that they being not subject to the jurisdiction of the Supreme Court shall not appear, plead or do any such act which might amount on their part to a recognition of the authority of the Court, had, in the words of Impey, created "universal terror" among the suitors of the Court, which could be well imagined by those who were acquainted with the 'extreme sensibility and timidity of the natives'.⁽²⁾ In the same letter Impey reported that verbal intimation was given to the natives that the jurisdiction of the Court did not extend beyond Calcutta.

'I am told from good authority that the Baniyan

(1) Ibid, Impey to Dunning, Mar. 1780; pp. 324-25.

(2) Ibid, Impey to Dunning, 15 June 1780; pp. 270-71.

and other principal servants of Sir. John Day are now sent over the country among the provincial zemindars and collectors to acquaint them how much he is their friend, that he is sent from England to defend them against the Court and to collect contributions from them for his good offices'.⁽¹⁾

The business of the Court was so much reduced that the attornies of the Court petitioned the Chief justice that no new attornies should be admitted to the Court, for, that would reduce their already meagre income. 'The advocates, Attornies, and officers of the Court, who have not already succeeded, will be reduced to a most deplorable situation'.⁽²⁾ It maybe here remarked that Impey's report about the deplorable situation of the attornies was casual and at the most intended to let Weymouth know to what minimum the business of the Court had been reduced. To Dunning he wrote: "I expect by next term we shall be reduced to a Court of conscience".⁽³⁾

To Sutton, Impey wrote:

'It is not proable you will hear more of any exertion of the natives against the power of the government or individuals but the Court will sink quietly into a state of

(1) Ibid,

(2) T.C.R. Coss. App. 26; Impey to Weymouth, 2 March 1780; p. 371.

(3) I.P., Vol. 16259; Impey to Dunning, 15 June 1780; pp. 270 - 71.

(1)
inaction and oblivion'.

The proclamation of the Council had more than a desired effect. The zemindars would not suffer a process of the Court executed in their districts, even if the execution was against a recognized Company's servant. This point can be well illustrated by the case of Budhinath. (2) Kashinath, the plaintiff in the Cossijurah Case, had filed another plaint against one Ramkissore Sharma, on affidavit of debt; the defendant was an Ameen of the Company receiving a salary from Harwood, Chief of Dinajpore. A capias was issued, defendant submitted to the arrest, but was rescued by Budhinath, the zemindar of the place, who confined the Sheriff's officer for one night and released them next morning with a warning never to attempt to execute any process of the Supreme Court. He also told the Sheriff's men that the Governor-General and Council had asked him to suffer no such execution in the district.

Impey refers to another Case wherein a rescue under similar circumstances was effected by Beenut, a zemindar. (2)

(1) T.C.R., Coss. App. 26, p. 370.

(2) Ibid.

The next result of the Cossijurah crisis was a moderate change in the system of administration of justice by the Company's Courts. (1)

The government having resisted by force the process of the Supreme Court, thought it prudent to give some appearance of justice to provincial judicial system. The old Adalats were abolished and new ones created, over each of which was placed one of the junior servants of the Company, who was to take oath to administer justice impartially and take no bribes. (2) The Sudder Dewanni Adalat, which had ceased functioning for long, was revived.

Reform in the provincial administration of justice was a long desired necessity. The Company's Courts needed organisation, coordination and gradation. They needed efficient and honest judges, independent from the executive control, and a well defined body of law to administer. The reforms as introduced after the Cossijurah crisis fell short of supplying all that was needed, yet, it was a step in the right direction, based on certain principles which were embodied in the Hastings-Impey-Plan of 1776. Under the system that had been working before the above change

-
- (1) B. Rev. Consult.; R. 50, Vol. 24, The Plan for the administration of justice, pp. 88 - 124.
- (2) I.P.; vol. 16259, Impey to Dunning, March 1780; pp. 235 - 37. Impey gives a list of Courts and their respective judges.
- | | | |
|--------------|---------------------------------|------|
| Patna | - J. Booth, made writer in..... | 1776 |
| Dacca | - A. Duncans,..... | 1772 |
| Dinajpore | - Benjamin Findale,..... | 1773 |
| Burdwan | - Hugh Austin..... | 1772 |
| Moorshidabad | - Thomas Ives..... | 1773 |
| Calcutta | - D. Campbell..... | 1771 |

was introduced the, members of the provincial council were judges, collectors, and magistrates all rolled in one. Their main concern was collection of revenue, hence the administration of justice was totally neglected. Appointment of separate judges to administer civil justice was a long felt necessity.

Were these Company's junior servants competent enough to administer civil justice? Probably they were not. They did not know the language of the people nor they were proficient in law. They were young, inexperienced and of strong prejudices.

'...Mr. Booth is of the meanest natural part, is totally illiterate in his own and ignorant of any Eastern language and is one of the lowest, most extravagant, dissipated young men in the country' wrote Impey to Dunning. (1)

We may now trace the remoter consequences of the Cossijurah Crisis. One of the two remote consequences was the Act of 1781.

Having violently resisted the Court in the Case of Cossijurah, the Governor-General and the Council, petitioned the House of Commons for an Act of Indemnity,

(1) Ibid.

their petition together with the petition of British inhabitants in India was placed in and debated by the House on 1 February, 1781. (1)

In their petition the Governor-General and Council laid a justification for what they had done against the Court. The justification was based on the contention, that by extending its jurisdiction to the zemindars the Supreme Court had exceeded the limits of its power set by the Act and the Charter, that the revenue of the country would suffer tremendous losses if the zemindars were held liable to the Supreme Court, the Council, therefore, in the interest of government was obliged to resist the process of the Court. In the end it was prayed "that they, and all others acting under their authority, maybe indemnified against all the legal consequences of their proceedings in the Cases herein above recited and suggested, (2) and that an Act of Parliament maybe passed for that end.

On 12 February 1780, the House debated General Smith's motion for a committee on the petitions against the Supreme Court of Bengal. (3) The motion was carried and a

(1) Par. His., Vol. XXI; Petition of G.G. and C.; pp. 1163 - 75.

(2) Ibid, p. 1175.

(3) Ibid, p. 1182 - 91.

committee of fifteen appointed to inquire into and report on the petition. ⁽¹⁾ This Committee is well-known as Touchet Committee. It presented its report in 1781. On the above Committee's report the Bengal judicature Bill was drafted, went second reading in the House on 19 June, 1781; and was consequently passed into an Act.

The Preamble of the Act runs as follows:

'An Act to explain and amend so much of an Act, made in the 13th year of George III, as relates to the administration of justice in Bengal; and for the relief of certain persons imprisoned at Calcutta in Bengal, under a judgment of the Supreme Court; and also for indemnifying the Governor-General and Council of Bengal, and all officers who have acted under their orders or Authority, in the undue resistance made to the process of the Supreme Court.' ⁽²⁾

We have referred to the certain provisions of the Act in an earlier chapter, dealing with the Patna Case. Here

(1) ~~ibid.~~ ibid. This Committee was appointed on 15 February, 1781. Followings were its members:

- | | |
|----------------------------|-------------------------|
| (1) General Richard Smith. | (3) Robert Gregory. |
| (2) C.W.B. Rous. | (5) Edmund Burke. |
| (4) Thomas Farrer. | (7) Hon. John Townsend. |
| (6) Dudley Long. | (9) George Dempster. |
| (8) John Elwes. | (11) William Graves. |
| (10) Lord Lewisham. | (13) William Pulteney. |
| (12) Frederic Montague | (15) Sir. Walter James. |
| (14) Sir. Gilbert Elliot. | |
- (Memoirs', p. 344, F.N.)

(2) 'Collections'; Act of 1781; pp. 203 - 207.

we may briefly refer to those provisions which relate to the powers and functions of the Court and the Council:

(a) The Governor-General and Council of Bengal shall not be subject to the jurisdiction of the Supreme Court for any act done by them in their public capacity

(b) The Supreme Court shall not have any jurisdiction in any matter concerning revenue or concerning any act ordered or done in the collection thereof.

No person shall be subject to the jurisdiction of the Supreme Court on account of his being a landowner, landholder, farmer of land, under-tenant or security for the payment of the rents.

No person by reason of his being employed by the Company, shall be subject to the jurisdiction of the Supreme Court in any matter of inheritance or contract except in actions for wrongs or trespasses. and also except in any civil suit by agreement of parties to submit the same to the decision of the Supreme Court.

The Supreme Court shall have full power to determine all actions against the inhabitants of Calcutta.

(c) The Governor-General and Council shall determine on appeals from the Country Courts in civil cases, and its judgment shall be final, except upon appeal to His Majesty in civil suits the value of which shall be five thousand pounds and upwards.

The Governor-General and Council shall be a Court to hear and determine on all offences committed in the collection of revenue; also they shall frame regulations for the provincial Courts.

(d) '.... That no action for wrong or injury shall lie in the Supreme Court, against any person whatsoever exercising a judicial office in the country Courts, for any judgment, Decree, or order of the said Court, nor against any person for any Act done by or in virtue of the order of the said court.'⁽¹⁾

By its last clause the Act indemnified the Governor-General and Council and persons who had acted under their orders for acts done in resisting the processes of the Supreme Court from 1 January 1779 to 1 November 1780.

(1) Ibid; Cl. XXIV; p. 207.

The Act virtually restricted the jurisdiction of the Court to the limits of Calcutta. It gave absolute power to the Governor General and Council over the life and property of the natives residing in the provinces. The question as to which of the two powers were to be superior; Governor and Council, or the judges, was determined by the legislature in the favour of the former.

The Act in its parliamentary stage was opposed and criticized among others by Dunning, Sutton and Dempster. Dunning and Sutton observed that the Bill censored the judges without hearing them. Sutton insisted "that as it was contrary to justice, to condemn even the guilty unheard, so it was still greater, when the innocent were condemned without a trial; and that the judges in India were innocent, was a fact which he would pledge himself to prove."⁽¹⁾ Dempster objected to that clause which gave the Governor General and Council of Bengal, a supreme, arbitrary, and uncontrollable power over the lives, property, and reputations of the native of India.⁽²⁾

But the opposition to the Bill as offered by a few could not out-balance the full support given it by Burke and his men. Burke gave a long discourse on what the

(1) Par. His. Vol. XXII; p. 549.
(2) Ibid, p. 554.

natives were like and asserted that a despotic system of government was more suited to their traditions than the free and balanced system of government that existed in Britain. By abridging the powers of the Supreme Court, the legislature was tending to establish solid government which would at least give security to the governed. 'This was necessary', Burke argued, 'for the actual preservation of the territories; for no government could subsist without authority', and added that it was perfectly useless for him in that place, and in that season, to inculcate the necessity of strengthening the hands of government in that quarter of the world. (1)

It maybe here observed that the 'American reverses' had much to do with the speedy enactment of the Bill. By misrepresentation of fact, the Governor General and Council had made the directors, and through them the leading men of the country, believe that the Supreme Court by unrestricted exercise of powers had rendered the government unstable and weak. It was impressed upon the men at home that India would be lost to the British Empire if the Court's powers were not abridged. The legislators were alarmed. Hence, when it was given to them by Burke and others, that the only way of retaining Indian possessions was to curb the power of the Supreme Court, they

(1) Ibid; pp. 554-56.

readily agreed. After losing the American Colonies the legislators were determined to retain India at any cost.

There were two alternate solutions for the problem, either to increase the power of the court or to curtail it to the minimum. The parliament applied the second solution without having at least contemplated over the first.

The last and the remotest consequence of Cossijurah crisis was a charge grounded on the proceedings of the court in the above case and added to the articles of impeachment levelled against Impey in 1787.⁽¹⁾

In the above article of impeachment, Impey is accused of 'high Crime and Misdemeanors' on the following alleged facts:

That the writ of capias was issued on an irregular and informal affidavit.

That the Sheriff's men committed several excess in the execution of the writ of sequestration.

That Impey being a privy to the above illegal proceeding of the Supreme Court, was guilty of a 'High Crime'!

It maybe observed at the outset that this charge was never examined, and proceeded against Impey by the House. Now, looking at the charges as they stand on the record, one may reasonably conclude that they are ill-founded.

As regards the affidavit and the capias issued thereon,

(1) Fourth charge (Cossijurah case); Articles of Impeachment; Par. Branch; N. 8; pp. 34-36.

it has been observed before that it was Hyde, and not Impey, who issued the capias; Impey being at that time confined to bed and quite unable to advise or direct his brother-judge Hyde. Besides, there is no evidence to prove that Hyde sought the advice of Impey before issuing the capias. On the contrary, as we have mentioned before, there is evidence to show that Impey did not know of the proceeding of the Court in the above case, until a latter stage, when the Sheriff sought his advice on the execution of the writ of sequestration.

As regards the legality of the writ of capias, we have to refer to rules seventeen and eighteen of the Supreme Court, under which affidavits were made and processes of the court issued thereon. Under the above rules no summons or capias could be issued against the defendant by the court unless the plaintiff specified in his affidavit in what manner the defendant was subject to the jurisdiction of the Supreme Court. ⁽¹⁾ We have observed before that Kashinath in his affidavit specifically mentioned the manner in which the defendant, Raja Sundernarain, was subject to the jurisdiction of the Supreme Court. It may be recalled that the plaintiff did state in his affidavit that the Raja having executed two bonds in the town of

(1) I.P. Vol. 16269, Rules and Orders of the Court, pp. 7 - 8; also T.C.R. Gen. App. 2; p. 71.

Culcutta, on which the plaintiff's claim was based, and being employed in the service of company for collecting revenue was subject to the jurisdiction of the court. It may be further recalled that Raja was in fact indebted to the plaintiff and the latter had in vain explored all possible means to recover his debt. Furthermore, the status of a zemindar, at the time when the affidavit was made, was undefined.

The Act and the Charter did not explicitly exclude them from the jurisdiction of the Supreme Court. If the Court wanted to determine whether the zeminders were, or were not, under its jurisdiction, it had no other means than to issue process for appearance and then to allow the defendant to plead to the jurisdiction. In view of the fact that the defendant appeared to be indebted to the plaintiff, and there was no precedent on the record to show that zemindars were outside the jurisdiction of the court, there is no reason why Hyde should not have ordered the writ against the defendants.

As regards the second allegation that Sheriff's men committed outrages and excesses of enormous magnitude, it may be stated that the allegation is untenable. There is no proof to show that the house of the defendant was plundered and its sacred apartments polluted. On the contrary, as we have adduced before, there is evidence to show that active resistance was offered by Raja's servants

to the execution of the writ of sequestration during the period intervening between the arrival of the Sheriff's men at Cossijurah and their arrest by the army dispatched by Ahmuty.

Supposing that certain excesses were committed by the Sheriff's men on the spot? Were the judges to be blamed for that? Impey mentions in several of his letters, as referred above, that it was likely that Sheriff's men committed excesses in the execution of the court's writs. Why, then, did the Council not bring actions against the Sheriff? The judges could not punish their Sheriff without any formal complaints being lodged and proved against him. The law presumed that the writs of the courts were properly executed unless shown otherwise.

CHAPTER VIII

The Last Three Years: A Temporary Settlement:- (1780-83)

Brief Outline of Events: (1780-83)

The six years old quarrel ended abruptly when the government applied force to resist the processes of the Supreme Court. For the first ten months of the year 1780, the Supreme Court lay humiliated, powerless and helplessly inactive. The alliance between Hastings and Francis which had provided a united front of the Council against the Court during the Cossijurah Crisis, broke in August. They challenged each other to a duel which was fought on 17 August, and in which Francis was hurt. Disappointed at the Court of Directors' decision to continue Hastings in his office, Francis decided to quit India, leaving Hastings in command of the government. With Sir Eyre Coote and his casting vote Hastings now could do what he wanted to do. Impey, the Supreme Court and the Adalats first drew his attention. The Adalats needed organization, effective control and supervision to run efficiently. To establish harmony between the Court and the Council was his other main consideration. By appointing Impey to the judgeship of the Sudder Dewanni Adalat in October, 1780, Hastings served both the ends. The year closed amicably for Impey and the Supreme Court.

Family troubles, illness, and intelligence from England that a hostile select committee had been appointed to inquire into the Touchet Petition, were for Impey the disquietening features of 1781. Yet, he was not insensitive to Hastings' troubles which the latter had incurred during his Banaras Campaign, and went as far as Banaras and Lucknow to help his friend by words and deeds. His Banaras journey had partly restored his health but the disorder in his arm persisted. He was told by his doctors that a complete recovery was possible only in England. Impey decided in August 1781, to apply for leave and sail back to England at latest by Christmas 1782. As he wanted to fight his opponents on equal grounds he wrote to his elder brother and friends asking them to secure for him a seat in the Parliament by the summer of 1783, when he expected to reach England.

In May 1782, the House voted for the recall of Impey; he got unofficial and unconfirmed intelligence of the same by October. He had almost booked his passage home, when he received in November an encouraging letter from Thurlow, pledging his full support and asking him to stay in India until he received an official recall. He cancelled his passage and wrote to his friends that if he was not officially recalled he would stay at least a year longer in India. In the meantime, on 5 November he had resigned the judgeship of the Sudder Dewanni

Adalat which had occasioned his recall. The resignation had been made with reference to the Act of 1781, which had given criminal jurisdiction to the Sudder Dewanni Adalat and turned it in a Court of record.⁽¹⁾

The official letter of recall which was sent on 8 July, 1782, was received by Impey on 27 January, 1783. As the weather conditions were not favourable for a sea voyage and Lady Impey was confined to bed until June, Impey did not leave India before December 1783.

It is now proposed to discuss the major events of these last three years of Impey's stay in India, under the following heads:

- (a) Impey's appointment to the judgeship of the Sudder Dewanni Adalat. (24 October 1780 to 5 November 1782).
- (b) Impey's journey to Banaras and Oudh. (July 1781 to December 1781).
- (c) His recall. (1782-83).

(a) Impey's appointment to the judgeship of the Sudder Dewanni.

We have observed in the preceding chapter that one of the immediate consequences of the Cossijurah crisis was the separation of Dewanni Adalats from the provincial councils and the appointment of separate judges for the Adalats. This arrangement, as Hastings envisaged, would lead towards a better and

(1) I.P. Vol.16260. Impey to Dempster, 18 Nov. 1782, pp.216-21

speedier administration of civil justice in the provinces.⁽¹⁾ But Hastings was disillusioned when the quarrels between the provincial council and the superintendents of the Provincial Adalat grew fierce and frequent.

"There have been violent contentions between the Provincial council at Patna, and the superintendent of that Provincial Adalat; mutual accusations had been preferred; and when he left India, all parties were attending at Calcutta." So deposed John Shakespear before the Select Committee of the House.⁽²⁾ The superintendents were young, impatient, inexperienced and corrupt. Impey in one of his letters to Dunning wrote that the ignorance of those who had so far presided over the provincial courts had been the "causes of the worst oppressions to the natives".⁽³⁾ One of the superintendents, Booth, had on account of the "most gross corruptions and misbehaviour" in his office been compelled to quit it.⁽⁴⁾ "The evils of our Adawluts are incurable. Their real sorrow is in the want of private emolument. I know it, yet though incurable they may admit of palliatives."⁽⁵⁾ This was how Hastings always felt

(1) H.M.S. 154, pp.437-92.

(2) First Report; Shakespear's examination; p.396: John Shakespear had served in India for 14 years; he was chief of the provincial council at Dacca from January 1778 to December 1780.

(3) I.P. Vol.16260; Impey to Dunning, 12 Nov. 1780; p.17.

(4) Ibid., Impey to Dunning, 6 May 1781; p.185.

(5) I.P. Vol. 16262; Hastings to Impey, 22 Jan. 1782, p.185.

about the Company's courts and that precisely was the reason why he was never reluctant to try new expedients.

Thus, the changes introduced in the month of April 1780, did not produce the desired results. Coupled with this, there were certain other factors which brought about another set of changes in the administration of justice in the provinces.

The 'accommodation' between Hastings and Francis, which Sir John Day took months to bring about, was short-lived.⁽¹⁾ Nearly completed during the Cossijurah Crisis it hardly survived till July 1780. In August, Hastings recorded a strong minute against Francis; judging of the latter's public conduct by his private, he found it to be "void of truth and honour".⁽²⁾ Next day Francis challenged him to a duel which was duly accepted by Hastings. On 17 August they fought; Francis was wounded.⁽³⁾ The duel broke the alliance with no hope or desire left in Hastings for reconciliation. With Coote and a casting vote he could thwart a Francis-Wheler onslaught; he had given him absolute patronage of the army and some additional allowances; he earned altogether 32,000 per annum.⁽⁴⁾

The short-lived Hastings-Francis alliance was one of the factors which had turned the Cossijurah affair into a crisis.

-
- (1) I.P. Vol.16259, Impey to Dunning, 27 Jan. 1780, pp.290-93.
(2) Forrest's 'Selections', Vol.II; Proceedings of the Secret Dept. 20 July, 1780. p.712.
(3) EUR.MSS. E.14. Francis Papers. Francis to Lord North, 27 Aug. 1780, pp. 497-500.
(4) I.P. Vol.16259, Impey to Dunning, 15 June 1780; pp.379-80.

It is doubtful whether Hastings if left to himself, would have chosen to march troops to resist the process and arrest the officers of the Supreme Court, towards which he had so been ungrudgingly respectful and which at that time was presided over by his school-days friend.⁽¹⁾ This was the price he paid for the alliance, and during the period the operations were carried against the court, he, as bound by treaty, was obliged to turn a deaf ear to the entreaties of his friend, Impey. The mere fact of his having conversed with Impey was deemed by Francis a breach of contract which needed explanation. When Francis heard about the private conversations which had passed between Hastings and Impey on Cossijuran affairs, he reproachingly called upon Hastings for explanation and was not satisfied until assured that the Governor-General contemplated no deviation from the stand already taken against the court.⁽²⁾

While the Hastings-Francis accommodation persisted, Impey stood humiliated and powerless in the eyes of Indians, whose cause he had championed so far against the excesses of the government. The court lay subdued, its powers annihilated, its independence and dignity impaired. Writing as late as 16 August to Lord Weymouth, Impey stated that not a single attachment had been executed outside the limit of Calcutta.⁽³⁾ The period

-
- (1) Has. Papers, Vol.29128. Has. to Pechel. 14 Mar.1780; p.249.
(2) First Report, 16A; Francis' deposition before the Committee, p.393.
(3) I.P. Vol.16260; pp.5-6.

between January to August was a period of helpless inactivity for the court, and of frustration and humiliation for Impey. "I have been made a sacrifice to new connection. But however close the present union may be between Mr. Hastings and Mr. Francis, I believe you will join with me in thinking that it cannot be durable..... But though the treatment I have received is not what I had reason to expect, I am resolved not to act as adversary to him (Hastings) in any respect, but in the cases in which he has or shall make it necessary for me to do so in self defence" - so wrote Impey to Dr. Fleming on 5 May 1780.⁽¹⁾ As he had written to Dunning so he wrote again to Masterman, in almost the same language and with the same anguish, "that the power which is exerted against me, would not have been in the hands in which it now is" without his assistance.⁽²⁾

After the rupture between Hastings and Francis, Hastings might have realized the futility of an alliance with his avowed enemy and quite naturally have regretted the alienation of his trusted friend, which the alliance had resulted in. There is no evidence, except the deposition of John Shakespear before the Select Committee, that an accommodation between

(1) I.P. Vol.16263; pp.36-38.

(2) I.P. Vol.16260; Impey to Masterman, 1 Mar. 1780; pp.13-14.

Hastings and Impey was effected as early as June 1780.⁽¹⁾ Hastings's problems were manifold. To finance a war, which threatened the extinction of the British from India, he needed money, 'internal peace' and more powers. Internal peace, among other things, required an amicable settlement with the court. The new Adalats having failed in their purpose, were either to be replaced or reformed, if elementary justice was to prevail in Bengal. Hastings devised a plan which he calculated should best serve the exigencies of the time. Not that reform was his first duty in these years; on the contrary, it was "to save British India from extinction".⁽²⁾

On 29 September 1780, Hastings minuted his motion to appoint Sir Elijah Impey to be the judge of the Sudder Dewanni Adalat and laid out the principles it was based upon and the purposes it might serve.⁽³⁾ The motion together with the individual opinion of the councillors was placed before the council on 24 October 1780.⁽⁴⁾ Sir Eyre Coote assented to Hastings' motion; Wheler and Francis opposed; the motion was passed by the casting vote of the Governor-General. Hastings recommended that a salary of 5,000 sicca rupees, and 600 sicca rupees per month for the rent of an office, might be allowed

(1) Ibid.

(2) Feiling's - Hastings, p.245.

(3) B.Rev. consult., 29 Sept.1780, R.50, Vol.28, pp.756-766.

(4) B.Rev. consult., 24 Oct. 1780, R.50, Vol.29, pp.1-21; also Tracts, 77.

to the chief justice for this appointment; and that the motion do lie for the consideration of the board at their future meeting.⁽¹⁾ A formal offer together with board's resolution was sent to Impey who accepted the office, "under its present regulations, and such other as the board shall think proper to add to them or to substitute in their stead".⁽²⁾ The motion regarding the salary was purposely not placed before the council until Francis had left India for England. On being asked by the Select Committee of the House as to what prevented the salary from being affixed to the office, Francis deposed: "That Sir Eyre Coote was gone to the coast, Mr. Wheler and himself were avowedly against the proposition; and of course, if the question had been put, it would have been lost".⁽³⁾ Francis left India on 3 December 1780;⁽⁴⁾ the salary as recommended by Hastings was affixed on 22 December, 1780⁽⁵⁾ As Francis had declared his intention of leaving India at least a month before he actually left, Hastings could well nigh wait until he left.⁽⁶⁾ Impey was officially intimated of the affixation of the salary in January 1781.⁽⁷⁾ On 12 November 1780, Impey

(1) Ibid., p.29.

(2) First Report; App.4; p.432.

(3) Ibid., p.390. Coote reached Madras on 5 Nov. 1780.

(4) Ibid., p.388.

(5) ~~B. Rev. consult.~~ *Ibid.*

(6) As early as 12 November 1780, Impey broke the news to Sutton of Francis' resolution to leave India. (Impey to Sutton, 12 Nov. 1780; I.P. Vol.16260; pp.17-18).

(7) I.P. Vol.16260; Impey to Lord Ashberton, 1 Nov.1782, pp.187-89.

wrote to Sutton, "...no pecuniary satisfaction has been offered or mentioned to me - but I apprehend that my trouble will not go unrecompensed".⁽¹⁾

Immediately after the assumption of the office of the judge of the Sudder Dewanni Adalat, Impey framed a set of regulations, which were revised by Hastings and approved by the council on 3 November 1780.⁽²⁾ By these regulations the judge of the Sudder Adalat was empowered to frame rules and regulations for Sudder and provincial Dewanni Adalats, which on approval of the council were to be binding on provincial Dewanni Adalats. Under the above regulations, petitions for appeal were to be preferred either through provincial Dewanni Adalats or directly to Sudder Adalat. Sudder Dewanni Adalat was empowered to receive fresh complaints and suits and refer them to the provincial Adalat for trial and might try a case referred by Governor-General and Council, and in trying appeals, the Sudder Dewanni Adalat might receive fresh evidences if in its opinion the case had been improperly or insufficiently investigated in the lower court.⁽³⁾

Among the critics of the new arrangement were those who disliked Impey and the Supreme Court. At home, to Burke, and his party it gave an opportunity to arouse popular frenzy

(1) Ibid., p.18.

(2) B.Rev. Consult; 3 Nov. 1780; R.50 Vol.29, pp.271-298.

(3) Ibid.

against Hastings and Impey, to make tirades against their character and integrity and to bring a motion in Parliament for the recall of Impey, which was eventually passed. One of the articles of impeachment, which was exhibited against Impey four years after his recall, related to his acceptance of the judgeship of the Sudder Dewanni Adalat.⁽¹⁾ This charge, more than any other, except one that related to the trial of Nandkumar, reflected upon the moral character of Impey.

We may, therefore, pause here to examine and observe the implications of this episode. With what motive and purpose the offer was made and accepted, and on what grounds it was opposed and criticised? Those who opposed and vehemently criticised the arrangement, were Francis and Wheler in India and a Select Committee of the House at home. The Select Committee which was appointed by the House to inquire into the matter, was briefed by Francis, who at that time was in London, and dominated by Burke. For convenience we shall first describe the argument for and against the arrangement, and then make general observations upon them.

Hastings' motion of 29 September was founded on two main principles: firstly, the new Dewanni Adalats, which had lately entered into a quarrel with the provincial councils, needed

(1) 'Articles of Charge', 5th Charge, Par.Bra. No.8, pp.37-39.

extraordinary attention during their infancy so that "they may neither pervert the purposes, nor exceed the limits of their jurisdiction, nor suffer encroachments upon it"⁽¹⁾. This extraordinary attention and effective control, the Sudder Dewanni Adalat, being constituted as it was of the members of the council, had failed to exercise, and was less likely to discharge that function in future. Therefore, the authority to control and supervise the new courts, without which they cannot thrive, must be vested in a person or body of persons, who by virtue of being in possession of some independent weight, is best suited for the purpose. Sir Elijah Impey by virtue of his superior legal training could be a good instructor to the superintendents of the Adalats and by being the first member of the Supreme Court might restore confidence in them.

Secondly, the appointment of Impey would lessen the distance between the court and the council and supply an 'accommodating temper', the want of which had been the root cause of the quarrel between the court and the council. It was not any accession of power to the court when that portion of authority which was proposed to be given was given only to a single man of the court, "and may be revoked whenever the Board shall think it proper to resume it"⁽²⁾.

Major John Scott on being examined by the Select Committee

(1) B.Rev. Consult., 29 Sept. 1780; R.50, Vol.28; p.757.
(2) Ibid.

on the efficacy of the appointment, said it was advantageous in more than one way. (1) First, it would save the revenue of the Company - the loss of revenues in consequence of appeals made to that court since its institution amounted to about a million sterling. Second, Impey as judge of the Sudder Adalat would not be bound to administer English law which was in many cases vexatious to the natives. Thirdly, the judges of the provincial courts would no longer be apprehensive of being sued in the Supreme Court for their judicial conduct. Fourth, the appointment would effectively prevent the interference of the Supreme Court in the matter of revenue. Fifth, it might bring security at home which, at a time when the government was waging wars against the Marathas, was a dire necessity.

As against the above may be enumerated the opinions of Francis, Wheler, and members of the Select Committee.

To Francis, the proposition, as put forth by Hastings, amounted to a direct contradiction or desertion of everything that was said or done by the council in the Cossijurah case. (2) He argued, if the institution of provincial Dewanni Adalats had caused competitions between them and the provincial councils, it was the duty and business of the council to put an end to them by its authority "which is direct and sufficiently

(1) First Report; pp.396-400: Maj. Scott had served in India for 15 years; for the last two years he was Aid de Camp of the G.G. and also served as a private secretary. He left Calcutta on 9 Jan. 1781. Hastings had appointed him his agent in England for explaining any part of his public conduct.

(2) B. Rev. Consult; 24 Oct. 1780; R.50 Vol.29, pp.1-13.

coercive over both parties".⁽¹⁾ He conceived that the appointment of the chief justice to this office "would clash and be inconsistent with the duties of his present regime".⁽²⁾ Furthermore, this would tend to make a breach between the chief justice and the other judges of the Supreme Court.

The appointment of a single judge to a superior court of appeal was not consistent with the principles of justice. Final appeals should not be heard by a single man. "If all the powers of the Sudder Dewanny Adaulut be vested in one man, yet so vested 'that they maybe revoked whenever this Board shall think it proper to resume them', such a judge may become, in the hands of a corrupt council, an instrument of oppression."⁽³⁾

Wheler supported Francis' stand with remarks and suggestions of his own.⁽⁴⁾ As the council's power to erect Dewanni courts was based on a doubtful interpretation of the Act, he argued, the power to erect a superior court of Sudder Dewanni Adalat was equally doubtful. He conceived that the arrangement would not bring any real conciliation between the court and the council, for, it lacked any real adjustment of principles between them. The new arrangement, by providing an opportunity for the chief justice to examine all the records of the govern-

(1) Ibid.
(2) Ibid.
(3) Ibid.
(4) Ibid.

ment, might do much to hide the government from the eye of the natives. He suggested that before the measure as proposed was applied, several other expedients might be tried. He suggested that either all the councillors and judges should constitute together a court of appeal or the Company's chief law officer or any of the puisne judges might be appointed to the office.

The Select Committee which was appointed on 15 February 1781 to take into account the administration of justice in Bengal, Bihar and Orissa and report thereon, submitted its first report on 5 February 1782.⁽¹⁾ The first report was entirely devoted to Impey's acceptance of the judgeship of the Sudder Dewanni Adalat. On the matter under investigation the Committee examined only three witnesses who were then in England. Of these three - Francis, Shakespear, Scott - two were avowed enemies of Impey and Hastings. Francis was the prime-mover in the whole business. About two months after his arrival in England he wrote to Chambers that except Dunning there was no supporter of Impey and the Supreme Court in Westminster Hall, that Impey was a condemned man and nobody had power enough to save him.⁽²⁾ About a year before the impeachment motion was

(1) In 1781, two committees were appointed; a Select Committee to report on the administration of justice in India, and a Secret Committee to report on the foreign policy of the government. Gen. Smith was the chairman of the Select Committee, and Dundas of the Secret Committee. Cambridge History writes Burke as the president of the Select Committee, which is wrong. (See 'Cambridge History' Vol.V p.192). From Gen. Smith's speech of 1 April 1783 it can be gathered that he was the chairman of the Committee and it was he who presented to the House all the twelve reports which were prepared by the Select Committee. (Par.His., Vol.23, p.718).

(2) 'Echoes', p.232.

brought in the House against Impey, Francis wrote to Chambers, that an attempt would be made to impeach Impey "in whose fate, I know you are interested"⁽¹⁾. In the same letter he assured Chambers that there was no chance of Impey's going back to India and "no administration would supercede you"⁽²⁾. Francis was intimate with Gen. Smith and had insinuated himself into the confidence of Burke. The majority of the members of the Select Committee were hostile to Impey and Hastings. Their observations were a foregone conclusion. On receiving the intelligence of the appointment of the Select Committee and the names of its members, Impey could forecast that their report would be unfavourable.⁽³⁾ When the House was debating a motion for printing the report of the Select Committee, Governor Johnston called it "frivolous, ridiculous, and absurd", fit to be presented on such a day as 1 April.⁽⁴⁾ Sir William Jones objected to the printing of the report "as such a measure, disseminating a charge through the world, unaccompanied by a defence, would create a bias in the minds of men, greatly to the prejudice of persons who were the objects of this report".⁽⁵⁾ Nevertheless, though the reports "undoubtedly display a certain amount of prejudice, yet they have often been unduly neglected

(1) EUR.MSS; Francis' Papers; Francis to Chambers, 20 Dec. 1786; E.19 Letter no.13.

(2) Ibid.

(3) I.P. Vol.16260; Impey to Masterman, 14 Sept. 1781; pp.46-51.

(4) Par. His. Vol.23. pp.715-16.

(5) Ibid.

by the historian, and their value as a storehouse of facts and documents is considerable."⁽¹⁾

The committee classified its observations mainly under five headings, viz. on powers and authorities of the office of the judge of Sudder Dewanni Adalat, on the circumstances in which the arrangement was made, on the expediency and policy of that establishment, on the legality of the authority upon which the arrangement had been made, and on the evil effects of the arrangement upon the natives, government, judges and British subjects in India.⁽²⁾ Most of the committee's arguments are a mere repetition of what Francis had minuted in the consultation, or stated before the committee. Hence we do not need to mention them. The committee observed that the circumstance and the manners in which the transaction was hurriedly completed cast reflection upon the motive of its executors. The advice of Sir John Day, the Company's advocate-general, was not sought on the legality of the transaction. On the expediency and policy of the establishment, the committee remarked:

"The power of the Governor-General over the whole royal and municipal justice in Bengal, Bihar, and Orissa, is as absolute and uncontrollable, as both those branches of justice are over the whole kingdom of Bengal. In that situation the Governor General is enabled to do things under the name and

(1) Cambridge History, Vol.V, p.192.

(2) First Report, pp.403-15.

appearance of a legal court, which he would not presume to do in his own person. The Refractory to his will may appear as victims to the law; and favoured Delinquency may not appear as protected by the Hand of power, but cleared by the decision of a competent court."⁽¹⁾

As regards the legality of the transaction, the committee observed that the Sudder Dewanni Adalat, as constituted under the new arrangement, seemed to be a new court, for, whereas the old court was only a court of appeal, having five judges who were servants of the Company, the new court had appellate and original jurisdiction and was constituted of a single judge who was a crown-servant. Whether the council had a power to create a new court, the committee after examining the two sections of the Act of 1773 (Secs. 36 and 37) which relate to council's power to pass ordinances and by-laws, found that the Act did not intend to transfer to the council such an absolute legislative power, by which it could create a new court. However, the committee does not seem to have been certain about the illegality of the arrangement. Nevertheless, it observed that the arrangement was illegal on procedural score. Under the Act of 1773, any ordinance or by-laws must be registered in the Supreme Court, which formality having been not observed in the present case,⁽²⁾ the whole transaction was illegal.

(1) Ibid.
(2) Ibid.

The committee further observed that the arrangement had violated another section of the Act which prohibited the members of the council and the judges of the Supreme Court from taking any other emoluments than what was attached to their office. (1)

On the effects the arrangement would produce on the natives, the committee observed that this would deter the natives from preferring complaints in the Supreme Court against the council and to council against the court. The younger judges would be displeased at the settlement, they would lose interest in their work and might try for lucrative appointment in the service of the Company. Those members of the council who opposed the settlement might feel that Hastings had deserted them by appointing a man against whom they lately fought so unitedly. The British subjects, who had lately petitioned against the court, would feel mortified at the elevation of their enemy to such an office. They would rightly think that the Governor-General had forgotten the death of Naylor and gone a long way to reward the person against whom he had fought lately.

In conclusion the committee observed that Francis and Wheler had acted consistently and properly in resisting the new arrangement, and Chambers and Hyde had no share in or been assenting to any part of it. (2)

(1) Ibid.
(2) Ibid.

Observations on the settlement.

We have given above the opinion of both sides on the issue, with a few comments on the composition of the Select Committee and its biased attitude towards Hastings and Impey. We may here pose a few questions. Was the whole arrangement a compromise? If a compromise, was it between Hastings and Impey, court and council or justice and political convenience? With what real motive had Impey accepted the offer? Was it a mere lust for power and money or a sense of public service which induced Impey, who had so far been an uncompromising champion of the court's independence, to accept a job under the control of the council? Was the arrangement attended by some useful results? An attempt may be made to answer the above questions.

Those who opposed the arrangement, in India and at home, seemed to have miscalculated, either intentionally or unintentionally, the extent of the jurisdiction and powers of the Sudder Dewanni Adalat. The superstructure which was raised in October 1780, was based on the substructure which was laid by Hastings in April 1780. The new Adalats which were erected in April were deprived of all revenue-jurisdiction, which lay with the provincial councils. The Adalats were to try only such civil suits which involved matters of succession, inheritance, personal property, and debts between the natives. (1) They were

(1) H.M.S. 154; pp.437-92.

even denied the power of summoning a farmer, renter, zemindar or any revenue collector of other description. The arrangement made in October introduced changes in the composition of the court of appeal, but no change in the jurisdiction and powers of the subordinate courts. The revenue-officers whom Impey called the potential oppressors, remained outside the jurisdiction of his Sudder Dewanni Adalat. All revenue cases, and all complaints against the revenue-officers, were to be instituted in the provincial councils. Appeals against the decisions of the provincial councils lay with the Governor-General and the council. Thus, in coming to a settlement with Impey and the Supreme Court, Hastings did not give up any claim which he had so far withheld against the court. The court and the council had been quarrelling over the amicability of the farmers and zemindars to the jurisdiction of the Supreme Court. This was the issue directly involved in the Cossijurah case. Thus, the allegation of Francis that the arrangement amounted to a direct contradiction of everything that was said or done by the council in the Cossijurah case, seems ill-founded. On the contrary, we find that Hastings by assuaging the acrimony that existed between the court and the council, tactfully secured for the future a 'non-interfering attitude' of the judges in revenue matters.

Another objection that the appointment of the chief justice

to Sudder Dewanni Adalat would clash and be inconsistent with his duties as chief justice of the Supreme Court, seems more imaginary than real. Francis argued, suppose a suitor brought an action in the Supreme Court against the chief justice for having acted illegally in the Adalat, the chief justice would stand as a party in a court where he should preside. "Again, suppose a person committed by any of the inferior Adauluts, or by the chief justice of the Sudder Adaulut, should apply to him for a writ of Habeas Corpus, should he refuse the writ, because the grounds of the committment are already known to him?"⁽¹⁾ The above two hypothetical cases were based on the proceedings of the Patna case. Could it be imagined that Impey, with all his profound legal learning and professional integrity, would act as ignorantly and illegally as the members of the Patna Council did in the case of Naderah Begum? Supposing, for the sake of argument, that he did; even then we do not find the clash between his two offices as envisaged by Francis. The Supreme Court had very clearly laid down in Gowrychand's case that except for 'manifest corruption' it could not entertain any suit for illegality or irregularity in the proceedings of the Company's court. Therefore, the chief justice, as the judge of the Sudder Dewanni Adalat, could be sued (though it was highly improbable)⁽²⁾ in the Supreme Court only for 'manifest corruption'.

(1) B.Rev.Consult. 24 Oct. 1780; R.50 Vol.29, pp.8-10.

(2) In the 69th Article of the Code which Impey drafted for the functioning of the Adalats, he laid down that "if the judge of the Sudder Dewannee Adaulut receive any money, he is to incur the like penalties and forfeitures" as are before enacted against officers of the Mofussil Dewanni Adalats. (Duncan's 'Regulations' - Duncan to G.G.&C. p.4).

The fear that his integrity might be questioned in the Supreme Court by his brother judges, if ever he became corrupt, was likely to deter him from becoming an instrument of oppression in the hands of a corrupt council. As regards the second hypothesis of Francis, it may be once again observed that the Sudder Dewanni Adalat and its subordinate courts had no criminal and revenue jurisdiction. As we have observed in the preceding chapter, almost all the petitions for Habeas Corpus were filed in the Supreme Court by those who were imprisoned for arrears of revenue. In most of the cases the court found that the petitioners were committed by revenue-officers for an indefinite period and under no regular decree or order of a competent court. The Sudder Dewanni Adalat, first of all, was least likely to commit a person; if it did, the commitment might be in satisfaction of a regular and lawful decree of the court. A prisoner committed under such circumstances, first, would not dare to move the Supreme Court for a writ of Habeas Corpus; if he did, the judges in all probability would reject it summarily.

Criticism of the arrangement in that it placed the power of hearing in a single person, is based on a juristic equity and for that reason is more theoretical than practical. Under situations as they existed at that time the choice lay between

'no-appeal' and 'appeal to a single person'. Quite naturally, the choice fell on having something rather than nothing. The members of the council had ceased to sit in the Sudder Dewanni Adalat since 1775. They had no time and no interest to understand the intricacies of Hindu and Muslim laws. The members of the provincial council, who constituted the Dewanni Adalats before the changes were introduced in April 1780, were equally disinterested in the administration of civil justice to the natives. Trade, territory and revenue, not the administration of justice, were the pressing concerns of the Company's servants. Consequently it was the native law-officers, the ill-paid Kazies and Muftees, who administered civil justice in the name of the members of the provincial council. Since the court of appeal had closed its doors at Calcutta, the decisions of these native law-officers, in fact, were final. Now, it may be asked, was it commendable to rest satisfied with this state of administration of civil justice in the provinces or to place at the top of the system a judge of Impey's calibre, who by his vigour, legal knowledge and professional interest, might organize the Adalats and instruct their judges? The system required an organizer and an instructor, with full powers to get it going. We shall shortly observe that within such a short period as one year Impey set the whole system on the right footing.

Wheler's suggestions that either all the judges and councillors should constitute together the court of Sudder Dewanni Adalat or the Company's law-officer or any of the puisne judges should be appointed to the office, deserves notice. Impey and Hastings had drawn a plan in 1776, which was referred to by Wheler, and which we have discussed in an earlier chapter. That was a most comprehensive plan, which united the judges and the councillors into an all-powerful legislative, judicial and executive body. Uniting the judges and the councillor in a body for the administration of a branch of civil justice would have been more pompous than useful. A body of eight persons, by no means harmonious, would have been ill-suited for the purpose. Besides, it is doubtful whether the councillors had time enough to sit in the Sudder Dewanni Adalat. When they had not found time for the last six years, it was highly improbable that in future they would find enough time and interest for the affairs of the Sudder Dewanni Adalat. Furthermore, such a plan, which institutionally united the judges and the councillors in a separate body, might need the prior sanction of Parliament. Appointing a Company's law-officer to the judgeship of the Sudder Dewanni Adalat was more incomprehensible. Among the Company's law-officers at that time there was only one, Sir John Day, who could be considered qualified and competent for the post. But Sir John was the

Company's advocate-general, appointed by the Letters Patent. He could not be appointed to be the judge of a Company's court until he relinquished the office of advocate-general. He could not be a judge and an advocate at the same time and possibly in the same court. The appointment of a puisne judge instead of the chief justice at the head of the Sudder Dewanni Adalat would mean a preference based on no reason. Stephen doubts whether anyone else in India, except Chambers, would have been able to frame the voluminous codes and regulations which Impey framed for the Adalats.⁽¹⁾

At any rate, had the offer been made to any of the puisne judges there is no reason why the chief justice would not have felt insulted. Although, it can be conjectured with some certainty, had Chambers been appointed to the office, Francis' minute would have been written in support rather than in opposition to the arrangement. His opposition was based not on principles, but on personal prejudices. He was opposing Impey; Impey the friend of Hastings; Impey the judge, who had very lately found him guilty of adultery.

Commenting on the haste with which the transaction had been completed, which shrouded it in clouds of suspicion, the Select Committee remarked, as we have mentioned above, that the advice of Sir John Day was not sought on its legality. It was

(1) Stephen's, Vol.II. p.247.

Francis who had stated before the Committee that the advice of Sir John was not taken, and that Sir John had told him in a private conversation that the transaction was illegal.⁽¹⁾ We have observed in the preceding chapter that Sir John belonged to Francis' camp. He had personal prejudices against the judges of the court. He was bound to give an uncandid and preconceived opinion on the matter at issue.

The committee observed next that under the settlement the Governor-General virtually became possessed of absolute control over the municipal and royal courts; so much so, that he could command the court to commit or acquit a person according as the person was a refractory to his will or a favoured delinquent. The observation is too ostentatious to deserve any serious consideration. The committee does not show under what clause of the settlement and how the Governor-General came to possess such enormity of power. Under the settlement the Governor-General derived no more power than any other member of the council. He had no more than a friendly influence on Impey. Supposing that by accepting the patronage of Hastings Impey became a tool in his hand. Could that tool be so effectively used as to command and dictate to the other judges of the Supreme Court?

Impey had evinced by his conduct in the Cossijurah case

(1) First Report; 16a; p.388.

that he would suffer a rupture of his private friendship than compromise with the independence and jurisdiction of the court. In one of his letters to Wallace he remarked:

'.....as I am conscious of having acted to the best of my judgment in pursuance of my duty, (of which the sacrifice of my private friendship when put in competition with it, is I think some evidence) I have no apprehensions for myself.'⁽¹⁾

The committee's observations upon the effects produced by the 'arrangement' on the natives, judges, British subjects and the dissenting councillors, seem equally untenable. The committee contended that the settlement would deter the natives from seeking remedies in the Supreme Court against the servants of the Company. We have observed before that a large percentage of the remedies which the natives used to seek in the Supreme Court were against the oppressive and corrupt acts of the Company's revenue-officers. A few months after the settlement was made Parliament, by passing the Act of 1781, expressly prohibited the Supreme Court from entertaining complaints or suits regarding matters of revenue. Supposing that the settlement did deter the natives from preferring complaints against the government in the Supreme Court. Did it matter much when only after a few months the Parliament itself made it illegal to seek such remedies in the Supreme Court? In fact, the

(1) I.P. Vol.16260; Impey to Wallace, 9 Oct. 1781; pp.75-76.

settlement had not such effects as the committee supposed it to have. Between October 1780 and May 1781, at least two matters had come before the Supreme Court which could have any tendency to keep up the division between the government and the court.⁽¹⁾ The first concerned a resistance to the court's process, but the prosecution was dropped; the other was a suit against one on the provincial chiefs and his council, "for forcibly dispossessing a suitor of the court, who had been in quite possession of land under an execution of the Supreme Court, and repossessing the person against whom judgement had been given."⁽²⁾ Impey proposed an arbitration to which the defendant, which in this case was the government, and the plaintiff agreed. Here we can see the real effect of the settlement; it had assuaged the acrimony that had for so long persisted between the court and the council. Referring a dispute to an arbitration so that the parties might reach an amicable settlement betrays an 'accommodating spirit', which the settlement had brought in the judges of the Supreme Court.

As regards the adverse effects the committee supposed the settlement might have produced upon the brother judges, it may be observed that Impey did consult Chambers who assured him that the transaction did not violate any provision of the Act of 1773.⁽³⁾

(1) Ibid., Impey to Thurlow, 4 May 1781, pp.67-72.

(2) Ibid.

(3) Ibid., Impey to Sutton, 31 Aug. 1781, p.78.

Wheler, who had opposed the proposition in the beginning, seems to have later apologised to Impey and confessed that his opposition was prompted by party-principles rather than personal convictions.⁽¹⁾ The persons who might have been really mortified by the settlement were a couple of British subjects and a large percentage of the Company's servants who had personal grudges against the court. We have seen in the preceding chapter how, for what reasons, and under what circumstances a petition was filed against the court to Parliament. Col. Watson Creasy, Fay and Hickey, among others, were the avowed enemies of Impey and it was they who had procured subscriptions to the petition against the court.⁽²⁾ Col. Watson, who was the leader of the opposition, organised against the court, had been for long a good friend of Impey before he was held liable in a suit filed against him in the Supreme Court; since then he had turned into a personal enemy of Impey, for, he had expected his friend to turn the scale of justice in his favour.⁽³⁾

We may refer to the opinion of Dunning, Wallace, Mansfield and Rous, who were the distinguished jurists of the time.⁽⁴⁾ Though they had professional affinity with Impey, yet they were more impartial than the members of the Select Committee. Their

(1) Ibid., Impey to Dempster, 18 Nov. 1782, pp.216-21.

(2) Ibid., Impey to Sutton, 31 Aug. 1781, pp.76-77.

(3) Ibid.

(4) First Report; App.3. 16a; pp.417-23.

opinion was sought by the Company on the issue of the appointment of Impey to Sudder Dewanni Adalat. Dunning, Wallace and Mansfield were of unanimous opinion that the appointment with the salary affixed to it was legal, not contrary to the Act of 1773, and quite compatible with Impey's duty as chief justice of the Supreme Court.⁽¹⁾ Rous gave a dissenting opinion, holding that the appointment with a salary was contrary to the Regulating Act. After a few days, Mansfield revised his former opinion. Although the Act did not expressly prohibit the judges from accepting any such office with a salary affixed to it, Mansfield believed that the intention of the Act was to create an independent judiciary; Sec.23 of the Act prohibited any reward being accepted by the judges.⁽²⁾ Under such circumstances he doubted whether the acceptance of the office was legal.

Thus we find that the opinion of the counsellors was equally divided on the issue; though Mansfield expressed doubts and not a definitive disapprobation. Keeping in mind

(1) Ibid., p.422.

(2) "That no Governor General or any of the Council of the said United Company's Presidency of Fort William in Bengal, or any chief justice, or any of the judges of the Supreme Court of Judicature at Fort William aforesaid, shall, directly or indirectly, by themselves, or by any other person or persons for his or their use, or on his or their behalf, accept, receive, or take, of or from any person or persons, in any manner, or on any account whatsoever, any Present, Gift, Donation, Gratuity, or Reward, pecuniary or otherwise, or any Promise or Engagement, for any Present, Gift, Donation, Gratuity, or Reward." (Extract from Sec.23 of the Act of 1773 - 'Collections' p.150). It is to be observed that the Act does not expressly prohibit the taking of remuneration for additional services done to the Company.

that Wallace and Dunning were the friends of Impey, we may not be inclined to put enough weight on their opinion. Had not the office been a salaried one, the counsellors would have assuredly been of one opinion about the legality of the transaction. It was, therefore, the affixation of the salary to the office and its acceptance by Impey that caused the controversy.

Sixty years afterwards Macaulay commented on this transaction in the following words:

'It was understood that, in consideration of this new salary, Impey would desist from urging the high pretensions of his court. If he did urge these pretensions, the Government could, at a moment's notice, eject him from the new place which had been created for him. The bargain was struck, Bengal was saved, and appeal to force was averted; and the chief justice was rich, quiet, and infamous.'⁽¹⁾

Mill conceived that by offering to the chief justice a large portion of money and power, the government "lost no part of that power which they lent to him, but gained the command even of that which he derived from another source."⁽²⁾

Even Stephen, who believed that the arrangement made in November was the "only way in which it was possible to lay the

(1) Edinburgh Review 1841-42; Vol.174; Warren Hastings, p.204.

(2) Mill, Vol.IV, p.351.

foundation of anything like a regular and efficient administration of justice in India", could not find an absolute justification for Impey's conduct in receiving the salary. He thought, if Impey had refused the salary either absolutely or till the express sanction of the Ministry for the whole measure was received, his conduct would have been absolutely justified; if he had received the salary without informing His Majesty's minister, his conduct would have been regarded as improper and a justification for his recall; the middle course which he adopted did not amount to an absolute justification of his conduct, but in great measure excused it. ⁽¹⁾ Barwell Impey in his 'Memoris' emphatically denies that his father ever ⁽²⁾ accepted the salary.

At this stage our inquiry must, perforce, be carried into the conduct of Impey, prior and subsequent to the completion of the transaction. Did he really accept the salary? If he did, did he accept it knowing that it was contrary to the intention of the Regulating Act?

The fact, which has so far not come to the notice of those who have commented on this subject, is that before leaving England Impey had conversed with Thurlow on the probability of his being offered the judgeship of the Sudder Dewanni

(1) Stephen's, Vol.II; p.241.
(2) 'Memoirs'; p.227 FN.

(1)
Adalat. Thurlow as we shall presently see, had given his prior approval to such a measure. Informing Lord Thurlow of his acceptance of the office with the salary affixed to it, Impey wrote:

'This I took to be conformable to the conversation I had the honour of holding with you, when I suggested the probability of such a proposition being made to me.'⁽²⁾

On 31 August 1781, he wrote to Sutton:

'The office I thought I might safely accept first because I had conversed with Thurlow, then Attorney General, in England on the probability of an offer of the same appointment being made me, when he said he thought I might take the office but would do right to write to England before I applied any salary to myself.'⁽³⁾

At the time when the office was accepted by Impey Thurlow was the Lord Chancellor, the official superior of Impey. In conformity with the Chancellor's desire, Impey took the earliest opportunity to inform him of his acceptance of the council's offer and sought his advice on the propriety of accepting the salary which was attached to the office and which he would not

(1) Stephen, who alone seems to have gone through the private papers of Impey, has overlooked a few letters which prove that Impey had obtained the approval of Thurlow prior and subsequent to his acceptance of the office. Thurlow was Attorney-General when Impey left England; he was appointed Lord Chancellor on 2 June 1778.

(2) I.P. Vol.16260; Impey to Thurlow, 4 May 1781; p.69.

(3) Ibid.; Impey to Sutton, 31 Aug. 1781; p.78.

apply to his own use until he got the approval of His Majesty's⁽¹⁾ ministers. In January he got the intimation about the salary; in April he wrote to Thurlow:

'In January last the Governor-General and council settled the establishment of the judgeship of the Sudder Dewanny Adalat at 5000 rupees per month; this I have received, but shall be ready to refund it, if you or any other of His Majesty's⁽²⁾ ministers shall intimate to me that it is improper.'

There is evidence to suggest that Impey did not touch the salary. After he wrote the above letter he wrote another letter to one of his friends, and in that letter he mentioned that:

'The salary has been received by my Baniyan who is the officer to receive it, and the other money for the establishment of the court, but it has not been applied to my use; it is kept in sealed bags separated from my other cash.'⁽³⁾

Writing again to Thurlow in May, Impey sought his definitive approval and expressed his readiness to refund the salary received so far if its acceptance was deemed improper.⁽⁴⁾ He informed the council of his intention to defer applying the salary to his own use until he heard from the Lord Chancellor:

'As this is the first opportunity I have had of addressing you since you were pleased to appoint a salary for the judge of

-
- (1) Ibid., Impey to Lord Ashberton, 1 Nov. 1782; pp.187-89.
(2) Ibid., Impey to Lord Thurlow, 1 April 1781; p.46.
(3) Ibid., Impey to (X), Date nil; pp.6-65.
(4) Ibid., Impey to Thurlow, 4 May 1781; p.69.

the Sudder Dewanny Adaulut I now take it, to return you my thanks for this mark of your attention to me. When you did me the honour of appointing me to the weighty trust which belongs to the office of the Sudder Dewanny Adaulut, I immediately acquainted His Majesty's Lord Chancellor therewith and have since informed him that a salary has been annexed to the office, but that I should not apply it to my own use if it was thought improper by His Majesty or His Lordship..... It has been paid to the person who receives the salaries of the officers and of the court, but I shall not suffer it to be applied to my use until I can hear from England.⁽¹⁾

A letter of similar import he wrote to Sutton, informing him that he had taken the earliest opportunity to inform Thurlow and Wallace about the office and the salary attached to it, and that he would not apply the salary to his own use until he heard from Thurlow.⁽²⁾

In June 1782, when Impey had almost made up his mind to leave India on health grounds, he again wrote to Thurlow:

'I wrote to you ... that the Governor General and the council had fixed a salary of 5000 rupees monthly on the judge of the Sudder Dewanny, that I had deferred applying it to my own use, till I was furnished with your opinion about, as I most probably shall not be able to receive that before I embark

(1) H.M.S. 173; Impey to council, 5 July 1781, pp.358-59.
(2) I.P. Vol.16260; Impey to Sutton, 31 Aug. 1781, p.77

for England I shall pay every rupee into the Company's treasury before my departure which be applied to the use of the Company, (1) if it is thought I ought not to receive it.'

A similar resolution that before leaving India he would refund the salary, he conveyed to his friend Sutton. (2)

The long-awaited letter of Thurlow was at last received by Impey on 4 November 1782; by then he had nearly resigned the judgeship of the Sudder Dewanni Adalat. (3) This letter of the Chancellor's was dated May 1782; possibly it was written after Parliament had passed the recall-motion against Impey. (4) In his letter Thurlow seems to have given Impey his warm support and approved his past conduct. Referring to this letter Impey wrote to Popham and Kerby:

'I was about to leave this place, but in consequence of a most warm and strong letter from Lord Thurlow I have resolved to stay till a formal recall shall arrive.' (5)

-
- (1) Ibid., Impey to Thurlow, 6 June 1782; pp.134-5.
 - (2) Ibid., Impey to Sutton, 6 June 1782; pp.140-1.
 - (3) Ibid., Impey to Dr. Smith, 30 Nov. 1782; pp.214-16. (In this letter Impey gives the date on which he received Thurlow's letter).
 - (4) Ibid., Impey to Michael, 17 Nov. 1782; pp.192-3. Stephen's observation that Impey wrote so many letters to Thurlow from India but got replies to none of them is wrong. (Stephen's, Vol.I, p.33). At least Thurlow wrote thrice to Impey; his first letter was miscarried; (Impey to Thurlow, 12 Aug. 1778, I.P. Vol.16259, pp.194-206), his second letter, dated 20 June 1780, was received by Impey almost after a year through Pott whom Thurlow had recommended to Impey for patronage (Impey to Thurlow, 6 June 1782; I.P. Vol.16260, pp.127-35), and the third letter was received in Nov. 1782.
 - (5) Ibid., Impey to Cator, 20 Nov. 1782, pp.204.

To his brother, Michael, he wrote that Thurlow had given him his full support:

'I think I should behave improperly towards my friend and patron should I after such a promise desert my post.'⁽¹⁾

The various extracts from Impey's letters, as quoted above, go a long way to show that Impey had obtained the prior approval of Thurlow to his accepting such a salaried office which was offered to him in October 1780; that even after accepting the office he did not appropriate the salary to his own use and kept it separate from his other cash; that in conformity with Thurlow's desire and his own conscience he informed his superior in office about the salary, and that in all probability he did not touch the salary till November 1782, when he received the approval and support of the Lord Chancellor. It is doubtful whether he ever applied the salary to his use, even after receiving Lord Thurlow's warm support. In November 1782, when he received Thurlow's letter, he knew that Parliament had passed a motion for his recall. He was apprehensive of an official recall which he might receive any day. Under such circumstances he could hardly be expected to appropriate to his own use the salary which he had not touched for a year. Only after two months did he receive the official recall. As the recall related to his acceptance of the office of Sudder Dewanni Adalat, Impey might have decided to refund the salary to the

(1) Ibid., Impey to Michael, 17 Nov. 1782, pp.192-3.

Company and maintain a strong defence against the charge. Whether he ever appropriated the salary is a matter of speculation, but this much is certain, that while he held the office of the judge of the Sudder Dewanni Adalat, he kept the salary apart and did not use it. The only use he made of this 'untouchable salary' was to borrow a sum of Rs.2700 from the Company on its security to send home. (1)

He wrote to Selburne that his salary as chief justice being in arrears, he had borrowed Rs.2700 from the Company to send home. (2)

Besides the Lord Chancellor's prior consent and subsequent approval, the existence of a strong precedent was the second factor which induced Impey to accept an additional job. The office he thought he might safely accept "because the judges are not under restrictions other than the members of the council, and no objection was ever taken to Clavering and Sir Eyre Coote being appointed commanders-in-chief". (3) Robert Chambers had told Impey that the acceptance of the office was not contrary to the Act. (4) On 7 July 1781, Robert Chambers himself was appointed to be the President of the Court of Chinsura, and an additional salary of Rs.3000 per month was attached to his

-
- (1) Ibid., Impey to Thurlow, 29 Oct. 1782; pp.183-87.
(2) Ibid., Impey to Selburne, 18 Oct. 1782; pp.169-172.
(3) 'Memoirs', pp.227 FN.
(4) I.P. Vol.16260; Impey to Sutton, 31 Aug. 1781, p.78.

(1)
office, which office he duly accepted and occupied until
15 November 1782, when he resigned it. (2) Whether that clause
of the Regulating Act which prohibited both the judges and
councillors from accepting any emolument, other than that which
was attached to their office, was mandatory or persuasive is a
matter for legal disquisition. If it was mandatory and express,
Clavering, Coote and Chambers were more guilty than Impey, for,
unlike others, Impey had abstained from appropriating the
salary of his additional office.

In this connection it may be further observed that while
accepting the office in October 1780, Impey was not certain that
a salary would be attached to it in due course. (3) If money,
and money alone was the main inducement Impey might have tried
to secure a formal assurance or understanding from the council
about the amount of compensation they would pay for his
troubles. He accepted the offer not because it promised
pecuniary advantages in the future, but because by making the
offer to him the council in fact reposed in him a trust "at a
time when I am engaged in the most disagreeable contests with
the Government". (4)

(1) Fourth Report 16A; pp.651-53.

(2) H.M.S. Vol.352, Statement of proceedings, pp.147-51.

(3) I.P. Vol.16260, Impey to Sutton, 12 Nov. 1781; p.18.

(4) Ibid., p.17.

Nevertheless, he had every reason to expect that his troubles shall be recompensed. To Dunning he wrote:

'I shall not receive the emoluments of the office for nothing, for besides my being kept in continual daily attendances and to long hearings, the correcting inveterate abuses, the drawing rules and instructions for practice, the attention to see that they are observed, the getting the courts with regular habits, and the forming a new code by the revision of all the regulations which have been heretofore made which are rather voluminous, and to be picked out of extraneous matter - is a work of great fatigue in this.....climate and a labour which half a year ago my constitution would not have allowed me to undertake.'⁽¹⁾

The above statement of Impey can be supported by what he actually did while he held the judgeship of the Sudder Dewanni Adalat. Between October 1780 and July 1781, Impey prepared a code of procedure for the Dewanni Adalats.⁽²⁾ He was, for that reason, the first of Indian codifiers. Stephen, who himself was a codifier and had the credit of drafting the India Evidence Act, writes that Impey's work was not of genius like Macaulay's

(1) Ibid., Impey to Dunning, 6 May 1781; pp.64-65.

(2) Duncan's 'Regulations'; pp.1-215.

This code of procedure consisted of 95 Articles. Duncan made but few alterations and the code was passed by the G.G. and council in 1783.

Indian Penal Code, "but it is written in vigorous manly English,
and is well arranged".⁽¹⁾ It remained in force for six years,
when it was re-inacted with amendments and addition by the
Regulations VIII of 1787.⁽²⁾

We have discussed the matter in its various implications and found that objections which were made to the settlement and the charges which were hurled against Impey were ill-conceived and untenable. Nevertheless, it was not public spirit which alone induced Impey to accept the office. Nor was the lust for power and money the main inducement. Impey being brought up and trained in English legal traditions, was quite naturally in favour of establishing in India a single uniform judicial system. He had been always irreconciled to the existence of the two separate judicial systems, one under the Company's control and the other under royal patronage; more so after his discovery that the Company's courts bore no semblance of justice. The plan of 1776, drafted by Impey and Hastings, was a sincere attempt to combine the two systems in a single whole. We have seen that the plan did not receive the attention of the home government. The settlement of 1780, though it did not completely unite the two judicial organizations in a single whole, gave an opportunity to Impey to be at the head of both the systems and thereby bring some uniformity in the administration of justice.

(1) Stephen's, Vol.II; p.246.
(2) Ibid.

At the time when the offer was made to him he had given up all hopes of holding the cause of the Supreme Court against the government. The Supreme Court lay subdued, humiliated and deprived of all powers. An offer, which by placing the chief justice at the head of the Company's courts would tend to restore in the Supreme Court and its judges their lost dignity, was bound to be readily accepted. The fusion of the Company's courts with the Supreme Court lay in the logic of the history. What Hastings and Impey tried to achieve in the past was done in full by the High Courts Act of 1861, which amalgamated the Sudder Dewanni Adalat with the Supreme Court.

Commenting on the settlement, Thornton writes that Impey by his own act "effected that which all the ingenuity of his enemies would have failed to accomplish".⁽¹⁾ To this it may be said that firm conviction in the justness of his conduct made Impey so bold and open, that notwithstanding that a loud cry had been raised lately against the Supreme Court and a petition was being laid against it in Parliament, he accepted the offer with loquacity. He was a little doubtful about the legality of accepting the salary; hence he did not appropriate it while he held the office and possibly refunded it to the Company before leaving India.

(1) Thornton, History of British India; p.141.

(b) Impey's journey to Banaras and Oudh.

(July 1781 - December 1781)

The settlement of 1780 established complete harmony between the court and the council. ⁽¹⁾ But for domestic troubles - Lady Impey's miscarriage, the illness of Marian, and the disorders of Impey's arm and bowels - the first part of the year 1781 was spent in peace and contentment. In July Impey left Fort William on a tour of Bengal and Bihar, partly for a change of climate and partly for inspection of the district Adalats. In the same month Hastings left for Banaras and Lucknow.

While Impey was at Moungher he received the news of Hastings' operations against the refractory Raja of Banaras. The rebellion had started with the massacre of three English lieutenants and lasted until the end of September, when it was finally suppressed. On the request of Hastings, Impey reached Banaras on 25 October with Lady Impey and Mrs. Hastings. He approved of every measure which Hastings had taken against Chet Singh, from his arrest to his dispossession, and took affidavits from various persons, at Banaras and Lucknow, to authenticate the 'narrative' which Hastings had written of insurrections at Banaras. After taking these affidavits and depositing them with Hastings at Chunar, Impey returned to Calcutta by the end of December.

(1) I.P. Vol.16260; Impey to his brother, April 1781; pp.14-28.

The last charge which was exhibited, but never debated in Parliament, against Impey, related to his having had taken affidavits at Banaras and Lucknow. He was accused of collecting evidences for Hastings who had illegally and unjustly dispossessed Chet Singh of his Zemindary.

As Impey did ~~not~~ approve of the measures that had been taken by Hastings against Chet Singh, his approval might have been caused either by an evil motive to cover up the crime of his friend or with a good motive to support and be helpful to his friend in a right cause.

Thus, an inquiry into Impey's motive and conduct perforce, must be preceded by an account of the circumstances that led up to the Banaras Crisis. It is, therefore, proposed first to give in brief a history of the Zemindary of Banaras and the proceedings of Hastings against Chet Singh, then to observe on the part played by Impey in the episode.

* * * * *

The Zemindary of Banaras, which was under the suzerainty of the Nabab of Oudh, lay on the western frontier of British possessions. Since 1764 it had been the policy of the President and council to turn Banaras into a strong barrier against any attack on British territory by the Nahab. ⁽¹⁾ This could

(1) Secret Consult. 29 March 1764; R.A. Vol.V, pp.112-13.

be done only by befriending the Raja of Banaras and keeping him dependent on British power in some way or other.

It was in pursuance of the above policy that after the death of Raja Bulwant Singh in 1770, Hastings prevailed upon the Nabab of Oudh to confer the Zemindary on Chet Singh, the son of the late Raja. ⁽¹⁾ The traditional enmity that persisted between the Nabab and the family of Chet Singh made Chet Singh dependent on the Company's protection for a safe possession of his Zemindary. ⁽²⁾

The arrival of new councillors in 1774 and the death of Shujah ul Dowlah in 1775 opened another chapter in the history of the Zemindary of Banaras. On 13 February 1775, in their secret department, the new councillors resolved that the treaty made with the late Nabab expired at his death, and they agreed that a new defensive treaty was executed between the Company and the new Nabab, by which the Zemindaries of Banaras and Gazipur were surrendered in perpetuity to the English Company, subject to the entire rule and management of Raja Chet Singh as heretofore, on condition of his paying the same tribute to the English Company which he formerly paid to the Nabab of Oudh, and which tribute amounted to sicca rupees 2266180. ⁽³⁾ A Sunnad and a Pottah were granted to Chet Singh by the Company. ⁽⁴⁾

-
- (1) Abstract of Letters from Bengal, no.2, Letter of 31 Oct. 1770; pp.31-32.
(2) Ibid., Letter of the Select Committee, 24 Dec. 1770; p.48.
(3) B. Secret Consult., 6 June 1775, R.A. Vol.29, pp.6-12.
(4) 2nd Report; Sunnad and Pottah, p.462.

When the war was declared between English and French in 1778, the Governor-General decided to raise an establishment of three regular battalions of sepoy at the expense of the Raja of Banaras and for that asked the Raja to pay a war subsidy of rupees 5 lakhs. (1) Chet Singh expressed his inability to pay the whole amount at once and requested the Board to receive monthly payments. (2) In a meeting of the council on the above matter, Francis suggested that payments should be received in instalments and the Raja should be assured that the Board shall make no further demand on him. (3) However, the council decided by the majority votes to demand immediate payment of the whole sum from the Raja. (4) The Raja made the payment in full on 10 October 1778. (5)

On 19 July 1779, the war between the French and the English still continuing, the Board resolved to ask the Raja for a second subsidy of 5 lakhs of rupees. (6) Thomas Graham, the resident at Banaras, conveyed to the Raja the Board's second demand and the Raja expressed his inability to pay. (7) The council then decided to send two battalions of sepoy to enforce payment and informed the Raja of the same. (8) The Raja

-
- (1) Ibid., G.G.&C. to Raja, 11 July 1778; p.463.
 - (2) EUR.MSS. Fowke Papers. G.3, Graham to G.G.&C. 14 Sept. 1778; p.79.
 - (3) B. Public Consult., 28 Sept. 1778, R.2, Vol.25, pp.374-75.
 - (4) Ibid., pp.384-86.
 - (5) 2nd Report, p.467.
 - (6) Ibid., p.468.
 - (7) EUR.MSS. Fowke Papers. G.3, Graham to G.G.&C. 15 Aug. 1779; pp.97-98.
 - (8) 2nd Report; pp.469-70; Wheler and Francis opposed the proposal; Barwell and Coote agreed to Hastings' proposal.

on being intimated as above agreed to pay the total subsidy in instalments, to which the Board did not agree and the troops were sent to enforce payment. When the troops arrived at Ramnagar the Raja paid the total sum of 5 lakhs, plus a penalty of rupees 20000 for the expenses of the two battalions that had been sent to enforce payment. (1)

On 22 June 1780, for the third time, Hastings moved the council to demand a subsidy of 5 lakhs of rupees from the Raja for the third year of the war. (2) The resolution was passed, and Francis Fowke, the resident at Banaras, was informed accordingly. The Raja first objected, but when he was threatened with force he paid the subsidy by 18 October 1780. (3)

On 2 November 1780, the council decided to ask Chet Singh to furnish such part of the cavalry entertained in his service as he could spare for the service of the government till the conclusion of the war, after which they would be returned to him. (4) To this demand, Chet Singh gave evasive answers and did not contribute a single horseman.

So much for the background; we may now describe in brief Hastings' operations against the Raja of Banaras.

In 1781 the Company's financial and political condition was very critical. The war with the French had depleted the

(1) Ibid.

(2) B. Secret. Consult., 22 June 1780; R.A.Vol.55; pp.503-504.

(3) EUR.MSS. Fowke Papers. G.3. Fowke to G.G.&C. 18 Oct. 1780; pp.124-25.

(4) 2nd Report; p.476.

Company's treasury and a war with the Marathas seemed inevitable. Hastings needed money to run the government. The Nabab of Oudh had not discharged his debts and dues to the Company. Palmer in his letter to Anderson summed up the whole situation in the following words:

'Taking war for granted as I do - how are we to prosecute it? No allies, no money - our Lucknow resources dried up. This Zemindary (Banaras) unsettled and no appearance of weight or stability in the new authority here - Bahar is in great confusion and the whole revenue of it in danger of being lost.'⁽¹⁾

Oudh, therefore, was the destination, when Hastings left Calcutta on 7 July 1781, for the upper country. But the route lay through the Zemindary of Chet Singh who had given sufficient provocation to Hastings by his past ungrateful conduct. Hastings' credentials, given him by the council before he left Fort William, had invested him with "full power and authority" to form such arrangements with the Raja of Banaras as he thought might be in the better interest of the Company and good management of the Zemindary itself.⁽²⁾ On 12 August 1780, Hastings reached Buxur where Chet Singh met him with a "great

(1) Anderson Papers; Add.45427; Palmer to Anderson, 16 Dec. 1781, p.82. There were no differences between the Company's situation in July and December of 1781.

(2) Has. Papers, Vol.29200, original Resolution of the Bengal Council on the visit of Hastings to Banaras, 3 July 1781; pp.34-35.

fleet of boats, which were crowded with two thousand armed and chosen men". (1)

This gave further provocation to Hastings and he refused to talk business to him until he reached Banaras. The Raja had put his turban on his lap and begged his pardon. Hastings wrote to Impey on 12 August 1781:

'...as to Rajah, I can at present say nothing. His behaviour, except in ceremonials, has been so bad to me that I cannot command it to others.' (2)

Hastings reached Banaras on 14 August 1781. (3) On his arrival he wrote a letter to Rajah and asked Markham, the resident at Banaras, to get an immediate reply to the same. (4) In this letter Hastings asked the Raja to give answers to the following points:

(a) Why he had made intentional delays in complying to the Company's orders?

(b) Why he had not furnished a body of Horse for Company's Service?

(c) Why he had tried to create conflict in the government at Calcutta?

(1) Hodges'; 'Travels', p.46; also Hastings' 'Narrative', pp.1-2.

(2) I.P. Vol.16262; Hastings to Impey, 12 Aug. 1781, p.150.

(3) There were thirty-seven Englishmen with the Governor-General at Banaras, G.F. Grand and Hodges included. (App. Part Second. No.13 - 2nd Report, p.556.

(4) 2nd Report; Hastings to Wheler, 18 Aug. 1781, pp.477-80.

The Raja gave a reply which did not satisfy Hastings; hence he was put under a house arrest at Siwalla Ghat on 15 August. Negotiations were carried between Hastings and Raja through Markham and Hastings' resentments were cooling down. It was then on 16 August that a large body of men came over from the other side of the river, overtook the guards, and released the Raja. The Raja escaped to the fort of Latifpur with his treasures and family. Three English lieutenants, Stulker, Scott and Sims, died at the Siwalla Ghat massacre.⁽¹⁾ On 20 August 1781, Capt. Mayaffore died while operating an ill-conceived campaign in Ramnagar. The news of Ramnagar disaster reached the Madhewdas Gardens, where Hastings had encamped, on 21 August. Fearing an attack by the enemy any moment, the Governor-General and his party left for Chunar at 8 o' clock in the evening of 21 August and reached there next morning. No money and no force; Hastings was destitute at Chunar. He wrote to Col. Morgan at Kanpur and to Col. Sir John Cumming at Futtehgur for enforcements. Banaras-fire had spread to Faizabad, Gorakhpur and Saran in Bihar. Enforcements arrived by 11 September from Kanpur, Allahabad and Lucknow; operations were carried between 15 and 22 September; the forts of Pateeta, Latifpur, Suckroot and Ramnagar capitu-

(1) Hodges' 'Travels', p.51. They were buried on 17 August and their funeral was attended by all the English gentlemen then at Banaras.

(1)
lated without any repelling resistance.

The last to be captured was the Bidjigur, where Chet Singh had taken shelter with his family and treasures. (2) On the capture of the fort of Bidjigur, the commandants instantly divided the wealth, "and founded the division on a letter of Mr. Hastings, in which he says very loosely, that he considered it as the property of the captors". (3) Raja Chet Singh escaped to Bundelkhand. (4) Thus, by 22 September the situation had been brought under complete control.

While at Chunar, Hastings had concluded a treaty, on 19 September 1781, with the Nabab of Oudh who had paid a visit to the Governor-General. (5) Under the second clause of this treaty, the Nabab was empowered to resume such jageers in his dominions which he might think necessary; with a reserve, "that all such for the amount of whose Jahuirs the Company are Guarantees, shall in the case of the Resumption of their Lands, be paid the amount of their net deductions, through the Resident,

-
- (1) Has. Papers, Vol.29130, p.39.
(2) Bidjigur was captured on 10 November. Chunar lay 20 miles north of Banaras, Pateeta was about 4 miles north of Chunar, and Latifpur was about 10 miles further away in the same direction. Bidjigur was 50 miles from Chunar. (Hodges', 'Travels', p.55).
(3) Pennant's, 'View of Hindoostann, Vol.II, p.214. On his examination by the Select Committee, Fairfax deposed that Hastings had been persuading the soldiers to restore to the Company the treasure they had captured at Bidjigur. (App.15, Second Report; pp.625-27).
(4) 'He lived for another thirty years, a shabby wanderer in Central India.' (Feiling's, 'Hastings'; p.268.)
(5) 2nd Report; Appendix to the Supplement; App.I.B, p.521.

(1)
in ready money". By this clause the Nabab was enabled to resume the jageers of his mother and grandmother at Faizabad, who had supported the late commotions at Gorakhpur and Banaras by men and money against the British, and as such had, in justice, forfeited all claims to British protection which was given them in 1775. (2)

On 26 September Hastings came back to Banaras. On 30 September he nominated Mahipnarain, the grandson of Bulwant Singh, to be the Raja of Banaras. (3)

On 25 or 26 October, Impey with his wife, surgeon, a few attendants and Mrs. Hastings, arrived at Banaras. Hastings showed him the narrative he was writing of Banaras insurrections. Impey advised him that a mere narrative was not sufficient until authenticated by affidavits. (4) In his 'narrative' Hastings writes: 'I have also added attestations of all the principal facts and events, sworn before the chief justice, to (5)

(1) Ibid.

(2) Ibid., p.523. In 1775 they gave 30 lakhs of rupees to the Nabab on British assurance that in future they would enjoy their jageers in peace.

(3) Mahipnarain was Bulwant Singh's daughter's son. Chet Singh was believed to be the illegitimate son of Bulwant Singh. (Impey to Dunning, 27 December 1781; I.P. Vol.16260; pp.97-98).

The Zemindary was to pay Rs.3333333-5-8 for the current year and a perpetual annual rent of Rs.4000000 in future. ('Narrative', p.52).

On 20 October, Banaras was separated from Ramnagar and created into a separate magistracy under Alle-Ibrahim-Khan.

(4) 'Memoirs', p.240; Feiling's, 'Hastings', p.268.

(5) 'Trial of Hastings', Vol.I, p.89.

whose advice I am obliged for having suggested it'.⁽¹⁾ Thus, immediately after his arrival, Impey started taking affidavits. In the course of a conversation, when Hastings described the Begums of Oudh to have risen in rebellion, Impey told him that if that was the fact he thought their intervention was an offence to the government of the Nabab, and that he had a most undoubted right of seizing the treasures⁽²⁾ of those persons who were employing them against his state.

On his cross-examination by Plumer during the impeachment of Hastings, Impey deposed: 'That the idea of seizing the treasures, he thought had originated with him, in a conversation with Mr. Hastings.'⁽³⁾

When Hastings proposed to Impey that he should go to Lucknow for taking affidavits as well as to intimate to Middleton that he should execute the treaty of Chunar without showing any leniency towards the Begums, Impey went to Lucknow; he stayed there for three days in the house of Col. Martin, told Middleton what had passed between him and Hastings, took⁽⁴⁾ the affidavits and took them back to Hastings at Chunar. This might have taken Impey the whole month of November. He

-
- (1) 'Narrative', p.54.
(2) Stephen's, Vol.II, p.261.
(3) 'Trial of Hastings', p.92.
(4) Stephen's, Vol.II, pp.26-62.

returned to Calcutta by the end of December, leaving
(1)
Mrs. Hastings with Hastings.

Hastings left Banaras in the first week of January and all
the way back to Patna he lay anxiously expecting a letter from
the Nabab. (2) From Buxar he wrote to Impey that neither had
he received any letter from the Nabab nor was he satisfied
with Middleton's conciliatory attitude towards the Begums;
that in case the Nabab did not pay his dues to the Company he
would abandon the Nabab and "pay it himself". (3)

At Patna, Hastings received the long awaited letter of
the Nabab and the intelligence that the operations against the
Begums were started by Middleton on 8 January and completed by
extreme measures on 12 January. (4) 'If the ministers who
possess the Nabab's authority and Middleton who directs them,
act as they ought, the issue of this business will furnish our
treasury with the clear discharge of the Nabab's debts.' - so
wrote Hastings to Impey. (5) From Moungher he wrote to Impey
that he had formally approved and advised the seizure of the
Begums' treasures, and his prohibition of a negotiation was

-
- (1) One of his letters to Dunning is dated at Calcutta on
29 December. (Impey to Dunning; 27 Dec. 1781;
I.P. Vol.16260, p.97).
- (2) I.P. Vol.16262, Hastings to Impey, 5 Jan. 1782, pp.174-75.
He wrote that he would be leaving Banaras on 7 January.
- (3) Ibid., Hastings to Impey, 16 Jan. 1782; pp.180-81.
- (4) Ibid., Hastings to Impey, 22 Jan. 1782; pp.182-87.
- (5) Ibid. Hastings believed that the Nabab's debts to the
Company could be discharged only when the Begums were
obliged to part with some of their "enormous wealth".
(Anderson Papers; Add.45427, Palmer to Anderson,
12 Feb. 1782; p.86.)

particularly pointed to that. ⁽¹⁾ On 5 February Hastings attended the meeting of the council and proudly told the councillors that the Nabab had paid to the resident at Lucknow Rs.4478490-4-8, and the balance of 20 lakhs of rupees, he ⁽²⁾ hoped, would be very shortly realized from him. He desired the council to write to the directors that there existed a "fairest prospect" of the Nabab's debts being completely paid ⁽³⁾ off to the Company.

Before Hastings reached Calcutta, the council, by its resolution of 14 January 1782, had approved the arrangements made by him at Banaras, and the treaty made with the Nababs of ⁽⁴⁾ Oudh; in particular it had approved the arrest of Chet Singh.

So much about the history of the Banaras operations. We may now proceed to make certain observations on the part played by Impey in the operations carried against Chet Singh and the Begums of Oudh.

* * * * *

The sixth article of impeachment against Impey alleges that "under Pretence that a journey was necessary for the Health", and divers other false pretences, Impey left Fort William for Banaras and Lucknow in order to meet Hastings, and

(1) Ibid.
(2) 2nd Report, App.13; pp.623-25.
(3) Ibid.
(4) Ibid.

become his adviser and instrument; that he collected evidences against Raja Chet Singh who had been expelled by Hastings; that he collected evidences against the princesses who were eventually dispossessed of their treasures by Hastings; that he carried verbal orders of Hastings to Middleton and the latter's reply to the former; and in all such doings, he virtually "became accessory to, and accomplice of the said Warren Hastings, in the said Acts of Tyranny, Cruelty, and (1) Oppression, committed as aforesaid by the said Warren Hastings".

In brief, the article charged him with having entered into a conspiracy with Hastings to dispossess the Raja of Banaras and plunder the Begums of Oudh.

Commenting on the subject of Impey's journey to the upper country, Macaulay wrote:

*Evidently in order that he might give, in an irregular manner, that sanction which in a regular manner he could not give, to the crimes of those who had recently hired him; and in order that a confused mass of testimony which he did not sift, which he did not even read, might acquire an authority not properly belonging to it, from the signature of the highest (2) judicial functionary in India."

The charge that Impey left Fort William for Banaras and Lucknow under the pretence of health is false. Impey's health

(1) Par.Bra. No.8; 'Articles of Charge against Impey', pp.40-42.
(2) Edinburgh Review, 1841-42, Vol. LXXIV; p.219.

had gone from bad to worse in 1781. Longsince he had been suffering from troubles in his bowels and arm, but never before was he so concerned about his health as in 1781. His doctors had advised him that a complete cure was possible only in England, and on their advice Impey wrote to his friends in September 1781 that he intended to return to England on leave for recovery of his health. ⁽¹⁾ In September, two months before he reached Banaras, he sent an application to Hillsborough, the then Secretary of State for Southern Department, for leave on health grounds. ⁽²⁾ In December 1781, after his return from the upper country, he wrote to his elder brother:

'That the journey I took from Calcutta, has restored me to my health, in every particular but the disorder in my hand and arm, from which I have no hope of recovery but in England and I do not much expect it here.' ⁽³⁾

In February or April 1781, Lady Impey had suffered a miscarriage and was sickly for the rest of the year. ⁽⁴⁾ His daughter Marian was all the year suffering from acute bowel troubles and as early as June 1781, Hastings sent him Japan-rice for Marian; he had gathered from indigenous sources that it

-
- (1) I.P. Vol.16260, Impey to Masterman, 14 Sept. 1781; pp.46-51; also, Impey to Thurlow, Sept, 1781, pp.55-58.
(2) Ibid., Impey to Lord Hillsborough, 18 Sept. 1781; pp.58-59.
(3) Ibid., Impey to Michael, 30 Dec. 1781; p.79.
(4) Ibid., Impey to Sutton, 28 April 1781; pp.34-38.

would cure her bowel troubles.

Under these circumstances it will be quite reasonable to state that Impey had left Calcutta with Lady Impey and his children for a change of climate which might restore their health.

Besides, when Impey left Calcutta in July he had no definite idea of going beyond Patna. The Impeys met Mrs. Hastings at Moungher, they heard of the Banaras disaster, went to Patna and from there to Bhagalpur where they stayed while the fire subsisted at Banaras. (2) It was on 18 August that Hastings wrote to Impey informing him of the Siwalla Ghat massacre, and for the first time requesting him to visit Banaras. (3) Yet, it was an invitation, not an entreaty, and Impey informed Barwell in England of this invitation with a sense of pride and privilege:

'He has asked me very earnestly and with great sol^{ci}itude to come to him at Banaras, I shall go there..... Things have taken a strange turn, I have more influence with him than ever.' (4)

But before Impey received Hastings' letter, he had written to his friend that as troubles were afoot at Banaras, and Mrs. Hastings alarmed and terrified about her husband's security, he would stay a little longer with her at Patna than

(1) I.P. Vol.16262, Hastings to Impey, June 1781; pp.114-15.

(2) Grier, 'Letters of Warren Hastings', p.144.

(3) I.P. Vol.16262, Hastings to Impey, 18 Aug. 1781; pp.146-7.

(4) I.P. Vol.16260, Impey to Barwell, 9 Oct. 1781; pp.71-73.

(1)
intended.

Thus Impey's decision to visit Banaras was made after he had heard of the disaster sustained and the destitute Hastings was put in. Had there been a conspiracy between Hastings and Impey to the effect that Hastings would first go and dispossess the Raja, then Impey would come and authenticate his misdeeds by taking affidavits, Impey's visit to Banaras would have been a pre-planned affair, which it was not. On this score we may, therefore, conclude that Impey had left Calcutta on a tour of Bengal and Bihar partly for recovery of his health and partly for inspecting the Adalats of the divisions.

Now to the next allegation that by collecting evidences against Chet Singh who had been expelled and against the Begums who were eventually dispossessed of their treasures, Impey gave sanction in an irregular manner to the crimes of Hastings who had recently hired him. This allegation may be examined in a broader context. Had Hastings really committed a crime? If he was guilty of tyranny, cruelty and oppression, did Impey believe that he was? Did the taking of affidavits eventually lead to the dispossession of the Begums of their treasures?

At the outset it can be said that Impey and Hastings were maintaining a good relationship in 1781. The year had started with a present of a coat from Hastings to Impey. ⁽²⁾ In several

(1) Ibid., pp.61-65; also, Has. Papers, Vol.29197, Has. to Marian; 20 Sept. 1781; pp.38-39.
(2) I.P. Vol.16262, Hastings to Impey, Jan. 1781; p.58.

of his letters to Impey, Hastings appears to have been exceedingly concerned about Marian's illness. In September, Hastings was praying to God to bless Impey for showing kindness to Mrs. Hastings. ⁽¹⁾ In October, Impey was telling Barwell that never before had he so much influence upon Hastings. Impey had told Hastings in one of his letters that if he (Hastings) did not apprise him (Impey) of all his motions before anybody else knew them, he (Impey) would resent it with all the jealousy of a woman. ⁽²⁾

Thus, Impey's motive in collecting the evidences for Hastings, might have been either to cover up his crime or to help him in a right cause. Friendship was the main factor; whether it was applied in concealment and commission of crimes, or in protecting his friend against a possible malicious and unjust persecution - we have to find out.

This point leads us to an inquiry into Hastings' conduct. Though an inquiry into Hastings' conduct does not fall within the perview of our subject, we may observe upon it in so far as it reflects upon Impey's conduct.

The Nabab of Oudh, Marathas and Chet Singh - these three figured in Hastings' mind when he left Fort William for the north. As early as May 1781, he informed Impey: 'I have determined on a visit to Lucknow, I shall depart on 15 July'. ⁽³⁾

(1) Grier's, p.145.

(2) I.P. Vol.16262, Hastings to Impey; 22 Jan. 1782; pp.182-87.

(3) Ibid., Hastings to Impey, May 1781, p.104.

Before leaving Calcutta, Hastings had conversed with Wheler about the policy he intended to pursue in his dealings with Chet Singh.⁽¹⁾ Wheler and Hastings agreed that the Raja's offences were such as to require early punishment; and as his wealth was great, and the Company's exigencies pressing, it was thought to exact from him a large pecuniary mulct - a sum of forty or fifty lakhs. The Raja's ability to pay the amount was thought to admit of no doubts, hence the Governor-General had resolved upon two alternatives if the Raja refused to pay; either to remove him or to capture his treasures.⁽²⁾ It may here be recalled that it was through the good offices of Hastings that Shujah Sul Dowlah condescended to confer the Zemindary on Chet Singh after the death of Bulwant Singh in 1770. The offence of Chet Singh, therefore, might have been serious and turned his patron into an enemy. The Raja, through his Vakeel, who was stationed at Calcutta, had long since tried to create dissensions in the government.⁽³⁾

'It was the prescribed duty of Chet Singh's Vakeels in Calcutta to furnish him with every little anecdote which bore

(1) 'Narrative', FN. p.13.

Hastings had also conversed with Maj. Palmer about his intention to exact 50 lakhs of rupees from Chet Singh. (Affidavit of Maj. Palmer; App.2. Parcel No.2. 2nd Report, p.587).

(2) Ibid.

(3) Ibid., pp.5-6.

any relation to the state of our government. I believe that the deliberate manner in which he made the first payment of the subsidy of that year was dictated by the doubts suggested of the firmness of my authority; and I am morally certain that his subsequent excuses and delays in the payment of the residue of the subsidy were caused by the belief that I was no longer able to enforce it; and possibly for such was the report, that a few months would close the period of my administration altogether. (1) Hastings further believed that one of the factors which brought his subsequent compliance to the Board's order was the approaching departure of Francis, which was published and generally expected. In June 1777, when Gen. Clavering was attempting to wrest from him his authority of Governor-Generalship, Chet Singh had deputed a man named Sambhoonath "with an express commission to my opponent". (2)

This was how Chet Singh had offended Hastings. Hastings looked upon Chet Sing's past intrigues with the majority members of the council as evidence of the "basest ingratitude, for, had it not been for his influence with Shuja-ud-daulah, Chait Singh, in all probability, would not have been guaranteed

(1) Ibid.

(2) Ibid. Rani Gulab Koour had sworn before Impey that Chet Singh had personal enmity against Hastings. (Affidavit of Rane Gulab: App.2. Par. No.3. 18A: Second Report. pp.597-98.)

in the possession of his Zamindary".⁽¹⁾ By delaying the payment of the subsidy and disobeying the Board's orders, Chet Singh had given further provocation to Hastings. It cannot be said that he had no fund to pay off the subsidies. We have seen that whenever he was threatened with a march of force, he promptly paid off the subsidy with fine. This might have convinced Hastings that he had been evading the payment and getting disloyal to the Company. No one seems to have had any doubt about the Raja's riches, not even Francis. Nevertheless, it is doubtful whether the initial measures taken by Hastings against the Raja were in proportion to the end they were intended to serve. We have reason to suppose that the sum of forty to fifty lakhs, which Hastings wanted to exact from Chet Singh as a fine for his past misdeeds, could have been got from him without putting him under a house arrest. It was humiliation which Hastings wanted Chet Singh to suffer in his own Zemindary before suffering a pecuniary mulct. Yet, Hastings had no reasons to fear that his little chastisement of a refractory subject would cause such a crisis. Had he anticipated a rebellion, he would have gone prepared for the eventuality.⁽²⁾

There is no evidence to show that Hastings was determined

(1) Davies', 'Warren Hastings and Oudh', p.140.

(2) 5th Report; Sir Eyre Coote Opinion, p.689.

to remove the Raja from the Zemindary. After putting the Raja under house arrest and receiving two humble petitions from the prisoner, Hastings' bitterness and prejudices were gradually soothing. He wrote to the Raja: 'Set your mind at Rest, and do not conceive any terror or apprehension.'⁽¹⁾

After receiving this letter Chet Singh expressed his gratitude in the following words:

'My protector! Whenever you spread your shadow over my head, I am entirely free from concern and apprehension; and whatever you, who are my master, shall as such determine, will be right.'⁽²⁾

It was at this stage that a crowd of armed men entered the house, killed the guards, and rescued the Raja. When Hastings received this news he was giving instructions to Markham for negotiations with the Raja. It is more likely that the Raja too was quite unaware of what his men were planning for his rescue. He could not possibly approve of being rescued by force until and unless he was sure of holding his ground against the British. Chet Singh does not seem to have possessed, at any stage of the crisis, that amount of confidence in his men and arms which could inspire him openly to resist and annihilate the British power. Even after his escape from

(1) Second Report; Hastings to the Raja, 16 Aug. 1781; p.479.

(2) Ibid.

Siwalla Ghat, he did not take shelter in Ramnagar fort, but went as far as Latifpur to assure himself against recapture. Had there been a pre-plan to subvert the British government, Chet Singh after his escape would have immediately fallen upon Hastings' camp. It is therefore possible that the Siwalla Ghat massacre was the spontaneous work of a crowd of people, unorganized and undisciplined, who by reason of their religious and regal attachment to Chet Singh, decided to set him free at any cost.⁽¹⁾ Chet Singh might have faced a difficult situation after his escape. He could not expect mercy or pardon from Hastings. The only alternative left to him was to resist British attacks and defend himself. He might, therefore, have sought help from all those quarters which were dissatisfied with the British.⁽²⁾ The whole country was put on fire.

The fort of Gorakhpur was attacked by refractory Rajas;⁽³⁾ Saran was attacked by Futty Singh; and troops were publicly levied at Faizabad for Chet Singh.⁽⁴⁾ It goes to the credit of Hastings that he did not lose his courage and faced the

(1) Even to-day the Hindus of Banaras treat the Raja of Ramnagar with some religious devotion. He is greeted by Hindus as "Har Har Mahadev" - which evinces that the Hindus consider him as a privileged devotee of God Vishwanath.

(2) Dadjou Singh and Govind Singh received a letter from Chet Singh asking them to join him with their men and arms. (Affidavit No.7. Second Report, p.603).

(3) 2nd Report, App.2, No.11, Affidavit of Ahlaud Singh; pp.592-93.

(4) Ibid., Affidavit of Hanney; pp.605-7.

situation resolutely.

The arrest and escape of Chet Singh was the starting point of the rebellion. What Hastings did during the period between the Siwalla Ghat incident and the final subjugation of Banaras, deserves praise rather than criticism. But it is doubtful whether it was necessary to put Chet Singh under arrest. Yet, we may feel reluctant to say that it was a crime.

Did Impey know that Hastings had committed any crime? How was the Banaras episode understood and interpreted by Impey?

We have observed before, that when Banaras was on fire Impey was in Bihar. He had heard about the uprisings at Banaras when he was at Moungher. When he reached Banaras all was quiet. Impey was, in good faith, convinced of the purity of Hastings' conduct and he made no secret of it. He was convinced that what Hastings had done lately was done in the interest of the British nation. Whether he had strong reasons for his convictions is a different question, not so relevant to our inquiry. On 15 April he wrote to Sullivan that when he reached Banaras all was quiet, but he was uneasy for the consequences with regard to the personal character of Hastings, and he told him to verify by affidavits such facts as were capable of such proof.⁽¹⁾

(1) I.P. Vol.16260, Impey to Sullivan, 15 April 1782; pp.141-2.

'There had been a revolution and under such circumstances which I feared might raise suspicion of his integrity; I was from the bottom of my heart convinced of the purity of his conduct, that he was incorrupt, and that all the proceedings were fair, I suggested to him the propriety of making them as public as possible, and to verify by affidavits such facts as were capable of such proof - I know how suspiciously all public transactions in India and more particularly revolutions are received in England even by the candid..... and I was aware that the public contests in which he had been engaged had created him more ... enemies - I feared the advantage the proceedings at Banaras might give them against him, except explained with that elucidation and candor which his writing always possesses and corroborated by the strongest testimony. I suggested and urged him therefore the propriety of giving narrative of them to the King's ministers, the directors, and to testify by affidavits I did not doubt charges would be brought against him.'⁽¹⁾

That Impey firmly believed in the purity of Hastings' conduct is further evinced by his concluding remarks made before the Lords on 6 May 1788, on the 23rd day of the trial of Hastings:

(1) Ibid.

'It has been objected to me as a crime, my Lords, that I stepped out of my official line, in the business of the affidavits; that I acted as the Secretary of Mr. Hastings. I did do so. But I trust it is not in one solitary instance that I have done more than mere duty might require. The records of the East India Company; the minutes of the House of Commons; the recollection of various inhabitants of India - all, all, I trust, will prove that I never have been wanting to what I held was the service of my country.'⁽¹⁾

In the course of the same examination before the Lords, Impey, with the same amount of boldness, said:

'Though he was not at Lucknow officially, yet the character of his office, and his rank in the country, gave that authenticity to his taking the affidavits, which would not have been given to that act, from any other person.'⁽²⁾

In the course of the above examination, Impey admitted that 'he was not acquainted with the substance of the affidavits themselves'.⁽³⁾ His being unacquainted with the contents of the affidavits was erroneously construed by Macaulay as an aggravation of his crime. In the business of affidavits, the person before whom it is sworn never knows its contents. 'All that the judge or commissioner has to do is to satisfy

(1) 'Trial of Hastings', pp.92-93.

(2) Ibid., p.91.

(3) Ibid., p.89.

himself that the deponent swears that the contents of his affidavit, whatever they may be, are true.'⁽¹⁾

On a careful perusal of the affidavits we find that they can in no way be connected with the eventual seizure of the treasures of the Begums. On his examination before the Lords, Impey himself said that "he did not consider those affidavits as ground for seizing the treasures of the Begums; nor did he, acting as an indifferent person of authority, affix in his own mind, any motive, beyond that of the Banaras narrative".⁽²⁾ Among the total forty-three affidavits sworn before Impey, only three indirectly implicate the Begums of Oudh.⁽³⁾

Lieut.-Col. Hanney swore that during the Banaras uprising the Begums had shown him a hostile attitude, that they had allowed public levy to troops for Chet Singh, that Capt. Gordon was attacked by Shamshur Khan who was who was the Begums' Aumil and that the two Eunuchs had encouraged people to go to the aid of Chet Singh. Macdonald's affidavit was given to the

-
- (1) Stephen's, Vol.2; p.265.
(2) 'Trial of Hastings'; p.89.
(3) 2nd Report, App.2. Affidavits; pp.584-613.
Sworn by Englishmen in English - 10
Sworn in Persian - 19
Sworn in Hindustani - 7
Sworn in French - 1
Affidavits of Capt. Davy
- verifying translations - 6

Total.... 43

Only three indirectly implicate the Begums of Oudh - one sworn by Lieut.-Col. Hanney who was commanding a corps at Lucknow, the other by Ahlaud Singh, Subbadar stationed at the fort of Gorakhpur; the third by Macdonald, who commanded a battalion of sepoys in the Vazir Service.

effect that the insurrections at Gorakhpur were excited by Chet Singh and encouraged by the Begums. Ahlaid Singh had sworn that the rebels at Gorakhpur were inspired and encouraged by the occurrences at Faizabad and Banaras. These are the only three affidavits which in any way implicate the Begums of Oudh as supporting the cause of Chet Singh. The other forty affidavits sworn before Impey relate solely to Chet Singh's affairs, that his rebellion was a fore-concerted one, that he financed and encouraged rebellion throughout the country lying east of the river Gomti, and the situation was that of a war. In view of the fact that the affidavits relate to the Banaras episode and do not contain direct allegations against the Begums of Oudh, it cannot be said that Impey collected evidences for the eventual seizure of the treasures of the Begums. Nevertheless, Impey did advise Hastings in good faith, that if the Begums were financing the rebels against the British, their treasures could be legally sequestrated. Yet, it is hard to believe that Hastings acted solely on his advice. Long before Impey came to help and advise Hastings, Hastings had concluded the treaty of Chunar with the Nabab; it was under that treaty that the jageers of the Begums were resumed in January 1782.

We may conclude that in the whole matter Impey had neither any corrupt motive nor had he conspired with Hastings to dispossess Chet Singh and plunder the Begums. He believed in the purity of Hastings' conduct, and collected the affidavits to

protect his friend against a possible malicious persecution by his enemies.

(c) The recall of Impey (1782-83).

While Impey was on tour in the upper country he had made two decisions; first, to return to England on leave for a short while and, second, to secure for himself and Hastings two seats in Parliament. The second decision was the corollary of the first. He made up his mind to return home for several reasons. The long silence of His Majesty's government on the dispute between the court and the council had made him uneasy since May 1781, and he had started considering this silence as a declaration against the court and "an acquiescence in the annihilation of its jurisdiction by the powers of the Company".⁽¹⁾ In August he received Sutton's letter, dated 21 February; and through this letter he got the intelligence of the appointment of a Select Committee to inquire into the petitions against the Supreme Court.⁽²⁾ The names of the members of the Select Committee and its proceedings did suggest to Impey that its report would be unfavourable.⁽³⁾ His doctors had advised him that a short return to England would cure the disorders in his bowels and arm.⁽⁴⁾ Above all, Hastings was intending to leave India in a year or two.

(1) I.P. Vol.16260; Impey to Dunning, 6 May 1781; pp.61-66.
(2) Ibid., Impey to Masterman, 14 September 1781; pp.46-51.
(3) Ibid.
(4) Ibid.

'What makes me more willing to return is that I believe Mr. H. will not remain more than a year after me; he has a desire that we shall both be in Parliament, and for that purpose has furnished me with draught to the amount of £10000 on his attornies in England, for the purpose of procuring two seats, one for me, to take place the latter end of the summer 1783, and for himself the latter end of the summer 1784.'⁽¹⁾

In September he wrote to Masterman and his elder brother, Michael, asking both of them to secure for himself and Hastings two seats in Parliament.

'I have a strong desire to meet my adversaries on equal grounds and to procure a seat there on my arrival.'⁽²⁾

He returned to Calcutta in December in good health, but the disorders in his arm continued.⁽³⁾ On 18 March 1782, he wrote to Lord Hillsborough that he lay under the absolute necessity of leave on grounds of health, that he proposed to embark the first ship sailing after the close of the winter session of the court and requested his Lordship to excuse him for not waiting until the receipt of a formal permission to leave, authorising his Lordship at the same time to lay his resignation to His Majesty if he deemed it necessary.⁽⁴⁾

-
- (1) Ibid., Impey to Sutton, Patna, 31 Aug. 1781; pp.73-93.
(2) Ibid., Impey to his brother, 14 Sept. 1781; p.52.
(3) Ibid., Impey to his brother, 5 Feb. 1781; pp.100-101.
(4) H.M.S. 163. Impey to Lord Hillsborough, 18 March 1782; pp. ~~(113)~~.

The year 1782 had started with the death of his youngest daughter Harriet on 11 February, and the birth of Hastings on 28th. (1) Preparations for a home voyage were afoot. Indian goods were sent by almost every home bound ship, muslin, shirts, pipes and other fancy goods. He made a remittance of £4000 to his brother between 30 December 1781 and 5 February 1782; (2) a further remittance of Rs.54000 was made in April 1782. (3) The illness of his brother, the intelligence of which he received in June, further confirmed him in his resolution to leave for home. (4)

In June 1782, he received a letter from Sutton, informing him of the passage of the Act of 1781. (5) He wrote to Dunning:

'Mr. Sutton has acquainted me with the event of the Petitions against the Court; it is not worse than I expected from the turn that the issue was to take.' (6)

He proceeded to make rules and orders as occasioned by the Act of 1781, and sent them to the Secretary of State for the Southern Department. (7)

In Parliament in London the situation had taken an

-
- (1) I.P. Vol.16260, Impey to his brother, 18 March 1782; pp.111-2
 - (2) Ibid., Impey to his brother, 5 Feb. 1782, pp.100-1.
 - (3) Ibid., Impey to his brother, 16 April 1782; pp.113-15. By this time Impey had sent gold to the amount of Rs.125000; but this sum included the money of others.
 - (4) Ibid., Impey to Lane, 6 June 1782; pp.118-21. Thomas Lane was Impey's attorney.
 - (5) Ibid., Impey to Sutton, 6 June 1782; pp.140-1.
 - (6) Ibid., Impey to Dunning, 6 June 1782; p.142.
 - (7) Ibid., Impey to Hillsborough, 1 Aug. 1782; pp.143-4.

unfavourable turn for Impey. The First Report of the Select Committee which related to Impey's appointment to the Sudder Dewanni Adalat, was submitted to the House on 5 February 1782. On the motion of Gen. Smith, on 3 May 1782, the House resolved to present an address to His Majesty to recall Impey, "to answer to the charge of having accepted an office granted by, and tenable at the pleasure of, the servants of the East India Company, which has a tendency to create a dependence in the said Supreme Court upon those over whose actions the said Court was intended as a control, contrary to the good purposes and true intent and meaning of an Act of the 13th of His Majesty's reign"⁽¹⁾.

In March 1782, the North government had resigned. In July Lord Rockingham died and Shelburne became the Prime Minister. Impey got this happy news in October and hastened to congratulate his friend.⁽²⁾ His old friend having come in power, there seemed no reason to pack up for home. Thus Impey requested Shelburne to accept his letter as a complete repudiation⁽³⁾ of what he wrote before about his desire to return home.

But Shelburne was in a parliamentary situation that could not possibly last. If the Fox and the North groups combined, his minority could not carry anything. He was dependant on

(1) Par. His. Vol.22. pp.1411-12.

(2) I.P. Vol.16260, Impey to Lord Shelburne; pp.169-72.

(3) Ibid.

the younger Pitt and Dundas, who was committed to recall Hastings. For these reasons, and because Fox was accusing him of sheltering criminals, Shelburne must occupy some ground (1) by way of compromise, before Parliament met in the autumn. Hence with much reluctance he had issued an order for Impey's recall on 8 July 1782. (2)

In October, Impey received an intelligence of a "hostile resolution" of the Commons, but he did not know the nature of the contents. He figured all the charges which Francis might have circulated against him. He recalled that as late as 3 April 1779, Francis had written a letter to the Secret Committee of the Court of Directors, accusing him for participating or having the profits of a contract entered in the name of James Fraser. (3) He wrote to his brother, Sutton and Thurlow, assuring them all that he had no interest in the Pull-Bandi affair.

'With regard to Fraser's contract I call God most solemnly to witness that I have not been nor do or shall expect to benefit directly or indirectly one atom by it.' (4)

The hope which Shelburne's elevation to the office of the First Secretary had aroused in him was shortly shattered by the news that the House had passed the recall-motion, which he

(1) Feiling; 'Warren Hastings', p.287.

(2) H.M.S. 162; p.25.

(3) I.P. Vol.16260, Impey to Sutton, 19 Oct. 1782; pp.179-81.

(4) Ibid., Impey to his brother, 19 Oct. 1782; pp.174-9.

received by 29 October 1782.⁽¹⁾ He booked his seat in a
Danish ship for a passage to England.⁽²⁾

It was at this time, when he had given up all hopes and desires for a further stay in India, that he received on 4 November 1782 the encouraging letter of Thurlow, dated some time in May 1782.⁽³⁾ This letter was written to him after the House had voted for his recall. Thurlow had assured him of his full support, approved his conduct and desired him to stay until formally recalled.⁽⁴⁾ Consequently he laid aside all thoughts of returning to England at least for the current year, cancelled his passage, thanked Thurlow for his support, hoping that His Majesty would not send a letter of recall.⁽⁵⁾ He wrote to Barwell: 'I think I am bound in honour and gratitude not to desert my post except I receive an official recall under His Majesty's authority'.⁽⁶⁾ He decided to stay for at least a year longer if he was not recalled.⁽⁷⁾

He was fearless, but uncertain about the future events. Hence he wrote to his brother on 29 November, asking him to consult Lord Ashburton, Richard Sutton and his other friends whether it would not be proper to resume negotiations for a seat in Parliament.

-
- (1) Ibid., Impey to Thurlow, 29 Oct. 1782; pp.183-87.
(2) Ibid., Impey to his brother, 17 Nov. 1782; pp.192-3.
(3) Ibid.
(4) Ibid.
(5) Ibid., Impey to Thurlow, 15 Nov. 1782; pp.189-91.
(6) Ibid., Impey to Barwell, 18 Nov. 1782; pp.119-201.
(7) Ibid., Impey to Cator, 22 Nov. 1782; pp.202-3.

In the meantime he had relinquished the judgeship of the Sudder Dewanni Adalat on 5 November 1782. To Dempster he wrote that his resignation had been occasioned by the Act of 1781, which had turned the Sudder Dewanni Adalat into a court of records and had assigned criminal jurisdiction to it. ⁽¹⁾ It is possible that the intelligence of his recall might have occasioned his resignation. The Act of 1781 reached him in June, the news about the vote of recall in October.

Shelburne's letter of recall reached Impey on 27 January 1783. ⁽²⁾ On 29 January he wrote to Shelburne and on 11 March to Townshend, one of the principal secretaries, that as Lady Impey was to lie in bed in ~~July~~ and the weather conditions were not favourable for a sea voyage, ⁽³⁾ his passage to England might be delayed for a few months. The French remained the masters of the Bay of Bengal; so that no British ship could safely leave the Hooghly for Europe. ⁽⁴⁾ Impey, therefore, was compelled to remain for nine months longer in Calcutta.

Nothing significant happened in 1783 except for the arrival of Sir William Jones in September. ⁽⁵⁾ In November, the council booked a passage for Impey. ⁽⁶⁾ On 3 December 1783, he

-
- (1) Ibid., Impey to Dempster, 18 Nov. 1782; pp.216-21.
(2) 'Memoirs', p.270.
(3) H.M.S. 178; pp.681-84.
(4) 'Memoirs', p.272.
(5) I.P. Vol.16264, Jones to Impey, 16 Sept. 1783; p.232. Sir William Jones had been appointed in the place of the late Justice Lemaistre.
(6) H.M.S. 187, Council to C. of D., 30 Nov. 1783; pp.5-42.

embarked with his family on board the 'Worcester'. (1)

- (1) The 'Worcester' sprung a leakage near St. Helena and very narrowly escaped a wreckage. At St. Helena Impey boarded the 'Dutton', and he reached England in the month of June 1784. ('Memoirs', pp.272-77).

After his return to England, Impey lived in suspense up to 12 December 1787, when finally six charges were exhibited against him in Parliament. The motion to impeach on the first charge was defeated on 9 May 1788. A faint and unsuccessful attempt was made to impeach him on the second charge; the remaining four charges were never proceeded with.

He had retained the rank and title of chief justice up to 10 November 1787, when he officially resigned it. In 1790 he took his seat as member for New Romney. In 1792, he quitted Parliament and retired to a quiet rural life, first at Amesbury in Wiltshire and then at Newick Park in Sussex. In 1801, he visited Paris to recover his fortune which had been invested in French funds. During his stay in Paris he was presented to Napoleon Bonaparte and his wife moved with the top ladies of Paris. When the war broke out again between France and England, he was detained for some time in a French camp and with much difficulty secured his return to London in July 1804.

In September 1809, he was seized by a mortal physical disorder, caused by effusion of serum on the brain, and he died about midnight on 1 October 1809, in the seventy-seventh year of his age. His remains were interred in the family vault at Hammersmith. ('Memoirs', pp.350-413).

SOME CONCLUSIONS

In these conclusions I shall first set out briefly the essence of Impey's story that I have been inquiring into and secondly shall indicate the extent to which I think I have made a personal contribution in my interpretation.

Before the establishment of the Supreme Court and the arrival of Impey in India, justice in British territories was administered insufficiently and irregularly by the revenue and executive officers of the Company; under Warren Hastings the civil had been separated from the criminal court, but not the judiciary from the executive. The members of the provincial Councils, whose chief concern was the collection of revenue, rarely found time to sit either in the Dewanni Adalats or to supervise the proceedings of the Nizamat Adalats. Their ignorance of the language, customs, and laws of the Indians coupled with their lack of any legal training, further prevented them from taking any informed interest in the administration of civil justice.

In Calcutta the Mayor's Court functioned under the direct supervision of the Governor and Council. This Court administered English law, but it was far from being independent of the executive.

The Governor and Council were, in fact, the highest Court of justice. They held the Court of Sudder Dewanni Adalat to hear appeals from the provincial Dewanni Adalats, they

supervised and regulated the proceedings of the criminal Courts, they heard appeals from the Mayor's Court, and for the town of Calcutta they acted as the justices of the peace and administered criminal justice through the Court of Oyer and Terminer.

Overburdened with matters of administration, revenue and conquests, the Governor and Council could hardly discharge their judicial functions with efficiency.

It was in this context, characterised by the absence of an independent judiciary, that Impey had to work in India. He had two main objects in view; first, to establish firmly the Supreme Court as an independent, impartial and superior organ of King's justice, and second, to protect the Indians against the irregular and corrupt exercise of powers by the Company's servants.

For the fulfilment of these objects, particularly for the establishment of the idea of an independent judiciary, it was necessary, not only that the government should give its full support to the execution of the Court's orders and decrees but also that it should hold the judges' dignity and honour high in the estimation both of the public and of itself. Being trained in English legal traditions, Impey expected, quite naturally, the same deferential treatment of the Court by the government of Bengal, which the ~~home~~ home government gave to the Kings' Bench and its judges.

He was not only disappointed in his expectations but had to

face from the very beginning an active opposition from the government. The government was in fact run by the three new councillors, who formed the majority in the Council. These councillors had landed at Calcutta with a superior air of authority. They were not prepared to suffer the Supreme Court acting as an independent agency of checks and balances over the government of the provinces. They wanted the Court not only to play a second fiddle to the Council but also to function in the commercial interest of the Company.

Nothing could be more revolting to Impey than to function under the direction and in the interest of the Council. He was acutely sensitive of his dignity as the Chief Justice and of the powers and jurisdictions of the Supreme Court, which originated from a superior source than that of the Council. Whereas the Council represented the commercial interests of a private trading company, the Supreme Court he thought, was established by His Majesty to administer the King's justice.

These differences between Impey and the three councillors were underlined by the personal prejudices which both parties bore against each other. The new councillors were jealous of the precedence Impey was given over them under the Charter. They disliked and distrusted him because he happened to be an old friend of Hastings.

Thus, from the very beginning the Court and the Council started functioning in mutual distrust and jealousy. The three councillors seized the earliest opportunity to assert their

superior authority over the Court. Impey applied for a new Court building; the councillors turned down his request and asked him to hold the Court in the old building. The judges worked out a mode of payment for their salaries and submitted it to the Council. That was not acceptable to the Councillors and the matter was referred to the Court of Directors.

Next came the matter relating to the appointment of the Court's officers and their fees and salaries. Impey submitted the list of officers and their salaries for the formal approval of the Council. The councillors first showed their disapprobation and later with much reluctance approved the schedule of salaries provisionally for one year. Impey was sufficiently provoked.

He knew that ~~by~~ making the officers of the Court depend upon them for the annual approbation of their salary, the councillors were trying to infringe the independence of the Court. The judges united behind Impey in a strong protestation to the Council; the councillors gave way, though grudgingly.

These early conflicts created a spirit of bitterness between Impey and the three councillors. Impey identified his pride and dignity with the independence of the Supreme Court. He wanted Indians to realise not only that the Court was established to protect them but also that it was independent and powerful. An occasion to prove the independence of the Court arose when Nandkumar came to be tried for conspiracy and forgery.

The three councillors, having taken advantage of Nandkumar's villainy against Hastings, were morally bound to stand behind him. Besides, to induce Indians to accept their superior authority and the strength of their party, it was necessary that Nandkumar should be saved.

Yet, their desire to save Nandkumar was subservient to their determination to attack the independence of the Court and hurt the pride of Imrey. Hence, the measures which the three councillors undertook in a state of fury, were intended to offend the judges more than to provide an effective defence for Nandkumar.

Their visit to Nandkumar after he was accused of conspiracy, their arrogant censure of the conduct of the two judges, Le Maistre and Hyde, for committing Nandkumar for forgery, and their interference with the proceedings of the Court to secure a special place of confinement for Nandkumar, - these measures produced different reactions in the accused and the judges.

This conduct made Nandkumar expect everything from power and nothing from justice. He became certain of his eventual escape through the intervention of the government. This certain feeling made him disrespectful towards the Court and the judges.

The judges, on the other hand, were provoked to defend their independence and pride by an adherence to rigid legalism. It was in this tense atmosphere that Nandkumar was tried for forgery.

Though Impey was sufficiently infuriated at the early attempts of the councillors to interfere with the proceedings of the Court, he managed to conduct the trial impartially and fairly. His prejudices against the accused and his protectors - the three councillors - came to dominate his mind only after the jury had found the accused guilty. He became obdurate against showing any mercy to the convict.

It was not in pursuance of any conspiracy between him and Hastings that Impey refused to give respite to the convict. Yet, his refusal was conditioned by certain extra-judicial considerations. He knew that any mercy shown to the convict was bound to be misconstrued by the Indians as timidity in the judges. Impey had been made merciless by Nandkumar's forging of evidence and producing of perjured witnesses during the trial and by persisting in his arrogant and disrespectful attitude towards the judges after the trial. On top of all these extra-judicial considerations there was Impey's firm conviction in the guilt of Nandkumar. For these reasons he left the convict to receive his just deserts.

The first object of Impey - the establishment of the independence of the Supreme Court - was to a considerable degree achieved by the trial and execution of Nandkumar. But it was a much more difficult task to protect the natives against the oppression and corruption of the servants of the Company.

Prevention of the arbitrary exercise of the governmental powers for private ends, next occupied the attention of Impey. The three councillors had acquiesced in the execution of their protegee, but they were determined to wreak vengeance on those who had either given evidence against Nandkumar or had shown allegiance to Impey and Hastings during the trial. Kamaluddin had been the principal witness for the prosecution in the conspiracy and forgery case. John Stewart, the judge-advocate and secretary to the Council, had been an intimate friend of Hastings and sat on the Grand Jury during the trial of Nandkumar. The three councillors first directed their campaign against them.

Kamaluddin was arrested and imprisoned on a false allegation for arrears of revenue. Stewart was dismissed, first from the judge-advocateship and then from the secretaryship to the Council.

The Council had exclusive authority over the matters of revenue and administration. But the Charter had authorised the Court to entertain complaints against persons who were directly or indirectly employed in the service of the Company. It was under this clause of the Charter that the Court received the petitions of Kamaluddin and Stewart for relief and protection.

The case of Kamaluddin brought to the notice of the judges the evil practice of confining persons for an indefinite period without bail. Impey also found that the revenue officers of

the Company followed no rules and usages in the discharge of their functions. This gave them much scope for the exercise of arbitrary powers. It was evident that in the present case these powers were exercised to express private prejudice against Kamaluddin.

The judges issued the writ of Habeas Corpus as a remedy for the first evil. As for the second, they laid down explicitly that the Company's servants must observe the rules and practices, which had been set by themselves or their superiors for the discharge of their duty.

This principle was further applied in the case of Stewart. Impey found that the councillors had not observed the instructions of the Court of Directors in dismissing Stewart from the secretaryship. Under the instructions they were required to give in writing to Stewart the charges against him and enter in the consultations of his defence.

These early successes of the Court in asserting its independence against the Council and in providing remedies against the abuse of power were attained at the cost of a certain amount of disorder in the government. Impey had demolished the myth of the Nabab's sovereignty over the provinces, had doubted the legal status of the Company's Courts, and questioned the unlimited exercise of executive powers by the servants of the Company. The councillors, on the other hand, having failed in

their attempts to insubordinate the Court, had abandoned, as a mark of their protest against the Court, their sitting in the Sudder Dewanni Adalat and transferred the supervision of the Sudder Nizamat Adalat to the Nabab. In effect, the Company's Courts of civil and criminal appeal had ceased to function.

Impey realized that the root cause of the growing conflict between the Court and the Council was the result of the Regulating Act and its concomitant Charter which inadequately defined and regulated the powers and jurisdiction of the Court and the Council. He also realized that the powers of the Court were insufficient for the achievement of its objects. He, therefore, in collaboration with Hastings drafted the plan of 1776, which mirrored his experiences and ambitions. Impey had come to realize through his experiences that for the better administration of justice in the provinces it was necessary that the sovereignty of the provinces, which had so far been exercised by the Company in the name of the Nabab, should now be vested in His Majesty, and the Supreme Court should be given a general power of supervision and control over the civil and criminal Courts of the provinces. He had also realized that there should be established separate Courts with separate judges for the administration of civil justice.

All his experience found its full vent in his plan. But the constitution and powers of the Sudder Dewanni Adalat, under

the plan were ambitious, well devised to raise a Hastings-Impey party in absolute possession of the legislative, executive and judicial powers of the government. The Sudder Dewanni Adalat was to consist of the councillors and the judges; the Governor-General and Chief Justice each had a casting vote. Thus with Barwell, Le Maistre, Hyde and Impey on his side, Hastings could control the majority vote as against the votes of Francis, Clavering and Monson. Chambers might have been an uncertain ally for both parties.

The plan, not having received the concurrence of the majority members of the Council, was not likely to receive any serious consideration by Lord North's government. Therefore, Impey had built no high hopes on the plan. His next move was to secure for himself a seat in the Council, which might enable him to counteract the designs of Francis and Clavering against the Court. But his abortive attempt to secure a seat in the Council was motivated more by a desire to increase his private fortune and powers than by any patriotic feeling to bridge the differences between the Court and the Council. Besides, the idea of giving the Chief Justice also a seat in the Supreme Council was repugnant to the basic principles of English law. However, Impey was very frank and unpretentious in his application for the councillorship.

All these early attempts to find a solution for the

conflict between the Court and the Council having failed, the judges and the councillors were left to interpret and define for themselves the nature and extent of their respective powers and jurisdiction.

Impey knew that there were three main classes of people at whose hands Indians in Bengal suffered most. The first class consisted of those who were directly or indirectly employed by the Company in the collection of the revenue. This class included the members of the provincial councils, farmers and sureties of revenue, and the Zemindars. The farmers and Zemindars were the intermediaries between the government and the cultivators. As such, they occupied a key position in the revenue administration of the country. It was very much the practice for them to borrow money for the annual charges attending their several concerns and most of them had debts of an old standing to a very large amount. But the Indian bankers who advanced their money could not sue them in the Company's Court, for it was the policy of the British servants at provincial headquarters to protect those farmers and Zemindars against any such liability. Most of the despotic acts of the members of the provincial Council were committed through them. Thus, the Indian cultivator was without remedy against a privileged group of his own colour.

The second class comprised those who were entrusted with

the administration of civil and criminal justice in the Company's Courts. These were again the members of the provincial Council in their capacity as the judges of the Dewanni Adalat, the Indian law officers of the civil and criminal Courts. The members of the provincial Council, being mainly concerned with the collection of revenue, had practically abandoned their judicial function to their poorly paid Indian law officers. The administration of justice, therefore, was corrupt, irregular and oppressive.

To the third class belonged the private European traders, who, by virtue of their being merely the members of the ruling race, exercised illegal powers and privileges for the furtherance of their private interests.

As the Supreme Court was not empowered to supervise, control and regulate the proceedings of the civil, criminal and revenue Courts of the Company, the only way it could grant any relief to Indians against the members of the first and second class was to hold them amenable to the jurisdiction of the Supreme Court, in their individual capacity, as persons directly or indirectly employed in the service of the Company. The members of the third class were directly under the jurisdiction of the Court.

This was, indeed, a most clumsy way to punish corruption and oppression. The Indians could hardly dare to prefer charges against the servants of the Company, Zemindars or

private British traders, who had the power and influence to overawe them. A recently established Supreme Court, functioning in the town of Calcutta, was hardly known to ignorant Indians living in the remoter parts of the provinces. Even if known, access to it involved expenditure and a journey.

This was not the only limitation under which Impey had to work. The councillors, being hostile to the powers and jurisdiction of the Court and to the idea of indiscriminate administration of justice on the principles of equality before the law, were least likely to suffer Court interference in the revenue and judicial matters of the Company, which matters had been exclusively committed to their care and control. They knew that all the farmers and Zemindars were indebted by large sums. If they were summoned to the Supreme Court on the action of a private suitor and compelled to pay off their private debts, they would become penniless to discharge their obligations to the Company, hence the Company would suffer enormous losses. They also knew that all the British servants of the Company and the European traders commonly committed peculation and corruption. If the Court persisted in establishing the equalising principle between the natives and the Europeans and summoned the Europeans to appear in the Court and answer to the charges levelled by the Indians, the government would be degraded in the eyes of the Indians and every Englishman of rank reduced to the level of the lowest native.

Thus, as against law and justice which Impey held above all considerations the Council set up the commercial and political interests of the Company. This broad issue underlay the leading events of the quarrel which started between the Court and the Council on the Patna case and developed into a crisis over the Cossijurah affair.

In the Patna case and in the case of Gowry Chand, Impey set forth the extent of the liability of the judges of the Dewanni Adalats for acts done in their judicial capacity. He held that the Supreme Court should hold them liable in damages for only manifest corruptions and not for irregularities which might have been involved in their proceedings. By maintaining this difference between manifest corruption and gross irregularities Impey recognized the legal status of the Company Courts. He had found during the trial of the Patna case that the judges of these Adalats had practically abandoned their judicial functions to the native law officers, who dispensed justice most unevenly and corruptly. On a side issue it was held that the farmers were subject to the jurisdiction of the Court as being persons indirectly employed by the Company in the collection of the revenue.

The judges of the Supreme Court next challenged the power of revenue Councils to imprison a person for an indefinite period without bail or manprize. It was a gross abuse of power. As the Supreme Court was intended by the late Act to redress

diverse abuses which had crept into the Company's affairs in India, the Court would not suffer their practice to continue any longer. Hence, in the case of ~~Sa~~roopchand against the Dacca Council, the Court held that no person could be imprisoned without bail or manprize. The government was, therefore, deprived of a most effective means of realizing revenue from the revenue-debtors.

The Supreme Court stationed Peat at Dacca as master-extraordinary and attorney of the Supreme Court. His stay there was meant to enable the suitors to give affidavits and seek legal assistance from him without incurring the trouble of coming to Calcutta. This was not sufficient to make the Supreme Court accessible to all and sundry. Having realized that the Company's Courts bore no semblance of justice and the Supreme Court was the only Court in British territories which administered justice evenly and fairly, Impey proposed to Rockford that circuits be established by the judges of the Supreme Court through the provinces.

These proceedings of the Court were bound to cause strong opposition from the Council and the members of the first and second class of potential oppressors. By the beginning of the year 1779, the Court had made enemies of a large percentage of the British subjects in India. The senior servants of the Company felt disgraced and hurt by being summoned by the Supreme Court on the suit of an ordinary native. But they could not

take any effective action against the Supreme Court. In the Council two of its bitterest enemies were dead. Francis' animosity against the Court was outbalanced by the tolerant and friendly attitude of Hastings and Barwell towards the Court. It was the other class of Europeans, not in the service, and free to do or say anything that suited their designs, which provided leadership to a movement against the Court.

The members of the third class as much disliked and dreaded the Court's adherence to the equalising principles of law as the members of the first and second class. The Supreme Court had deprived a great many members of the third class of the exercise of unlimited powers and privileges and punished them for oppressions and corruptions committed against the natives. The lead was taken by people like James Creasy, who had been personally affected by the judgment of the Court, and the result was the Touchet Petition against the Court. This petition together with the petition of the Council against the Court was sent home to be placed before Parliament.

Self-confidence held Impey high against these protests and petitions. He was not discouraged. It was a sudden bridging of difference between Hastings and Francis that enabled the Council to present a united, and therefore a most formidable, front against the Court. Since the Court held him liable to a large amount of damages for adultery committed against Grand, Francis had turned into a bitter enemy of Impey and his Court.

He would compromise his differences and prejudices against Hastings if the latter promised him a united front against the Court. As Barwell was intending to return to England, Hastings was inclined to buy Francis' allegiance at any cost. The bargain was struck through the agency of John Day, who had his own personal prejudices against the Court and its judges.

The Cossijurah case provided the opportunity to test the vigour and genuineness of the Hastings-Francis alliance. The line of action was laid down by Day and Francis; Hastings had to follow and keep his promise. A divided Council had allowed the senior servants of the Company to appear in the Supreme Court, but a united Council would not allow a Zemindar to appear in the Court. The Council not only refused to execute the process of the Court against the Raja of Cossijurah but gave the Raja orders not to appear in the Court. The Court was obliged to send its sheriff to execute its process against the defendant. Then the Council employed its military force to apprehend the sheriff's men and put them in prison.

The Hastings-Francis alliance was one of the main factors which turned the Cossijurah affair into a crisis. Hastings, if left to himself, would have chosen not to send troops to resist the process and arrest the officers of the Court. While this accommodation between Francis and Hastings persisted, Impey stood humiliated and powerless in the eyes of the Indians, whose cause he had championed so far against the accesses of

the government. The Court lay helplessly inactive and subdued, its powers annihilated, its independence and dignity impaired.

When the short-lived Hastings-Francis alliance ended in a duel between them in August 1780, Hastings realized the futility of having alienated his friend Impey, and of having abridged the power of the Court to the minimum. While awaiting the decision of Parliament on the issues of conflict between the Court and the Council, Hastings wanted to bring about a temporary settlement between the two. With Coote's and his own casting vote, he could carry the decision of the Council in his favour.

The appointment of Impey to the judgeship of the Sudder Dewanni Adalat fulfilled the long-felt need of placing the civil Courts of the Company under effective supervision and control. The newly appointed judges of these Courts needed legal guidance, supervision and training.

The settlement also restored the dignity of Impey and his Court. During the Cossijurah crisis, the Council undid what Impey had taken six years to achieve. The Court had tried to impress the Indians as an independent and powerful body; the Council, by using force against the Court had made the Indians lose their confidence in the Court.

The settlement established a complete harmony between the Court and the Council and an intimate friendship between Hastings and Impey. Even during the Cossijurah crisis, when

Impey was completely ignored by Hastings, the former did not lose his respect and regard for the latter. In fact, Impey had always considered him a most competent and able Governor-General and he had been willing to support him as far as it was consistent with his own principles and integrity.

Thus, when Hastings invited him to Banaras for his advice and help, Impey was flattered and went. Impey was genuinely convinced of the purity of Hastings' conduct. He believed that Hastings was honest and that his operations against Chet Singh were justified. But there had been a revolution and Impey feared such circumstances might raise suspicions of Hastings' integrity. Therefore, Impey suggested to him the propriety of making his proceedings as public as possible and to verify by affidavits such facts as were capable of proof.

On his return to Calcutta, Impey was planning to return to England and to secure for himself a seat in Parliament. He knew the names of the members of the Select Committee which had been appointed to inquire into the petitions that had been filed against the Supreme Court. He knew also that the report of a Burke-dominated committee would be most unfavourable for the Court. And, he was right in both conjectures.

On the recommendations of the Select Committee, Parliament passed the Act of 1781. The issue of conflict between the Court and the Council was decided in favour of the Council. Taking into consideration the recent American reverses, Parlia-

ment decided that an autocratic system of government was more suited to Indian traditions than the free and balanced system of government which existed in Britain and which the Supreme Court had tried to achieve in India.

The Touchet Committee report was followed by the first report of the Select Committee on Impey's appointment to the Sudder Dewanni Adalat. Misrepresentation of facts, personal prejudice and party politics had combined to infect the Parliamentary atmosphere with an anti-Court and anti-Hastings-Impey feeling. The House voted for the recall of Impey. Impey's friend Shelburne was in power, but he was dependant on the younger Pitt and Dundas who were committed to recall Hastings. As a political compromise, and with much reluctance, Shelburne signed the letter of recall on 8 July 1782. Thus was the career of Sir Elijah Impey brought to an unhappy and perhaps untimely end in India.

* * * * *

In previous writing on Impey two main schools of thought had emerged. In the judgment of Macaulay, Mill and Beveridge, who were the chief protagonists of one school, Impey was a malicious, uncandid and corrupt judge. He sent to the gallows an innocent Indian of high rank and caste, in order to save his friend Hastings from a just prosecution for corruption and bribery. To gratify his lust for power he extended the juris-

diction of the Supreme Court over matters and subjects which were, by the Act of 1773, expressly excluded from its jurisdiction. This illegal extension of the jurisdiction caused disorder in the government; the revenue of the Company suffered loss and the Indians were terrorised. The government, therefore, was obliged finally to oppose the Court by force. Having been so opposed by the Council in his attempts to enlarge the powers of his Court, Impey tried to snatch power and fortune for himself by being appointed by Hastings to the judgeship of the Sudder Dewanni Adalat. By accepting a salaried post under the control of the Council, Impey became in essence a tool in the hands of Hastings - a tool which Hastings did not fail to use in collecting and authenticating evidence to support his otherwise condemnable operations against the Raja of Banaras. Thus, in whatever Impey did in India, he was, according to Macaulay's school of thought, guided by the vilest of motives.

In opposition to this grew the second school of thought, led by Stephen. Stephen had approached the subject from a jurist's point of view and found sufficient evidence to justify the judicial conduct of Impey. He held that there existed no conspiracy between Hastings and Impey to take away the life of Nandkumar, that the trial of Nandkumar was fair and impartial, that the guilt of the accused was proved beyond doubt, that the sentence of death was legal, that the hands of Impey were so tied that he could not in good faith give respite to the

convict, and that in the whole affair of Nandkumar he was actuated by no private considerations. Likewise, in claiming jurisdiction over the Company's servants, farmers and Zemindars, Impey was in fact exercising the legitimate powers which were given to the Court by the Charter of 1774. Therefore, the violent resistance which the Council put up against the Court was illegal and unjustified.

After my inquiry into the subject, I have found that the leaders of the first school of thought based their judgment on insufficient facts. They sat in judgment on a judge, but did not inquire into his judicial pronouncements and into the proceedings of his Court. What they took into account was the school-days friendship that subsisted between Hastings and Impey and the fact that Nandkumar was tried and executed shortly after he had accused Hastings of corruption and bribery. From this they inferred that Nandkumar was judicially murdered by Impey. This inference induced them to attribute to Impey the vilest of motives in his judicial conduct subsequent to the trial of Nandkumar. A man who could conspire with Hastings to murder Nandkumar could have no other motive in extending the jurisdiction of the Court or accepting the judgeship of the Sudder Dewanni Adalat than that of gratifying his lust for power and money.

Stephen, on the other hand, had examined the subject in a legal context. He did not take into account the special cir-

cumstances under which Impey had to discharge his judicial functions in India. Hence he could not trace the influence of non-jural factors on the judicial conduct of Impey. For this reason he could not find an absolute legal justification for Impey's appointment to a salaried post under the control of the Council, though he believed that Impey accepted the post in good faith. Thus, Stephen's inquiry into the subject was more or less like an inquiry held by the judge of a superior Court into the judicial conduct of a judge of an inferior Court.

I have tried to examine the judicial conduct of Impey in an historical context and to find how far and to what end his judicial conduct was influenced by extra-jural circumstances. I have found that there existed no conspiracy between Hastings and Impey, and the trial of Nandkumar was held fairly and impartially. But Impey had some extra-judicial considerations in refusing to give respite to Nandkumar. His hands were not so tied by the law as Stephen believed them to be, that he could not in good faith and in law give respite to Nandkumar. All the same, it was not to screen his friend Hastings, as Macaulay alleged, that he refused to show any clemency to the convict. It was to establish the independence and supremacy of the Court and its judges that Impey refused to give respite to Nandkumar.

Similarly, it was not to gratify his lust for power but to protect the Indians from the oppressive and corrupt exercise of

judicial and revenue authority, that he claimed jurisdiction over the servants of the Company, farmers and Zemindars, whom he verily considered to be the potential oppressors. Impey accepted the judgeship of the Sudder Dewanni Adalat not for pecuniary reward but so as to put the Company's Courts into working order and to resecure the confidence of the Indians in his powers and dignity. It was to advise and help his friend Warren Hastings in a cause which he in good faith believed to be a right one, that he went to Banaras and Lucknow. In his abortive attempt to obtain a seat in the Council he was not actuated by any patriotic zeal to bridge the difference between the Council and the Court, but by an ambition for securing a higher rank and a larger remuneration.

When we consider what Impey did for the Supreme Court and his actions in curbing the corrupt and oppressive practices of the servants of the Company, we must conclude that he rendered extremely valuable service to the Indian judiciary. And while we cannot say that Impey was a really great man, we must but acknowledge that by introducing English legal principles into the India of the late eighteenth century, Impey made an ineradicable contribution to the development of the Indian judiciary.

SOURCES

IN MANUSCRIPT

British Museum

(A) Impey Papers. (Vols. 16259-71)

1. Letters of Impey to various persons in England from 1774 to 1783; volumes: 16259 and 16260.
2. Impey-Hastings correspondences from 1778 to 1782; volumes: 16261 and 16262.
3. Impey to various official persons in India and their answers, from 1775 to 1783; volumes: 16263 and 16264.
4. Letter-Book of Impey, from 1774 to 1780; volumes: 16265, 16266 and 16267.
5. Copies of rules, orders, and instructions as to the practice and proceedings in the Courts of justice at Fort Marlborough, on the Island of Sumatra, Calcutta and Madras, compiled by Impey; volumes: 16268, 16269 and 16270.
6. Copies of official documents relating to Impey; volumes: 16271.

(B) Warren Hastings Papers

Adds. 29076; 29079; 29103; 29108; 29112; 29128;
29130; 29135; 29197; 29200; 29207.

(C) George Vansittart's (Loose) Papers

Add. 28370 (Acquired by the British Museum in 1954).

(D) David Anderson's Papers

Add. 45427.

India Office

(A) Francis Papers

EUR. MSS.

1-11/13. 7
14, 15, 16, 17, 19, 23, 33
4, 7, 10, 14

-480-

(B) Fowke Papers

EUR. MSS. G.3.

(C) Bengal Consultations

1. Law Consultations.
Range 166, volumes: 79, 80, 82, 83, ~~81~~.
2. Public Consultations.
Range 2, volumes: 10, 11, 12, 14, 15, 25.
3. Secret Consultations.
Range A, volumes: 5, 19, 27, 28, 29, 49, 51, 55.
4. Secret Proceedings Relating to Nandkumar.
Range 168, volumes: 16, 17, 18.
5. Revenue Consultations.
Range 49, volumes: 48, 49, 54, 55, 56.
Range 50, volumes: 15, 16, 17, 18, 19, 28, 29.
6. Revenue Committee Consultations, 1772.
Range 67, volume: 54.
7. Report of the Committee of Circuit, 1772.
Range A, volume: 19.
8. Calcutta Revenue Committee Consultation.
Range 67, volumes: 59, 60.
9. Bengal General Consultation of 1765.
10. Criminal and Judicial Consultations (J780) N.50, volume 22.

(D) Minutes, Dispatches and Letters

1. Court Book, volume 90.
2. Bengal Dispatches, volumes: 6, 7, 12.
3. Abstracts of the letters from Bengal, Number 2.

(E) Home Miscellaneous Series

Volumes: 108, 115, 120, 121, 122, 123, 124, 125, 134, 135,
143, 144, 154, 162, 163, 172, 173, 175, 178, 187,
212, 352, 413, 421, 422, 424, 584.

At Winchester

Impey's family-tree, his Chancellor's medal, his prayer-book and his collection of paintings are in the possession of Mr. Lawrence Impey at Chilland, Winchester. Lawrence Impey is the living lineal descendant of Sir Elijah Impey.

P R I N T E D

Official

I Reports of the Select and Secret Committees
of the House of Commons:

1. Third Report of the Select Committee of 1773.
 2. Seventh Report of the Committee of Secrecy, 1773.
 3. Report of the Touchet Committee with Appendixes (8 May 1781).
 4. First Report of the Select Committee (5 February 1782).
 5. Second Report of the Select Committee (6 June 1782).
 6. Fourth Report of the Select Committee (18 June 1782).
 7. Fifth Report of the Select Committee (18 June 1782).
 8. Ninth Report of the Select Committee, 1783.
 9. Fifth Report of the Select Committee of 1812.
- II Parliamentary History; volumes: 17, 21, 22, 23, 26, 27, 28.
- III 'The Trial of Nandkumar', (Cadell) Lon. 1776.
- IV State Trials; volume 20.
- V 'Articles of Charge against Sir Elijah Impey with Minutes of Evidence, 1788'.
- VI History of the trial of Warren Hastings, (Debrett) 1796.
- VII 'A Collections of Charters and Statutes relating to the East India Company'; volume 2, (Lon. 1817).

Contemporary Works

1. Adolphus, John. The History of England, 2nd Edition, (Lon. 1805).
2. Colebrooke, J.E. Supplement to the Digest of the Regulations and Laws. (Calcutta, 1807).
3. Dow, Alexander. History of Hindostan. Vol.II. 1768.
4. Duncan, Jonathan. Regulations for the administration of Justice in the Courts of Dewannee Adaulut. (Calcutta, 1785).
5. Francis, Philip. Answer of Philip Francis to the Charge brought against Sir John Clavering, Col. George Monson and Mr. Francis at the Bar of the House of Commons on the 4th Feb, 1788 by Sir Elijah Impey. (Lon.,1788)
6. Grand, G.F. Life of a Gentleman long resident in India. (Calcutta Historical Society, Edition of 1910). (Cape of Good Hope 1814).
7. Hastings, Warren. (a) Memoirs relative to the State of India (Lon. 1786).
(b) A narrative of the insurrection which happened in the Zemeendary of Banaris in the month of August 1781. (Calcutta 1782).
8. Hodges, William. Travels in India, 1793.
9. Impey, Sir Elijah. (a) The Speech of Sir Elijah Impey delivered at the Bar of the House of Commons on 4 Feb. 1788. (Lon. 1788).
(b) A Refutation of a Pamphlet entitled, The Answer of Philip Francis. (Lon. 1788).
10. Khan, Seid-Gholam-Hossein. Seir Mutaqherin (1780). (Published in 1902 by R. Cambray & Co.)
11. Mackintosh, William. Travels in Europe, Asia and Africa, 1782.
12. Pennant, T. The View of Hindoostan. (Lon. 1798-1800).
13. Smith, Adam. Wealth of Nations. (Lon. 1776).

14. Tracts; East India. (a) No.77: Original Minutes of the Governor General and Council on the appointment of Sir Elijah Impey to be judge of the Sudder Duany Adawlet. (Lon. 1781).
(b) No.795: Extract of an original letter from Calcutta relative to the Administration of justice by Sir Elijah Impey, 1781.

Modern Works

1. Acharya, Keshub-Chandra. The Defence of Nandkumar (A reply to Sir James Stephen's Book). (Calcutta, 1888).
2. Ahmad, Muhammad Basheer. The Administration of Justice in Mediaeval India. (Aligarh, 1941).
3. Beveridge, Henry. The Trial of Maharaja Nandkumar. (Calcutta, 1886).
4. Busteed, H.E. Echoes from old Calcutta. 3rd Edition. (1897).
5. The Cambridge History of India. Volume V. (1929).
6. Cotton, H.E.A. Calcutta Old and New. (1907).
7. Davies, C.C. Warren Hastings and Oudh. (Lon. 1939).
8. Fawcett, Sir Charles. First Century of British justice in India, 1934.
9. Feiling, Keith. Warren Hastings, 1954.
10. Forrest, G.W. (a) Selections from the Letters, Dispatches and other State Papers. 1772-1785. 3 Volumes. Calcutta, 1890.
(b) Selections from the State Papers of the Governor Generals of India. Warren Hastings. (Lon. 1910).
11. Glig, G.R. Memoirs of the Life of the Right Hon. Warren Hastings. (Lon. 1841).
12. Grier, S.C. The letters of Warren Hastings to his wife. (1905)

13. Hastings, G.W. A vendication of Warren Hastings. (1909).
14. Impey, Barwell. Memoirs of Sir Elijah Impey, 1846).
15. Kaye, John William. The Administration of the East India Company, 1853.
16. Lecky, W.E.H. A History of England in the Eighteenth Century, 1882.
17. MacFarlane, Charles. Our Indian Empire. (Lon. 1844).
18. Malcolm, Sir John. Life of Lord Clive. 1836.
19. Mill, James. The History of British India. Volumes III & IV, 4th Edition. (Lon. 1840)
20. Moon, P. Warren Hastings and British India. 1947.
21. Morley, W.H. (a) The administration of justice in British India. 1853.
(b) Digest of Indian Cases. Volume 1. 1850.
22. Nicholls, John, M.P. Recollections and Reflections, Personal and Political, as connected with Public Affairs during the reign of George III. (Lon. 1820).
23. Parkes, J. Memoirs of Sir Philip Francis. Completed and edited by H. Merivale. (Lon. 1867).
24. Plumb, J.H. England in the 18th Century 1714 - 1815, 1955.
25. Roberts, P.E. History of British India, 2nd Edition. (Oxford 1938).
26. Ross, Charles. Correspondence of Cornwallis. Volume 1. (Lon 1859).
27. Shaw, John. Charters relating to the East India Company. (Madras 1837).
28. Southey, Robert. The Life and Works of William Cowper. (Lon. 1835).
29. Stephen, Sir James F. The Story of Nuncomar, and the Impeachment of Sir Elijah Impey. (Lon. 1885).

30. Sutherland, Lucy S. The E.I.C. in 18th Century Politics. (Oxford 1952).
31. Thornton, Edward. The History of the British Empire in India. 2nd Edition. 1858.
32. Tracts. No.1035. Verbatim Report of the Trial of Maharajah Nandkumar. (Bhawanipur 1906).
33. Weitzman, Sophia. Warren Hastings and Philip Francis. (1929).
34. Wilson, Sir R.K. An introduction to the Study of Anglo-Muhammadan Law. 1894.

Periodicals

1. Annual Register of 1773, 1781 and 1788.
2. Edinburgh Review. Oct. 1841 - Jan. 1842.
Vol. LXXIV - pp.160 - 255.
'Warren Hastings' by Lord Macaulay.
3. The English Historical Review. VOL. LXXII. No.284.
July 1957.
"New Evidence on the Nandakuma Trial"
by Miss Lucy S. Sutherland.
4. Calcutta Review. 1844. Vol.II.
'Sir Philip Francis', pp.561 - 608.
5. Hickey's Bengal Gazette.
1781, Jan. - 1782, Mar. N.4.
6. Commons Journals.
15 Nov. 1787 - 25 Sept. 1788.
Vol. XLIII. Articles of Charges
against Impey.

ABBREVIATIONS

- B. Pub. Consult. - Bengal Public Consultations
- B. Rev. Consult. - Bengal Revenue Consultations
- B. Sec. Consult. - Bengal Secret Consultations
- Collections - A collection of Charters and Statutes relating to the E.I.C.
- Dis. - Dispatch
- Echoes - Echoes from old Calcutta
- E.H.R. - European Historical Review
- H.M.S. - Home Miscellaneous Series
- H.P. - Hastings Papers
- I.P. - Impey Papers
- L.B.I. - Letter Book of Impey
- Memoirs - Memoirs of Sir Elijah Impey
- Narrative - A Narrative of the insurrection which happened in the zemeendary of Banaras
- Par. His. - Parliamentary History
- P M - Parkes and Merivale - Memoirs of Sir Philip Francis
- R. - Range
- Sier - Seir Mutaqherin
- Speech - Speech of Sir Elijah Impey
- Trials - Trial of Nandkumar and others
- T.C.R. - Touchet Committee Report
- Travels - Travels in Europe, Asia and Africa
- Van. Papers - Vansittart Papers
- Vol. - Volume