43

CHAPTER-II

COMPANY GROWS IN INDIA

THE COMPANY AND THE NATIVE PRINCES

It was natural that the Company should direct its first endeavour to establishing trade relations with India to the Spice Islands, and that it should have sought to follow the line of action suggested by the foundation of the Levant Company. The Company was established to take advantage of the concessions granted by the Turkish Sultan in 1579, which in effect exempted the servants of the Company from local jurisdiction and authorized them to manage under their own law their relations inter se. Such a system was almost inevitable under the circumstances of the time, when even in Europe the idea of a territorial law applicable to every person within a given area was only slowly becoming definite. Both Muhammadan and Hindu law were definitely religious in origin and character and could not easily or with any justice be applied to European merchants, and the native princes had no interest in insisting on attempting to apply them. The Europeans might without injury to the native State be allowed to govern themselves according to their own laws. Obviously a local ruler could not be expected to tolerate disorderly conduct or injuries inflicted on his subjects, and it is significant that the charter of 1605 of James I to the Levant Company avoids ascribing criminal jurisdiction proper

to the Company's consuls in the East, and this branch of their jurisdiction seems to have been of later development.[1]

In the light of these facts it is easy to understand the terms of the charter of privileges which Captain Lancaster obtained from the King of Achin on his first voyage. It confers on the English traders the privilege of enjoying their own laws with exemption from compulsion to accept the local law or faith. It authorizes disposal of property by will or on intestacy by the law declared by the chief of the factory, thus excluding the regular practice of the confiscation by the sovereign of the property of a merchant dying in his territory. It authorizes the chief factor to execute justice, both criminal and civil, as between the merchants and servants, but it assumes that offences committed against natives will be punished by the local authorities, merely exempting the goods of the Company from seizure as punishment for the misdeeds of their servants.

The Company, however, was not fated to effect much in the Spice Islands, and in India its contacts were with subordinates of the Mogul Emperor, who were not in the least inclined to treat on the basis of equality with the English merchants, especially as the influence of the Portuguese was exerted energetically against them. Hence the effort of James I through William Hawkins to obtain permission for regular trade from the Emperor ended in 1611 in failure, though Jahangir had at first

shown much favour to Hawkins during his stay at Agra. Force, however, extorted local respect, and the authorities at Surat agreed to grant trading privileges which an imperial firman confirmed. A more important effort to secure a treaty settlement was made by the King through Sir Thomas Roe, sent as ambassador in 1615-19. He found that the Emperor was not prepared to conclude a treaty, and in the end he had to content himself with obtaining that was requisite in the way of permission to trade and to manage the affairs of the factory independently of local interference, in the form of a grant from Prince Khurram, the viceroy of Gujarat. Failure to effect more was inevitable, so weak was the Company, and so engaged in conflicts with the Portuguese and later in disputes with its former allies, the Dutch. It was not therefore, surprising that Roe found it impossible to secure leave to settle in Bengal or Sind, and that the first settlements had to be confined to Surat, Agra, Ahmadabad, and Broach the chief factor at Surat being given authority over the other settlements and the style of president, while the control of trade with the Red Sea ports and Persia fell also under him. Further expansion became possible with the growing decline of Portuguese power and influence at the Mogul Court as the result of Dutch attacks. In 1635 the Viceroy of Goa gladly concluded with the English president at Surat a truce, which was confirmed by the Anglo-Portuguese treaty of 1641, concluded after the emancipation of Portugal in 1640 from

Spanish control. Finally Cromwell in 1654 extracted from the Portuguese Government a formal recognition of the right of trade with Portuguese ports in the East Indies, and the marriage treaty of Charles II in 1661 guaranteed Portugal against the loss of its few remaining possessions to the Dutch. Cromwell also in 1654 secured definite peace with Holland, though too late to save the English share in the Spice Islands. Pulo Run was surrendered in 1667, Bantam in 1682, and Bencoolen in Sumatra, settled in 1686, was handed over under the treaty of 1824 when Malacca became British.[2]

Though Surat figured largely in the history of English trade on the coast, the Company was not destined to secure territorial authority there. Its operations had to be carried on on the basis of the permission of the local authorities confirmed by the Emperor and subject to imperial sovereignty. The same conditions prevailed within those areas in which the Emperor had effective authority and even in the lesser Muhamadan states. The first real territorial authority which was acquired in India was obtained from a Hindu prince. In 1611 the Company followed the example of the Dutch, had started a factory at Masulipatam, the chief port of the kingdom of Golconda. But trade advantages were found to be superior in the Hindu territory to the south, and in 1626 a subsidiary settlement was formed at Armagaon, which was the first fortified port of the Company in India. But it proved unsatisfactory, and in

47

1639 a grant was obtained from the local chief of Wandiwash, who empowered the English Company to build a fortress, to mint money, and to govern Madras, on condition that half the customs and revenues of the port should be paid to the grantor. The English removed from Armagaon in 1640, and in September 1641 the new station, named Fort St. George, superseded Masulipatam as the English headquarters on the Coromandel coast. In 1645-7 the surrounding district was over-run by the forces of Golconda, but the grant made by the Hindu raja was continued in operation by the new ruler. The division of the customs, however, caused difficulty; in 1658 it was agreed that an annual payment of 380 pagodas should be accepted as the King's share. In 1672 the amount was increased to 1,200 pagodas, when it was expressly laid down that no local authority should be maintained at Madras, but that it should be wholly under the English with unrestricted power of command, government, and justice. This grant remained when in 1687 Golconda was conquered by Aurangzib. The position therefore was that the English power of government was plenary, but that the sovereignty of the Empire was fully recognised by the payment of a substantial quit rent. The Company obtained also in 1693 the grant of three villages adjoining Madras, and under the administration of Thomas Pitt five more were added in 1708, however, confirmation of the right of these villages was obtained by the mission of John Surman to the Emperor Farrukhsiyr, who also confirmed the Company's

established privilege of freedom from dues in the province of Hyderabad. The quit rent of Madras remained payable and the Emperor's supremacy was attested by the pattern of the rupees, which the Mogul authorities permitted the Company to coin at Madras.[3]

The situation in Madras, with the decline of the authority of the Emperor, became more and more in effect one of dependency on the local representative of the Mogul, the nawab of the Carnatic, who was in theory subordinate to the subadar of the Deccan. The outbreak of war with France resulted in the conquest of Madras in defiance of the prohibition of the nawab, and though the latter's position was recognized by Dupleix the real control rested in French hands. On the restoration of the town by treaty with France in 1748, the Company might no doubt have asserted its full sovereignty, but they contented themselves with his renouncing, in 1752, the quit rent, whereupon the English tenure of Madras and the limited area around its walls became absolute, but the rest of the country remained under the nominal sovereignty of the Emperor and the effective rule of the nawab, whose power, however, was essentially dependent on his support by the Company.[4]

In Bombay on the other hand as we have seen, the Company had obtained from the King, who was its absolute sovereign by virtue of its cession by Portugal, full powers of

49

government, and Bombay was indisputably British territory.

From Masulipatam trade had been carried to the seaport of Orissa and factories established in 1633 at Hariharpur and Balasore, while in 1650-1 a settlement was made by Hugli and later extended to Patna and Kasimbazar. But no effective sovereignty could be obtained. The agents of the Company had to content themselves with efforts to secure exemption from transit duties and customs in consideration of an annual payment of 3,000 rupees, and in 1656 they obtained from Shah Shuja a grant freeing them from demands on these accounts. The factors were especially interested in the concession which applied to their private trade as well as to that of the Company, while the latter bore the burden of the payments to the local authorities. Efforts to obtain imperial confirmation of the governor's grant met with comparatively little success, though in 1678 apparently he renewed the grant with the approval of the Emperor, and two years later a firman was obtained from Aurangzib himself. The failure of the local officials to pay respect to this grant and the interference with the Company's trade in the important commodity of saltpetre were a prime cause of the determination in 1686 of the Company on the instigation of Sir Josiah Child to make war on the Mogul. The result of this rash enterprise was the realization of the weakness of the Company, and on the initiative of the Bombay authorities peace was restored in 1690; and in February 1691 an imperial grant was made of freedom from

50

all dues in consideration of the payment of 3,000 rupees per annum in lieu. Under this pacification the English settlement was established in August 1690 at Sutanati, the site of the future Calcutta. In 1696 a local rebellion afforded the factors an excuse for fortifying the factory, and in 1698 the Company purchased at the cost of 1,200 rupees a year the right of zamindar over the three villages of Sutanati, Calcutta, and Govindpur. The fortified factory was named Fort William in honour of the King, and in 1709 became the seat of a presidency. As zamindar the Company was entitled to collect the revenue and exercise civil, judicial authority. It appears also that by the judicious exercise of bribery the Company was able to exercise criminal jurisdiction over Muhammadan and Hindu subjects of the Empire without interference either by the local faujdar of Hugli or his superior authority, the nazim at Murshidabad.[5]

The uncertain and not wholly satisfactory condition of English rights in India as they existed in 1698 led to an effort by the New Company to establish relations on a more regular basis. The directors dispatched on a mission to Aurangzib with the authority of the Crown a special ambassador, Sir William Norris. It was contemplated that he should obtain from the Emperor formal concessions for trade and the right to exercise jurisdiction over their settlements, as in the case of the Ottoman dominion. For this purpose the

51

representatives of the New Company were given rank as King's consuls and claimed authority as such over all Englishmen in India, including the representatives of the Old Company. The latter inevitably used their influence with the Indian authorities to defeat the efforts of Sir William Norris, while they carried on a bitter rivalry at their headquarters with the new-comers. The net result was the complete failure of the mission of Sir William Norris, who died en route home in 1702, and the abandonment once more of the effort to assimilate conditions in India to those prevailing in the Ottoman territories.[6]

The United Company, therefore, had to content itself with the process of obtaining concessions by imperial grant in lieu of the formal treaty aimed at by Norris, and in practice each presidency normally had to negotiate with the local authorities separately. But in 1714-17 a definite and not unsuccessful effort was made by the mission of Surman already referred to, to secure from the Emperor a general settlement. Surman in fact procured from Farrukshiyar three firmans addressed to the rulers of Gujarat, Hyderabad, and Bengal. A composition of 10,000 rupees was accepted for customs and dues at Surat, the rupees coined at Bombay by the Company were to be valid in the imperial dominions. The position at Madras was regularized as above described, and the right to trade free of dues in Bengal subject to the annual payment of 3,000 rupees was established. Moreover,

52

they were to be allowed to settle where else they pleased and to acquire fresh villages in the vicinity of Calcutta. But at this time the value of an imperial firman had come to be very slight with the decline of imperial power, and it proved impossible to secure from the local governors, whose position approached more and more closely to that of effective sovereigns, the villages which it was to acquire. Nor was it possible even to secure the right to mint coins. But a vital change was effected by the events which led to the defeat of Siraj-ud-daula and his acceptance in February 1757 of a formal treaty which confirmed the privileges of the Company, and gave it the right to coin money and to fortify its town, which had proved fatally exposed to capture. The position was further consolidated under the terms on which Mir Jafar was raised to the nawabship of Bengal. He was required to recognise English sovereignty in Calcutta; to grant lands sufficient to enable the Company to maintain a military force; to meet the cost of the troops used to support him; and to accept the residence of a servant of the Company at his durbar. The twenty-four parganas, whose acquisition had been approved by the firman of 1717, now at last passed into the hands of the Company as zamindar, paying a quit rent to the nawab who in 1759 assigned it to Clive. The Company naturally took exception to this abnormal position under which they paid rent to their own servant, but, after stopping payment in 1763, they sanctioned

53

the resumption of the grant, first until 1775 and then for ten years more.

The substitution of Mir Kasim by a fresh accord as nawab in 1760 brought further territorial powers to the Company, which received the districts of Burdwan, Midnapur, and Chittagong free of all payment. It must, therefore, be assumed that by this date the sovereignty over Calcutta, the twentyfour parganas, and the three districts, was definitely British, subject to whatever value might be attached to the vague claims of the Emperor to be paramount sovereign in India.[7]

THE GOVERNMENT OF THE COMPANY'S SETTLEMENTS AND TERRITORIES:

(A) THE EXECUTIVE GOVERNMENT

In the early days of the activities of the Company there was little need for elaborate organization. The Company had merely trading stations without territorial sovereignty, and it was only gradually that wider authority came to be exercised at Madras, Bombay, and Calcutta under the varying conditions dictated by the different sources of its power. The general principle of the control of the business of the factories was the rule of a council, the chief member of which was styled governor or president. The policy of the Company varied from time to time regarding the principle on which control should be exercised. Surat and Bantam were at first

54

selected to be the chief centres of the Company's affairs, other factories being made dependent upon them, but this arrangement was later varied, until in the period of depression in 1657 the determination was taken to have but one presidency, Surat, to which Fort St. George, Bantam, Hugli, and Persia alike should be made subordinate. Surat, however, suffered from the disadvantage that territorial power there could not be obtained, and accordingly, when the policy of securing political authority was resolved upon, it was decided to d terminate the dependence of Bombay on Surat. In 1686 John Child, who had been made president of Surat and governor of Bombay four years earlier, was created captain-general, admiral and commander-in-chief of the Company's forces in all its possessions as well as director-general of all mercantile affairs. His headquarters were normally to be Bombay, which from May 1687 superseded Surat as the headquarters of the western presidency, but he was empowered to visit Madras and Bengal to regulate affairs there. It was expressly explained that the high titles were intended to give the Company's general the same pre-eminence and authority as was enjoyed by the general of the Dutch Company at Batavia, whose political policy was being adopted by the London Company. On the failure of Sir John Child's efforts and the disasters in Bengal, the Company's projects were modified. After Child's death the post of captain-general and commander-in-chief was given in

55

1693 to Sir John Goldsborough, but his headquarters were fixed at Madras, while Sir John Gayer was to act as his lieutenant-general and governor of Bombay. Gayer in 1694 succeeded to the style of General on Goldsborough's death, but remained at Bombay, while Higginson, president at Madras, became lieutenant-general. The latter title, however, disappeared in 1698 when the redoubtable Thomas Pitt was appointed governor of Madras, and, after being held by successive governors of Bombay, the title general was dropped in 1715, when the new post of president and governor of Fort William, terminating the vicissitudes of the supreme control of the Bengal posts. The three presidencies now stood on a like footing, subject only to the co-ordinating power of the Company, which naturally at so great a distance was able to do little to bring about a concerted policy.[8]

The position of the president differed considerably from that of the governor of a Crown colony, because collegiate rule was encouraged by the Company, and the president was not normally entitled to overrule his colleagues. The number of members of council varied from time to time and place to place. In 1674, for instance, Madras had a governor who was first member of council, a book-keeper, a warehouse-keeper, and a customer who collected customs, rents, and taxes. In Bombay the president was aided by an accountant, a warehouse-keeper,

56

who registered the European goods sold and the Eastern goods purchased; a purser marine who gave an account of imports and exports, paid porters and seamen, and supervised ships' stores; and a secretary who recorded proceedings, wrote letters, and kept the Company's seal. The higher officers of the Company, who constituted the council, had normally worked their way up from the position of writers through that of factor, obtained after five years' service, to senior factor, reached after three years' further service, and to that of merchant. Naturally for effective action and decisions such a body was seldom well suited, and Clive had to insist, when faced with the task of government, on being given effective authority to act without the necessity of carrying with him the whole body of the council at Fort William. It is significant of the Company's distrust of autocracy in any form that the original resolution taken by the Madras Council on the eve of the dispatch of Clive to Calcutta would have associated with him two deputies to constitute a council to determine the political conduct of the expedition. The project was dropped simply because of the opposition to it of a member of the Calcutta council, whose objection was based on the wholesale supersession of that body, with the fortunate result that sole authority was given by Madras to Clive. Fortunately, as a forerunner of the later difficulties between Crown and Company's officers, Colonel Adlercron, commander of the royal regiment which had

57

come to India with Admiral Watson, had disqualified himself from the command of the expedition to relieve Calcutta by refusal to accept in advance the division of the prospective plunder on the basis laid down in the Company's instructions, and to undertake to return when required by the Madras Council.

The absence of authority by the president was probably on the whole disadvantageous to the interests of the Company. This was revealed in a marked form in 1762, when Vansittart entered into an agreement with Mir Kasim to regulate on an equitable basis the dues on the internal trade. The agreement authorized the officers of the nawab to determine disputes, and this deprivation of the right of acting as judges in their own cause induced the council to reject an arrangement in itself meritorious and led to the conflict with Mir Kasim and his replacement by Mir Jafar.

The control exercised by the chief authorities in the presidencies over the factories subordinate to them is shown by the correspondence to have been close and continuous, as in the case of Bombay, when its government was supervised by the president and council at Surat. But the presidencies themselves were subject to a very close control by the Company, so far as that could be exercised, through the medium of correspondence. The Company had, of course, the supreme right dismissing or removing from the officers which they occupied any of its

officers as well as of punishing them. Moreover, it could remove from India any persons engaging in trade without its licence, and so could prevent dismissed officers from trading after their dismissal. But it was difficult to make effective the exercise of its powers, and it was by no means always possible for the Company to secure the effective carrying out of its directions.[9]

(B) JURISDICTION AND LEGISLATION IN BOMBAY

Great constitutional interest attaches itself to the judicial arrangements operative in this period, the changes in which display a gradual evolution of the rule of law in the affairs of India. The system can be followed most clearly in the case of Bombay, because Bombay was, from the first, subject to the unfettered sovereignty of the British Crown and judicial arrangements were not affected by derivation from two sources.

In the first years of Bombay under the direct control of the Crown the chief concern of the government was military protection, for the island was threatened by the hostility of Aurangzib and the Maratha Sivaji and also from the Portuguese and Dutch settlements. In these circimstances it was natural that the island should have been subject to martial law regulations, which could properly be enforced under conditions akin

59

to war proper. Apparently those which were in operation were adopted from the set issued by Peterborough for the garrison of Tangier in 1662. The adaptation may have been made by Henry Gary, who became governor of the island on the death of Sir Gervase Lucas in 1667. Otherwise the island appears to have continued under the existing Portuguese law. The island had been since its cession by the Sultan of Gujarat in 1534 under Portuguese rule, and it would have been difficult for the governor, H. Cooke, who received it from the Portuguese in 1665 to introduce forthwith English law. As he explained on December 23rd 1665, the maintenance of the civil law gave great satisfaction, as the Portuguese on the mainland had often possessions on the island and vice versa. The garrison was governed by martial law, and liberty of conscience was accorded to all persons. Prior to the occupation judicial cases had not been dealt with in the island but carried to the judge at Thana or to the higher court at Bassein. Cooke therefore, had to establish a justice of the peace to examine causes with the bailiff and to report to Cooke, who gave the final decision, a rough and ready mode of procedure which resulted in the probably well-founded accusation that Cooke accepted bribes. His successor Lucas did not alter his arrangements, but put a stop to the exercise by Portuguese landlords of powers of coercion over their tenants, taking upon himself, as royal governor, sole power of punishment, either in his

60

either in his own right or through the justices of the peace. Gary, his successor, also tried cases personally, but he urged the appointment of a judge advocate trained in the civil law. It seems, however, that the courts martial dealt not only with Englishmen and military offenders, but might also punish natives accused of capital offences, such as wife murder.

The maintenance of the Portuguese law was of course entirely in accord with English law in its application to conquered and ceded territories, the rule being as recognized in Calvin's case by the judges of James I and asserted as indisputable by Lord Mansfield in Campbell V. Hall that the laws of the conquered or ceded territory remained unaltered until replaced by the command of the sovereign, so far, of course, as such laws were not incompatible with the substitution of English for Portuguese sovereignty. It is curious, therefore, that in 1845 it was judicially held that neither Portuguese law nor Portuguese courts survived in Bombay after the session of 1661.[10]

With the transfer of the island by the charter of 1668 to the government of the Company the position was completely changed. The charter, as already noted, gave to the Company through the court of committees power to legislate and by their governors and other officers to exercise judicial authority, and it was required that their laws should be

consonant to reason and not repugnant or contrary to the laws of England. Moreover, they were to be as near as may be agreeable to such laws, and the courts and their proceedings were to be like those used and established in England. It is clear, therefore, that the Crown did not contemplate any deviation from the principle which had been acted upon in the case of Jamaica in 1661-4 that English law and English judicial procedure should be applied to a ceded territory.

The orders from the Company reached Sir George Oxenden, president of Surat, in September 1668, and he himself visited the island in January 1669. In accordance with instructions from the Company he established the executive government under a deputy governor and council, but the current belief that he enacted codes for the civil and military administration of the island rests on a misunderstanding. The laws and ordinances of war which then were operative in the island had clearly been in force before his arrival, and so far from enacting them he expressed grave doubt as to their effectiveness and warned the deputy governor of Bombay, who claimed that they authorized a court martial to pass sentence of death on a military officer for alleged mutinous conduct, that the powers given rested only on the prerogative and that a man might be prosecuted for condemnation by court martial. Oxenden's doubts were natural. No state of war proper could be held then to exist, and the

62

extent of the right of the Crown to authorize punishment of such offences as mutiny or desertion by courts martial in time of peace was wholly doubtful. James II had in 1685 asserted the right to punish drastically by courts martial so long as the insurrection of Monmouth was raging, but he had instructed recourse to the civil courts the moment warfare had ceased, and this was in accord with the spirit of the Petition of Right of 1628 and the contemporary debates in the House of Commons, which showed that it was held in legal circles under Charles I that even soldiers under the common law could not in time of peace be dealt with by martial law, a system essentially intended for the government of armed forces when War was raging. It might be claimed that the authority of the Crown was greater when outside England, but Oxenden's caution was justified, nor was it lessened by the fact that so far as he knew the laws in question had not been formally issued by the King. Despite his objection, however, he could not absolutely prohibit their use; a revised edition which mitigated the extreme severity of the original articles the death penalty being excised from some twenty-five articles, was prepared apparently in Bombay and accepted by the Company. It continued to be operative for many years. At an uncertain date there were adopted, and were enforced in 1729 at any rate, selections from the articles of War which were issued in 1717 in England under the authority of the Mutiny Act of that year.

63

These articles were applied in 1747 by the Madras government to their forces, and in 1748 the regulations framed by the Company itself provided that military offences should be tried according to the rules, customs, and articles of war in His Majesty's service.[11]

As already noted it was not until 1754 that the position of martial law in India was brought into accord with that in England by the passing of an Act of Parliament, based on the analogy of the English Mutiny Act, which removed any doubt as to the authority of the Crown by the prerogative to authorize the Company to punish by courts martial offences against military law committed by its officers and soldiers in time of peace.

Only after the death of Oxenden in July 1669 did there arrive in India laws which were enacted by the Company under the charter for the government of Bombay. These laws were drafted by Thomas Papillon, the rival of Sir Josiah Child, and by the Company's solicitor. Their draft was revised by the Court of Committees and the Solicitor-General and duly engrossed and sealed. They were taken to Bombay by Aungier in January 1670. Translated into Portuguese and the coast dialect of Marathi, they were published in February. As the first important legislative work of the Company their contents are of special interest. Their first section dealt with religious observances,

requiring attendance at public worship in accordance with English law, but freedom of religious belief, observances, and customs was granted not merely to Roman Catholics, as required by the Treaty of Cession, but generally to all inhabitants, and fine or imprisonment might be inflicted for the use of abusive or contemptuous language about another person's religion.

Section 2, regarding the administration of justice, confirmed the existing rights provided for the impartial administration of justice, laid down the principle of trial and conviction by a jury of twelve men before deprivation of rights or the infliction of corporal punishment, and forbade commitment to prison without specific warrant.

By Section 3 provision was made for the establishment of a Court of Judicature for the decision of all suits in criminal matters under a judge appointed by the governor and council, trials to be by jury of twelve Englishmen unless one party to the dispute was not English when half the jury was to be non-English. There was to be a right of appeal from the court to the governor and council, which was constituted the supreme court for the island. Authority was also given for the appointment of justices of the peace and constables, for the maintenance of order, apprehension of criminals, etc.

Section 4 provided for the registration of transactions relating to houses or land, and Section 5 laid down miscellaneous penalties for the chief crimes. In many cases the

65

Company mitigated the severity of English law, notably in the case of robbery. The same characteristics are marked in Section 6 touching military discipline and the prevention of disorder and insurrection. Mutiny, sedition, insurrection, or rebellion could be punished by death, but other offences were treated lightly; even a soldier who slept on duty could only be fined or imprisoned. Offences were to be tried not by courts martial but by the governor and council or by a jury. Unfortunately the temperate character of the laws in this regard raised bitter complaint locally, with the result that the president and council gave permission for resort on necessary occasions to the Articles of War. The two codes, therefore, continued to subsist side by side; in point of fact the more drastic remained in operation, when, less than fifty years later, the laws of the Company had passed out of remembrance.[12]

The need of a judiciary was sufficiently indicated by the episode which was the immediate cause of Aungier's visit to Bombay. Young, the deputy governor, had quarrelled with his chief military assistant and had endeavoured to secure his condemnation to death by court martial, an action disapproved by Oxenden, and he had assaulted and confined the wife of his leading member of council, whose death later was asserted by her friends to be due to his violence. Aungier convened a grand council of thirteen persons in all to investigate the charges,

66

which were found not to be proved, and the only action taken was to send home the parties to the controversies. But, as the Company pointed out, it was not possible to deal with the matters involved, including the allegation of murder, in England, and Young was actually permitted to serve in Persia, where his insane action elicited orders for his removal which was anticipated by his death.

Aungier was not in a position immediately to supersede the system of the administration of Portuguese law in Portuguese by local experts, but he set up benches of justices at Bombay and Mahim, including besides natives of Bombay the English customs officer at each place to deal with minor disputes, up to 200 xeraphins in value, and petty offences. Appeal lay to the deputy governor and council, who sat weekly and who heard major cases and matters affecting the government of the island and the Company's interest therein. The superior court employed juries for the more important felonies at least, and applied the Company's laws; in the inferior courts Portuguese law was probably still effective. Englishmen were subjected to the jurisdiction of the superior court, and the Company itself and its officers were not exempt from its jurisdiction, though it was clear that the Company was not likely to suffer wrong from a court of its own servants. Appeal to the president and council at Surat was discouraged. This

67

system was well adapted to lead up to the formal introduction from August 1st 1672 of English law and the setting up of the Court of Judicature as directed by the Company. Bombay was now divided into four hundreds in imitation of English subdivisions of countries, and justices of the peace appointed, now English in lieu of Portuguese for them, with power to hold preliminary investigations on the strength of which indictments were preferred before the court. The justices also assisted the judge, who in 1678 was renamed chief justice, apparently to indicate that his position was reduced to that of primus inter pares. The court from 1672 dealt summarily and without appeal with civil causes under twenty xeraphins, and petty quarrels. In other civil causes juries were duly employed and paid; attorneys were allowed to practise; English procedure, including arrest and imprisonment, was followed, and English substantive law, including statute law, applied as closely as possible. Appeals to the governor and council were discouraged, and after 1677 apparently out of the use. The court also undertook probate and administration work, and registered deeds affecting immovables, and, anticipating English legislation of 1854, bills of sale of goods.[13]

Criminal jurisdiction was exercised monthly in general sessions, juries were used for major offences, but minor infractions against religion and morals were punished without

68

jury trial. For theft the death penalty was sometimes inflicted, as in 1674-5, but the Company in 1677 definitely disapproved of it. Capital sentences were considered by the governor and council, who might refer to the president and council at Surat, and in many cases were remitted for good cause. English common and statute law was applied freely to make good defects in the Company's laws. This was doubtless, as in civil cases, just and proper under the charter. To the credit of Child it should be put that he was reluctant to permit the execution of persons accused of witchcraft, thereby showing himself in advance of the sentiments of the day. The court on the English analogy asserted control of punch-houses, which had to be licensed by the council, the making and mending of highways, and the fixing of prices, a power still exercised as late as 1727.

The regularity of the position of the court was established in 1677 when an appeal against the attachment of certain property was considered by the Privy Council Committee for Trade and Plantations. The committee held on June 12th that the Company were right in contending that the issue involved was one to be decided by the Bombay Court by the verdict of a mixed jury as provided in the Company's laws, and the matter was ended amicably by submission by the complainant, Alvaro.

69

In a few cases of special importance trial took place by the governor and council with a jury. Thus Captain Shaxton, deputy governor, was thus tried for complicity in the mutiny of his company in accordance with the Company's laws in 1674; found guilty on several counts he took exception to the court as interested parties, so that it merely referred the matter to the Company. The soldiers concerned were tried by martial law, on the ground that by mutiny they had put themselves outside the laws of the Company. It seems probable that the chief weakness of the court lay in the fact that the judge was dependent on the good will of the council, as was seen in the dismissal of Niccolls in 1677, but there is no clear proof of injudicious interference with the court by the council. Under Gary in 1679 it reversed a decision of his as to the grant of administration in respect of a piece of land belonging to a widow dying interstate without relatives, but that was a just assertion of the right of the Company under the charter of 1668 to escheats, which would normally fall to the Crown.

Keigwin's rebellion from December 1683 to November 1684 interrupted the orderly development of the court and inaugurated a period of innovation both in judiciary and in the law. As mentioned above, Charles II had granted a new charter (August 3rd 1683) providing for the erection of a court for maritime

causes of all kinds, including all cases of trespasses, injuries, and wrongs, done or committed upon the high seas or in Bombay or its adjacent territory, the court to be held by a judge learned in the civil law assisted by two persons chosen by the Company. The causes heard were to be determined by the court in accordance with the rules of equity and good conscience and the laws and customs of merchants by such procedure as the judges might direct. The officer sent out was Dr. St. John, and this zealous judge succeeded in securing authority from the governor to act also as chief justice of the Court of judicature, which remained necessarily in being, for the authority of the Admiralty Court did not cover all civil business, for instance, matters affecting houses and lands, and probably did not extend to the punishment of offences other than those connected with interloping. The Company certainly at the outset took the natural view that the new court was essentially a court to deal with what ranked in English law as Admiralty causes. St. John, however, was not acceptable to John Child at Surat, and his work as chief justice ceased in 1685 (March 27th) and he was removed from the Admiralty Court two years later.[14]

But before this Sir Josiah Child had shewn a new interpretation of the rights and purposes of the Company, fortified in his view by the terms of the charter of 1686, under which

71

he claimed that the Company had become a sovereign state in India. From a series of letters sent to the presidencies it is clear that he arrogated to the Company absolute power to legislate and exercise jurisdiction at its pleasure. Ignoring the terms of the charter of 1668, it was laid down (July 28th 1686) that the law for Bombay was not to be found in statute books of English law, where it was still the custom of the court to seek it, but such law as the King or the Company might lay down, and such temporary by-laws as the general and council at Surat might find cause to make, until disapproved by the King or the Company. Moreover, it was asserted that under the charters of 1683 and 1686 the people of Bombay were to be governed by the law martial and the civil law, which only was proper to India. On February 3rd 1687 Surat was required to enact by-laws for Bombay, and it was reiterated that common law was quite unsuited for India, including, doubtless, in that term English statutes of general character. It was also made clear that in Sir J. Child's view the letters of the Company ought to be deemed binding as law on all its servants in India. To strengthen the position the post of deputy governor of Bombay was conferred on Sir John Wyborne as an expert in the government of Tangier, in conformity with which Bombay was to be governed. En route he was commissioned to try by martial law the planters and others concerned in the mutiny of 1684 at St. Helena, and the Company asserted

72

that it had the royal commission to govern both St. Helena and Bombay by martial law. It is, however, obvious that the claims made by the Company were invalid. The King had not the power to authorize the use of martial law in civil matters, and, though the Company could make laws, it had to be done in due form not by mere letters, and the laws made were not to be repugnant to English law. It would not, therefore, have been possible for the Company itself to confer the power to govern by martial law, and the whole episode is suggestive of the period of prerogative run mad which preluded the revolution of 1688.[15]

In point of fact civil jurisdiction was never confined to the Admiralty Court by the Company. The Court of Judicature was temporarily held also by Dr. St. John as chief justice, but he failed entirely to meet the wishes of the two Childs, for, fortified by the fact that he held a commission from the King as well as from the Company, and embittered by the Company's refusal to continue him in charge of the Court of Judicature, he set up extravagant claims of judicial independence. In Thorburn's case, where the Court of Judicature, under the new head John Vaux, had condemned him, he argued that the court had no right to try a mercantile cause, his jurisdiction being exclusive, but this was clearly an impossible claim, and appears to have been negatived. In the case of Day v. King

73

tried in the Admiralty Court, he strove to establish his right to pronounce the decision against the views of his two assistants, and he denied that an appeal lay to the governor and council. Both claims were patently absurd, the first running counter to the rule of the charter that the determination of the court was to be that of the majority, the professional judge being one thereof, and the latter ignoring the general appellate jurisdiction given to governor and council by the Company's laws of 1669. Moreover, he claimed the right to try military offenders, and asserted that he had been promised the control of the Court of Judicature, so that, if his pretensions had been accepted, he would have been sole judge, a dangerous contingency, for we find him sending to prison on his own authority an alleged servant. On the other hand, while the Company, anxious over the rebellious spirit of the territory as seen in Keigwin's rebellion (1683-4) and the loss of trade from interloping, might be excused for objecting to any imperium in imperio, it was obviously undesirable that Sir J. Child should insist that the judges must obey the general and council 'as it becomes all under command'. Dr. St. John was permitted to remain in control of the Admiralty Court until 1687, when he was dismissed, first Sir J. Wyborne, and from 1688 to 1690 Vaux, succeeded him. The latter was at the close of his office a pluralist, acting on military service during the Sidi's invasion, as member of

74

council and as judge. His departure to win Aurangzib's forgiveness marked the end of both courts for the time being, for John Child's death deprived Bombay of any person capable of resuscitating an effective administration to aid recovery from the injuries inflicted by the war.[16]

Neither court could be restored for years, and justice was administered in a rough and ready way by the governor and council, whose action could be authorized under the charter of Charles II. But much doubt existed as to the power to punish unless on confession, especially in the case of murders, and the Company returned no reply to Sir John Gayer's appeal in 1702 for power. Sir N. Waite, the chief representative of the New Company who took charge in 1704, Gayer being confined at Surat, took some action. He and the deputy governor shared jurisdiction Waite and the council heard civil and criminal causes, but most of the work was done by the deputy, while crimes resulting in death were investigated by the coroner, whose office dates from 1672, the governor and council awarding punishment. From 1708 when Aislabie, the deputy succeeded Waite, the same system of delegating authority to the deputy prevailed until 1712, when the council itself resumed sittings, only shortly after to permit the former practice to be resumed. Only under Charles Boone in 1716 was orderly judicial procedure restored, and so completely had the charter of 1668 and the

75

laws of 1669 been forgotten that application was made for power to try pirates and murderers. The Company's reply is significant; it sent out the charter and advised the council to remove from the island any who refused to obey the laws in force.

The new arrangements established a Court of Judicature mainly composed of the Company's servants, but including four Indians, representing the Hindus, Muhammadans, Portuguese Christians, and Parsees, though for cases between English persons three English justices must sit. The jury system was not revived, and only in the punishments inflicted is there much evidence of remembrance of the terms of the laws. The law of England was not unknown and was applied where appropriate, and even some knowledge of international law can be traced. Rough and ready methods of obtaining confessions were not unknown, and summary punishment was awarded for perjury or contempt of court. Both in criminal and civil matters the court exercised a wide jurisdiction, but in cases where a capital sentence could be imposed, such as murder or rape, the court referred for sentence to the governor and council. To that body appeals presumably lay, but appear to have been rare.[17]

The Court of 1718-28 differed essentially in its basis from that of 1672-90, for the latter was definitely constituted

76

by the laws of the Company, while the former was established by order of the governor and council, approved by the Company only. No doubt it was legally enough constituted, but the fact that capital sentences were passed by the governor and council only may be explained by the rather informal character of the court's creation. Again the earlier court used juries, and its judges might be, as in the case of Niccolls and Gary (1675-83) outsiders, while the later court was essentially a Company's court, the bench consisting mainly of members of council. But it was undoubtedly an improvement on the haphazard system of 1690-1718, and it paved the way for the introduction of the Mayor's Court in 1728 under the charter of 1726. That court was based on the principle of the Mayor's Court introduced into Madras under the charter of 1687; it had been considered in 1688 whether it should be extended to Bombay, but Child was doubtless opposed, and, though not formally adopted by Boone, it inspired part of the system of 1718. But the new plan rested on a royal charter, indicating, as noted above, the feeling that royal authority was necessary for a court if its judgements and grants of probate and administration were to be recognized by English courts. Further, the charter granted legislative power to the governor and council. Sir J. Child had asserted that the power to make by-laws was vested in the general and council of Surat, but we find that little had ever been done in this

77

regard. The Bombay Council itself laid down regulations as to public houses, gaming, and other minor matters, but its regulations were largely analogous to those under English law, and we have no evidence of any serious claim to possess legislative authority proper.

The Letters Patent of September 24th 1726 provided for the establishment of a municipal corporation, the mayor to be elected annually from the aldermen by the mayor and aldermen, of whom there were to be nine, seven and the mayor being English. The aldermen were to hold office for life, vacancies being filled by the mayor and aldermen from the leading inhabitants. They could be removed from office by the governor and council for reasonable cause, but subject to appeal to the King in Council.

The mayor and aldermen were constituted a court of record, the mayor and two aldermen being authorized to hear all suits of a civil character arising in Madras or the factories subordinate to it. Its process was to be based on English law and to be executed by a sheriff chosen annually by the governor and council, but no juries were used. Appeal lay to the governor and council, with a further appeal to the King in Council where the sum involved was over 1,000 pagodas.

Criminal justice was given to the governor and five

senior members of council who were to have the same powers as English justices of the peace. They were to hold Quarter Sessions four times a year, and were also given the powers of Commissioners of Oyer and Terminer and Gaol Delivery, but might not try cases of high treason. Procedure was to be by indictment as in England, and thus both petty and grand juries became regular; the latter had only been known sporadically under the Court of 1672-90.

As a corollary to the creation of municipal bodies it was decided to grant legislative power for the better government and regulation of the corporations, and the governor and council were empowered to make such regulations and impose pains and penalties for their breach, provided that by-laws and punishments were not contrary to the laws of England, and both had been confirmed by the Court of Directors before they took effect.[18]

The court was expressly authorized to grant probate and letters of administration in case of intestacy. Moreover, in 1727 (November 17th) it was provided by supplementary Letters Patent that the fines levied by the court should go to the Company. This principle had long been operative in practice, but clearly under a royal grant the claims of the Crown would have been paramount but for the express provision thus made.

79

The charter of January 8th 1753 which superseded those of 1726 and 1727 contained some improvements. The aldermen were on vacancies occurring to be chosen by the governor and council. The jurisdiction of the Mayor's Court was restricted to matters where the value was over five pagodas. On appeal the governor and council could execute their decision if the court failed to act. Evidence by Christians was to be on oath, and in the case of Indians in such a form as should most bind their consciences. Special provision was made for cases against the Company or brought by it. The court might frame rules of practice subject to control by the Company. A Court of Requests, composed of at least three commissioners out of a larger number chosen by the governor and council, was established to deal with suits of value up to five pagodas. All members of council were made justices of the peace. Moreover, the Company systematically examined through its legal advisers the reports of the proceedings of the courts and pressed on them the duty of conformity to English law.

It is, of course, obvious that it would have been impossible to insist on the government of natives in Bombay in regard to their civil rights by English law, and from the first this fact was recognized in various forms. Aungier, on the suggestion of the Company in 1673-4, recognized the authority of panchayats, or caste representatives, over all

inter-caste disputes which were submitted to them by agreement, though otherwise matters must be determined by the court. It is clear that the court had to apply caste rules in such cases. The panchayats were also given duties of watch and ward and reporting all sorts of offences to justices of the peace. Moreover, they were bound to look after the estates of orphans. Under the system of 1718 we find the chowghulas, headmen, and vereadores of the several tribes of inhabitants recognized as empowered to decide caste and communal disputes as an inferior court, whence appeal lay to the Court of Judicature. The latter were a legacy of Portuguese times, and were elected by the landowners; they were used to muster militia and collect taxes and seem to have superseded the panchayats in charge of orphans' estates, and in the case of Muhammadans the kazi and chowghulas played a similar part. The kazi seems to have had a minor jurisdiction in cases of inheritance and the like. For Hindus reference might be made to caste headmen or merchants for opinions. So strengthened, the court could revise even a sentence of the casting out of caste of a panchayat.

The Mayor's Court asserted naturally enough like power, but this led to dispute in 1730 with the council, which denied its right to deal with issues of religion or caste, and dismissed the mayor from his post as secretary to the council as punishment for his insistence on his judicial independence.

But the Company very properly upheld the authority of the court against the council, and the mayor and aldermen as grand jurymen were able to express freely their views to the governor and council, using their power to refuse to find true bills of indictment to press their views on the due method of swearing Hindus. These conflicts had their effect in the Letters Patent of 1753, where suits between natives were to be determined by the court only on submission by the parties. But it appears that this rule was ignored at Bombay in practice, even if it were legally binding there.[19]

(C) JURISDICTION AND LEGISLATION IN MADRAS

The position in Madras was vitally affected by the fact that authority there as regards the natives was essentially derived from Indian suzerains, while that over Englishmen rested on the Company's charters. A regular judicature over the latter dates only from 1666, though the necessary power was accorded in the charter of 1661. In 1665 the Company pointed this out to the governor, and a grand jury duly indicted, and a mixed petty jury found guilty, a murderer. Streynsham Master, who became governor in 1678, reformed the court on the Bombay model, and it sat with juries to hear civil and criminal causes save minor matters, following English law. In 1686, however, it was superseded by the Court of Admiralty, which in Madras fared far better than in Bombay, partly because in

82

1687 there was appointed as judge advocate Sir John Biggs, who was a protegé of the Company and enjoyed its favour. The court served also as the Supreme Court, and when a corporation was instituted in 1688 under the charter given by the Company, appeal was made to lie to the Court and not to the governor and council.[20]

The creation of a municipal corporation, as noted above, was motived by the desire to secure general acquiescence in taxation, a strike and no co-operation movement having greeted the imposition of a house tax in 1686. The corporation was composed of an English mayor and twelve aldermen, of whom the three senior must be English, but the others were to be of any nationality, a Frenchman, two Portuguese, three Hindus, and three Jew or American merchants being among those first appointed by the Company. Thirty of the 120 burgesses were to include the heads of the castes. In fact, the institution did not work as desired; it neither raised taxes nor founded municipal institutions, but it was of considerable importance judicially. The mayor and aldermen were constituted a civil court, while the mayor and the three senior aldermen were justices of the peace with criminal jurisdiction. Appeal lay to the Admiralty Court where the value exceeded three pagodas, or in criminal cases the offender was sentenced to lose life or limb. Its power to inflict sentences of death was disputed,

83

but conceded in 1712 by the council. Appeal lay to the Admiralty Court when that existed from 1688 to 1689 and 1692 to 1704, and in the interim to a temporary court of the governor and four justices. After 1704 Admiralty jurisdiction was apparently exercised by the governor and council, who tried pirates and interlopers as pirates under the Piracy Act of 1699 by special commission. It also heard appeals from the Mayor's Court, and while it lasted the Admiralty Court, under the instructions of the Company to Pitt as governor in 1698 to hear appeals in cases of not less value than one hundred pagodas.

In the Admiralty Court, in criminal jurisdiction, and in the Mayor's Court, juries seem to have been employed, but in civil causes juries seem not to have been employed in the Admiralty Court, the charters of 1683 and 1686 ignoring them, and certainly they were unknown to the Mayor's Court.[21]

To the jurisdiction of these courts natives, it is clear, were regarded as subject probably from the time when they became effective, and by the eighties cases of hanging major Indian offenders are frequent; Europeans were often suffered to escape with branding on the hand, doubtless because of the English legislation as to benefit of clergy, which seems to have been accepted also in Bombay and Calcutta in the eighteenth century, when applied to Indians at Calcutta

the additional penalty of expulsion across the river was often added. The source of this control of Indians was unquestionably the cession of authority by successive overlords, none of whom were especially strong, and all of whom were prepared to meet the wishes of the English for a consideration. At first naturally native disputes were left to the Indian adigar, or town governor, who administered justice according to long-established usage at the town house or choultry. About 1654 this practice was varied, two Englishmen being appointed to sit. In the reform system of Streynsham Master three justices were appointed, two to be a quorum, with authority in respect of small misdemeanours, breaches of the peace, and actions of debt to the value of fifty pagodas or under, unless the parties agreed to a larger amount. Appeal lay to the governor and council with jury trial there. The court proved to have a long life; in 1688-9 aldermen replaced the magistrates, but the work proved to require special justices, who continued to impose sentences of whipping, fines, imprisonment, and the pillory. In 1727 the Madras Council purported to create a Sheriff's Court, with appeal to the Mayor's Court if the value at stake exceeded five pagodas, but this attempt to supersede the Choultry Court was disapproved by the Company, who were no doubt justified in holding that the council had no authority thus to act. The need for a court of the type proposed was recognized, as in the case of Bombay, by the charter of 1753.

85

but it seems to have superseded this side of the choultry jurisdiction only in 1775, and, despite doubts cast by the Advocate-general at Madras in 1788 on the legality of the constitution of courts for the trial of matters affecting Indians, the Choultry Court continued to exercise a minor criminal jurisdiction until it was abolished in 1800.[22]

The major courts erected under the authority of the Company were superseded by the Mayor's Court, established under the charter of 1726, which was on the same lines as that granted to Bombay. The new court soon showed a praiseworthy inclination to defend its judicial powers. It insisted on committing to prison two merchants in 1736 for refusing to take the pagoda oath, i.e. an oath in a temple, and, to calm the indignation of the Indian residents, the governor had to intervene and secure the release of the men on parole. The Company censured the spirit of the court, warning them that they would not allow those who failed to show proper deference to remain in their limits, but they also insisted that, so long as they acted within their charter rights, they should receive the support of the governor.

The question of the law to be applied to natives by the court naturally arose. The Company was insistent on due observation of English law in the court, but it was anxious to favour the continued recognition of any peculiar customs

86

of the Indians. Hence, when the castes of Madras appealed to the Company its reply of February 12th 1731 insisted that disputes between natives should be decided among themselves according to their own customs, or by justices or referees to be appointed by themselves, or otherwise as they thought fit. If, however, they desired the court to decide, it must do so by English law, and the same rule must apply in differences between natives and subjects of England where either party was obstinate and determined to go to law. The decision is interesting, and, in view of the terms of the charter, no doubt inevitable. In the charter of 1753 jurisdiction of the court in matters between natives was made to depend on their submission. But this seems in practice to have caused little change, and the awkward position arose that the natives of Madras had no very effective substitute for the Mayor's Court. The Choultry Court, or that of Requests had a very limited authority, and, though in 1770 the idea of establishing a special court to deal with cases of native law was discussed, it resulted in action only in 1795 when a Court of Chtcherry was erected, only to be superseded by the Recorder's Court of 1798, in which an arrangement existed adapted to secure due regard for Indian law in cases affecting natives of India.[23]

(D) JURISDICTION AND LEGISLATION IN CALCUTTA

In its early days Bengal fell far short of Madras or Bombay in the character of its organization, executive and judicial alike. The settlements in the Bay were too unimportant as a rule to be considered worthy of the presence of a governor and council at any point, and the judicial authority given by the charter of 1661 authorized trial only by a governor and council. The establishment of a Court of Admiralty never became effective; when war was declared on the Empire the officer in command of the naval expedition was given a commission (January 1686), but prize business alone was transacted, and no court seems ever to have sat under later commissions of 1688 and 1693. After Charnock's establishment at Sutanati in 1690 the position was clearer, but in 1693, owing to piracies in the Red Sea, the privileges of the Company were placed in abeyance by the Emperor, and the idea of setting up a Court of Judicature was dropped, the local council being instructed in 1698, however, Bengal was declared a presidency and the governor and council thus became possessed of full judicial authority. In 1704 they established a committee of three members for the decision of minor causes, but the sittings of this body seem to have been irregular.[24]

Over Indians the Company had acquired jurisdiction by the purchase of the three villages, Sutanati, Govindpur, and

88

Calcutta, which gave it the rights of a zamindar. Under the regime then existing in Bengal, a zamindar was wont to exercise a wide criminal jurisdiction, whipping, fining, and imprisoning at discretion. The Company took full use of this authority, and a member of council regularly held a Zamindari Court for both civil and criminal business. Holwell, famous as the survivor and historian of the Black Hole, was collector of Calcutta from 1752 to 1756, and acted as magistrate; he tells us that the procedure was summary; in causes of property appeal lay to the president and council, while in capital sentences the president was required to confirm the judgement of the infliction of the lash until death. It is clear that by this time the necessity under which an ordinary zamindar lay of submitting sentences of death for confirmation to the local faujdar at Hugli and the nazim at Murshidabad had been got rid of, but the detail of the mode of inflicting a death sentence confirms the assertion of Bolts, which has wrongly been disputed, that hanging was prohibited for Muhammadans by decree of the Emperor. It seems however, that at least on one occasion Muhammadan members of a party of criminals were spared lest the nawab be induced to assert his rights of supervision.

What, however, is interesting is that this Court of Cutcherry dealt also with disputes between Europeans and

Indians of European descent, a position attacked by the Mayor's Court in 1755-7. As a result, in 1758, the Company ordered the constitution of two separate courts. The former dealt with all criminal causes, consisting of a quorum of three justices, the members of council sitting in rotation, each sitting for a month in turn as the acting justice to dispose of slight offences with an appeal to the quorum. When dealing with Europeans this court was clearly the governor and council under the charter; when dealing with natives it was a Zamindari Court. But it seems that the quorum of three was not persisted in, and by 1772 Bolts describes the Zamindari Court as held by one of the council or of the Company's servants sitting alone. Over Europeans presumably criminal jurisdiction in serious cases would be exercised under the charters of 1726 and 1753 by the Court of Quarter Sessions thereby created, which used juries.

The second court dealt with civil matters exceeding twenty rupees in value; it was composed of five of the servants of the Company below the council, with appeal to the president and council where the amount in dispute exceeded a hundred rupees. It seems, however, that it tended to evade decisions and to refer really difficult cases to arbitration by Indian merchants, who resented this tax on their time.[25]

Beside these courts was that called the Collector's

Cutcherry, which was simply the mode in which the Company exercised the coercive powers of the zamindar as collector of land revenue over the tenants or farmers of the revenue. Its practice of ordering whipping of delinquents was merely in accord with native practice, as was the complete injustice of allowing punishment to be inflicted at the discretion of an interested party who acted as judge in his own case.

The charters of 1726 and 1753 established in Bengal the courts also set up in Bombay and Madras, the Court of Quarter Sessions, the Mayor's Court, the Court of Requests from 1753, and the governor and council as Court of Appeal from the Mayor's Court. But naturally for Indians the three courts of the Zamindari persisted. The Mayor's Court exhibited like those of the other presidencies a measure of independence sufficient to arouse the Company's displeasure, and it fulminated also against the same spirit among the attorneys, whose activities in all three presidencies undoubtedly pointed the way to the emancipation of justice from any excessive executive control, an ideal expressed admirably in 1672 by Aungier but one slow to develop under the rather jealous eye of the Company.

The development of commerce and government alike had undoubtedly reached a stage at which the servants of the

91

Company could not suffice without training for the purposes of a judiciary, and the time was ripe for far-reaching changes. One obvious defect in the systems which had prevailed was the absence of provision for Indians as judges; under the charters of 1726 and 1753 Indians could serve as jurors in the Sessions Court, but only if Christians, a restriction removed only in 1826. The Bombay Court of Judicature from 1718 to 1723 had admitted Indians, though hardly as fully equal to European justices; a like system had been tried at Madras from 1687 to 1692, and the original intention of the Madras municipality was to include Indian aldermen, but this plan failed wholly to materialize. Small wonder therefore if the question of how to give just effect to Indian law where Indians were concerned remained to be solved. Calcutta indeed felt least the inconvenience, for the exclusion of cases between Indians by the charter of 1753 mattered little to a presidency in which these cases were capable of disposal by the Zamindari Court of Cutcherry.[26]

THE DIWANI, THE EXPLOITATION OF BENGAL, DYARCHY, AND ANARCHY

1. THE GRANT OF THE DIWANI

With Plassey and the following arrangements with successive nawabs of Bengal, the real authority had passed

92

into the hands of the Company. When its unreasonable demands regarding freedom of private trade from dues and the right to act as judge in its own cause had driven Mir Kasim to revolt and open war, a new treaty with Mir Jafar provided further limitations on the nawab's power. He was to limit his forces, to receive a permanent resident at the durbar, and not to levy more than $2\frac{1}{2}$ per cent duty on English trade, while compensation was to be paid for all losses, public and private, due to the disputes with Mir Kasim. This accord still left room for some independence on the nawab's part. He appointed Nandakumar as his chief minister and his attitude during the war with Mir Kasim and his allies, the nawab of Oudh and the Emperor, was deemed dubious. So at his death in 1765 the position was strengthened by the grant of recognition to his son Najm-ud-daula only on condition that he agreed to appoint a minister as deputy subadar with the management of affairs, whom he was not to displace without the sanction of the Company. The position of the Company was thus definitely assured in fact though not in law. Clive indeed was indignant that the council had acted thus definitely without his assent, for by 1764 he had secured control of the Company and had decided to assume the governorship of Fort Williams in order to restore confidence. Public opinion in England had viewed with just reprobation the establishment of Mir

Kasim in 1760, and the contest with him, provoked by indefensible claims, and redeemed only by the success of Munro at the decisive battle of Baksar (October 22nd 1764). Utter confusion prevailed both in the domestic and the external relations of the Company. Vansittart had found his prudent projects rejected by the council, and corruption raged among the Company's servants, who had violated the instructions of the Company in taking large presents on the accession of the new nawab.[27]

Clive's solution for the situation as regards the nawab of Oudh and the Emperor alike was of the highest importance in determining the future history of India. He himself in his earlier stay in India had contemplated the possibility of the direct assumption by the Crown and had approached Pitt on the subject, but without result, and his own views were now set on a different solution. He decided to secure the position of the Company as the de facto authority in such a way as would shield it from claims either by foreign powers or by the Crown, to provide it with a faithful ally, and to bring the Emperor into the position of a grateful pensioner. He rejected, therefore, definitely any idea of restoring imperial power, such as had been involved in Vansittart's suggestion of the grant to the Emperor of Oudh, which he restored to the nawab on payment of fifty lakhs and the cession of Kora and Allahabad. The Emperor was promised a tribute of twenty-six lakhs, and

the districts ceded by Oudh. In return he regularized the position of the Company in Bengal by bestowing upon it formally the diwani, covering the whole of the financial administration, including the collection of land revenue and customs, and the civil government. The diwani had hitherto rested with the nawab, who was also in control of the military government and criminal law, the combination of powers marking the decline of the former principles of the Empire. Now it was definitely detached from him as a matter of theory. But Clive did not contemplate the actual taking over of the authority and its execution by the servants of the Company. His idea was very different. The actual administration was left in the hands of four deputies of the nawab, and in his final directions to the Calcutta Council (January 16th 1767) he insisted that, while the nawab was but a name and a shadow, policy required that he should be venerated and be encouraged to show resentment at any lack of respect by foreign nations. His office should be used to repel any foreign efforts at control, and genuine grievances should be adjusted through him. While the revenues belonged to the Company, the territorial jurisdiction must be exercised through the chiefs of the country acting under him and the presidency in conjunction. If the mask were thrown off, foreign powers would be able to complain directly to the British Government, which might be compelled to look closely into matters with results like to

95

embarrass the Company. It was not forgotten that, by the Letters Patent of January 14th 1758, the Company's authority in case of war to deal with lands acquired from any foreign power was subject to the approval of the Crown. The Company shared the views of Clive; on May 17th 1766 it definitely urged that the control of the Company should be confined to superintendence of the collection of the revenue and of its transfer from the treasury of the nawab to that of the Company, and it was only by experience that it could be realized that the system of dual control was utterly inefficient. Moreover, time had to elapse before the servants of the Company could gain sufficient experience to be able to take over charge of the administration, and, before that happened, the country was fated to suffer enormously from their rapacity.[28]

2. THE WORKING OF DYARCHY

Clive had fully realized the danger of plunder of the province following in his own footsteps. But, undeterred by reminders of his past, he insisted on the servants of the Company signing the new contracts ordered by the Company forbidding the acceptance of presents and supplementing their existing covenants. On the other hand, he recognized that the salaries paid were far too low, and tried to solve the problem of private trade and due remuneration by establishing a Society for Trade, which was allowed to work the monopoly

96

in salt, and to pay thence handsome subventions to the principal military and civil officers. The Company treated this step as a disregard for their orders for the abolition of private trade, and the business was stopped in 1768, but the problem was left unsolved. The reputed riches of the country had the result predicted by Clive. Influence was exerted from the royal family downwards to secure posts in India for hangerson and younger sons of noble or rich families, and the new comers were intent only on acquiring fortunes. The easily won wealth was brought home and expended on the purchases of seats in the Commons, with the result of offending the territorial magnates, who found themselves outbidden, and disgusting moderate men with the insolence and overbearing character of the newly enriched ex-servants of the Company.

Clive, though aware of the danger impending, had nothing to suggest to keep it in check. The government of the presidency remained virtually in the same form as before 1756, with the exception that the select committee of the council then instituted for prompt action in emergency was continued as a regular piece of machinery. The council, as laid down in 1770, was to consist, with the governor, of nine members, all of whom were to reside at Calcutta - unless the resident at the durbar were a counsellor - and not to have any other employment. The Governor, commander-in-chief, and three senior members

97

constituted a select committee, charged with the conduct of negotiations with the country powers and the issues of war and peace thence arising; but any treaty, whether of commerce or alliance, must be approved by the whole body. The correspondence on such topics was conducted by the governor, but must be submitted to the select committee, and copies sent to the Company. The supremacy of the civil authority was emphasized in 1769; the council could delegate its power to any civil servant, who must be obeyed by the highest officer of the Company's army, and the majority of the council might dismiss officers at its discretion. This insistence on military subordination had been emphasized by Clive when he was confronted with a mutiny of officers on his carrying out the orders of the Company to reduce the allowances paid to them. Nothing but his firmness of character enabled him to quell the mutiny, the great majority of the officers being permitted to remain on after signing three-year contracts which, under the East India Mutiny Act, would have rendered them in the event of a fresh insubordination liable to the death penalty.[29]

Supreme as was in theory the council, it was wholly incapable of inducing moderation in the desire of the servants of the Company to enrich themselves, and its own members were inevitably subject to the same urge to attain easy fortunes and to leave a land for which they had no affection. Nor was

the position improved by the activity of Parliament which, like the proprietors, desired to share in the plunder. While the proprietors insisted in 1766 on raising the dividend from 6 to 10 per cent and in 1767 demanded 12½ per cent, the outcome of the inquiry by a committee of the whole House of Commons in 1766-7 was the demand of the State for the payment of 4,00,000 Pounds a year for two years from February 1st 1767, in return for which the Company might retain its territorial acquisitions and revenues for that period. Parliament also interfered in the disgraceful business of the management of the dealings in the shares of the Company. It overruled the demands of the proprietors for 12½ per cent, and restricted voting to persons who had held their qualification for six months, while dividends could be declared only at a half-yearly or quarterly court. In 1769 the bargain was continued for five years. The pressure on the Company was thus most serious. Far from sharing in the riches of its servants, its debts were put at 6,000,000 Pounds, it had an army of 30,000 men to maintain, and it paid 1,000,000 pounds a year in subsidies to the nawab, the Emperor, and other Indian chiefs.[30]

The effect of the demands for money on the unfortunate province were described effectively by the resident at the durbar who lamented on May 24th 1769 the fact that the fine country which had flourished under the most despotic and

99

arbitrary government was verging to its ruin when the English had so great a share in the administration. The governors who succeeded Clive were not men of the calibre necessary to deal with so grave a situation. Verelst, however, secured the appointment in 1769 of supervisors who were to make a full study of the history of their districts, to report on their resources and the amount of land, to investigate all payments made by the ryots to the zamindars or collectors, to report on manufactures, and, as regards justice, to enforce it when the law demanded, to encourage arbitration in disputes as to real property and to discourage arbitrary fines. They were to examine the credentials of local officials and to see that records were kept locally and returns sent to Murshidabad. It was later determined mainly to make their functions advisory, but the system did not work as hoped. There were many cases of disputes with local officials who resented interference, and unhappily too many of the officers concerned merely regarded their appointments as an excellent mode of acquiring control of the trade of the district and making a rapid fortune. It must be remembered that few officers were available of character or experience. It was in vain that in 1770 were added controlling councils of revenue for Murshidabad and Patna, which later were added a controlling committee of accounts and a controlling committee of revenue at Calcutta (1771).

The *coup de grace* to the attempt to carry on on these lines was administered by the appalling famine of 1770, when at least a fifth of the population of Bengal, then perhaps fifteen millions, perished while some of the Company's servants profiteered in necessities and the principal deputy added 10 per cent to the assessments to make good at the expense of the living the losses involved in the wholesale depopulation.[31]

THE INTERVENTION OF PARLIAMENT, NORTH'S REGULATING ACT, AND WARREN HASTINGS

1. WARREN HASTINGS IN BENGAL

The anarchy of Bengal was plainly intolerable, and Parliament was certain to intervene. But the Company was deeply moved by the facts revealed, and every motive of self-interest drove it to seek to establish order before worse befell. As early as 1769 it had dispatched Vansittart with two other experienced servants of the country to India with power to reform, but their ship was lost without trace, and the opportunity was gone, for when in 1772 the Company proposed to entrust a like mission to six supervisors, Parliament definitely forbade the act. What the Company could do was to resolve to end the system of dyarchy and to require the president and council to stand forth as diwan, and by the agency of the Company's servants to take upon themselves the

entire care and management of the revenues as laid down in the directors' letter of August 29th 1771. The man to accomplish this mission was Warren Hastings, who in April 1772 succeeded Cartier and who had had much experience in Bengal and from 1769 as second at Madras. While the determination to take over formal charge might easily be justified the method of action was deplorable. Hastings was required to co-operate with Nandakumar in accusations, which were later proved false, against the deputy diwans of Bengal and Bihar, and Nandakumar after all was denied the succession to the office which he had anticipated. In other matters he had a freer hand, and his work for the two years before the intervention of Parliament became decisive was probably the most creditable of his career, for the difficulties to be faced were enormous, and he was deeply handicapped by the necessity of securing funds whence dividends could be paid, and of avoiding too great offence to the mass of influential people at whose instigation the civil service had grown out of all proportion to the needs of the occasion, numbering in 1781 no less than 252 members, sons of the first families in the kingdom, aspiring to the rapid acquisition of lakhs and to return home in their prime. When he started his work, the supervisors in the districts, the boards of revenue at Murshidabad and Patna, and the governor and council at Calcutta represented in that order the real hierarchy of power,

and it was his essential task to restore authority to the hands entitled to wield it.

The assumption of direct authority involved the disappearance of the offices of deputy diwan, and the useful step of removing the treasury from Murshidabad to Calcutta, thus revealing to Bengal the fact that Calcutta was now the real capital of the country and remedying the undue authority which had been enjoyed by the board of revenue at Murshidabad. At the same time the allowance of the puppet nawab was reduced from thirty-two lakhs at which it had been fixed in 1769 as opposed to fifty-three in 1765 to sixteen lakhs, though careful adjustments seem to have increased the sum available for the nawab's personal pleasures. Much more dubious was the decision, approved but not suggested by the directors, to appoint as guardian of the nawab Mir Jafar's widow. Hastings no doubt was quite pleased that the Munni Begam should leave the youth without administrative experience, since it formed no part of his plans to encourage the nawab to play any effective part in government.[32]

The revenue reforms of Hastings and his colleagues, four of whom formed with him a Committee of Circuit (1772) to determine for five years a settlement of the revenue, were instrumental in establishing the office of collector, an approved version of the former supervisor; in each district a diwan was appointed to aid the collector. The whole council became a

committee or board of revenue to audit the accounts of the diwani with the aid of the rai raian, an Indian official who supervised the provincial diwans. The treasury, now at Calcutta, was reorganized, and the office of accountant-general created. But, while improvements in form were made, the essential work of fixing the revenue was badly muddled by adopting the putting up to auction of its collection. If the zamindars had been oppressive, they now were often superseded by unscrupulous adventurers without that connextion with the ryots possessed by hereditary zamindars. The latter in origin may have been mere agents for rent collection, but they had long since struck deeper roots in the system, and some measure of the relation of landlord and tenant had begun to appear. The collectors soon realized the degree of over-assessment, but the board of revenue at Calcutta was obdurate, and the Company destroyed the work of the collectors by ordering in April 1773 their withdrawal and the substitution of some other agency. Their motive seems to have been the view that the collectors were monopolizing the trade of the country. But the decision was unfortunate. The Company then and later knew nothing accurate of the amounts paid to the zamindars by the ryots and of the amounts retained by the latter. The information was mainly in the hands of the hereditary corporation of kanungos, whose business it was to act as registrars of land revenue and to secure that the ryots were not oppressed. These functions they had come to perform

in such a manner that the ryots derived no profit from their existence, while they more or less intimidated the zamindars into sharing their profits with them. If the collectors had been persistently kept at work it might have been possible to obtain such an exact knowledge of the system as would have permitted of due protection of the tenant and of the interests of the government; as it was, lack of proper knowledge was to compel acceptance of the permanent settlement of Bengal in which the government and the tenants alike were losers in the interests of the zamindars or tax-collectors.[33]

The president and council, on November 23rd 1773, drew up a scheme which was to have been temporary but was not effectively revised by the Company. A committee of revenue was formed at Calcutta composed of two members of council and three other servants of the Company to supervise the first of the six divisions into which the territory was divided. In the other five provincial councils set up, apparently in the expectation that the Calcutta committee would ultimately take over their functions. In each district the collector was to be replaced by an Indian diwan; occasional inspections were to be made by commissioners of the board of revenue set up in 1772, and the chiefs of the councils had to swear not to engage in private trade, receiving in lieu the substantial salary of 3,000 rupees a month. The new scheme proved no improvement on the old; the

105

records show defaulting zamindars, absconding farmers, and deserting ryots; the diwans did their work both slowly and badly, and the provincial councils insisted, as had the collectors, that the land was over-assessed, that at Patna suggesting as the only remedy a settlement in perpetuity as the one way of securing stability. Hastings was not a revenue expert, and the problem was unsolved when the regime of the Regulating Act deprived him of the complete ascendancy which in fact he exercised over his colleagues, and which made his position for the two years one of unquestioned though informal authority.

On the other hand, his reform in judicial matters are of greater note, because, while in the nature of things they had to suffer much change, they were on sound lines at the time and helped to the more efficient execution of justice. Verelst had quite fairly denounced the system of civil and criminal justice under the nawab: 'Every decision is a corrupt bargain with the highest bidder ... Trifling offenders are frequently loaded with heavy demands and capital offences are as often absolved by the venal judge'. The Company, as holders of the diwani, were responsible for civil justice, as virtual masters of the nawab they were morally responsible for criminal justice and in the reform scheme regard was had to both duties.

The system of justice existing in Bengal before the Company became responsible was summary and unsatisfactory. The

chief criminal court was held by the local zamindar, who had a right to the fines exacted by reason of his tenure; he could pronounce sentence of death, but execution depended on the orders of the government at Murshidabad. The zamindar was also the judge of the civil court, or adalat, taking a fourth or fifth part of the amount recovered. Naturally, in lieu of litigation in this court arbitration was often preferred. The law administered was that of the Koran and the commentators; where these afforded no guide, local customs and usage were relied on, but these were so ill defined that judgement was largely discretionary. Appeal lay to the similar courts at the capital, but in addition the government could interfere in the course of justice, and could give on complaint a remedy or inflict punishment without any judicial sentence. Moreover, in the districts the peasants were hampered even in seeking justice by the lack of local courts. Corrupt judges and a corrupt government added to the defects of the legal system, and the absence of any register of judicial proceedings rendered appeals most difficult.[34]

Religious causes were not decided by the temporal judges without the aid in cases affecting Muhammadans of the kadi, and in those affecting Hindus of a brahman, especially in cases where outcasting might be the result of condemnation. Clearly this rule afforded in inheritance cases a certain security for

107

the observation of justice denied in issues of criminal law.

In revenue cases the jurisdiction had been originally exercised by the zamindar, but some time before the diwani passed to the Company jurisdiction had, doubtless in the interest of the government, been transferred to deputies, naib diwans, with appeal to the chief diwan at Murshidabad.

The forms of justice thus existed, but it is clear that the courts were the instruments of power rather than of justice useless as means of protection, but apt instruments for oppression. It is significant of the position that the servants of the Company, when they had claims against Indians, not residing under the British flag but in the vicinity of the Company's settlements, used simply to seize and hold them prisoners until they consented to pay, without asking the authority of any officer of the native government, but with its full approval. The government indeed was so complaisant as to overlook cases of seizure of persons who did not fall within this category, and after the Company's acquisition of the diwani both the French and the Dutch exercised like rights, the French at least disputing the demand of the president and council that recours in such cases must be had to the law courts.

The course of justice was further troubled by the revolution, which placed Mir Kasim in power, for many Englishmen

with or without the consent of the Company soon scattered through the interior to seize the trade, and exerted wide influence on the administration of justice, and the overthrow of Mir Kasim led to further encroachments on native authority. the banyans or native agents of the English often controlling the local courts and even acting as judges. The beginnings of better things seem to have followed the appointment of supervisors in 1769, for they were encouraged to observe the maintenance of justice, to discourage arbitrary fines, and the retention of a fourth of the value as a perquisite of the court. It seems that capital and other important cases were referred to the resident at Murshidabad in order that the pleasure of the nawab should be taken, which, of course, in practice meant that of the deputy, who was under effective control by the Company.[35]

For this unsatisfactory state of affairs the remedy proposed on August 15th 1772 provided for the creation in each district of a provincial Court of Diwani - Mofussil Diwani Adalat - for all civil causes including real and personal property, inheritance, caste, marriage, debts, disputed accounts, contracts, partnerships, and demands of rent. Over this court presided the collector and other officers of the Company; cases were heard twice a week in open court. From its decision appeal lay to the Diwani Sadar Adalat at the chief seat of government. In that court the president with at least two members of

109

council sat, aided by the diwan of the treasury, the chief kanungos, and other officers. From this jurisdiction was excepted the right of succession to zamindaris and talukdaris, which remained reserved to the president and council in their executive capacity.

Criminal courts were constituted on a similar basis. In the provincial courts sat the kadi and mufti of the district with two maulvis to expound the law, the Muhammadan criminal law, and decide if the accused were guilty of a breach thereof, but the collector was enjoined to see that evidence was duly submitted and weighed and the decision passed fair and impartial, and given in open court. The proceedings of the provincial Faujdari Adalats were supervised by the Nizamat Sadr Adalat, presided over by the Darogo Adalat, appointed by the nazim, representing the nawab in his capacity of supreme criminal judge, with the aid of the chief kadi, the chief mufti, and three maulvis. The chief and council were to supervise the proceedings of this court. In capital cases the court certified its view to the nazim, but Hastings arranged (1774) for the grant of authority to the darogo to affix the seal of the nazim to warrants of execution, thus giving in effect power to the court to pass final sentences.

Much was also laid down to improve procedure, including due records in each provincial Diwani Adalat and their transmi-

ssion to the Sadr Adalat. To relieve the ryots from the burden of travelling in search of justice the head farmers of the parganas were empowered to decide without appeal suits up to ten rupees. But the practice of the exercise of juriadiction by creditors over debtors, as of moneylenders over ryots, was absolutely forbidden. Arbitration by consent as opposed to compulsion under the old system was advocated for partnership debts, disputed accounts, contracts, and the like, while in cases involving marriage, inheritance, caste, and other religious usages the Koran for Muhammadans and the Shastras for Hindu were made binding, the maulvis or brahmans to expound the law and aid in the decision. In cases up to five hundred rupees in value the provincial courts could give final decisions, but thereafter appeal lay. The practice of heavy charges for delivering judgements was stopped, and officials were forbidden to take fees for themselves. The Faujdari courts were not permitted to pass death sentences, but must transmit the evidence with their opinion to the Sadr Court for decision. Any fine over a hundred rupees must be confirmed by the Sadr Court, which alone could decree forfeiture and confiscation of property. Against decoits great severity was provided; they were to be executed in their own villages, their families made state slaves, and their villages fined, while police officers were to be rewarded for activity in their apprehension. In imposing the death penalty Hastings deliberately went beyond

the Koran.

An important clause authorized the collectors to make subsidiary regulations for the due course of justice and the welfare and prosperity of the ryots as local circumstances might require, the approval of the council being eventually required. This is interesting as a recognition of the right of the Company through its officers to exercise the power of making regulations which appertained to the diwan.

The abolution of the collectorships in 1773 interfered with the judicial arrangements in an unfortunate manner. Their place was taken in each district by the diwans, who reported their proceedings to the provincial council. In each division there was a provincial court, presided over in succession by the members of the council other than the member of the presidency council, but with power to the whole council to revise the proceedings of the superintending member. Appeal lay from the councils to the Sadr Adalat in matters above 1,000 rupees in value. Complaints against the head farmers, diwans, zamindars and other chief officers were assigned to the provincial councils with appeal to the council of revenue at Calcutta. Complaints against officers of the Faujdari Adalats were to lie to the governor, and by him to be referred to the Nizamat Adalat for inquiry and determination. Clearly, whatever the objections to the combination of revenue collection and jurisdiction in

112

the hands of the collectors, the change suggested by Hastings could serve no useful purpose.[36]

It must be added that Hastings was aware of the desirability of the due ascertainment of Hindu and Mahammadan law and contemplated the issue of codes of both, tentative preparations for this end being set on foot. In one regard, however, his inaction must be censured. When British officers were given oversight over the administration, it was intolerable that they should have been compelled to acquiesce in sentences of mutilation and impalment, and these could have been abolished forthwith.

Of Hastings' commercial reforms, part of which were only made effective later, little need be said. In March 1775 he swept away the abuse of the fraudulent employment of the free passes to exempt the goods of the servants of the Company from dues. The latter were reduced to $2\frac{1}{2}$ per cent, payable by Europeans and Indians alike, and the customs-houses in zamindaris were swept away, leaving only the central establishments at Calcutta, Hugli, Murshidabad, Patna, and Dacca. Monopolies in salt, betel-nut, and tobacco alone were retained, and the decaying internal trade was definitely stimulated.

In his relations with the nawab, as has been seen, Hastings was utterly indifferent to the maintenance of the fiction

113

of his sovereignty. In this period of his career he was no less opposed to any recognition of effective authority in the Emperor. He had two good excuses for his attitude. The Emperor had most unwisely in 1771 permitted himself to accept the tutelage of the Marathas when, recovering from the disaster at Panipat (1761), they swarmed back to Delhi, and the Company was desperately anxious to save the tribute of twenty-six lakhs of which he was in receipt. Hastings determined not to pay, and so peremptorily declined to do so on the ground of the poverty of the province, denouncing to the directors the folly of aggrandizing an enemy, and he sold Kora and Allahabad, which had been designed as an appanage of the Emperor, for fifty lakhs to the Nawab of Oudh. Hastings has been applauded for his action by serious judges, but it clearly was a definite breach of a solemn promise and neither legally nor morally defensible, for the Company should clearly have warned the Emperor in 1771 that his adherence to its enemies would compel it to stop the tribute, if that were its intention. Hastings seems indeed to have gone further, and to have contemplated establishing direct relations between the Crown and the Oudh; he must have discussed the project at Banares in 1773 when he visited Shuja-ud-daula, and found him willing to strike his coinage in the name of the King, a decisive feature. He seems in 1777 to have contemplated the possibility of such action as regards Berar also, but the project evidently never matured in his mind. In any case, the

British Government would never then have agreed to so decisive an assertion of sovereign power. In the Treaty of Paris in 1763 it made no claim to sovereignty, contending itself with an agreement with France under which Salabat Jang was recognised as subadar of the Deccan and Muhammad Ali as nawab of the Carnatic. Not until 1769 was direct action taken by the Crown, and then only in the shape of commissioning the commodore of the squadron, which was to escort the supervisors of the Company to India, as royal plenipotentiary, and sending through him gifts to the Emperor in return for those presented by the latter to the King on his accession. As the Company was not duly informed of the commission, its local councils questioned the authority of the commodore to interfere with their relations with the Indian States, and much friction arose between the Madras Council and Lindsay, and his successor Harland, who even projected the conclusion of a treaty with the Marathas in violation of the subsisting agreement of 1769 with Hyder Ali. The experience then gained would, it may safely be said, have negatived any desire on the part of the ministry to add to its troubles direct responsibility for Indian affairs.

The unquestioned authority of Hastings displayed itself in his conduct of relations with Oudh and his disposition of the Company's military forces. He allowed himself to be induced to support the nawab in the destruction of the Rohilla power in

115

Rohilkhand, an achievement accompanied by the gravest excesses on the part of the nawab's forces. Hastings in this matter is beyond excuse; happily in no later case were British forces placed at the disposal of a despotic ruler for the carrying out of a policy which resulted in the destruction of enlightened rulers in favour of the sovereignty of a dynasty whose government of its unhappy subjects was from first to last indescribably incompetent and unjust. For Hastings the chief gain was the relief to the funds of the Company.[37]

2. THE INTERVENTION OF PARLIAMENT AND THE REGULATING ACT

The period of Hastings' unquestioned authority was now to pass away, for Parliament had at last been driven to intervene with definite authority. It was now patent that the East India Company was no longer merely a company for the extension of commerce, 'but in reality a delegation of the whole power and sovereignty of this kingdom sent into the East'. Such a body could not be allowed to remain outside the interest of the state. To leave it to carry on without further control was impossible; even Clive and Hastings, as we have seen, had held that direct relations with the Crown might be desirable. To carry this farther to the logical conclusion of establishing the sovereignty of the Crown, in lieu of that of the Company, was a step too bold to be expected. It would have necessitated the rejection of the sanctity of property rights, one of the

116

maxims most strongly held by the Parliament of the time. It would have placed directly in the hands of the government an enormous mass of dangerous patronage. It would have compelled an immediate definition of the rights of the diwani, for the Crown could not with dignity hold as delegate of the Mogul, and much bitterness would assuredly be caused in India and among European powers if the necessary course of negativing Mogul sovereignty was adopted. There remained, therefore, only the alternative of subjecting in its political aspect the Company to legitimate control, and this step was strongly commended by the current doctrines of constitutional law. There seems no reason to doubt the soundness of the view taken by the law officers on December 24th 1757; in the case of territory granted by Indian princes under peaceful conditions the right of property vested in the donees, but the sovereignty over the inhabitants as English subjects and over the settlements as English settlements vested in the Crown; in the case of territories acquired by conquest the property and the sovereignty alike vested in the Crown. Governor Johnstone, it is true, in the debates on the Bill proposed by the Company in 1772 for the better government of their territories, denied that lands gained by conquest vested in the Crown, asserting therefore that the Company was lawfully owner. But in any case he suggested from his colonial experience that the Crown should grant the lands to the Company as in the New England, asserting that foreign states would be preferably

117

well pleased to have the position regularized in place of the pretence of control by a cipher of a nawab, Clive spoke strongly against the directors, the proprietors, the government, and the administration of the Company in India, and the Bill was decisively rejected. Instead, Burgoyne secured the appointment of a select committee in April to inquire into the state of affairs in India, alleging that the prime evil was the inter-mixture of trade and government. In August the Company was forced to beg the government for a loan, despite the fact that in March a dividend of $12\frac{1}{2}$ per cent had been declared, and this elicited the appointment of a secret committee. The two reported from time to time with great rapidity showing such serious errors that Chatham wrote in 1773, 'India teems with iniquities so rank as to smell to earth and heaven'; and Shelburne, with his usual wealth of information, repeated the condemnation of directors, proprietors, the Indian administration, and the government. Parliament was so moved that in December 1772 it forbade the proposed dispatch of supervisors to India as involving expense which the Company could not afford.[38]

The Company in March 1773 renewed an appeal for a loan, and in May Burgoyne resumed his attack, and secured the passing of a resolution, 'That all acquisitions made under the influence of a military force, or by treaty with foreign

princes, do of right belong to the State.' This resolution, as its wording shows, was specially aimed at covering the condition of affairs in Bengal, and, though a resolution of the House could not make law, it is clear that it correctly declared with all the authority of Parliament behind it the existing law. Decisive action by Parliament was forthcoming, though Burke denounced as unconstitutional interference with an established right. The pecuniary needs of the Company were relieved by a loan of 1,400,000 pounds at 4 per cent and the promise to forgo the Company's debt of 400,000 pounds until the new loan had been discharged. The Company was forbidden to declare a dividend exceeding 6 per cent and required to submit accounts half-yearly to the Treasury. But far more important was the accompanying Act imposing new political conditions, the Regulating Act, which Burke denounced as 'an infringement of national right, national faith, and national justice'. This measure altered the constitution of the Company at home, changed the structure of the government in India, subjected in some degree the whole of the territories to one supreme control in India, and provided in a very inefficient manner for the supervision of the Company by the ministry.

To secure continuity in the direction annual election of the whole body of twenty-four directors was terminated, six being elected each year, to hold office for four years, and

119

then to be ineligible for re-election for at least one year. In practice few changes were made, and thus a directorate of thirty members of whom six were temporarily out of office was constituted. Voting power was restricted to holders for at least a year of 1,000 pounds stock and measures were laid down to frustrate collusive transfers in order to multiply votes. The result was to deprive 1,246 of the smaller holders, but the measure failed to improve the quality of the Court of Proprietors or to prevent power being readily purchased by servants of the Company returning with the spoils of the East, especially as holders of 3,000 pounds stock were now given two votes, of 6,000 pounds three, and of 10,000 pounds or over four votes.[39]

For the government of the presidency of Fort William a governor-general and four councillors were appointed by name, Hastings as governor-general, General Clavering, Colonel Monson, Barwell, and Francis. They were given office for five years, and could be removed earlier only by the King on the recommendation of the Court of Directors; a casual vacancy in the office of governor-general was to be filled by the senior member of council, while the Company was to fill any casual vacancy in the members of council with the assent of the Crown, and after five years to have the full patronage. In this body was vested the whole civil and military government of the presidency, and

120

the management and government of all the territorial acquisitions and revenues in the kingdoms of Bengal, Behar, and Orissa, in like manner as they were or might have been exercised by the president and council or select committee hitherto. The Act thus evaded in the characteristic British manner the danger of definition by reference to a fait accompli.

The other presidencies were subjected to Bengal in so far as no government of such a presidency might give orders for commencing hostilities or declaring war against any Indian power or for concluding any treaty of peace or other treaty with such a power without the previous consent of the governor-general in council, but two vital exceptions were allowed, those of imminent necessity which would render postponement dangerous, and the receipt of special orders direct from the Company. A president and council offending could be suspended by the governor-general and council. Moreover, the governors were to transmit regularly to the governor-general intelligence of all transactions relating to the government, revenues, or interests of the Company.

On the other hand, the governor-general and council were to obey the orders of the Court of Directors and to keep it fully informed of all matters affecting the interests of the Company. In its turn it was to send the Treasury, within fourteen days after receipt, copies of advices received regarding the revenues,

and to a secretary of state advices as to civil and military affairs.

These provisions were supplemented by remarkable clauses regulating the judicial arrangements of the presidency. The committee of secrecy in its report of May 6th 1773 had stressed the unsatisfactory character of the existing system under the charter of 1753, since the trial of claims against the Company in the Mayor's Court and of charges against its servants in the Court of Oyer and Terminer and Gaol Delivery was vitiated by the fact that the judges held office subject to removal by the governor and council, from whose action there lay only the dilatory remedy of appeal to the King in Council. Moreover, the judges were supposed to act by English law, of which they were largely ignorant, with the result that they referred for the advice of the Company's counsel before decision - for instance, regarding their ecclesiastical jurisdiction and power of dealing with crimes committed by Europeans not under the Company's flag. In this regard it was pointed out that the charter conferred authority only over the town or district of Calcutta and its subordinate factories, and that there were many of His Majesty's subjects resident in Bengal who did not fall under the jurisdiction of English law.

To meet these difficulties the Regulating Act provided for the erection of a judiciary emanating directly from the

122

Crown, and therefore able to punish the servants of the Company without fear of consequences and to adjudicate on claims against it. The charter of March 26th 1774 gave effect with minor additions to the express provisions of the Act, superseding for Calcutta the provisions of the charter of 1753. The Court was constituted of a chief justice and three puisne judges appointed by the King from barristers of five years' standing, to hold office at pleasure, and their authority was assimilated empowered to appoint necessary subordinate officers, but the governor-general and council must approve their salaries. With like assent they could regulate court fees. The admission of attorneys and advocates lay in their hands, and they nominated three persons for the office of sheriff when selection was made by the governor-general and council.[40]

The jurisdiction of the court was of the widest possible character, including the functions of a Court of Equity according to the rules of the English High Court of Chancery, so that the same court combined both the common law and the equity jurisdiction. It was also a Court of Oyer and Terminer and Gaol Delivery for Calcutta, the factory of Fort William, and the factories subordinate thereto as if in England, justice being administered through grand and petty juries summoned by the sheriff. As a superior court it was empowered

123

to superintend the Court of Requests and the Court of Quarter Sessions and the magistrates thereof - the governor-general, members of council, and judges being made justices with power to hold Sessions by the act - and to issue to such courts and officers writs of mandamus, certiorari, procedendo, or error. Further, it was given ecclesiastical jurisdiction over British subjects in Bengal, Bihar, and Orissa, so far as circumstances required, to be exercised as in the diocese of London, and in special it might grant probates and letters of administration, to which was added power to deal with the estates of insane persons. It was also made a Court of Admiralty for Bengal, Bihar, and Orissa and the adjacent dependent territories and islands, and authorized with a jury of British subjects resident in Calcutta to punish treasons, murders, piracies, etc., committed on the high seas within its jurisdiction.

In civil matters appeal lay to the King in Council as in the colonies; it must be brought within six months and the matter must be over one thousand pagodas in value. In criminal causes its consent was required for any appeal.[1]

The jurisdiction of the court, however, was limited in respect of those to whom it was to apply. It had authority over all British subjects resident in Bengal, Bihar, and Orissa, and could hear and determine all complaints against any of His Majesty's subjects for crimes, misdemeanours, or oppressions,

124

and also to entertain, hear, and determine any suits whatsoever against any of His Majesty's subjects in Bengal, Bihar, and Orissa, and any suit, action, or complaint against any person employed by or in the service of the Company or of any of His Majesty's subjects. Clearly many of the inhabitants of the areas mentioned would not fall within its jurisdiction, and a special clause modified this exclusion. The court could hear any suit or action by any of His Majesty's subjects against any inhabitants of India within the territories named on any contract in writing, where the cause of action exceeded five hundred rupees and the inhabitants had agreed in the contract that in case of dispute the matter should be determined in the Supreme Court; in such cases the action might be brought in the first instance in that court, or on appeal from a provincial court. It seems clearly to follow from this enumeration that normally suits by British subjects against Indians could be brought only by consent of the defendant, that suits by inhabitants against inhabitants were not expected to be brought but presumably could be heard by consent, but that suits lay always against British subjects and persons employed by the Company or any of His Majesty's subjects.

From the jurisdiction of the court were excluded offences short of treason or felony of the governor-general, council, and judges, and their arrest in civil proceedings was forbidden.

125

Offences of which the court had cognizance were to be tried by a jury of British subjects resident in Calcutta.

The court superseded the Mayor's Court and that of Oyer and Terminer under the charter of 1753, but not those of Requests and Quarter Sessions, which were to be held as before, the judges being added as justices to the governor-general and council.

Legislative power was granted as in the charter of 1758. The governor-general and council could make rules, ordinances, and regulations for the good order and civil government of Fort William and the subordinate factories; such enactments were to be just and reasonable and not repugnant to the laws of the realm, and reasonable fines and forfeitures could be imposed for their breach. But they were not to have effect until registered in the Supreme Court with its approval; copies must be sent home, to be exhibited at the India House and to be communicated to a secretary of state, and they might spontaneously or on representations being made be cancelled by the King in Council. This procedure substituted the court as the immediate check on hasty legislation, but avoided the long delay of obtaining home approval as required by the charter of 1753.[42]

A series of clauses was aimed at the flagrant errors of

the past. The governor-general and council and the judges were not to receive presents or engage in trade save that of the Company. No officer, civil or military, might accept a present from any native prince or power on pain of forfeiting double the amount and being removed from India. No officers engaged in revenue collection were to engage in trade or any of the state monopolies. No subject of His Majesty was to lend money at more than 12 per cent interest. Servants of the Company punished for breach of trust might be removed to England. A dismissed servant could be restored to office only with the assent of three-fourths of the directors and proprietors. Further, the Court of King's Bench in England was given power to punish any offence against the Act or any crime, misdemeanour, or offence against any of t His Majesty's subjects of of the inhabitants of India.

4. WARREN HASTINGS AS GOVERNOR-GENERAL - INTERNAL AFFAIRS

In the internal affairs of Bengal Hastings and his council, for once normally in accord, were confronted by a struggle with the Supreme Court, due almost inevitably to the circumstances attending the creation of that body. But at first Hastings established close relations with Impey. The latter revealed on his proposed impeachment that Hastongs in defiance of his oath had given him a copy of Nandakumar's accusation against him and the judges of conspiracy, and must therefore have been on

127

intimate terms with him. In concert with him, Hastings proposed to meet the difficulties which soon revealed themselves in the working of the court by a further inroad on the theoretic position of the nawab. Contemptuous of forms, Hastings would have treated British sovereignty as paramount and have extended the carefully limited jurisdiction of the Supreme Court over the whole of Bengal, Bihar, and Orissa. Secondly, he would have united the judges of the court with the members of the council in control of the Sadr Diwani adalat, the final Court of Appeal at Calcutta, and he would have put on a definitely legal basis the authority of the provincial councils. But the majority of council, relying on the policy of the directors and of Clive in favour of maintaining the dual form of government, rejected the proposal, and matters between the court and the government became severely strained.[44]

The Act of 1773 unquestionably aimed at giving an impartial court control over the excesses of the Company's servants. But what were the limits of its power? English law itself was and is uncertain as to the extent to which a court can interfere in the actions of the executive government, and in 1774 the matter was much more obscure than it now is, and the Company's servants might well fear grave interference with their methods of revenue collection. Again the legislation left wholly untouched the nature of the law to be administered

128

in the court. It followed, therefore, that it must be English law as far as it could be adapted to Indian conditions. Further, the legislation gave the court authority over British subjects or subjects of His Majesty, and persons employed by the Company or by British subjects. That was in itself natural enough, but whom did it intend to include in the number of British subjects? We may fairly say that the ordinary native of the provinces was not a British subject at this time. But the resident of Calcutta presumably were British subjects, and a claim might be made out in the case of the residents of the twenty-four parganas and even of Burdwan, Chittagong, and Midnapur. But did Parliament intend to cover such persons? Dit it not rather refer merely to European British subjects? Further, what was included in employment by the Company? Dit it cover a great native landlord farming the revenues? The court held that it did, and that it covered also native imprisoned by the collectors, to whom it granted writs of habeas corpus. Again, what was the relation of court to the provincial courts of the Company already referred to? The council was certain that it was determined to keep the court out of any intervention in criminal justice, and Hastings seems to have concurred for this purpose in recognizing once more the authority in form of the nawab. Muhammad Reza Khan was in 1775 appointed deputy with superintendence of the criminal courts, and the Sadr Nizamat Adalat was moved to Murshidabad from Calcutta.

where it was in too close proximity to the Supreme Court.

Conflict between court and council came to a head in three cases. In that of the Raja of Kasijura the court claimed that a zamindar must be held subject to their jurisdiction in a case of a claim for a private debt against him. The council ruled that zamindars were not subject to the jurisdiction of the court, and by use of a force of sepoys took captive the sheriff's officers sent to arrest the recalcitrant zamindar. This negatived the claim of the court that at least any person alleging that he was not subject to its jurisdiction must plead accordingly. The point was a most difficult one, but, though the Company did not disapprove of Hastings' action, it was undoubtedly high-handed and dangerous.[45]

Another series of disputes touched the right of the court to punish English or native officers of the Company for acts of oppression committed in the collection of the revenue. Bitterly as this was resented the right of the Court was clear, and Impey had some justification in declaring that the function of the court should be to protect the peasants against the exactions of English magistrates acting through native subordinates.

Even more important was the Patna case in which the Supreme Court awarded heavy damages against her nephew and

the officials of the Patna Council to Nadera Begam. Jurisdiction was exercised in this private suit on the inadequate ground that the nephew was a farmer of the revenue, but the essential point is that the court thus claimed power to penalize the judicial actions of officers of the Company, and that examination of the facts shows that the judicial work of the council, left to Hindu and Muhammadan legal experts, was discreditably done. On the other hand, it is very dubious if the new court were really able to benefit the natives to any extent, and it is certain that governor and council and 648 British subjects resident in Bengal petitioned the Home Government for relief. As an immediate remedy Hastings, without the approval of the Company, which clearly was requisite, obtained Impey's acceptance of the presidency of the Sadr Diwani Adalat, in the belief that in that office he could control wisely the provincial councils and thus avoid conflict with the Supreme Court.[46]

The appointment of Impey followed on earlier steps to reform the provincial councils. On April 11th 1780 their revenue business was separated from judicial business consisting of suits between private persons, which were assigned to Diwani Adalats presided over by a covenanted servant of the Company, appeal in important causes lying through the chief of the provincial council to the Sadr Diwani Adalat, over which

the governor-general and council were to preside, In fact since the Regulating Act that court had not in practice sat, and on its resumption under regulations of April 11th 1780 it seems to have determined cases on the recommendation of the keeper of the treasury records. This was plainly unsatisfactory, and Impey's appointment certainly gave the court a better head, while he was authorized to superintend generally the new inferior courts. He did this part of his work efficiently, prepared a code of procedure, and had the courts increased to eighteen, of which only four were presided over by collectors as judges. But it was a fatal flaw in the project that Impey thus was granted at the Company's pleasure a large salary, so that the House of Commons in May 1782 properly demanded his recall to answer the charge of compromising thus the independence of the Supreme Court, by taking a salary from those whom the court was to maintain in due subordination. But impeachment was delayed until 1787, when on the first charge pressed, that regarding Nandakumar, Impey, a trained lawyer, succeeded in persuading the Commons to refuse to act. In fact, it was inconceivable that legal evidence could have been found to condemn him in that case. He has of course found advocates to whitewash him, but it is sufficient to cite the appeal of Cornwallis that he should not be allowed to return 'all parties and descriptions of men agree about him'.

132

In the meantime Parliament, in deference to the appeal of Hastings and the petition from Bengal, had inquired by a committee into the administration of justice, and an Act of 1781 effected important changes in the system of 1773. The preamble showed clearly who had won the contest; it asserted the necessity of supporting the government, the importance of the regular collection of the revenue, and the maintenance of the people in their ancient laws. It was enacted that the Governor-general and council, jointly and severally, were not to be subject to the jurisdiction of the court for anything done in their public capacity, and their order could be pleaded in justification of his action by any subordinate; this rule was not to apply to matters affecting British subjects, presumably Europeans were meant. But they were still liable in England, and facilities were given for securing certified copies of documents which were to be available in England. This rule differeitiates Indian from colonial government; but at the time when it was enacted the view still prevailed that a governor was not subject to legal process in his own colony for official acts.[47]

A further vital change was the rule that the Supreme Court was not to have or to exercise any jurisdiction in any concerning the revenue or any act done in the collection thereof according to the custom of the country or the regulations of

the governor-general and council. Moreover, the extent of its general jurisdiction was precisely defined. It was declared that no one became liable to jurisdiction because of being connected as landowner or farmer of land revenue with the collection of rent, and that persons servants of the Company or of European British subjects should not be subject to such jurisdiction in matters of inheritance or succession to lands or goods or in contract, but only in actions for wrongs or trespasses and in civil suits by agreement to submit. Moreover, due registers of the natives employed were to be kept and none not so registered could be employed. Overall inhabitants of Calcutta the court had jurisdiction, but in cases affecting Hindus and Muhammadans the law and customs of the defendant were to be applied in matters of inheritance and contract. Moreover, the rights of fathers and masters of families by Hindu or Muhammadan law were to be respected, and acts done by the rule of caste must not be deemed criminal. The court was authorized to frame, for approval by the King, suitable forms of process to be used in native causes. In the respect thus shown for native law Parliament followed the rules of 1772 already mentioned.

The Act also recognized the validity of the actions of the provincial councils by forbiding actions in the Supreme Court against judicial officers of the country courts or persons

executing their decrees. Those imprisoned in the Patna case were to be released on security being given by the governor-general and council for payment of the damages awarded, as was in fact done, though appeal to the King in Council was expressly permitted by the Act. Moreover, the appellate jurisdiction of the governor-general and council as the Sadr Adalat was recognized, and its continuance authorized, with appeal in civil suits to the King in Council where the value was 5,000 Pounds and upwards. It was also authorized to deal with all offences committed in the collection of revenue, and severities beyond what was customary or necessary, but punishment must not extend to death, maiming, or perpetual imprisonment. It will be noted that no jury was allowed in such cases, a logical corollary of taking from the Supreme Court its revenue jurisdiction.

The action of Parliament definitely did away with the idea of Hastings of making the provincial courts subordinate to the Supreme Court and bringing the judicial system into a state of unity. Henceforth the two systems remained side by side until a final fusion was achieved after the transfer of authority to the Crown. By direction of the Company in 1782 the governor-general and council resumed their duty of acting as the Sadr Diwani Adalat.

Apart from Parliament Hastings found it necessary to make innovations in the criminal system. The development of crime necessitated more effective prosecution, so that in 1781 the judges of the Diwani Adalats were required to act as magistrates, or in approved cases zamindars, with power to commit for trial to the nearest Faujdari court. The decision is important as it foreshadows the transfer of jurisdiction to European hands.[48]

The question of legislation was also dealt with in the Act of 1781. The Regulating Act had given a limited power of legislation subject to the control of the Supreme Court. But it was clear that this power was not intended to cover legislation for the inhabitants generally of the provinces. The nawab, as effective authority in the provinces, had exercised the power of issuing regulations, and the Company as diwan could doubtless claim a like right, while it controlled the criminal powers of the nawab. Accordingly, in 1772, Hastings, as we have seen, had issued regulations regarding the administration of justice, and in 1780 further regulations were made, which were consolidated in a new code with Impey's aid in 1781. These regulations were not passed under the form provided in the Act of 1773, but their validity was definitely recognized by the Act of 1781. It allowed the governor-general and council to make regulations for the

provincial courts and councils; copies were to be sent to the directors and a Secretary of State. They might be disallowed or amended by the King in Council, but were to remain in force unless so dealt with within two years. It must be admitted that the terms of this enactment are modest, but naturally the governor-general and council preferred to rely on their power thus recognized rather than use the machinery of the Supreme Court, though for some time it was justly doubted if the Supreme Court could be regarded as bound by such regulations.[49]

On the vital revenue question Hastings and his colleagues in their capacity as the Board or Committee of Revenue set up in 1772 wrangled incessantly, Hastings and Barwell holding that the land was the property of the sovereign, Francis that it was the property of the zamindars, and none showing proper regard to the rights of the ryot. Once in full power, Hastings insisted on a new plan (February 20th 1781) of administration based on centralization. The provincial councils disappeared in favour of a Committee of Revenue consisting of four officers of the Company and an Indian diwan, who was relieved of control by the rai raian and soon exercised a dangerous power. Collectors were replaced in the districts, but denied all power as to the settlement of revenue; their reports show the ryots miserably oppressed. Moreover, the kanungos were restored in 1781 to their misused authority. Gradually the errors made were put right. In 1782 an office was established to care for

137

the zamindaris of minors, females, and those incapable; in 1783 the collectors were urged to report on the state of the crops, and after Hastings' departure in 1786 the Committee of Revenue was reconstituted as a board under a member of council; the collectors were made responsible for making the settlements; a new division divided the province into thirty-five (in 1787 twenty-three) districts, and the office of chief saristadar was created to bring the land records, hitherto the property of the kanungos, under government control.

One point remains for consideration. How far did Hastings regenerate the civil and military services of the Company? The answer must be that, no doubt in order to retain control over the Company through favours done to proprietors, his disposal of patronage was recklessly generous, increasing the cost of the civil establishment from 251,533 pounds in 1776 to 927,945 pounds eight years later. There were available, beside the offices of governor-general and councillors, one place of 25,000 pounds, one of 15,000 pounds and five each of 10,000 pounds and 9,000 pounds, sums far in excess of any merits of the young men who formed the service. It was left to Cornwallis to dispense with support purchased at so serious a price at the cost of the much ill-used ryot.[50]

138

THE ESTABLISHMENT OF ORGANIZED ADMINISTRATION: PITT'S ACT AND CORNWALLIS

1. THE ESTABLISHMENT OF PARLIAMENTARY CONTROL

The course of events in India necessitated and received close consideration at the hands of the British Government and Parliament, policy being swayed this way and that according to the strength of Hastings' interest in the Company and its relations to Lord North. The dangerous position of affairs in America proved a source of safety to Hastings, for in 1779 and 1780 Acts were passed to extend for a year in each case the privileges of the Company and to continue the governor-general and council in office, but the weakness of the Company's position was shown by the tentative motion of North in 1780 to pay off the 4,200,000 pounds due to the Company and to notify its dissolution. In 1781, as already noted, a select committee considered the administration of justice in India, a secret committee the war in the Carnatic. The former resulted in the Act of 1781, which readjusted the judicial arrangements in Bengal. It was based on the decision to maintain the authority of the Company, which by another Act was accorded assurance of continuance until three years' notice after March 1st 1791, and placed under a slight measure of further control, being required to submit all outgoing dispatches on political, revenue, and military matters to a Secretary of State. Moreover,

139

a new financial accord was reached. The Company was to pay 400,000 Pounds in quittance of all claims of the State up to March 1st 1781, and might pay dividends up to 8 per cent, the State to receive three-quarters of any surplus profits.[51]

The secret committee's report resulted in a series of efforts, following on resolutions moved by Dundas, who had presided over it, in April 1782. Bills of pains and penalties were prepared against Rumbold and Whitehill for misdemeanours as governors of Madras, but were dropped, through inability to keep a quorum, next year. On May 30th the Commons desired the directors to secure the recall of Hastings and Hornby for action contrary to the honour and policy of the nation, bringing great calamities in India and enormous expense on the Company. But the directors were prevented by the proprietors from carrying out the wishes of the Commons, and, though the government could refuse to allow them to send a dispatch reporting the facts, it could not compel recall. Thus it was made clear that the Company's directors could not control its servants, nor the State the Company. While events in India in the defiance of Calcutta by Madras proved that the main presidency could not control those subordinate to it. It proved naturally that to fly in the face of Parliament was a risky game, and the opportunity of the government came in 1783, when the Company had to apply for financial relief. Dundas in April proposed a

140

Bill which purported to give the Crown full power to recall the principal servants of the Company, and authorized the governor-general to overrule his council and effectively to control the subordinate presidencies, while the zamindars who had suffered from the quinquennial settlement of Hastings were to be restored. He indicated Cornwallis as the saviour of the situation. Naturally, as Dundas was in opposition, it was impossible to proceed with his Bill, but on November 18th Fox introduced two measures. The former dealt specially with details of administration and was obviously intended to render impossible in future most of the misdeeds of Hastings. The second was a vigorous effort to reform the whole constitution. There was to be a board of seven commissioners named in the Act, irremovable for four years except on an address from either House of Parliament, vacancies to be filled by the King. It would control the revenue and territories in India with power to appoint and remove all servants of the Company. It was to sit in London and Parliament was to have power to inspect the minutes of its proceedings. The commercial business of the Company, on the other hand, would have been carried on by nine (originally eight) assistant directors appointed for five years by the largest shareholders, casual vacancies to be filled by the Court of Directors. Burke's great speech on the Bill denounced the many abuses of the Company's system, and the criticisms against the Bill were largely insincere and

ineffective. The opposition denounced the power of patronage, but the commissioners could not have exercised it in a more dangerous manner than it was being in fact exercised, by Hastings' own admission when he spoke of 'a system charged with expensive establishments and precluded by the multitude of dependents and the curse of patronage from reformation. ... A country oppressed by private rapacity and deprived of its vital resources by the enormous quantities of current specie annually exported in the remittance of private fortunes'. The weakest spot was the vague control of Parliament over the commissioners, but doubtless that could have been adjusted. The Bill was carried by 208 to 108, but defeated in the Lords by George III, who declared as his enemy any peer who should vote for the Bill, and on December 18th the ministry was dismissed. By a tactical error Fox opposed the dissolution which might have condemned the action of the King, and Pitt in due course with royal aid secured a majority, and in August 1784 passed his Act. It rather characteristically borrowed ideas from its predecessor, but it made a vital improvement from the point of view of tactics by leaving in being the patronage of the Company, and it purported not vitally to change its constitution instead of sweeping away the Courts of Directors and of Proprietors. But its essential plan was the same, the control by the British Government of the conduct of public affairs by the Company. Fox had been willing to leave undecided the right to territorial

possessions, and the new Act also avoided dealing effectively with this point. It embodied essentially a compromise.[52]

The Act established a Board of Commissioners for the Affairs of India, usually known as the Board of Control. They were to be the Chancellor of the Exchequer, a Secretary of State, and four privy councillors holding office at the royal pleasure, and appointed by the King. This essential difference from Fox's scheme brought the control of the Company into the hands of the Commons. The quorum was three, the president to have a casting vote. They were to control matters of civil or military government of the British territorial possession in the East Indies. Full access was given to the Company's records; its dispatches from India must be submitted to it, and dispatches out could only be sent with its consent and altered at its desire. While it might require its orders to be sent without the directors' concurrence, a committee of secrecy of not more than three members was to be formed from the directors, and orders of the Board requiring secrecy were to be transmitted by the committee without informing the other directors. The Court of Proprietors was forbidden to alter any decision of the directors approved by the Board, and thus lost its effective power, a proper punishment for defying the Commons in 1702. Against possible encroachment by the Board on its commercial business the directors were protected by the

right to appeal to the King in Council.[53]

The constitution of the Indian governments was revised. The governor-general was to have three councillors, one of whom was to be the commander-in-chief, who, however, though having second place, was not to succeed in the case of a vacancy pending a new appointment to the governor-generalship. The other two presidencies were placed under governors and three councillors, one to be the local commander-in-chief, but if the commander-in-chief of the Company were present, he took his place, though the latter might sit. The governor-general or governor was given a casting vote. All these officers were to be appointed by the Court of Directors, but councillors only from the Company's covenanted servants in India. Any officer could be recalled by the directors or the King. Resignations of any of the high officials mentioned must be in writing, a provision intended to obviate the confusion over Hastings' resignation in 1777, on a vacancy in the office of governor-general or governor, or if no person had been appointed to act by the directors, the senior councillor was to act.

The power of the governor-general and council over the minor presidencies was to extend not only to transactions with the country powers or war or peace, but also to any other points referred to their control by the Court of Directors.

Moreover, the presidencies must obey the governor-general unless they had received different orders from the directors, which were not known to the governor-general. In such a case the orders must be sent to the governor-general and council, who were then to issue such instructions as they deemed necessary. This new rule for the first time established a real subordination.

In like manner subordination was enforced on the governor-general and council, it being asserted that 'to pursue schemes of conquest and extension of dominion in India are measures repugnant to the wish, the honour, and policy of this nation'. They were forbidden without the authority of the directors or the secret committee to declare war, or commence hostilities or enter into any treaty for making war against any of the country princes or states or any treaty of guarantee, except where hostilities had actually been commenced or preparations actually made for the commencement of hostilities against the British nation in India or against some of the princes or states dependent thereon or whose territories were guaranteed by any treaty. The governors of the subordinate presidencies were similarly forbidden without the sanction of the governor-general and council or the directors to commence hostilities or make treaties except in sudden emergency or imminent danger, and any treaty thus made was to be subject if possible to

145

gatification by the governor-general and council. Disobedience of the presidencies might be met by suspension. Moreover, the control of the central government was to be made effective by their obligation to send copies of papers of all kinds.

In judicial matters an important principle was laid down. Subjects of His Majesty, whether servants of the Company or not, were made subject to the jurisdiction of Courts in India and Great Britain for crimes of any kind in the territories of the native states.[54]

Efforts were made to restrain the evil practices of the past. To demand and receive a present in the case of an officer of the Crown or the Company was declared to be extortion, disobedience to the Court of Directors' orders a misdemeanour, as also any bargain for giving up or receiving any office. The Company was not to release or compound any sentence on a servant nor restore to office one dismissed by a judicial sentence. Officers of the Company might be required on return to declare on oath their fortunes, and after five years' absence save on grounds of health could only be reappointed with the approval of a three-fourths majority of a Court of Proprietors. Proceedings in England in the King's Bench in case of extortion or other misdemeanour might be by rule or information, and a special court of three judges, four peers, and six members of the Commons was to be set up each session

to try cases of information for extortion and other misdemeanours. This remarkable provision, which was amended in 1786, naturally never came into use.

Reductions and retrenchments in the establishments, civil and military, were to be made by the directors. In the civil, service promotions under the rank of councillor, in the military under that of commander-in-chief, were to be made by seniority save in special cases where the directors were to be informed. Cadets were not to go out under age fifteen or over age twenty-two, or if they had served for a year in the army over twenty-five.

Special powers were given to the governor-general and governors to authorize the arrest of persons suspected of carrying on illicit correspondence with persons in authority, where in native states or European settlements, but this power seems to have been allowed to remain unused.

The Act, so far as the powers of the government and Company were concerned, had, very wisely, been matured in consultation with the latter, and, though Fox insisted that it undermined the power of the directors, it is clear that they were left with a considerable possibility, which in practice was a reality, of control. The Board was not normally an originating, but a revising body, and enormous influence

necessarily rested with those through whose hands the mass of business passed. Moreover, the Board soon passed into oblivion as such. Pitt and Dundas at first attended meetings, later Dundas virtually acted alone, and in 1793 the office of President of the Board was made salaried, so that, although provision was made that the two junior members need not be privy councillors and might be paid, the management fell in practice to the president, the fiction of a Board surviving in the rule that an ex officio member signed also the President's decisions. The president was virtually a secretary of state for India, and Indian affairs became a matter for the Cabinet in the same manner as those colonial issues which were dealt with by a secretary of state.[55]

Amendments of the Act were early found necessary. Cornwallis, appointed governor-general, would not accept the office unless he was given power in case of necessity to override his council, a right attacked by Burke as introducing arbitrary and despotic government, especially as it also permitted the combination of the offices of governor-general and commander-in-chief. Even so further Act in 1791 was necessary to make beyond question his full power. At the same time the requirement of the approval of the King for the person selected as governor-general was abolished, but the King could recall any officer, as was done in Barlow's case, and the

provision therefore was of small practical importance. A third Act repealed the absurd provision as to declaration of property and remodelled the court to try extortion. But its important provision dealt with the jurisdiction of the courts. The Supreme Court at Calcutta was given jurisdiction over all criminal offences committed within the limits of the chartered trade, and the court of the governor and council and the Mayor's Court at Madras were given criminal and civil jurisdiction over all British subjects residing in the territories of the Company on the Coromandel coast or in any other part of the Carnatic or the Northern Sarkars or in the territories of the subadar of the Deccan, the nawab of Arcot, or the raja of Tanjore.

An issue of great constitutional difficulty was raised in 1787-8. Prior to 1781 the Crown had paid for royal forces sent in the public interest to India, but in that year an Act had provided that the Company should pay two lakhs a year for each regiment of 1,000 men sent to India at the Company's request, while authority was also given to the Company to raise European troops and punish deserters. Discussions arose in 1785-6 regarding the strength of the force, and in 1787 the government decided to send out four regiments, offering to let the Company nominate seventy-five officers. The cost annoyed the Company, which desired also to avoid issues of

149

precedence, and it demurred. The government replied by an Act which gave the Board power to send out troops, but fixed the number which might be charged to the Company. Moreover, the Board was expressly forbidden to increase any salary or pension without the concurrence of the directors and notice to the Parliament, and the directors were to lay annually before that body an account of its receipts and disbursements

The Act evoked much constitutional discussion. It was urged for the Company that its own forces were sufficient and cheaper, and that it was wrong that the Crown should have forces for which Parliament did not provide by annual votes. Pitt, for his part, insisted that armed forces should all be under the Crown, and that he would welcome any means of improving the control over armed forces which was so vaguely accorded by the Bill of Rights and the Mutiny Act. Lord Cornwallis was indeed then considering the possibility of amalgamating the royal and the Company's forces, and the constitutional issue was again debated in 1878, when there was almost equal division of the highest legal authorities on the question whether the Crown could properly use her Indian forces as they were used for the protection of Malta in case of the outbreak of war with Russia.[56]

At the close of Cornwallis's regime the Charter act fell to be renewed. Pitt was in full power. Dundas reputed expert

in Indian affairs, war with France occupied every mind. Indian finances seemed less embarrassed, and the new Charter Act of 1793 passed with minimal trouble. It was essentially a consolidating measure, and its alteration struck at points of detail. The cost of the staff of the Board of Control and of the members if paid was placed on the Company. Its trade privileges subject to certain restrictions were continued for twenty years. It was allowed to increase its dividend to 10 per cent; thereafter on various conditions a sum of 500,000 Pounds was to be paid to the state, but these conditions never materialised. But the Crown might order the application of the whole of the revenue to purposes of defence if need be without regard to the investment of the Company. The Company must pay the actual expenses of the royal forces serving in India; but matters up to the end of 1792 were adjusted by wiping out all debts.

In India the position of the commander-in-chief was varied by making express appointment by the directors necessary for his being a member of council. The powers of the governor-general over subordinate presidencies were expressed in the widest term so as to apply to the civil and military government in general. His power to override his council was repeated and applied to the governors, but the authority was declared not to apply to judicial matters or taxation or

legislation proper. When visiting a presidency the governor-general would supersede the governor and might appoint a vice-president to act in his absence. Departure from India without permission was to be tantamount to resignation in the case of the higher officers. The King's approval was requisite for the appointment of governor-general, governors, and commander-in-chief.

To remove doubts it was provided that the Admiralty jurisdiction of the Supreme Court at Calcutta was to extend to the high seas. Further the governor-general and council were authorized to appoint justices of the peace in any presidency, but they were not to sit unless invited in the Courts of Oyer and Terminer and Gaol Delivery. The sale of liquor was made subject to the grant of a licence, and power was given to levy a sanitary rate in the presidency towns.[57]

152

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