CHAPTER - VII

The Parliamentary Act of 1781 :
The Supreme Court Regulated

* In the previous Chapters, elaborate discussions have been made on various cases where the English Court made illegal interferences and took hasty and improper decisions, and also on important transactions in connection with the conflict between the Court and Council. This conflict, as we have seen, had reached its climax with the Kasijora case. Admittedly, the conflict between the two Supreme bodies was jurisdictional, and most of the cases arose out of matters concerning the revenues of the country. The Court, erected to bring order in the existing judicial system of the country, soon proved to be a machinery of endless troubles to all sections of the people. The Natives, the British subjects, and the Governor-General along with the members of the Council were annoyed and terrified because of the conduct and ambitious design of the English judges. It has been previously observed, how the law the judges administered was repugnant, how they were ignorant of the customs and usages of the Natives, and finally how nakedly they attempted to exert their influence in every sphere and encroach upon the jurisdictions of the Supreme council. Different representations complaining against the actions and attitude of

* Chapters: III - VI.
the court were sent from Bengal to the Court of Directors from time to time, and also from the Directors to Lord Weymouth, Secretary of State. The Governor-General and council never before directly challenged the authority of the Court; but in the Kasijora incident of 1779 they for the first time made a strong armed resistance to the invasion of their jurisdictions by the judges. After this incident, they sent a long letter, demanding the revision of the powers and jurisdictions of the Supreme Court, to the Court of Directors; moreover, two petitions—one from the Governor-General and Council, and another from the British subjects residing in the provinces against the Supreme Court were sent to the House of commons. The House appointed a committee to enquire into the troubled state of Bengal and its report, submitted in 1781, finally led to the intervention of the British Parliament. Consequently the Act of 1781 was passed to make an improvement upon the defective Regulating Act, to limit the jurisdictions of the English Court, and also to strengthen the hands of the Government there. Thus the Natives found themselves secure, the long-standing grievances of the petitioners were redressed, and a reign of terror was over. The present chapter deals with the immediate circumstances that led to the passing of the Act of 1781 and also an analysis of the provisions of the same.
Regarding the interference of the Supreme Court, Colonel Monson in 1775 stated that neither the Supreme Court nor any of its judges had any jurisdiction over the Revenue Department of the provinces; the management and collection of revenues were vested solely in the hands of the Governor-General and council by the order of the British Parliament. This interference of the Judges in the revenue affairs was meant to deprive the Government of the authority given to it by the Parliament. Such an act of the Court created the idea in the provinces that the usual and legal process of revenue collections was altered and the mode of collection was to be guided by English laws. It was, therefore, to produce evil and dangerous consequences on the state of affairs in the country. Monson further observed that the powers of the English Court were defined and the judges clearly went beyond their jurisdiction by attempting to exercise the authority of the Government. He stated that if such things continued, it would be impossible for the Company to collect revenues from these provinces.

General Clavering fully agreed with Monson's view on this point and remarked that "it appears plainly that the judges have acted out of their Jurisdiction, and have taken upon themselves to determine matters of Revenue, which by Law are only subject

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1. Revenue Department, Minutes of Consultation, September 13, 1775.
to the Governor-General and Council\(^2\). He was of opinion that
the Calcutta Committee might be instructed not to pay heed to
the order of this English Court in matters concerning revenues
of the provinces. Under the circumstances, Clavering foresee
that there must be grave and fatal consequences on the revenue
collection in the Country.

The provincial council of Revenue at Calcutta wrote a
letter to the Governor-General and Council in 1780 making a
complaint against the supreme Court. In their letter the
provincial council stated that the jurisdiction of the English
Court over them created obstruction in the transaction of their
business to a great extent. They stated that they had been
informed "that a Declaration has been made from the Bench that
the Revenue Councils, have no authority to settle Disputes
between Farmer and their under-renters. A Declaration of this
nature if enforced, must be sensibly felt by the Provincial
Councils in all parts of the Country, in the Decline of their
authority. And an Interference in Matters of this kind by the
judges, which may be deemed the Necessary consequence of a Denial
of our authority in point, must divert the channel of Revenue
Business, from the provincial Councils, to that court, where the
Judges themselves preside\(^3\).

2. Ibid., September 13, 1775.
3. Revenue Department, Minutes of Consultation, April 13,
   1780.
The Governor-General and Council in a separate letter to the Court of Directors in 1780, raised the question of the revision of the powers and jurisdictions of the Supreme Court. In their long letter containing fifty paragraphs, they expressed their grave concern about the illegal interferences of the Supreme Court with the administration of the provinces of Bengal, Bihar and Orissa. They upheld before the Court of Directors the new difficulties created by the continuous efforts of the Supreme Court to establish jurisdiction at par with the Government of Bengal. This ambitious design of the court was a great menace to the peace and security of the country as well as injurious to the purpose for which the Court was erected. The Governor-General and his council opined that the evils and injustice created by this English Court in the provinces, originated more from its own construction than from its known and indisputable powers and jurisdictions. They described the harmful effects produced by the excesses of the Court in the provinces and wrote, "we should have seen the higher classes of the Natives totally alienated, your revenue running fast to ruin, all idea of a power in your Government to protect them utterly annihilated among the people, with every consequence to the National Interests that may be expected to result from so alarming a state of things."  

4. Revenue Department, General Letters to the Court of Directors for William, January 25, 1780 (Paragraph-4).
They then referred to their proceedings in the case of Raja of Kasijora of which the Directors had already been informed previously. They informed that they unanimously adopted their limited measures to avoid the great mischief committed by the Court in the above-mentioned case. They proceeded in this direction as necessity demanded, and just having checked the illegal action of the Court, they abstained from proceeding further. They added that in case of their legal difficulties in their transactions of business, they acted in almost all cases under the direction of the Law Officer appointed by the Directors to advise them in matters involving legal issues. While commenting on the conduct of the judges of the English Court they informed "We saw no motive for their misleading us; and tho' we felt present embarrassment to ourselves, and perceived the approaching decline of your Affairs in the admission of their claims; we were willing to trace them rather to a defect in the charter, than to a wilful abuse of its powers." They wrote that they waited for a long time for the consequences of their representations on the present affairs to the court of Directors and from the Directors to the ministers of the King of England. During this long period of their continuous difficulties and tyranny upon the natives caused by the unreasonable actions of the English judges, they hoped a revision of the existing syst

5. Ibid., (paragraph 7.)
of administration of justice or an introduction of a novel one.

The Governor-General and council further informed the Directors that had the judges of the English Court possessed a spirit of conciliation and 'a conceding Benignity' to a reasonable extent, it would have been advantageous to both the supreme organs in the provinces for the smooth functioning of their business; and so they wrote: "Your Government might then have retained the respect that belonged to it, without which it exists to little purpose, and our Laws, if such an Effect was intended, have imperceptibly taken root at present, with pain we say it, the one is cramped and enfeebled, and the other become the object of universal consternation". They also wrote that they were surprised to observe the process of contempt issued against the Naib Nazim of the provinces, who at that time had his residence at Murshidabad, the seat of the country Government. This was due to the fact that the Naib Nazim made no return to the Writ of Habeas Corpus and this action was considered by the Court as a violation of the 'protection to which a witness is entitled eundo and redeundo'.

In the opinion of the Governor-General and council, it was a matter of great regret that the English judges did not seem to be solicitous in any case. They put emphasis on the fact that

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6. Ibid., (paragraph - 9.)
no institution would be able to resist the action of the judges, if they made attempt to exercise the strict provisions of the law of England in the provinces. They were conscious of the fact that they had to resist the actions in this matter of the English judges possessing remarkable wisdom and knowledge. If the Naib Nazim, they said, pleaded to the jurisdiction, he must give jurisdiction to another court at the same time. So far as this case was concerned, the Naib Nazim should be exempted from the jurisdiction of the foreign laws for his different blood, temper and complexion from those of the Englishmen. Moreover, the party in this case had no allegiance to the King, obedience to his laws, lived out of his protection, derived no security, and enjoyed no liberty and fortune from the English system of judicial administration.

From the very establishment of the Supreme Court in Bengal, the Petitioners (the Governor-General and council) wrote, the English judges tried their best to make the inhabitants of the provinces, without discrimination, amenable to the jurisdiction of their own court. They in this connection cited the case of the Naib Nazim. The Naib Nazim was not subject to the jurisdiction of the Court, was not in the service of the Company in any way, and did not receive from the Company stipend or remuneration of any kind. It was mentionable, they wrote, that the Naib Nazim was a man of great importance; he possessed
the full executive jurisdictions of the Native Government. He was again the Chief Magistrate exercising criminal jurisdiction in the provinces and his powers "the Statute has not abridged, and which, by being thus tolerated, we apprehend are legalized; to which we may add that, in his jurisdiction, in matters of criminal cognizance, the Judges have not only at all times acquiesced, but in a particular instance have actually resorted to it in aid and exoneration of themselves. The fact that one section of the population in the provinces was not within the jurisdiction of the Court, was declared by the court in loose terms very often. They said that the right itself was never brought to a decision and the attorney of the defendant with the interest to prevent the decision, acquiesced. They further added that the client of that attorney "glad at any rate to be freed from the vexations and expenses already incurred, has submitted to the Deception, and returned to his own home; whence, after a short interval of quiet, he has been again dragged by a new writ to Calcutta, to go through the same process with the same Termination. Here they drew the attention of the court of Directors by referring to the famous case of the Zaminder of Pawakhal to justify their above description.

The Supreme Court with the help of the 'Rule instituted for the professed purpose of facilitating its operation',

7. Ibid. (paragraph - 19).
8. Ibid. (paragraph - 20).
Attempted to extent its powers and jurisdiction exceeding their limits marked by the Act and the charter previously. The Court, they informed, also attempted frequently to bring each and every class of the inhabitants of the provinces indiscriminately under their sphere of influence. The petitioners did not know how to reconcile the temporary jurisdiction by law over these inhabitants who were exempted from it. They informed that they might suspect the rights and authorities of the Court in certain cases, but they never thought of questioning and disputing these; it was only after the recent Kasijora affairs that they took up the question for their examination.

After examinations and observations they could understand that the rights and jurisdictions of all Courts in England were well-demarcated, unlike those of the Supreme Court, on the basis of the long and acknowledged usages. They also perceived that laws must be interpreted by the simple and literal construction of the words and phrases in which these had been written and expressed; and laws which were not based on long and recognised usages should not be made binding on the people. The Supreme Court, they remarked, "is itself of too recent an institution to claim the sanction of usage for any practice, which it hath either constituted or permitted".  

9. Ibid. (Paragraph - 26.)
The writs issued by the Supreme Court were everywhere obeyed and even on occasions when the orders of the Governor-General and council were disputed. The court exercised the right, derived from the necessity of a temporary jurisdiction over those who were exempted from the same by the law; but in such cases the Governor-General and council suspected the right and necessity at the same time. The judges of the Court could have done better and acted wisely in determining a person to be under their jurisdiction had they, instead of declaring persons under their jurisdiction, examined the very basis of their such declaration. Moreover, in case of any doubt on their part as to the subjection of a particular person, the judges should have sought the opinion of the Governor-General and Council on the point whether the person concerned was in the service of the company or not. The Governor-General and Council considered that they were the fittest body to give just opinion on this point.

They were of opinion that difficulties had been created by some technical distinctions and it was not possible for them to remove all these. It was certain that all classes of persons in the provinces were not amenable to the jurisdictions of the Supreme Court; according to the real meaning of the Act of the Parliament some sections of persons were clearly outside the jurisdiction of that English Court. Still by the order of this Court, such exempted classes of men were made liable to all
sorts of punishments inflicted upon persons for contempt of jurisdiction. When these persons disobeyed the process of the Court, they were fined, rigorously imprisoned and even their properties were sequestered illegally by the orders of that court. What is more, a Zamindar* residing four hundred miles from Calcutta, were dragged down to Calcutta, compelled to appear before the Court and put to a prison for not obeying the Court's process. He was imprisoned there for many a month till the determination of his plea to the Court's jurisdiction. Under the circumstances they remarked: "In what sense are we to understand the force and authority thus far exercised over him, if the Judges should at least decide that he is not subject to their jurisdiction? Is it jurisdiction, or is it merely an act of power, against which no right can protect him?" So, if the Court took measures to establish its authority over these classes of men, many of them were destined to be ruined. Here the petitioners cited the case of the Raja of Kasijora where they intervened in favour of that Raja; and had they not interfered with this case, the Court's action would have certainly produced menacing consequences. The Raja, being unable to pay 3,00,000 sicca rupees, had to suffer rigorous imprisonment in Calcutta for a long period of not less than a year; and during the period

* In this letter of the Governor-General and Council, there is no mention of the name of the Zamindar.

10. Ibid. (Paragraph-28).
of the absence of the Raja his Zamindary might have passed into a state of anarchy and revenue collections in his Zamindary might have suffered considerable loss.

They also referred to the case of the Rani of Rajshahi, a lady of very high rank and caste, having the first great Zamindary. They observed with alarm the English Court's Mandatory process issued against such an influential lady of the country. This honourable lady being totally ignorant of the intention and language of that process of the Court, did not act in obedience to the above process. True to its principle the Court at once sent a Capias; a party of armed ruffians went to the Rani's house, her house is pillaged, her Temples polluted, the most secret recesses of her family violated, and that sanctity of character trampled upon, which throughout the East, even in times of fiercest Hostility, the most barbarous Nations reverse in woman.\[11\]

In their letter the Governor-General and council were not willing to cite the numerous cases in the Supreme Court. In all these cases, the judges of the court pursued a principle unknown in England and this showed clearly that they only attempted to extend and establish the Court's powers and jurisdictions paying no heed to the interest of the Natives. They wrote that they sincerely had been trying to evade any

11. Ibid. (paragraph-32).
possibility of intervening in the legal authority and powers of the court from the very beginning of its establishment in Calcutta. Even applications were made to the judges of the Court for the removal of certain doubts in connection with the Court's jurisdiction over certain classes of persons in the provinces as soon as their commission had been proclaimed by the judges. They mostly enquired about the position of the zamindars in the provinces. They took special interest in this class of men, because their subjection to the jurisdiction of the court would have certainly hampered the revenue collection of the provinces seriously.

In their letter, the Governor-General and council further informed the Court of Directors that they asked for the opinion of the highest legal Authority for their guidance and they (Petitioners) were informed of the fact that the Court had no jurisdiction over any zamindar or quoad zamindar. The Court could have claimed its jurisdiction over a zamindar only if he expressed, by a written contract, his willingness to that effect. In the Kasijora case, the Raja was by no means a subject to the Court's jurisdiction, since he was not a servant of the Company or a subject of the King of England. It was the rule of the Court previously that the person, who applied for a writ against a Native in these provinces, was to take oath to be subject to the jurisdiction and without that rule, write
could not be granted. But the Court paying no heed to that rule, granted such write. The intention of the Act was to protect the inhabitants of the provinces from the injustice and injury. But this noble attempt of the British parliament, they wrote, proved to be futile, and the law became an injury and oppression to those Natives for whose peace and security it was made by the Parliament. Thus by upholding these arguments elaborately in their letter, the Governor-General and Council attempted to draw the attention of the Court of Directors to the important question of the revision of the jurisdiction of the supreme court in Bengal.

It has been noticed earlier that after the passing of the Regulating Act and the Charter, Bengal came into prominence and became the seat of the Government of the British dominions in India. In Bengal two Supreme organs were created; one organ was the Governor-General and Council having the executive and political powers of the Government, and the other was the Supreme Court composed of the English judges being completely independent of the former. The former was the enlargement of the ancient presidency and the latter superseded the old Mayor's Court of Calcutta. So with the establishment of the two separate jurisdictions, the affairs of India, especially of Bengal gradually became very serious and complicated. The attention of the British Parliament was soon drawn to these
affairs in Bengal. As a natural corollary, these two independent institutions erected at a place far away from England and possessing wide jurisdictions, were destined to clash against each other.

Under the circumstances it was difficult to say how much of these complications was due to the defect in the framing of the constitution or to the activities of those who had to act under this constitution. But it was a recognised fact that such an attempt on the part of the King of England to introduce English laws or courts or system of judicature in a country where there had been different nations, races, religions and languages, was a serious political blunder. It has been observed previously that the newly erected English Court denied the authority of the well-recognised Native courts and inflicted severe punishments upon the officers who acted according to the established laws of the Country. The terrified inhabitants of Bengal then witnessed the whimsical and unwarranted actions of the Court, which dragged even the Samindars of the provinces to Calcutta only to put them into long and rigorous confinement.

The sacred apartments of the females were broken into and their own men suffered wounds from the rough and brutal treatment of barbarous persons employed by the Court purposely. "But this was not the worst. Their places of private and domestic worship were violated in the same manner; and those symbols or
external objects of their adoration, which had been sanctified by the reverence of ages, were dragged from their places by profane hands, and thrown amongst the heap of household furniture, and lumber, which were collected to answer the ends of the execution.

It is essential to discuss in brief the two aforesaid petitions (one from the Governor-General and Council and the other from the British subjects), which were presented to the House of Commons and read there subsequently. The first-mentioned petition was that of the Governor-General and Council, subject-matter of which can be discussed here. By the Regulating Act (Stat.13. Geo.3) the civil and military government and the ordering and management of the revenues in the provinces of Bengal, Bihar and Orissa were vested in the hands of the Governor-General and Council. At the same time, the same Act erected a Supreme Court at Fort William in Bengal having jurisdiction over British subjects residing in the provinces and servants of the Company. By a provision of this Act it was stated that no summons or writ could be issued against the Governor-General and Council by the Supreme Court. In a word the Governor-General and Council were exempted from the jurisdictions of the English Court. So, any attempt on the part of the Court to compel the Governor-General and Council


13. Ibid, pp. 1165-1175. (Petition from the Governor-General and Council at Calcutta which was read in the H/C on Feb. 1, 1780.)
to appear before the Court was contrary to the meaning of Act. But in spite of these provisions which granted to the Petitioners (the Governor-General and Council) privileges and immunities and set a limit to the jurisdiction of the Supreme Court, the judges of the Court very often attempted to exercise jurisdictions over persons not amenable to them. They even went to the extent of instituting suits against the Governor-General and Council for acts done by them collectively. In their representation the Petitioners referred to the famous Kasijora case to prove this point. In the present case a writ was issued by the Supreme Court against the Raja Sundernarayan who being terrified remained underground. The revenue collection of the Raja was at a standstill and the Petitioners being alarmed at the loss of revenue, informed the Raja that he was not amenable to the jurisdiction of the English Court by any means and so was not to obey the Court's Process. But afterwards a writ was ordered for sequestering the effects and lands of that Raja, and for the execution of this writ, the sheriff sent a force to Kasijora. The petitioners had never before exercised the powers of the Government against the actions of the Supreme Court; but they then determined to protect the Company's property in the provinces and the Natives from the tyranny and control of the English Court by opposing the Sheriff's officers employed to enforce the writ. What followed next was an actual fight between the two Supreme powers of Bengal. To execute the writ, the female
apartment of the Raja's house were entered by force, his temple
was polluted and what is more, the image of his worship was
'thrust into a bucket'. "Such acts are accounted instances of
the grossest violation and sacrilege, according to the
principles and persuasions of the inhabitants of these
provinces, and have been never known to have been authorised
with impunity by the most despotic of their Mahometan rulers". 14

The judges of the court at this resistance of their
jurisdiction attempted to inflict 'exemplary punishment' on
all persons employed on this occasion by the Governor-General
and Council. Kasinath Babu (the plaintiff on the Court's advice
instituted a suit against the Petitioners and summons were
served upon them separately by the Court accordingly to appear
before the court. But they refused to obey the Process of the
Court, since they were not answerable to the Court for any act
done by them collectively. Such was the unfortunate state of
affairs in Bengal at that time. The petitioners wrote that they were
well-informed that the Court had attempted often previously
to make many Zamindars of these provinces subject to the English
law of which they were completely ignorant. For this extension
of jurisdiction illegally over the Zamindars, the petitioners
understood that the Company would suffer more loss of revenue and
the Government of the provinces would be humiliated.

14. Ibid, p. 1170. (Petition from the Governor-General and
Council at Calcutta which was read in the H/C on Feb. 1,
1780.)
The Governor-General and council in their petition were also of opinion that "the attempt to extend to the inhabitants of these provinces the jurisdiction of the Supreme Court of Judicature, and the authority of the English law, and of the forms and fictions of that law, which are yet more intolerable because less capable of being understood, would be such a constraint on the minds of the people of these provinces, by the difference of such laws and forms from their laws, habits, manners and religious principles, which, under every successive constitution of the former Governments have been respected and supported, as might inflame them, notwithstanding the known mildness and patience which constitute their general character, to an open rebellion, less indeed to be apprehended in a time of peace, but certain in the event of an invasion; and thus an incident like this, besides previous other unhappy events, would bring about a great disaster and calamity in the Indian possessions of the British Government. The petitioners observed that their submissions to the jurisdiction of the English Court would amount to some thing like 'public ruin', and there would be 'personal ruin', if they resisted its authority. They, however, in their representation did not pray for any remedy of the complained evils and injustice. It was observed by the Governor-General and Council that they might labour hard, had they been free from the anxieties in connection with their awkward position

to perform the allotted duty vested in them for the advancement of the national interest. 16.

The second petition was the petition 17 of John Touchet and John Irving who were the agents for the British subjects; and this representation was signed by six hundred and forty eight British subjects residing in the provinces of Bengal, Bihar and Orissa. This petition was also presented to the House of Commons and read like the former one. The aggrieved British subjects in order to have their longstanding grievances redressed, sent this petition to the members of the House of Commons in England which they considered to be the protector of the properties and liberties of the British subjects. They thought that as Englishmen they could enjoy certain fundamental rights granted by the British parliament and no institution could ever deprive them of their rights residing under British laws. But they observed with great alarm that many scandalous and false reports about their conduct and activities in the provinces, had been sent to England before the passing of the Regulating Act. Receiving these reports, they conceived, the British Parliament adopted rigorous methods to punish the English men residing in the provinces.


17. Ibid, pp. 1175-1181. (Petition from the British subjects against the Supreme Court which was read in the House of Commons, on Feb. 7, 1780).
The petitioners pointed out that one of their 'inherent' rights was the trial by jury in all cases, whether civil or criminal, and while residing under the English law, they could not be deprived of this 'indefeasible' right. But in spite of this recognised benefit, the British subjects in the provinces were not permitted to enjoy the same in civil cases by the strict order of the judges of the Supreme Court; and they considered this to be a clear violation of the fundamental law of England.

The British subjects also conceived that "no tyranny can be more dreadful in its operations, or more fatal in its consequences, than that a Court, established by law, with all the authority of one of the first courts in England, should also possess undefined powers and jurisdiction, of which the Judges of it are the sole interpreters, and under no control but at the immense distance of the mother country." and they were to face all these evils consequences. The judges of the Court claimed that the charter had granted them the power to adjust the English laws with the usages and customs of the Natives. But their knowledge regarding the languages and usages of the country was very scanty and their only source of informations was the witnesses. Moreover, the judges had the power to reject or allow any evidence according to their sweet will.

18. ibid., p.1179. (petition from the British subjects against the Supreme Court, which was read in the H/C on Feb.1, 1780).
The British subjects expressed their extreme satisfaction to know that a provision, made in the Act and charter, had authorised an appeal from the Supreme Court to the King and they considered this to be a check administered to the ambitious design and tyranny of the Court. But at the same time they were frightened to see that the English judges could reject or admit any evidence and also that they had attempted to change and make the rules of the Court. The British subjects perceived that "there must be some fundamental error in that institution, which requires a more than ordinary degree of temper, ability, and integrity, to carry its purposes into execution; and they do not hesitate to declare, that to administer the power appertaining to the institution of the supreme Court without extensive public detriment, and partial acts of private severity and injustice (if it be possible at all) requires more equity and moderation, discernment and enlightened abilities, than they can hope to find in any men"\(^{19}\). The British subjects were not to decide to what extent the English Judges might acquire the required qualities stated above; they only complained of the unlimited and uncontrolled powers which the court enjoyed and exercised without any hesitation.

In their petition the British subjects, in order to remove their grievances, placed their demands for the kind

\(^{19}\) Ibid, pp.1180-1181.
consideration of the British Parliament, and these were:

firstly, the granting of a trial by jury in all cases where English law operated; secondly, the limitation of the 'retrospective powers' of the Court to the time of its erection,
thirdly, the clear definition of the persons who were and were not subject to the jurisdiction of the court; fourthly, the declaration of the statutes which would and would not come into force in the provinces; fifthly, the direction of the power of the Court in connection with the admission and rejection of evidences; sixthly, the appointment of separate judges for the law and equity sides of the Court; seventhly, the restoration of the ancient and constitutional powers of hearing appeals in the first instance to the supreme authority of the Government given to the Governor-General and Council of Bengal; and finally, the granting of a power of staying executions in criminal matters till the King's opinion could be known. The aforesaid petitions were placed before the House of Commons and after the petitions being read, General Smith spoke before the members of the Commons and he tried to convince the House of the necessity of making an immediate enquiry into the distracted state of the Government of Bengal. In order to discuss the

20. Ibid, pp.1190-1191. (Debate on General Smith's motion for a Committee on the petitions against the Supreme Court of judicature in Bengal, Feb. 12, 1780; The Speech of General Smith in the House of Commons.)
present state of the jurisdiction of the Supreme Court, he first of all narrated in brief the jurisdictions of the Mayor's court in Bengal. General Smith upheld before the assembled members the case of Nandakumar who was indicted for forgery committed many years before the Supreme Court had been erected. At the same time he referred to the case of Radha Charan Mitra, who was tried for forgery and condemned by the Mayor's Court, but was ultimately pardoned.

General Smith in the House of Commons mentioned the petitions on the table which spoke much against the extension of the powers and jurisdictions of the English Court. He said that the Court very often extended its jurisdiction over the Natives; but it was not at all the intention of the Parliament to subject the Natives to the jurisdiction of the Court and the Act also clearly exempted them from its jurisdiction. The Supreme Court had the legal right to exercise jurisdiction only over the British subjects and other persons employed in the Company's service. But the judges of the Court interpreted this Clause in such whimsical ways as the Governor-General and Council seriously thought of limiting the Court's jurisdictions; they even went to the extent of sending their petition (which they actually did) to the British parliament, 'for an act of indemnity'.
Next he, to convince the members of the Commons of the chaotic state of Bengal and of the harassment and oppression of the Natives by the judges of the Court, referred to the well-known cases - the Dacca case, the Patna case and the Kasijora case. He narrated these three cases in brief and stated that the third case, namely, the Kasijora case where the Governor-General and Council had to employ military force against the Sheriff's Officers, was the immediate reason for the petition of the Governor-General and Council to the House of Commons. "From this detail of facts", Smith remarked, "the House will perceive the anarchy which now prevails in Bengal, what an alarming situation! The Governor-General and Council find themselves reduced to the indispensable necessity of actually employing military force to restrain the jurisdiction assumed by the Judges of the Supreme Court, the foundation of whose authority is a British Act of Parliament. If these difficulties have arisen from different constructions of the Act itself, it is the strongest argument that I can urge for explaining and amending that Act of Parliament."

He then desired that the House should immediately send to Bengal the news to the effect that they would direct their serious attention to the grievances of the petitioners as well as the extension of the Court's jurisdiction. The Governor-General

21. Ibid., p.1190. (Debate on General Smith's Motion for a Committee on the petitions against the Supreme Court in Bengal)
and Council and all Natives, he conceived, would feel satisfied
to know such decision of the Parliament. He, therefore, suggested
for the setting up of a Committee to which the abovementioned
petitions would be referred.

Broughton House then spoke on the occasion before
the House of Commons. He said that the House were to decide upon
the good Government of a country whose extent was 150,000 square
miles and which was inhabited by men having different races,
religions, customs, and usages. He was of opinion that the peace
and happiness of ten millions in that country were disturbed and
the Natives of the provinces complained of the violation of their
customs and usages caused by the judges of the Supreme Court.
Besides the extreme grievances of the Natives, the British subjects
residing in those provinces, and even the Governor-General and
Council had to suffer intolerable hardships. The House received
one representation from those British subjects upon whom the people
of England had to rely solely for the good government and
security of the provinces. Moreover, the House, he said, received
another representation from the Governor-General and Council, who
have been driven to necessity of employing military force to
restrain the alarming extension of power attempted by his Majesty's judges:
He stated that the distant country was passing through universal
chaos and disorder and then he severely condemned the first
measure of the English Court - the trial of Nandakumar.
Rouse remarked that the powers and jurisdictions of the Governor-General and Council and the provincial Courts were threatened by the English Court. The judges of the Court made an invasion of the powers of the Governor-General and Council; they frequently issued writs of Habeas Corpus to release persons confined by the provincial Councils or collectors for arrears of rent. He then referred to an instance to justify this statement. He cited the language of the two English judges—"we know not what your provincial Chief and Council are". This, he added, would show that the authority of the Governor-General and Council recognised by the British Parliament, was resisted and disrespected. "Thus made an object of taunt and ridicule, was it wonderful, that their acts became inefficacious, or that their powers should be inadequate to the great trust reposed in them, for securing the public revenue, or administering justice amongst the inhabitants"?

Persons, whether Native or European, employed in the Provincial Courts were forcibly made subject to the jurisdiction of the Supreme Court. The competency of the provincial Courts, he said, was never recognised by the Court, though it had been recognised by the fourteenth clause of 13 Geo.3. The English judges resisted the orders of those authorised courts and even went to the extent of punishing the members of the Courts for acts done under the authority of the Governor-General and Council.

22. Ibid, p. 1198. (The Speech of Broughton Rouse in the House of Commons on the same day).
To put an end to this anarchy the Governor-General and Council were forced to employ a military force to oppose the powers exercised by the English Court illegally. On the other hand, the English judges too determined to adopt vigorous methods to exert their influence and authority. Rouse was of opinion, "Civil discord has taken place; the powers of Government are at war with one another; and it would not much surprise me to learn by the next advices, either that the Supreme Court has inflicted death upon the members of your Government; or that your Governor-General and Council have shipped off his Majesty's judges for Great Britain".23. He then touched upon one important point and the point was that the Supreme Court attempted to establish the equalising principle between a Native and European. He informed that the Natives considered the Europeans as much superior; but they would not regard the Englishmen, if they saw their Government belittled by the English lawyers publicly and the British subjects reduced to the level of the most ordinary Natives. "Our dignity will fall; our power will dwindle, some accident of the moment will produce revolt, and then, Sir, it will not remain a question, how we shall hold that country, but whether we shall hold it at all".24.

Uraxall next expressed his approbation of this motion.

23. Ibid., p.1199. (The speech of Broughton Rouse in the House of Commons on the same day).

24. Ibid., p. 1202 (The speech of Broughton Rouse in the House of Commons on General Smith's Motion).
He was of opinion that any insurrection in Bengal was dangerous at that time. The Supreme Court was at war with the Supreme Council; he observed that Bengal would soon turn a place of discord and massacre, and to avoid the unthinkable mishap, effective and immediate steps were essential. At last General Smith's motion was agreed.

About this time the Governor-General and Council wrote a letter to the Court of Directors in 1780, discussing the question of the power and jurisdictions of the Supreme Court to issue process against the Governor-General or the members of the Council separately or individually for acts done in their corporate capacity. They pointed out that the Court illegally issued processes against the Governor-General and Council individually for acts done in their corporate capacity. And they considered that such processes of the Court were contrary to the clauses of Stat. 13 Geo. 3. They informed the Directors that they had already sought the Advocate-General's (John Day) opinion on the question whether the Supreme Court had any legal authority to issue any Process against the Governor-General or any member of the Council separately or individually for any act done in their collective and corporate capacity. The Governor-General and Council stated that the Advocate-General

25. Ibid, pp. 1205/('The speech of Wsali in the House of Commons on the same day and the same occasion).
in his report formed a very unfavourable opinion about the Court's such processes issued against them. The Advocate-General put emphasis on the fact that the Governor-General and also the members of the Council were immuned from all kinds of suits and actions in the Supreme Court which were founded on any act done by them in their corporate capacity. The Advocate-General delivered his opinion on the present issue on the 23rd February of the same year and in this connection, it will be proper to give his opinion in his own words:

"The statute and the charter of Justice, pursuing its provisions, except the Governor-General and the Members of the Supreme Council from arrest in any action, suit or proceeding, and from trial upon any indictment to be preferred for any offence short of felony or treason; they are nevertheless clearly and incontrovertibly amenable to the Justice of the Court in any civil proceeding of which they may be individually the objects."

The personal exemption of the members of the Supreme Council from civil and also from criminal processes with a few exceptions, was granted for a supposed sufficiency of means to answer each demand. However, the charter made them subject to the English Court's jurisdiction beyond doubt. But the Advocate-General considered the above subjection both in common sense and

in law restrained to the acts done by the Governor-General and Council in their private capacities. At the same time he held the view that in the exercise of the powers given by the Parliament to the members of the Supreme Council, their public or joint acts were not examinable at all. When the new system of Government was set up in the provinces, the Advocate-General stated, it was not the intention that the Governor-General and Council should be answerable individually in their 'Private Fortunes' concerning any acts of the Government in the provinces. What the Parliament intended was to retain the powers of the Government as well as of the Court wide and independent of each other to the most practicable extent.

The Governor-General and Council then drew the attention of the Court of Directors to the delicate position in which they themselves would be placed as a result of such illegal processes issued by the Court 'whose constant object is to reduce the powers of the Government and to render its authority contemptible in the eyes of the natives'. This practice of the English Court, they pointed out, had menacing consequences on the peace and security of the Natives. Besides the immediate consequences, they unanimously expressed in strong language their opinion against the Supreme Court. They opined "that the powers vested in the Governor-General and Council by parliament cannot

27. Ibid, p.538.
be exercised by them or applied to the purpose and effect for which they were extended, and that the dependance of these provinces in Great Britain cannot be secured, unless the Supreme Court of Judicature be forthwith abolished, and a new Institution Established on different principles and with powers more narrowly limited, and more exactly defined, for the future Administration of the law of England in these provinces, as far forth as, upon a Reconsideration of the subject, it may be deemed advisable to extend their co-operation in the same. The Governor-General and Council thus appealed to the Directors to consider their opinion and take necessary action for limiting the encroachments made by the English Court.

After a few days the Governor-General and Council in another letter to the Court of Directors referred to the summons served upon all the members of the Supreme Court severally by the Supreme Court to answer a charge of trespass brought by Kasinath. They wrote that the Directors had already been informed of the opinion delivered by the Advocate-General against the practice of the Court of allowing the process to be issued against the Governor-General and members of the Council individually for acts done by them in their corporate capacity. They mentioned that by the provisions of the Act and the charter the Governor-General and Council were to constitute a body for

28. Revenue Department, General Letters to the Court of Directors, Feb. 29, 1780.
the administration of the civil and military Government, as well as for the ordering and management of all territorial acquisitions and revenue of the country. Again, they were clearly 'exempted from arrest in all cases but of felony and Treason and a power granted them to constitute an attorney to appear to, on the behalf, and to answer to, all suits instituted against the Company', according to the clauses of the same Act and the charter. They in their present letter informed the Directors of the illegal summons served upon them to answer a charge of trespass brought by Kasinath Babu. And being duly advised by the Advocate-General, they wrote, they had directed the Attorney to appear for them. The Governor-General and Council also transmitted the Directors a transcript of their proceedings on that occasion along with the summons stated above 29.

It is to be noted that the British Parliament at this time appointed a Committee* to enquire into the disturbed state of Bengal; the committee after a thorough enquiry into all important incidents, produced a report in 1781. On the basis of the report, a Bill was brought to the House of Commons to remedy the evils of the previous Act. Now it will be proper to direct our attention to the 'Debate' in the House of Commons on the Bengal Judicature Bill.

29. Revenue Department, General Letters to the Court of Directors, March 3, 1780.
* (The Committee was set up in 1781 after General Smith's motion for a Committee being accepted in the House of Commons)
Ultimately, the Bengal Judicature Bill was prepared. The bill to explain and amend the Stat.13.Geo.3 ("An Act for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe"), as related to the administration of Justice in Bengal; and for the relief of certain persons imprisoned at Calcutta, in Bengal, under a judgment of the Supreme Court of Judicature; and also for indemnifying the Governor-General and Council and all officers who had acted under their orders or authority, in the resistance made to the Process of the Court, was placed before the House of Commons for discussions 30 in June, 1781. Dunning severely opposed the Bill; he severely criticised all clauses of the bill with exception to the clause which was to indemnify the Governor-General and Council for the resistance 'they had given to the execution of the Judges' decrees'. His opinion was that the Bill would make the Governor-General and Council of Bengal a great despot.

The House on June 22 of the same year resolved itself into the Committee formed previously. Sir Richard Sutton also criticised the Bill and demanded an amendment of the Bill to prevent the Governor-General and Council from becoming a despotic institution. But on the other hand, it was argued that the

bill, if amended, would be meaningless. Burke argued that Bengal urgently required the establishment of an arbitrary authority and the Governor-General and Council ought to be given more powers than the King's Court. This was, he said, because of the fact that the Governor-General and Council were responsible for all their actions and "judges were responsible only when it appeared that they had acted corruptly and wilfully wrong." The proposal for the amendment of the said Bill was rejected; the committee then discussed every clause of the bill.

The report of this Committee on the Bengal Judicature Bill was read and discussed on the 27th of the same month. Dempster examined and criticised different clauses of the Bill; he made a very unfavourable opinion of the clause by which the Governor-General and Council were given arbitrary and supreme power over the lives and property of the Natives. Richard Sutton also shared with his views and objected to the clause.

Burke then delivered his speech and commented that the said Bill was justified in policy as well as in necessity. He said that the Englishmen considered the free system of England as the best basis of Government in Europe; but the Natives would not form such an opinion about it. The Natives

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31. Ibid, p.552. (The speech of Burke in the H/C., on the said Bill on June 22, 1781.)
were well-acquainted with the despotic rule and they should be ruled by their own known laws. The House had in the report of the committee an account of the proceedings of those judges. "They were arbitrary in the extreme, The encroachments which they made on the most sacred privileges of the people, the violation of their dearest rights, particularly in forcing the ladies before their courts; the contempt that was shewn for their religious ceremonies and mysteries; and the cruel punishments inflicted upon them in case of their disobedience; new, strange, and obnoxious to them; all these things contributed in fact, to compel the British legislature to restore peace, order and unanimity to the extensive territories of India, by giving them the laws which they approved."32. Burke said that the opposers of the Bill were jealous of the powers and authority given to the Supreme Council by this Bill, but they should bear in their minds that the English judges were clamouring for more powers. Thus in that distant country two Supreme organs were reigning, each exercising despotism 'in the most offensive way', and this disturbed the security, peace and happiness of the Natives. That is why, he stated, it was the immediate duty of the parliament to put an end to these disorders as there was no higher institution to stop the long-drawn contest. The cause of the

32. Ibid, pp.554-555. (The speech of Burke in the H/C. on the Report of the Committee on the Bengal Judicature Bill June 27, 1781.)
Natives must be taken into consideration first of all, and for the order and security of the Natives, strong government was to be established there. For these reasons, the committee appointed to make an enquiry into the grievances of the Natives and British subjects in those provinces of India, 'had recommended this plan to the House, as the most likely to restore concord and good order to the people, and to give firmness and stability to the Government'. He said that this was the remedy for the redress of the grievances of the people of that distant country and steps must be taken in that direction before the prorogation of the parliamentary session.

In spite of the division in the House of Commons, the report of that committee on the Bengal Judicature Bill was finally accepted by an overwhelming majority.

Thus the Bill 'to explain and amend' the Stat 13 Geo.3, was passed into an Act in the Parliament in the year 1781. This Act of the Parliament recited the Act, passed in the thirteenth year of George III's reign "for establishing certain Regulations, for the better management of the affairs of the East-India Company, as well in India as in Europe". The Supreme Court at Fort William in Bengal with various powers and jurisdictions was erected by a letters-patent on March 26, 1774, in the fourteenth year of the King's reign. But the powers and

33. Stat. 21 Geo.3, Cap-70 (Sections: I-XXVI.)
jurisdiction of the English Court were not clearly defined and some clauses and provisions of the Act and Charter were ambiguous and to produce different interpretations. Hence difficulties arose, as has been seen previously, regarding the true spirit and meaning of certain provisions. This glaring defect in the Act and Charter created a sense of fear and insecurity in the minds of the Natives of the provinces of Bengal, Bihar and Orissa. The worst thing was that it led to a great disunion between the Supreme Court and Governor-General and Council. To avert further mischief and misunderstandings immediately, it was felt that the government of the provinces was to be supported, the Natives were to be protected, and the revenue collections in the provinces were to be made regular. For the remedy of the evils already produced, steps were taken.

This parliamentary Act declared that the Governor-General and Council of Bengal were, whether jointly or severally, not subject to the jurisdiction of the Supreme Court for any act or order, done or issued by them in their public capacity. The Act thus stated that "the Governor-General and Council of Bengal shall not be subject, jointly or severally, to the jurisdiction of the Supreme Court of Fort William in Bengal, for, or by reason of, any act or order or any other matter or thing whatsoever, counselled, ordered, or done by them, in their
The Act then declared that a person or persons impleaded in the Supreme Court in any civil or criminal action or process, for any act or acts done by the order of the Governor-General and Council, was or were to be permitted to plead the general issue and give that order in evidence. If that order was proved sufficiently justified, the persons concerned was to be acquitted and discharged from all kinds of action, process or suit in the Supreme Court. But the Supreme Court had full jurisdiction where such orders extended to the British subjects. The Governor-General and council, individually or collectively, or any person acting under their orders, could not be discharged from any suitor or process before any competent court in England. (Sections: II - IV).

For the prevention of the abuses of the powers vested in the Governor-General and council, it was declared that "in case any person, by himself or his Attorney or Counsel, shall make a complaint to the Supreme Court and enter the same in writing and upon oath, of any oppression or injury, charging the same to be committed by the said Governor-General, or any member or members of the council, or any other person or persons, by or in virtue of any order given by the said Governor-General and council, and shall execute a bond with some other person,

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who the said court shall deem responsible, jointly or severally, to the United East India Company, in such a penalty as the court shall appoint, effectually to prosecute the said complaint by indictment, information or action, in some competent court in Great Britain, within two years of the making of the same, or the return into Great Britain of the party or parties against whom the same is made; that then, and in such case, the party complaining shall be, and is hereby, enabled to compel, by order of the court, the production in the said Supreme Court, of a true copy or copies of the order or orders of council complained of...35 All authenticated copies of the orders of the Governor-General and council and the depositions before the Supreme Court, were to be received in any King's Court, whether of law or equity, at Westminster. But there was a limitation of action against the Governor-General and Council; it was not possible to carry on any action or suit against any one of them before any of the Courts of England, if it was not commenced either within five years after his arrival in England or five years after that crime. (Sections : V - VII.)

For the curtailment of the powers and jurisdictions of the Supreme Court, it was enacted that the Court was to possess and exercise no jurisdiction over revenue matters or

35. Stat.21 Geo.3 Cap-70, Section-V.
matters concerning any act done or ordered in the revenue collections in accordance with the rules and regulations of the Governor-General and Council or the practice of the country. It was also declared that the Court was to have and exercise no jurisdiction over any person, being a land-holder, land-owner, or farmer and receiving any share of profits for collection or any compensation. No person being a security for the payment of rents payable out of the forms or lands within the provinces of Bengal, Bihar and Orissa, was to be subject to the jurisdiction of the Supreme Court.

(Sections VIII - IX)

It was further declared in the Act that the Supreme Court was not to exercise any jurisdiction over persons employed by the Governor-General and council or by any person enjoying authority under them or by a Native or a successor of a Native in England, or employed by the Company, in matters concerning inheritance and succession to lands or goods, or concerning any contract between the parties. But this was with exception to actions of trespass or wrongs or to any civil suit, by agreement, between the parties to be submitted to the Supreme Court. Again, to ascertain perfectly the Natives being amenable to the jurisdiction of the Supreme Court due to the fact that they had been employed by any British subject of the King of
England, it was thought proper that the Governor-General and Council were to make arrangements for the entry of the names, descriptions, places of abode of all Natives being employed in the Company's service in any judicial office or as principal Native officers of any district in the revenue collections or in any business concerns of the Company, in a book. This was to be done by the Governor-General and Council on or before 1st January, 1783. Two copies of the book were to be made: one copy was to be preserved in the provincial office and the other was to be registered in the Supreme Court. Moreover, the Governor-General and Council were to take steps for registering the names of persons to be appointed in vacant or newly created offices afterwards. The act said that in case of death or removal of any persons from any employment in the East India Company's service, the names of such persons were to be entered in a book (Sections X - XII).

By this Act it was declared that every British subject of the King of England was to make arrangements in a similar way the entry of the name, description, and place of abode of his Native agent in any revenue concern in the provincial office of the district (in which that British subject resided). And it was further declared that "If any British subject shall be convicted before the Supreme Court, of employing any native agent, or engaging with any native
partner, not registered as herein before is provided, or who shall be bona fide, and in effect and substance such agent or partner, the said British subject, if in the company's service, shall forfeit, on conviction, the sum of five hundred pounds, and if not in the company's service, shall forfeit one hundred pounds to any person suing for the same.\textsuperscript{36} It was further stated that a British subject was not entitled to receive any sum of money, if that person engaged him in any trade concern with a non-registered Native partner (Sections : XIII - XVI).

Thus the Act gave the Supreme Court full powers and jurisdiction to hear and determine, according to the process prescribed in the charter, all actions or suits against all inhabitants of Calcutta. But the Court was not to have any jurisdiction over those inhabitants in matters of succession to lands, rents, goods and inheritance and matters of contract. Such matters were to be determined by the laws and usages of the Muhammadans in the case of Muhammadans. When one party would be a Musling and another party a Gentoo, the case was to be decided always according to the laws and usages of the defendant. It was enacted that the civil and religious usages of those Nati were to be regarded; the rights and authorities of the fathers or masters of families among the Natives were to be preserved.

\textsuperscript{36} Stat 21, Geo 3, Cap-70, Section-XIV.
to them. No act committed by the law of caste in those families were to be considered as a crime, in spite of the fact that the act might be unjustified in the eye of English law. (Sections : XVII - XVIII.)

The Supreme Court was empowered to make Rules and orders, and also frame process in civil and criminal suits against the Natives of the three provinces of Bengal, Bihar and Orissa; but such Rules and forms of Process might suit the religion and manners of those Natives. Moreover, those Rules, orders and forms of process were to be transmitted to one of the principal secretaries of state for the royal approval or alteration or refusal of the King. (Sections : XIX - XX).

According to this Act, the Governor-General and Council might determine on appeals from the Provincial Court in civil cases; the council were to be a Court of Record and their judgment was to be final. But appeal in civil cases was allowed to the Crown where the value was five thousand pounds and more. The Governor-General and Council were given the right to hear and determine all offences and extortions committed in the revenue collections and punish the offenders. But in no case the council were to inflict penalties of perpetual imprisonment or death upon such offenders. (Sections : XIX - XXII).
The Governor-General and Council were further empowered to frame Regulations for the Provincial Courts from time to time. They were to transmit copies of all the regulations, within six months after the making of such regulations, to the Court of Directors and also to one of the King's principal Secretaries of state. The King could amend or disallow these Regulations; and if such Regulations were not disallowed within two years by the King, these were to be effective. (Section : XXIII).

It was also declared that the Judicial Officers in the country Courts were not to be liable to actions from wrong or injury in the Supreme Court for any judgment or order of their Courts. Even a person acting under the order of these Courts, was not to be liable to actions for wrong in the Supreme Court. No Process or Rule was to be made or issued against any such Officer or Magistrate for any corrupt act in case of an information, until due notice was served upon him. Moreover, no such Magistrate was to be liable to arrest or any personal caption in such a case, until his refusal to appear to answer after due notice. (Sections : XXIV - XXVI).

From an analysis of the provisions of the present Act, it becomes clear that most of the glaring defects of the Regulating Act (13 Geo. 3 Cap. 63) were rectified. The powers and jurisdictions of the Supreme Court were curtailed.
to a great extent and on the other hand, the hands of the Supreme Council were strengthened. Moreover, the Act more or less clearly defined the jurisdictions of the two rival Supreme institutions of Bengal. Of all the sections of this Act of 1781, Sections - 1, 8, 9, 17, 21, 22 and 23 deserve special mention. It has been noticed that by Section - 1, the Governor-General and Council were completely exempted from the jurisdiction of the Supreme Court. Section-8 clearly stated that the Court was to have no jurisdiction in matters concerning revenues. It was declared again by Section-9, that the Court was to exercise no control over the Zamindars or revenue Farmers. Section-17 stated that no one was to be subject to the Court's jurisdiction in cases of succession and inheritance, on the ground of his being in the service of the Company. Sections-21 and 22 declared that the Supreme Council might determine on appeals and references from the Provincial or Country Courts in all civil cases, and the Council were to determine all offences committed in the revenue collections; and Section-23 empowered the Supreme Council to frame Regulations for the Provincial Courts from time to time. Thus the interferences of the English Court with the revenue affair (which was the primary source of almost all conflicts between the Judiciary and the Executive) were made impossible, and the question of the subjection of the Zamindars of the provinces was settled.
But the Act could not completely remove the evils of the Regulating Act. Like the Act of 1773, the Act of 1781 also failed to provide a clear statement whether the Natives of India were to be styled 'Subjects,' or whether the Provincial Courts would exercise an exclusive jurisdiction, or with the Supreme Court a concurrent jurisdiction. It also could not clearly state the relation of the Indian possessions with the crown of England. It is also observed that "the phrase 'British Subjects' is used in both acts in such a way as necessarily to exclude from its meaning the Hindu and the Muhammedan inhabitants; but it is so used that, with respect at least to subjects not being natives of Great Britain or India, subsequent glosses made it almost impossible to affix any definite understanding to it." 

Inspite of the shortcomings, it must be admitted that the Act of 1781 solved many a source of contention between the two Supreme machineries and the settlement made by it continued up to 1861. The Act may be said to be a compromise, because by it the powers of the English Court were limited to a considerable extent, and Parliamentary recognition was given to the Company's

institutions. It will be a great mistake to think that the Supreme Court after 1781 lost its prestige and respect for its restricted jurisdictions. The supreme Court, being thus regulated anew with diminished powers and authority in 1781, continued to function for a long period of more than eighty years. The period from 1781 to 1862 in British India saw the glorious career of the supreme Court; during this time the Court enjoyed more popularity and respect from all sections of the people of the Country than it had ever before enjoyed. The purposes and intentions of the drafters of the Regulating Act remained unfulfilled up to the year 1781, and now these were reflected through the present Parliamentary Act.

This Act may be said to have favoured the policy of amalgamation, and it was felt, just after the assumption of direct responsibility of the Indian Government by the English Crown in 1858, that for the better administration of justice in India, the English and the Native Courts should be amalgamated. In the meantime the Indian Law Commission, appointed in 1934, submitted its four Reports, the last of which bearing date May 20, 1856. The commission recommended an amalgamation of the Supreme Court and the Sadar Courts in Calcutta into one Court, which was to be named the 'High Court'. Thus on the basis of this recommendation of the Law Commission
the Act of 1861 was passed. To establish a uniform system of justice in India, the Act of 1861 thus led to the subsequent abolition of the Supreme Court along with other two Sadar Courts in Bengal, and the establishment of the 'High Court' in Calcutta in the month of July, 1862.

CHAPTER VIII

Impney-Hastings Collaboration

A remarkable aspect of the period of severe rivalry between the Court and the Council is that there subsisted a private correspondence on terms of intimacy and affection between the two rival chiefs. It is strange and interesting to note that during the whole period of so violent a contest and when accusations of the most atrocious nature were made against the Chief Justice of the Supreme Court, Hastings and Impney lived in an 'unbroken Intercourse and on Terms of Intimacy and Friendship'. Such intimacy is revealed nakedly in two conspicuous instances. The first occasion is the execution of Nandakumar (1775), and the second one is the appointment of Impney as the Chief Judge, in addition to his normal duty as the Chief Justice of the Supreme Court, of the Sadar Diwani Adalat in 1780. Both these cases expose the close personal relationship and mutual understanding on the basis of self-interest between Impney and Hastings at a time when their respective departments were directly involved in a long-drawn and deadly contest. In the first instance Impney stood by the side of Hastings for inflicting capital punishment upon Nandakumar. In the second instance, the latter gave the former the suitable return by an offer of a lucrative post. It is alleged that the offer of such a salaried office in the Sadar Diwani Adalat to Impney by Hastings was not legal. It was an
appointment which Hastings had no right to offer and Impey to accept. Thus the appointment was undoubtedly a consequence of personal reconciliation between them and an act of private favour to Impey from Hastings, and in the language of Macaulay 'a bribe'. when Impey had obtained the end at which he had so long aimed, all disensions between the Court and the Council immediately came to an end. It should be borne in mind that in the list of Six Articles of charges brought against Impey in the Parliament of 1788, the case of Nandakumar appeared as first and the acceptance of this new appointment by Impey appeared as fifth.

The present chapter deals with these two instances which produced far-reaching consequences and were subject to bitter criticisms. The discussion that follows naturally divides itself into two sections. The first section deals with the case of Nandakumar, the second with the appointment of Impey as the Chief Judge of the Sadar Diwani Adalat.

Section - I

Warren Hastings was publicly accused by Nandakumar of several charges of defalcations on March 11, 1775. After a few days Hastings instituted a complaint in the Supreme Court against Nandakumar and others for coercing a Native (Komaluddin) to accuse Hastings. Nandakumar was acquitted on this charge of
conspiracy; but within a few days from this time, he was
suddenly arrested on a serious charge of forgery brought against
him by a Native, named Mohan prasad. Nandakumar was thrown into
the common gaol; he was tried in the Supreme Court, sentenced to
death and on the 5th of August executed.

It will be necessary here to give an account of
this Nandakumar episode in some detail. Scarcely four months
after the establishment of the new Government, on the 11th of
March, 1775, Nandakumar presented to the Supreme Board a
memorial which contained a formal statement of bribes received
by Hastings from Rumi Begum and other persons on different
occasions. He delivered to Francis a long letter which was
addressed to the Governor-General and Council. He requested
Francis through his messages to lay it before the Supreme Board
as a duty of a Councillor of the State. This letter was written
on March 8, under the signature of Nandakumar in persian. In
his letter, he gave an account of the charges against Hastings
in general terms. The latter part of the letter gave an account
of the presents received by Hastings on account of transactions
of a public nature; it gave 'a more particular and circumstantial
statement of facts'.

1. Secret Department, Fort William, March 11, 1775.
Francis brought the letter accusing Hastings of corruptions, opened and read it before the Board. He said that he received the letter publicly in presence of a considerable number of persons. He further said that he apprehended in general that the letter contained some charge against him, but he was not acquainted with Nandakumar's intention of bringing such allegations as were mentioned in the letter.

On the 13th of March Nandakumar wrote the Secretary of the Board a letter which referred to his letter of the 11th instant, and in this letter he expressed his desire to appear before the Board in support of its contents. He further stated that he had no other object than the Company's prosperity. However, on the same day on a motion of Colonel Monson, supported by General clavering and Francis, it was determined that Nandakumar should be called before the Board and be asked to produce the proofs of his charges against Hastings. But Hastings vehemently objected to it, considering those members of the Council as his censors. Hastings remarked: "They were therefore unfit to sit in judgement upon me; that I would not suffer the dignity of the first magistrate of this Government to be debased, by sitting to be arraigned as a criminal at the council Board, of which he was the President, by a man of a character so notoriously infamous"

2. Ibid, March 11, 1775.
as that of Rajah Nundcomar'. He resolved not to sit in the Council to hear the charges brought against him by Nandakumar whom he called the 'basest of mankind'. But the majority of the Council determined to make an enquiry into the allegations against Hastings. Francis read the paper aloud and a strong altercation followed. At once Hastings, challenging the right of the councillors to conduct the examination, quitted the room followed by Barwell.

The majority also denied the right of the Governor General to dissolve the Board and claverin took the Chair accordingly. Nandakumar was called in and asked to produce the proofs in support of his charges. He said: "Everything is contained in the letter I have given in". In addition to other charges, he alleged that the sum of Rupees two lakhs and a half was paid to Hastings by Muni Begum and Hastings himself purchased his son's (Gurudae) appointment with one lakh of Rupees. The majority of the Council resolved that "the sum of three lacs forty thousand rupees had been received by the Governor-General; that of right it belonged to the company; and that Mr. Hastings should be required to pay into the company's treasury the amount for their use".

3. Ibid, Fort William, 3rd April, 1775 - The Governor-General's Minute.

A few days later Hastings instituted proceedings in the Supreme Court against Nandakumar and two Kinmen, holding high stations in the company's service for an alleged conspiracy. The allegation was that Nandakumar was a party to the conspiracy of forcing Kamaluddin, a Native to write a false petition injurious to his character. Nandakumar was accused before the judges of the Supreme Court on April 11 of the same year. The majority of the Council, on hearing the evidence, "adduced at an examination before the judges, placed on record their conviction that the charge was a fabrication, and had no foundation whatever in truth."

Immediately after the commencement of this prosecution for the above conspiracy, a more serious offence was alleged against Nandakumar by one Merchant, named Mohan Prosad. He was arrested on a charge of forging a bond five years back and he was committed to the gaol on the 6th of May, when Justice Lemaistre was the sitting Magistrate.

The gaol where Nandakumar was confined was a common gaol. It became impossible for him to perform the ablutions which were essential before he took his food. His request was that he should be removed to any other place. This in a representation to the Supreme Council, Nandakumar wrote:

"I might not suffer upon such a charge from the bare accusation a punishment equal to that of death, the violation of the most sacred duties of my religion." He stated that the institutions of his religion included various kinds of prayer and ablutions which should be performed by the brahmins before taking any kind of food. In the concluding sentence of the letter, he wrote: "I therefore humbly request that I may be permitted to reside, under as strict a guard as may be judged requisite, in some place where these objections may be obviated."

Nandakumar's committal gave great offence to the majority in Council and they resolved to send the message to Elijah Impey, with Nandakumar's representation. They dispatched repeated and urgent messages to the judges to the effect that Nandakumar should be set at liberty on bail, but everything was in vain. During that time in his conversation with clavering, Nandakumar told him: "Don't trouble yourself about me; the will of Heaven must be complied with. I am innocent."

The majority of the Council resolved that the Sheriff and Deputy Sheriff should be requested to attend the Board and produce the original warrant for the commitment of

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Nandakumar. Agreeably to their summons, the sheriff produced
the same for the inspection of the Board. It appears that
this warrant was addressed to the sheriff of Calcutta and to
the keeper of the prison, issued under the signature of Justice
Lemaistre and John Hyde on the 6th of May, 1775. Then in answer
to a question made by Colonel Monson, the Deputy Sheriff stated
that Jarrett (Attorney of Nandakumar) desired that Nandakumar
might be sent to some other place than the common gaol; but the
judges told him that they were of opinion that he could not be
removed to any other place and he should be confined in the
common gaol. They then by a resolution directed the Sheriff
and Deputy Sheriff to inform the Chief Justice of the prison-
condition of Nandakumar, whose religion obliged him to deny
himself sustenance in the prison. They were also directed by
the majority in Council to request the Chief Justice to
consider 'of granting the prisoner such relief as may be
consistent with the strict security, of his prison to answer
to the charges brought against him'.

Impey, the Chief Justice, in answer to this,
informed the Supreme Council through the Sheriff that Nandakumar
was not committed by him and so he had no right to intervene
in this matter. However, the Chief Justice sent for some

8. Proceedings of the Secret Select Committee from 8th
May to 31st May, 1775; Secret Department, Fort
William, May 8, 1775.
Pandits to ascertain the facts. They visited Nandakumar in the prison and opined that it was not proper for him to perform his ablutions or eat where Christians and Muhammedans inhabited; but 'if he did so, he might be absolved by penance'. They added: "It is no easy matter to lose caste. A Brahmin must eat eight times of the meal of a Mussulman before he can lose his caste". It appears from the records that the opinions of the pandits were given in writing under the signature of Kissan Jewan and other five pandits9.

Nandakumar protested against these opinions of the Pandits. He stated that there were other Pandits at Nadia, who were of 'a higher caste and better informed' and desired that they might be consulted. But this request was turned down. The Chief Justice in a letter to the Governor-General and Council wrote that Justice chambers and Justico Lamajistes were perfectly satisfied with the answers of the Pandits and so there could be no reason for altering the prisoner's mode of confinement. He further wrote that many brahmins, even men of higher caste than Nandakumar were confined in the common gaol; but they had not lost their caste and remarked that this was the first complaint of the kind10.

9. Ibid, Secret Department, Fort William, May 9, 1775.
10. Ibid, Fort William, May 9, 1775.
On the 3rd June the criminal sessions concerning the commitment of Nandakumar were opened before the Chief Justice; and the sittings of the Court were held at first in the Mayor’s Court, ‘on the site of St. Andrew’s church’. Durham was the Counsel for the Crown and Farrer (with Brix as assistant) was for the defence; the number of jurymen was twelve. Nandakumar was ordered to the Bar to be arraigned. Farrer then requested that the prisoner should be allowed a place near his counsel and also be allowed to indentify himself by declaring that he was the man arraigned. But his requests were not complied with; he was arraigned and the Indictment was read. The interesting event was that Justice Chambers, just after the Indictment being read, expressed his doubt whether it was well laid, as it was for a capital felony on the 2nd George II and said that this act was specially applied to the local policy of England for commercial and other reasons. He conceived that the same reasons could not apply to that condition of Bengal. He further thought “that it would be sufficient, and as far as the Court ought to go, to consider Bengal in its then state, as upon the same footing that England had been between the statute of 5th Elizabeth and that of 2nd George II”. From the Bench Justice chambers

* Indictment of Nandakumar, dated June 7th, 1775 - cited in D.C. Ganguly’s Select Documents of the British Period of Indian History, ON-27, p. 94.

therefore proposed that the Indictment should be quashed and
the prosecutor might be allowed to prefer a new one. But the
Chief Justice and the other two judges did not pay heed to his
proposal.

The historic trial commenced on the 8th June and
continued for eight days. Instead of Durham (counsel for the
crown), the Chief Justice (Impey) and the other two judges t
the duty of the cross-examination on themselves. They carri
it out in detail and recalled the witnesses again and again.
After a protracted examination, involving a great quantity of
contradictory swearing, the Chief Justice pronounced sentence
of death on Nandakumar.

It appears that on the 31st July, Farrar sent a
petition to John Robinson (Foreman of the jury), in which
he prayed for a stay of execution and a recommendation to the
King for mercy. But Impey took serious exception to it and
next time when Farrar appeared in the Court, he was severely
censured by him (the Chief Justice) for his above prayer.
The Chief Justice refused to grant the prayer for staying the
execution. Nandakumar was taken to the gallows and he was
executed on the 5th of August, dying with dignity and courage.
Gleig calls Nandakumar as the 'most consummate of all scoundrels' and opines that his death sentence was 'strictly legal'. He also remarks that neither Impey nor Hastings was in any manner accountable for 'the Tragedy'. J.F. Stephen in his 'The Story of Nuncomar and the Impeachment of Sir Elijah Impey, Vol. 1' holds the view that Nandakumar was tried and sentenced to death in accordance with the ordinary course of law. But H. Beveridge in his 'Trial of Maharaja Nandakumar' specifies the corrupt motives which were rightly attributed to Impey. Following the opinion of Macaulay, Beveridge maintains that there was 'strong circumstantial evidence' to show that Hastings was the real prosecutor in this business. The arguments put forward by Beveridge are more convincing and scientific than those of Stephen. It appears that Beveridge had 'a curious knowledge of the local and general contemporaneous historical matter'; on the other hand, though a master of English law, stephen possessed 'only a skirting and superficial knowledge of Indian conditions'.

It is surprising to note that it was Hastings who, soon after the establishment of the Supreme Court, held the view that 'it was the cruellest injustice to subject natives of India to laws made for far different social conditions and

enforcing penalties which their own principles considered unreasonable.13.

The crime for which Nandakumar was executed was not capital by the laws of India. Forgery in India was the very easiest and commonest description of swindling. The offence which, practically speaking, had not obstructed the path of an Englishman to a peerage 'was now to doom a Hindoo to the gallows'. The law which made forgery capital in England was passed without the smallest reference to the state of society in India.

It is alleged that the Chief Justice manifested a determined purpose, throughout the trial, to effect Nandakumar's ruin and death. In course of the impeachment against Impey after thirteen years, his summing up was described as characterised by "gross and scandalous partiality". Impey allowed himself to be prejudiced by his partiality for Hastings and he hanged Nandakumar to save his close friend. It is certain that Hastings was the real mover in the business and Nandakumar was put to death as he went to the extent of attacking him directly. In course of the impeachment against Hastings after a lapse of thirteen years,

Burke charged Hastings with having "murdered Nandocumar, through the hands of Sir Elijah Impey" 14.

The forgery for which Nandakumar was accused had been committed four years before the institution of the Supreme Court, and in the interim he had been protected and employed by Hastings. But the accusation, which ruined Nandakumar, was not produced until he came forward and brought a specific charge against Hastings of corruption 15. It is noticed that Nandakumar charged Hastings with taking presents amounting to three lakhs and a half from Muni Begum and Hastings had to admit that she gave him the amount which Stephen considers as 'entertainment money'. It is known that one juryman signed an appeal for Nandakumar's mercy. Even the Nawab of Bengal presented to the Supreme Court a petition which stated that forgery was not made capital by the Custom of the Country, 'nor, as I am informed, was life formerly forfeited for it in your own country; this has only been common for a few years past' 16.

Impey had within his jurisdiction the power to respite Nandakumar; but he corruptly refused to respite him pending the

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15. Secret Department, Fort William, 25th Jan., 1776, No.5.
submission of his case for the consideration of the King of England. Rather when Farrer submitted the petition for staying the execution, Impey refused to grant the prayer, took serious exception to it, and censured Farrer publicly in the Court. It is to be noted that in India there was no second instance of forgery being punished with death. He could have been pardoned, since such a precedent had been made by the Mayor's Court in the case of Radhacharan Mitra in 1765. In 1802 the Chief Justice of the Supreme Court lamented that such crime was not then capital in the country where it had been committed.

The Court of Directors sent a representation to Lord Weymouth, Secretary of State for the Southern Department in November, 1777. In the representation the Directors referred to the case of Nandakumar who was executed for an offence which was not capital by the laws of the Natives. They remarked that the criminal law of England, which the Supreme Court enforced over the Natives, 'were contrary and repugnant to the laws by which they had been governed previously'. The general principal laid down by the Court in their proceedings against Nandakumar was that the whole English Criminal law was 'in force, and binding, upon all the inhabitants within the circle of their jurisdiction in Bengal'. The Natives certainly knew that it was a crime, but they never knew it a capital one

17. Report from the Committee, H/C., 1781 - General Appendix, No. 3.
and they were astonished at the unprecedented severity of the execution. Many Natives at that time remembered the notorious forgery of Clive and the fate of Omichand, and at the same time, the old man of high rank and caste who was sentenced to a terrible doom.
In 1780 Warren Hastings proceeded to execute his plan for the revival of the Sadar Diwani Adalat in expectation of relieving the Supreme Court of the various burdens and also of destroying the possibility of the new Adalats to come in conflict with the Provincial Councils. He placed in the Supreme Board an important Minute on the 29th September, 1780. Hastings in his Minute wrote that the institution of the new Courts of the Diwani Adalat had already created alarming and troublesome competitions between the Provincial Councils and the Diwani Adalats. This fact revealed the need for directing special attention to those courts from their very establishment. It was to be observed that the Courts should neither suffer any encroachment upon them nor exceed the limits of their jurisdiction. The Governor-General stated that there would be need for very laborious and unremitting application on the part of the Supreme Council to effect those points. He further wrote that these Diwani Adalats, according to their constitution, were made amenable to the Superior Court, the Sadar Diwani Adalat. This Adalat, he remarked, was 'commonly but erroneously' known as merely a Court of Appeals, the province of which must necessarily be more extensive. He then described the nature of the duties and functions of the Sadar Diwani Adalat.

1. Revenue Department, the 29th September, 1780 - Cited in First Report from the Select Committee, 1782-183 Vol. I, Appendix No. 3.
Adalat in brief. The business of this Court was not merely to receive appeals from the decrees of the inferior courts in any cause exceeding a fixed amount; it was also to receive and revise all proceedings of those Courts. Again, it was to attend to the conduct of such courts, to remove their defects, and to form new checks and regulations according to the requirement of the purposes of their institution.

The Governor-General stated that it was difficult for the above courts to subsist without the support and control of some powerful authority held over them. The Supreme Board was not capable of exercising that authority and if it was delegated to any body of men, 'not possessing in themselves some weight independent of mere official power, it will prove little more effectual'. The only plan that the Governor-General devised to solve this problem, was to be found in the following motions which he submitted to the Board for its considerations:

"That the Chief Justice be requested to accept of the charge and superintendancy of the office of Sudder Dewaunee Adaulut under its present regulations, and such other as the board shall think proper to add to them, or to substitute in their stead, and that on his acceptance of it, he be appointed to it, and stiled the judge of the Sudder Dewaunee Adaulut".

2. Revenue Department, the 29th September, 1780 (Cited in Original Minutes of the Governor-General and Council at Fort William in Bengal, 1781. p.3.)
The reasons in support of the above office of the Superintendent proposed to be offered to the Chief Justice of the Supreme Court, can be best understood in the Governor-General's own words. He wrote: "I am well aware that the choice which I have made for so important an office, and one which will minutely and narrowly overlook every rank of the civil service, will subject me to much popular prejudice as it's real tendency will be misunderstood by many, misrepresented by more, and perhaps dreaded by a few. I shall patiently submit to this consequence, because I am conscious of the rectitude of my intentions, and certain that the event will justify me, and prove in that whatever light it may be superficially received. I shall be found to have studied the true interest of the service, and contributed the most effectually to its credit.

The want of legal power except such as are implied in very doubtful constructions of the act of Parliament, and the hazards to which the Superiors of the Dewanny Courts are exposed in their own persons, from the exercise of their functions, has been the principal cause of their remissness, and equally of the disregard which has been in many instances shown to their authority. They will be enabled to act with confidence, nor will any man dare to contest their right of acting when their proceedings are held under the function and immediate patronage.
of the first member of the Supreme Court, and with his participation in the instances of such as are brought in appeal before him, and regulated by his instructions. They very much require an instructor, and none will doubt the superior qualifications of the Chief Justice for such a duty.

It will be a means of lessening the distance between the board and the Supreme Court, which has perhaps been, more than the undefined powers assumed to each, the cause of the want of that accommodating temper, which ought to have influenced their intercourse with each other. The contests in which we have been unfortunately engaged with the Court bore at one time so alarming a tendency, that I believe every member of the Board foreboded the most dangerous consequences to the peace and resources of this government from them. They are at present composed, but we can not be certain that the calm will last beyond the actual vacation, since the same grounds and materials of disunion subsist; and the revival of it at a time like this added to our other troubles might, if carried to extremities, prove fatal.

The proposition which I have submitted to the board, may nor have I a doubt that it will, prove an instrument of conciliation with the Court, and it will preclude the necessity of its assuming a jurisdiction over persons exempted by our
construction of the act of Parliament from it. It will facilitate and give vigour to the course of justice; it will lessen the cares of the board and add to their leisure for occupations more urgent and better suited to the genius and principles of government; nor will it be any accession of power to the Court, where that portion of authority which is proposed to be given, is given only to a single man of the Court, and may be revoked whenever the board shall think it proper to resume it.\(^3\)

Wheler, one of the members of the Supreme Council in his Minute\(^4\) advanced a series of arguments against the above-stated proposition of the Governor-General regarding the new appointment of Elijah Impey. Wheler remarked that he was more sincerely desirous than anybody else of the just judicial administration of the Country, which was divided between the Government and the Supreme Court. He stated that in the late institution of the Diwani Courts of Adalat, the Supreme Council considered itself acting within the jurisdiction given to it by the legislature and making an effective regulation for the benefit of the country. Wheler expressed his sorrow because, Hastings in his minute saw the institution in a different colour.

\(^3\) Ibid, Hastings's Minute, pp. 3-6.
\(^4\) Revenue Department, 24th October, 1780, pp. 6-13.
in both the respects. If the Diwani Adalat had any evils, he was willing to suggest some remedies for them. Whaler wrote that "the expedient proposed by the Governor-General seems not to fall in with any of the intentions of the act, but to be opposed by difficulties, as well as to strengthen consequences, which unless obviated must determine me to withhold my assent to it." Some of the difficulties mentioned by him are the following.

In the first place, the Supreme Board should not have proceeded to establish such an important institution, while the Board had not possessed the legal power to appoint the superintendents of the Adalat, excepting what was implied from a doubtful construction of the Act of Parliament. In such case the business of the Board was to act in collaboration with the Court. Secondly, if the Governor-General and Council had not competent authority to establish the above institution, then they were not competent to confer that authority upon any person. Thirdly, it would be proper for the Chief Justice to accept of the office of the superintendent proposed for him, only if he acknowledged the validity of the present institution of the Governor-General and Council. The acceptance of an office by the Chief Justice could hardly establish the authority which conferred it.

5. Revenue Department, 24th October, 1780 - Whaler's minute.
In the fourth place, Wheeler was of opinion that the interposition of the Chief Justice's person might indeed stop the clash between the Supreme Court and the Supreme Council temporarily, but it would be no adjustment of principles between these two departments. Accordingly to him, the union of various powers in a single hand (Chief Justice) could hardly be regarded as a regular conciliation of the above two contesting organs. Moreover, a particular distinction conferred upon the Chief Justice was not likely to 'suppress all opposition of sentiment from other judges'. Fifthly, the purposes of giving efficacy to the Adalats and conciliating the court would, according to him, be better served not by delegating the power of hearing appeals to the Chief Justice alone, but by delegating the same to all the judges of the Supreme Court. In the next place, the acceptance of such an important appointment by the Chief Justice might hazard the independency of the two departments, viz. the Supreme Court and the Supreme Board. Seventhly, this union of various powers in the person of the Chief Justice was foreign to the constitution of the Government of the Company as well as outside the scope of the Act. Regarding the appointment of the Chief Justice, Wheeler stated that 'it seems inconsistent with his appointment from the King, which makes him independent, to accept of another appointment during the pleasure of this board'. Lastly, the Chief Justice could not be separated from the
privileges of his original post. It did not appear from the office proposed to be offered to him, how he could be held under responsibility or control. Whaler on this point entertained apprehensions and these are stated below.

The first point which he stated was that it would be considered requisite to annex a lucrative salary to the appointment and a huge establishment. He considered such an expenditure utterly in-admissible at a time when it was very difficult to raise money for the country on necessary occasions. The second thing which he took into consideration was that decisions in the Court of Appeals might be made on the principle of the English law and hence the introduction of such practice should be considered previously. In the next places he was of opinion that a new channel of litigation would be opened, if the Solicitors and Attorneys were admitted to practice in the Court of Appeals. This is because of the fact that the Solicitors and Attorneys were out of the control of the company. He then apprehended that the business of this Court of Appeals must make room for the Chief Justice of the Supreme Court to inspect thoroughly the affair of the revenue proceedings of the provincial Councils. "Such an influence possessed by the Chief Justice of the Supreme Court", Whaler
Francis, another member of the Supreme Council in his minute examined the abovestated institution on its own merits without making any comment on the personal character of any person. He refuted the reasonings one by one shown in the minute of the Governor-General in connection with the proposed institution and appointment.

In his Minute, the Governor-General stated that the institution of the new Courts of the Diwani Adalat had already given occasion to alarming competitions between the Diwani Courts and the provincial Councils. If this be the fact, Francis opined that it should be the duty and business of the Government to put a stop to all those competitions; the administration of the country then needed vigour to execute its duties. He stated that no difficulty would be removed by transferring the laborious service to the Chief Justice who was already overburdened with the duties of the supreme Court.

The second reasoning in the minute of the Governor-General was that the Sadar Diwani Adalat was commonly but

6. Wheler's Minute, p.11.
7. Revenue Department, the 3rd October, 1780- Cited in First Report from the select Committee, 1782-'83 Vol.I, Appendix No. 3.
erroneously understood to be a Court of Appeals and its province must be much more extensive. Francis stated that according to the sixth Article of the plan for the Administration of Justice, the qadar Diwani Adalat would receive and determine appeals from the provincial Diwani Adalats and nothing more than that. He argued that if the province of this Court must be more extensive, its extent should necessarily be precisely defined. According to him, such an undefined jurisdiction was either no power or a despotic one. If this Court was to receive and revise any proceeding of the inferior Courts (as stated in the Governor-General's Minute), it must not be styled a Court of Appeals, because its business was only to receive appeals from the inferior Courts. Regarding the other duties proposed by the Governor-General (such as, attending to the conduct of the inferior Courts and removing their defects), it was his view that these are 'exclusively and unalienably vested in the Governor-General and Council'. Then he was of opinion that the proposed office might be exercised by the supreme Board or any two members of it; and the duties of this office could be sufficiently performed if only two or three specific days in a month were allotted to this duty.

Next Francis objected to the request proposed to be made to the Chief Justice for several reasons stated here.
The supreme Council, he argued, had no right to establish the sadar Diwani Adalat on any plan which was to commit the rights of the Company, in capacity of the Diwan of the provinces, to the Custody of any of the judges of the Supreme Court. This was because, the views of the Supreme Court and those of the council on the jurisdiction of the Court differed widely. Moreover, there was no reason to think that the Chief Justice changed his views which he had maintained so long in this respect. He remarked: "Thus the Council, by making the Chief justice judge of the suddar gewalnee Adalut, would put it into the power of the very man, with whom they have been contending, to give up what they have hitherto insisted on as their essential rights."

Francis stated that to give authority to the Diwani Adalats was the main object of this plan of the Governor-General. But this would hardly prove an instrument of conciliation or prevent the revival of conflicts. Under the circumstances, in case the Chief Justice tried to carry his recent views into this Diwani Adalat, it was the Supreme Court which would gather strength from such an appointment. On the other hand, in case the Chief Justice acted in accordance with the principles more conformable to those of the Governor-General and Council, fresh difficulties would arise. This would rather pave the

8. Revenue Department, the 3rd October, 1780, (Francis's Minute - cited in Original Minutes of the Governor-General and Council of Fort William in Bengal, 1781, p.17.)
way for creating a fresh breach between the Chief Justice and other judges; and moreover, this would not at all repair the conflict already existing between the Supreme Court and the Council. He again argued: "The two puissance judges can not but feel themselves wounded by this partial selection of the Chief Justice, and the max preference given to his superior qualifications. We ought not to offer them such cause of offence, nor ought we to be careless of the effects it may produce. — I conceive that the appointment of the Chief Justice to this office would clash and be in consistent with the duties of his present station."

He further stated what the Chief Justice would do, if a person committed by any inferior Adalat or by the Chief Justice in capacity of the Judge of the Sadar Diwani Adalat, applied to him for a Writ of Habeas Corpus. It might so happen that the person so committed might apply for a Writ of Habeas Corpus to one of the puissance Judges; and if he succeeded, it would reveal that the act of the Superintendent would perhaps be set aside by an inferior Judge of another Court where he (superintendent) himself presided. He went on stating that such a case might happen frequently and this would make fresh differences between the Supreme Court and the Sadar Diwani Adalat backed by the Chief Justice of the Supreme Court.

Thus Francis remarked: "On the whole, I think it would be improper in the Council to request the Chief Justice to take upon himself, and perhaps illegal in him to accept an office, which is so inconsistent with the duties of his present station; and this would prevent the Chief Justice from performing the duties given to him by the king in most important cases, particularly in cases, where the question of the extent of the powers of the Supreme Council and the limits of the jurisdiction of the Supreme Court might arise.

The Governor-General in the concluding sentence of his Minute was of opinion that the portion of the authority (proposed to be given) was given to a single man of the Supreme Court, and Francis vehemently protested against this observation. He stated that final appeals were never allowed to be tried by a single judge in England or in any of its provinces. Even the king could not try an appeal without the assistance of his privy Council, called the King-in-Council. He further opined that if it were lawful for the Supreme Council to delegate judicial authority to the judges of the Supreme Court, this should be delegated to all the judges and not to one of them. In fine, the Governor-General in his Minute wrote that the portion of the authority, which was proposed to be given only to the Chief Justice, might be revoked whenever the board shall think it proper to resume.

10. Ibid., p. 21.
it's Francis argued that such a judge might become an instrument of oppression in the hands of a Corrupt Council, because the Chief Justice would be to a great extent protected by his judicial capacity and the Council also would not be answerable for his decrees. Moreover, he argued that it would neither be proper for the Chief Justice to accept the office on such a precarious term, nor be proper for the Supreme Council to offer the Chief Justice the office with this clause that "he is removable at any time by a resolution of the board." 11

Thus it is clear that Wheeler and Francis, members of the Governor-General and Council, vehemently objected to this scheme especially the appointment of the Chief Justice of the Supreme Court in the Sadar Diwani Adalat. But in spite of their strong arguments against this plan, the Governor-General being supported by another member, Eyre Coote, passed the above proposal with his casting vote. In the proceedings of the 18th October, 1780 Hastings thus resolved that the Chief Justice be requested to accept the charge in the Sadar Diwani Adalat under its present regulations. It appears from a letter of Impey that he accepted the Governor-General's proposal and in his letter he wrote: "I am sensible of the Honour conferred on me by the Trust you have reposed in me; accept of the charge and superintendency of the office of Sudder Dewann

11. Ibid, pp. 22-23
Adawlut, under its present Regulations, and such others as the Board shall think proper to add to them, or to substitute in their stead, and will with great Readiness dedicate my vacant Time to the service of the public. It has been observed that the Governor-General recommended that a salary of Sisca Rupees 5,000 might be allowed to Impey for this appointment. But the consideration of this proposal was adjourned. However, in consequence of Impey's letter of acceptance, it was agreed that the Chief Justice would be appointed the Judge of the Sader Diwani Adalat. After a few days by the order of the Supreme Board, the superintendents of several Diwani Adalats and the provincial Councils were informed of this new appointment.

The Select Committee (1782-183) in its First Report made an enquiry to consider the appointment of Elijah Impey to the post of Superintendent in the Sader Diwani Adalat at Calcutta. The appointment being made by the Supreme Council and the Chief Justice having accepted the appointment, this Select Committee considered it their duty to minutely examine into the whole of these affairs. The Witnesses brought and examined before the Committee were Lawrence Sullivan, Samuel Wilks, Philip Francis, John Shakespeare, and Major John Scott. The first four

12. Letter of Impey to Hastings, Dated, Fort William, the 19th October, 1780.
witnesses in course of their examinations severely criticised such an appointment of the Chief Justice, while only the last witness, it appears, pointed out the good side of the same.

Laurence Sullivan, Chairman of the Court of Directors of the East India Company, being examined stated that there had been advices from India regarding an 'Agreement' between the Governor-General and the Chief Justice by offering to the Chief Justice the office of Superintendent under the Company since the time when the Company sent the petition to the House of Commons. Sullivan again said that he did not receive any public advices and he only received private letters, the intention of which was to offer the above post to the Chief Justice. He further stated in his evidence before the Committee that the Court of Directors considered this appointment as a subject of such importance as to require the best opinions they could receive regarding the Chief Justice's appointment, and so the Directors had referred the matter to Dunning, their own Counsel14. Samuel Wilks, from the East India House, then gave his evidence before the Committee. Wilks who was the Examiner of India Correspondence said that he saw the papers concerning the appointment of the Chief Justice to the office of Superintendent in the Sadar Diwani Adalat15.

The Committee in order to ascertain the particular day on which this appointment of the Chief Justice was first laid before the Court of Directors, found from the Secretary of the East India Company that before the 24th October, 1781, no paper was laid before the Court of Directors relative to the Chief Justice's new appointment. The Committee then went through the arguments of some members of the Supreme Council for and against this appointment proposed by the Governor-General. These arguments were found in the proceedings of the Governor-General and Council in their Revenue Department of the 29th September and the 24th October, 1780. The Committee also examined the extracts of other proceedings of the Governor-General and Council and observed that very opposite views were formed about the propriety and unpropriety of such an appointment by the members of the Council General.

Then Philip Francis, an ex-member of the Council General was examined and he gave his long evidence. He stated that he was in Calcutta from October, 1774 to the month of December, 1780 and he was present in the Council at the time when the Governor-General proposed to request Elijah Impey to accept this new office in the Sadar Diwani Adalat. Francis did not think that this appointment of the Chief Justice 'would be a Means

of conciliating the other Judges to the Authority claimed and exercised by the Governor-General and Council. He went on saying that the Supreme Council were themselves a Court of Appeals from the Provincial Courts in the last resort and the Council had no power to delegate their authority to any other person. The Supreme Council were given by the Regulating Act the whole power of ordering, managing, and governing the Country and he declared that it would have been much happier, if that power had been more decided and clear. He said that the Governor-General and Sir Eyre Coote definitely thought that by virtue of the Act they had possessed a clear power to offer the Chief Justice the new office in the Sadar Diwani Adalat. In answer to a question, he stated that the Chief Justice accepted this office by writing a formal letter to the Supreme Board. He remarked that it was the usual practice, in important matters affecting the authority of the Supreme Court, to take the opinion of the company's Law Officer; but in this case no legal opinion about the proceeding was taken from the Law Officer prior to the Supreme Council's offer of this office to the Chief Justice. John Day, the Advocate-General had opined repeatedly that 'the Appointment itself, and more especially the proposition of annexing a salary to it, were clearly illegal; and that if he was called upon officially, he should declare his opinion to that Effect.'17. Francis considered that that Chief Justice

17. Ibid, Francis's Evidence, pp15.
as the Superintendent of that Adalat was under the Supreme Council's control and also responsible to them for the act to be done by him in that capacity; and the Council had the power to discharge him if they were not satisfied with his conduct.

"That he thinks, that after the measure pursued by the Governor-General and Council, to restrain the Jurisdiction of the Supreme Court over the Zamindars, Collectors, Farmers and Ryotta, & he thinks the Native Inhabitants would necessarily conclude that all the points hitherto in Dispute between the Council General and the Supreme Court were given up to the Court; and that it was meant to throw the whole power of the Government, in that Department, in that Department, into the Hands of the Court.-- That the Natives at large could not distinguish between the Chief Justice and the Court; and that he conceives this would be the impression of the measure upon their Minds. That as far as his conversance extended, he never knew an Act of Government give such general Dissatisfaction to the European Inhabitants, as this Appointment."

Francis further stated that the Chief Justice never told that he had very little business in the Supreme Court and that he had much time to devote in another Court, the business of which would need 'a laborious and most unremitted Application'; he remarked that rather the Chief Justice was over burdened with

18. Ibid, p.16.
business in his own Court. On the other hand, the Governor-General had never before expressed any opinion to the effect that the Chief Justice's conduct towards the Native Courts was moderate and just. Instead of admiring the attitude of the Chief Justice towards those Courts, the Governor-General had before openly expressed his dissatisfaction of different proceedings of the Supreme Court. Moreover, the Supreme Council complained in their letters to the Court of Directors that the constant effort and intention of the Supreme Court was 'to lower and degrade the Government of the Country in the Eyes of the people'. He then opined that the Natives would be deterred from seeking justice in the Supreme Court for such an appointment and the purpose of the appointment would not be served, if they were deterred from complaining to the Supreme Court against the mal-administration of the Provincial Councils and courts. The King's judges had previously often declared that the purpose of their appointment was to prevent the oppressions and extortions of the Europeans acting under the Company. If this be the fact, he did not think that "the lessening of the Distance between the Council Board and the Supreme Court, by giving to the Chief Member of the latter a lucrative Appointment, to be held during the pleasure of the former, had a Tendency to answer the purposes of the Institution of the Supreme Court" 19.

19. Ibid. p.17.
John Shakespeare, who was the Chief of the Provincial Council at Dacca from 1778 to 1780 and departed from India in December, 1780, then gave his evidence before the Committee. Shakespeare said that there was an open rupture between the Supreme Court and the Council before the appointment of the Chief Justice; but he believed that there was not such a rupture at the time of the appointment. He also believed that there took place a personal Reconciliation between the Governor-General and the Chief Justice. In answer to a question, he replied that in his opinion, the appointment would not have taken place, had there been no re-conciliation between them. It was generally considered, he believed, to be a matter of favour to the Chief Justice and he apprehended that the appointment must tend to accommodate the public disputes between the Supr Council and the Supreme Court.

Shakespeare said that he supposed that the Native Inhabitants "would consider the Chief Justice's Acceptance of the Appointment under the Governor-General and Council, which must be noticed to them by Precepts from the Governor-General, rather as a Degradation of the Court - That this Appointment was a very unpopular Act, and generally disliked by the European Inhabitants of Calcutta - That the Council General was certainly better adapted to settle Disputes between the

Provincial Councils and the Provincial Adauluts, than the Sudder Adaulut under its present Establishment, admitting they had sufficient Time to go through all the Business. He believed that the Chief Justice did not state any reason for accepting such an appointment under the Supreme Council and he supposed that the Chief Justice's inducement to accept of that offer, was an extension of power and influence. Shakespeare further stated that he had never heard that the Chief Justice ever offered his services to attend the Diwani Court in capacity of an Assessor. Again, during the time of the conflict he had never heard of the Governor-General having formed any opinion regarding the moderation and justice of the Chief Justice's attitude towards the country Courts.

The next witness was Major John Scott, who was then a Major in the service of the Company on the Bengal Establishment. He said that the appointment of the Chief Justice to the new office in the Sadar Diwani Adalat had taken place before he departed from Calcutta. He believed that at that time the Chief Justice did not assume his new office and no salary was also annexed to that office. Major Scott stated that he heard of the appointment when he was coming down from Chunagar; he received

letters from Bengal while he was at Madras, but he was not informed of any salary being annexed to that office. He conceived that "the Motives of the Governor-General in the Appointment of Sir Elijah Impey, were pure and disinterested; that he conceived the Interest of the East India Company had been very materially affected in Bengal, by the unfortunate contention between the Council General and the Court of Judicature, and that Sir Elijah Impey's Appointment would put a stop to it; he also thinks there was another object in view, which was the equal Distribution of Justice throughout the provinces." 23

Major Scott thought that the Governor-General regarded the Chief Justice's appointment as a temporary measure and not a permanent one. He conceived that the opinion of the European Inhabitants of Bengal on that appointment was good. They considered that it would promote an equal distribution of justice throughout the provinces, prevent the Appeals to the Supreme Court, and that it would prove a considerable saving to the East India Company. But he thought that the Company's servants disliked the appointment, since they understood that their interests would be materially affected by such an appointment. He then remarked that the Chief Justice's appointment to the new office "would effectually prevent the Interference of the Supreme Court in Matters of Revenue," 23

which was the grand Article of Advantage to the Lawyers. He then said that he was one of those six hundred and forty-eight persons who signed and sent the Petition against the Supreme Court to the British Parliament for the redress of their long-standing grievances.

After considering the whole matter regarding the Arrangement made by the Governor-General in favour of the Chief Justice, the Committee made some important observations. These observations can be shown under the following principal heads: firstly, the Power which was given by the Governor-General to the new office of the Chief Justice in the sadar Diwani Adalat; Secondly, the circumstances under which that appointment of the Chief Justice was made; thirdly, the Expediency of that establishment in that person; fourthly, the Act of Parliament and other powers under which the appointment was justified; and lastly, the effects of such an appointment on the Natives, the judges, other officers of the Supreme Court, the members of the Council General, and also on the British inhabitants and the professors of Law.

In dealing with the first head mentioned above,

24. Ibid, p.27.
25. First Report from the Select Committee, 1782-83, pp. 35-36
the committee made an enquiry into the powers and authorities given to the office of Elijah Impey. In order to get the real and satisfactory idea of this office, the committee pursued the plan of the original Court of Sadar Diwani Adalat. The plan can be seen in a Report of the Select Committee, 1773. It appeared to the Committee that the definition given there differed totally from the Construction in the Minute of Hastings of the 29th September, 1780, and that by a reference to any part of the original plan, no definite limits to the power and authorities of the Court could be marked out precisely. In the original constitution of the Sadar Diwani Adalat, its definition was that the Court 'should be a Court of Appeals from the Provincial Court'; but this definition was expressly denied of that new office. It seemed from the Minute of the Governor-General that the jurisdiction of the Sadar Diwani Adalat might be original or appellate according to the choice of the Chief Justice. He was granted the power to alter or revise any proceedings of the country Courts and also to form such Rules for the proceedings of those courts as he would deem fit. However, the Consultation did not mention any usage or Rule of Law by which the Chief Justice would judge or by which he was to be governed; his judgment was final and conclusive. Thus all those powers were vested in the hands of a single person. In the minute, he was declared to be a judge
possessing the power to remedy the defects of the subordinate Courts and also to form such new regulations as would be required for this institution. Thus the Authority given to the Chief Justice extended even to a power of making alteration in the constitution of those Courts. It is evident that "The Minute either supposes an Authority in Sir Elijah Impey to new-model the Courts to the Act of Parliament; or, what would be worse, to confer upon them powers, which the Act of Parliament had not given the Governor-General a Power to confer."

Furthermore, it was found that the Chief Justice accepted the Office under the Supreme Council on precarious terms. He was the judge of the Supreme Court and he had very often declared that his authority extended even over the conduct of the members of the Council individually; but that person on the present occasion submitted himself to their power of Regulation. On the other hand, the Governor-General definitely knew that throughout the late proceedings of the Supreme Court, Impey's conduct was violent, and that it was oppressive and harsh towards the Natives and some British subjects. The committee remarked: "Yet has he chosen to put the person whose conduct he thought thus rash, even when limited by Laws and Charters, into an open office of such unlimited arbitrary power,"

26. Ibid, p.35.
as nothing but the greatest Temper, Moderation, Equity, and Regard to the Natives, could render in any Degree tolerable. If the Appointment therefore of such an office could be justified by law, or any avouable Expediency, Mr. Hastings is clearly reprehensible for fitting it with a person of whom he had entertained, or pretended to entertain, an opinion, which (if well grounded) must render him altogether unfit for that situation. He has put into a situation of great power and Trust in the Company's Service, the Chief Judge of a Court; the constant aim of which he had represented to be that of Encroachment (if not worse on the Rights and Privileges of that Company; of whose Rights and Privileges he (Mr. Hastings) was the natural guardian and Trustee).[27]

The second head[28] stated earlier, was the circumstances under which the arrangement was made. The conflict between the Supreme Court and the Council reached its climax in the Kasijora affair. The Governor-General issued orders, authorising a disobedience to the Supreme Court's Process and supported those orders by a military force. The Chief Justice, on the other hands, issued processes for seizing the officer acting under the direction of the Governor-General even in the

27. Ibid. p.36.
28. Ibid. pp. 36-38.
camp. In this situation, the Governor-General applied to the parliament complaining against the Court's processes; the Chief Justice too in a letter to the Secretary of state complained of the violent proceedings of the Governor-General. Under these heavy reciprocal accusations, the parties were brought before a Committee of the House of Commons and in the Enquiry the main object was the conduct of the persons, making such accusations. It appeared from the evidence of Shakespeare (Chief of Dacca) that Hastings and Impsey were reconciled about the time of the arrangement of the Sadar Diwani Adalat. Major Scott (Agent to Hastings) stated that the Chief Justice and the Governor-General 'lived in an unbroken intercourse, and on Terms of Intimacy and Friendship' during the whole period of the violent contest between the Court and the Council.

In this transaction another point must be noticed. In his Minute, as has been seen, the Governor-General affirmed that the powers of the Provincial Courts including the Sadar Adalat were only implied and that implication was only 'on a construction of an Act of Parliament'; and that construction again was 'doubtful' and even 'very doubtful'. Thus "This being the Governor General's Idea of the constructive and doubtful nature of the Original Institution, the giving it, by a further construction, a far larger Degree of Authority, must have appeared an Assumption of power (if possible) still more
doubtful; and in that case, it behoved the Governor-General not to have made such dispositions, until both the first and last doubts were removed by an Authority that could not be doubtful. But neither the Governor-General nor the Chief Justice made any attempt to remove those doubts and this was for the first time that on such an important matter of law, no law opinions were taken. The Committee observed: "This Law Arrangement, thus made without any Law Reference, is the more striking, as, instead of the former unanimity, the greatest and strongest difference of opinion had prevailed on this point. The Supreme Council were equally divided in number on that issue and it was only by the casting vote of the Governor-General that the question was carried.

The Committee next dealt with the issue under the third head. The grounds of expediency on which this court justified were stated, it has been seen earlier, by Hastings at large in the consultation of the 29th September, 1780; and these were answered in other consultations by Wheeler and Francis. It was observed that the objections made by them to the Chief Justice's appointment proved to be solid and no answer was

received by them either in any letter or any Minute of the Governor-General. In the Minute the Governor-General pointed out two Chief reasons for that arrangement; the first reason was the harmony that was to prevail between the judiciary and the Executive, and the second one was to prevent the suits against the Company before the supreme Court. It appeared that the full scheme of Reasoning of the Governor-General was on the supposition that both in effect as well as in substance the Chief Justice was the whole Court. The condition of the presidency of Bengal under the Supreme Court and the newly constituted sadar Diwani Adalat could be well observed thus:

"In the Court of Sudder Adalut, the Natives, and a great part of the company’s servants, are subjected to the Discretion of sir Elijah Impey. No place is left in which to question the Extent or the Exercise of his power in the Sudder Adalut, but the Supreme Court. But in the Supreme Court, the complainant finds the person against whom he complains, sitting as the presiding Judge; one and the same Man in his own person possesses, and in effect blocks up, all the avenues to Justice."

The point under the fourth head is the Act of parliament and the power by which this appointment was made. This power by which the new Courts of Justice had been made,

was the highest form of authority and legislative in nature. It appears that the Governor-General in his Minute did not state that on the basis of what clause of the Regulating Act, he used his power of creating the Sadar Diwani Adalat. The powers and jurisdictions of the Court and the number of its judges were different. It appears from the Governor-General's Minute that this Adalat was different from the original Court of Sadar Diwani Adalat on three principal points and thus a new Court. Firstly, the original Court was a Court of Appeals only, but the new Court, as has been described by the Government-General, was more than that. In the second place, the original Court consisted of all the five members of the Supreme Council, while this Court consisted of the single man, the Chief Justice. Finally, the judges of the Old Court were the members of the Supreme Council in their public and Corporate capacity and they were the Company's servants. But by the institution of the new Court, that 'Corporate Body' was superseded in the new constitution; and they were replaced by the Chief Justice of the Supreme Court who was not a servant of the Company, but of the Crown. Thus from all these points of view, the Sadar Diwani Adalat was substantially and in effect a new Court.

It seemed that this Court was established upon a construction of the section-36 of theRegulating Act, although
there was no clear-cut mention of that Act in the Minute of the Governor-General. If it is supposed that the Sadar Diwani Adalat was established on the basis of the authority derived from that section of the Act (though it is doubtful whether the Governor-General could establish such a novel institution), the Directions of that Act necessary to give validity to the Ordinances of the Council, have been observed in no one particular. According to the Act, no ordinance or Regulation was valid, unless it was registered duly and published in the Supreme Court. In the second place, in order to be valid, such an ordinance or Regulation was to be openly published and its copy affixed in some open part of the Supreme Court. Lastly, the Act provided an appeal from the ordinances and Regulations, 'within sixty days from publishing them in England', to the King-in-Council. But it is clear that the directions stated above, were not observed in instituting the Sadar Diwani Adalat. Thus "the present Arrangement was nothing more than a Minute of Council, (if regularly it was even that) never published in the Supreme Court, nor registered, nor consented to, or approved thereby; and consequently (so far as it is grounded on this clause) is without question invalid and illegal." 34.

34. Ibid, p. 42.
under the last head a brief discussion may be made on the effects of the new appointment of the Chief Justice on the Natives, the judges and officers of the Supreme Court, members of the Governor-General and Council, and also on the British inhabitants. The effect of this arrangement on the Natives was very dangerous; the Natives, who had given credit to the Chief Justice's various declarations and had known that the Supreme Court was an institution to protect them against the oppression of the Company's servants, were greatly affected. Such Natives now saw the Chief Justice accept a great judicial office from the Hands of the Chief Servant of the Company, and thereby becoming dependant upon those, against whom the Natives were taught to believe he was intended, on their part, as an uninfluenced and a powerful controll.

The present arrangement had also its evil effect upon other judges of the supreme Court. The younger judges felt themselves left by the Chief justice and this feeling had serious consequences. The judges would be insincere in performing their functions or by securing lucrative employments they would put themselves into a posture of compounding the Disputes between the Government and the Court. Moreover, the practitioners

36. Ibid, p. 47.
in the Supreme Court were to suffer heavy loss for the reduction of business in that Court. Thus its effect on such practitioners was considerably dangerous. The ill effect of this arrangement on the members of the Supreme Council was more glaring. They felt themselves abandoned by their Chief, the Governor-General when they saw that their 'Adversary' (Chief Justice) had been offered the highest office in the Sadar Diwani Adalat by their Chief. This might make those members fearful or indifferent in asserting the Company's rights in the long run.

The British inhabitants were also very much discontented as a result of the above arrangement. Those inhabitants, who shared the Governor-General's view that the Chief Justice had gone beyond the limit of his powers and jurisdictions, saw him now invested by the Governor and Fellow complainant with new and far greater powers than those which they had stated him to parliament as having abused. 37.