CHAPTER - 1

ESTABLISHMENT OF THE ENGLISH COURT IN BENGAL

The history of the judicial administration in Bengal and other parts of India before the English assumed sovereign powers, is a long and complicated one. This introductory chapter will show how the English first made their settlements in India and then, how they established in Bengal the English Court in gradual stages. It presents the events from the formation of the East India Company to the time of the institution of the Supreme Court in Bengal. This necessitates giving a brief resume of the system of administration of justice which existed in Bengal, Bihar and Orissa before the advent of English administration of justice in those regions. The Nazim was the most important figure in the department of justice. The idea of Nizamat included justice, protection, and the defence of the country. The Nazim sometimes administered justice in collaboration with the Kazi, Mufti, and the Ulema. He had the power to appoint a Daroga and other officers to enquire into different cases and to make a report to the Nawab; and his court was styled the Aqawul-ul-Alia. The Nazim sat at Murshidabad with the Diwan of the province and also the Diwan Buital, the controller of the Khalsa, the Intelligencers of Shah (His Majesty), the Kotwal, the Kanungo's and others. The Daroga of the Aqawul-ul-Alia appeared before this assembly with officers of the

1. "Treatise on the Government of Bengal, Bihar and Orissa, with respect to the Revenue and Administration of Justice from the time of Jaffer Khan to that of Serajeddoula", (cited in patra A.C., The Administration of Justice under the East India Company in Bengal, Bihar and Orissa, pp. 12-17)
court to lay before the Nawab the cases already settled by the parties. He again laid before the Nazim the cases unsettled. The Nawab then with the advice of the Kazi, Mufti and Ulema investigated the cases, and according to lay passed decrees upon these. All cases concerning the revenue collection were referred to the controller of the Khalsa; and according to the Muhammadan law, the cases involving the Faujdar were tried.

Sitting in his courts styled the Dural Keza and Mohokama Keza, the Kazi settled matters of dispute in accordance with the law. The department of the Kazi was almost independent of the Nazim. The Kazi sitting in his tribunal at Murshidabad with another learned man passed his decisions. The Nawab Sujaheddien Khan gave the powers of administration of justice in cases involving the land revenue to the controller of the Khalsa. The controller appointed a Daroga and other officers to enquire into the cases and this court of the Daroga was called the Diwani Adalat. In cases of boundary disputes, the Talukdars of a Zamindary referred to the Zamindar for decision without informing the Khalsa; and these cases were generally settled by the Zamindars.

To apprehend murderers, and thieves and to protect the country, some officers were recruited and they were known as the Faujdars. The Court of the Faujdars was styled as Cutchery Faujdar. The Faujdar executed the death sentences and other punishments were passed by the Nawab.
In Hooghly and some other places there were three classes of Courts - the Cutchery Adalat, the Kazi's Court, and the Faujdari Court. Two types of courts - the Faujdari court and the Kazi's court - were found in Jessore and some other places. It is to be noted that a similar system of administration of justice in Bengal, discussed above, operated in Bihar and Orissa at that time.

It was found essential in the early days of the East India Company that the Crown should grant to them a few judicial and legislative powers, to be exercised in their East Indian possessions. It was in the year 1600 that the English merchants first came to trade in India. In the same year, Queen Elizabeth of England granted a Charter to the London East India Company on 31st December. By this charter Elizabeth "for the honor of the nation, the wealth of her people, the encouragement of her subjects in their enterprises, the increase of navigation, and the advancement of lawful traffic", constituted a body corporate and politic known by the name of "The Governor and Company of Merchants of London, trading to the East Indies". They were authorised to purchase lands, sell those, and to have a common seal; they were empowered to carry on trade to the East Indies for fifteen years only. By this Charter, the company were also authorised to make bye-laws for the good government of the company. The laws and orders of the company were, however, not to be repugnant to the laws of England.

3. Ibid, p.137.
James I, after reciting the Charter of 31 December, 1600, confirmed the company's rights by Letters patent, dated the 31st May, 1609. This charter, instead of limiting the exclusive rights and privileges of the company to fifteen years, granted "the whole, entire, and only trade and traffic to the East Indies", to the company for ever. The English made their first attempt to establish factors in India in 1608 and Jahangir, early in 1613 issued a firman by which the English were permitted to establish permanently a factory at Surat. They very soon got permission to establish factories in some other places; and by the month of February, 1619, the English erected factories at Surat, Ahmedabad, Agra and Broach. In 1668 Bombay was transferred to the East India Company and in that year the company took up the judicial administration of the Province of Bombay. In 1632 the Sultan of Golkonda granted the English the 'Golden Firman', by which they were permitted to trade in the ports of the kingdom of Golkonda freely. Another firman of 1634 confirmed the rights of the company given by the previous firman. A factory was erected at Hooghly in 1651 and very soon such factories were also established at Patna and Kasimbazar. In the same year another firman was issued granting the English the right of trading in return for a fixed annual payment of duties. In 1672 the company, by dint of a firman, were exempted from the payment of duties.

The Royal Charter of 1661 granted for the first time the Governor of the East India Company the power 'to hold general

courts, make bye-laws and to judge all persons belonging to the
said Governor and company or that should live under them, in all
causes, whether civil or criminal—according to the laws of the
kingdom and to execute justice accordingly. It is to be mentioned
that this Charter of April 3, 1661, empowered the company to appoint
Governors and other officers in their several factories and decreed
that such Governor and Council should have the power of exercising
civil and criminal jurisdiction in their factories in accordance
with the laws of the kingdom. Another charter was granted on 27th
March, 1669. On August 9, 1683 the next Charter was granted by
Charles II which stated that a court of judicature would be
established at such places as the company might appoint; and this
court would consist of one person learned in civil laws and two
merchants all to be appointed by the company, and to decide according
to equity and good conscience and according to the laws and customs
of merchants by such rules as the crown should from time to time
direct either the Great Seal or Privy Seal; failing which directions
by such ways and means as the judges should think best.

The Charter of September 5, 1698 incorporated the English
Company trading to the East Indies, popularly known as the English
East India Company. But ultimately the two companies were united
in the reign of Queen Anne under the name of the United Company of

7. Cowell, History and constitution of courts and legislative
Merchants of England Trading to the East Indies, on September 29, 1708. This later on became known as the East India Company. The Surman's Embassy submitted the Company's petition to the Emperor in 1716 to secure more privileges. In 1717 the Company were given three firmans for Hyderabad, Gujrat and Bengal. By this firman, the Company's trading right, free of all duties, was confirmed in Bengal.

As for the exercise of trading rights by the East India Company, it will be useful to concentrate our attention on its activities in Bengal. The English first obtained permission to trade in Bengal with their ships, when Shahjahan granted them a firman on February 2, 1634. But the vessels were restricted from entering any other port than Pipley in Balasore, where their first factory was established in Bengal. After this period, as a result of Shahjahan's firman the Company enjoyed free trade with Bengal. The English were very soon granted the freedom of trade by a special 'nishan' or order of Shah Jahan. In 1651 a factory was established at Hooghly. Afterwards, Shaista Khan granted the English an order in 1672, by which they got the freedom of trade throughout the Province of Bengal and were exempted from paying and duty. In this connection, it is to be mentioned that the Settlements in Bengal as well as in Bihar and Orissa were made subordinate to Fort St. George in 1658.

The Company, after the removal of Shaista Khan, sent an agent to the Emperor to secure a fresh order for freedom of trade; and the agent succeeded in obtaining such an order from the Emperor in 1677. Job Charnak returned to Bengal in 1690 and established a factory at Sutanati. The importance of Bengal grew with the development of trade and commerce there, and Bengal was made independent of Madras. Consequently, one Governor was appointed for their affairs in the Bay of Bengal and also in other subordinate factories. Thus the foundation of the Company's power in Bengal was laid. In 1691 during the reign of Aurangzeb the English were empowered to trade in Bengal without the payment of any duty excepting a present of Rs. 3,000 annually.

In the year 1693 the Directors in London proposed the establishment of a court of judicature in Calcutta, which would take up the cases of disputes among British subjects residing at that place. They wrote in 1693: "We send you with this a short extract of two or three paragraphs out of our general letter to Bombay and Suratt, by which you will see that we have taken as much care as we can to prevent the irregularities of such as sail upon our country permissive ships from Suratt & C. And now it will be your part to erect such a judicature in Bengal after the manner you have been practised at Fort St. George to judge and punish by fines to the Company and otherwise such as shall offend hereafter, wherein we doubt not, but you will proceed with

exact justice and great moderation, which is always to be used to
the first offenders, besides if you find any refractory you may
reduce them to obedience by denying them the privilege of our
passes and draggers &c. But the Company failing to secure a
firm footing in Bengal for the Nawab's refusal to grant them the
right of permanent settlement there, it was decided to stop the
execution of their judicial plan and wait for the just time. In
1698, another company, was, however, incorporated by a separate
Charter under the authority of a parliamentary Act, under the name of
The English Company of Merchants Trading to the East Indies.

The status of the Company in Bengal changed to a consid-
erable extent after 1698, when they were granted the zamindari of
three villages of Sutanati, Kalikata and Govindapur on payment of
1300 hundred rupees to the previous proprietors. It was estimated
that these three villages at the beginning of the eighteenth century
had a population of more than 30,000. Now the Company began to
function in Bengal in two capacities. As a zamindar they were
connected with the revenue collection and also with the exercise
of a certain amount of functions of deciding petty offences and
revenue disputes in places under their jurisdiction. Secondly, the
Company formed a corporate body exercising sovereign authority derived
(through different Charters) from their king, over the English
subjects residing in India. In 1700 the Bengal Establishments were

10. The Letter of the Court of Directors, 10 April 1693.
12. Extract from the Deed of purchase, Dec. 30, 1699 (Cited in
Jones Monckton, Warren Hastings in Bengal, p. 31.)
declared a Presidency and the Fort in Calcutta was named after the reigning king William of England. Sir Charles Eyre was appointed by the Company the first President and Governor of Fort William. But the instructions to Charles Eyre contained no direction for creating any regular courts of judicature at Calcutta. For the first time British justice was administered to the natives of India by the establishment of a special court of justice in the province of Bombay. Mr. Fawcett was of opinion that the introduction of English law into India seemed to bring new ideas and good government in India.  

The company soon felt the necessity of establishing a few new courts in Bengal; and three categories of courts with different powers and jurisdictions were erected in that province. First of all, the Faujdar court was established over which a member of the Board of Council or a servant of the company under the council presided. Obtaining in case of capital sentences the approbation of the President and Council before the execution, this Faujdar court proceeded in a summary manner. This court had its jurisdiction only over the complaints of criminal nature made by the inhabitants of India. The second court was the court of Cutchery which consisted of the Company's servants under the Council, any three of whom, their President being one, sat on fixed days for adjudication, in a summary way, of small causes of action.

which arose among the local men in the settlement of the Company. This court of Cutchery had to refer the important and serious causes of action to the Council. Appeals could be made from this court to the Governor and Council. And thirdly, another important court, styled the Collector's Cutchery was erected by the Company. This court could exercise its jurisdiction over the causes and matters concerning the collection of ground rents only. But the courts thus established in Bengal and other provinces in India had many restrictions and probably, for these limitations, these courts of the Company proved to be inefficient and ineffective to restrain crimes.

The Company, therefore, decided to establish a strong judicial machinery in Bengal to administer justice. On an application to the King, the company obtained a Royal charter in the year 1723 by which they were authorised to deal with the administration of their various settlements in India with wider powers and authority. Thus about 17 years after the united company was established, the Directors of the Company laid at the foot of the throne a representation stating "that there was great want at Madras, Fort William and Bombay of a proper and competent power and authority for the more speedy and effectual administering of justice in Civil causes, and for the trying and punishing of capital and other criminal offences and misdemeanors". They accordingly prayed for permission to establish the Mayor's Court in each of

these places and thus existing courts were superseded by the establishment of the Mayor's Court at Madras, Bombay, and Fort William under 13 Geo.I in September 24, 1726.

A meeting of the Court of Directors was held under the chairmanship of Henry Lyell on 1st February, 1726. At that meeting the three Charters were exemplified for the Factories of Fort St. George, Bengal and Bombay authorising the Mayor and Alderman at each of these places to try causes, viz. Felony, Injuries and Civil Actions. It is known from the record that George Saintsburg Llyods was at first appointed the Mayor for the town of Calcutta at Fort William in Bengal. But from the extracts of the record we know, when the Royal charter reached Calcutta, it was found that the Mayor as nominated in the charter and some of the Aldermen named therein were absent and so, Charles Hampton was appointed the first Mayor of Calcutta. Thomas Bradyill was appointed the Sheriff and John Bonkett, Thomas Coales, Robert Frankland, George Mandavilla, Thomas Cooke, Henry Harnell, James Neville, Mathew Wesley and William Bruce were appointed the first Aldermen.

It is to be noted here that the Mayor's Court at Calcutta began functioning sometime in December, 1727, when the Charter along with the judges reached Calcutta.

The Royal Charter of September, 1726 thus provided for the establishment of the Mayor's Court at Madras, Bombay and Fort William, each consisting of a Mayor and nine Aldermen, seven of

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17. Court Minutes, vol.52 p.177 (cited in Bengal Past and Present, Vol.VIII.)
18. Bengal Public Consultations, 28th August, 1727.
whom with the Mayor were to be natural born British subjects. These courts were declared to be Courts of Records and empowered to try, hear and determine the civil suits, Actions, and pleas between party and party. Each Local Government consisting of a Governor and Council was constituted a Government Court of Record to which appeals from the decision of the Mayor's Court might be made. In cases involving sums under 1,000 pagodas, the decision of the Government Court was final and if the sum involved was above that amount, an appeal lay from the Government Court to the king-in-council. It was also constituted as a court of Oyer and Terminer and empowered to hold Quarter sessions for the trial of offences save high treason. These courts were further authorised to grant probates of Wills and Administration.

The Mayor's court which had been established at Madras, was abolished on the capture of the place by the French in the year 1746. But the town having been restored to the English in 1749, the Directors of the East India Company represented to the king-in-council that 'it would be great encouragement to persons to come and settle at that place, if a proper and competent judicial authority were established there', and further that justice gained little by the establishment of the Mayor's Courts and that the justice they administered was bad and inefficient. Accordingly, the Company surrendered the Charters of 1726 and 1727; and George II granted a new charter in 1753, re-establishing the Mayor's courts at Bombay, Madras, and Fort William with some modifications. The Deed of surrender to King George II, by the united company, of the grants
of 1726 and 1727, was made on 6th January, 1753. By an Indenture made between the King of England and the United Company, the Company surrendered and yielded up the abovementioned two Grants and all the franchises, powers, jurisdictions, rights, and privileges mentioned there. The King thereby declared his acceptance of the above surrender. It was declared that it should be of no force of effect, until 30 days next after the arrival of the new charter, which was to be granted for establishing courts of judicature within those settlements.

The Charter of 1753 recited the previous Charters of 1726 and 1727. By this Charter, the King granted that there should be one body politic and corporate by the name of 'The Mayor and Aldermen of Madras-Patnam' in the town of Madras. This was to consist of a Mayor and nine Aldermen. The Charter appointed the first Mayor and Aldermen who were to be sworn to the President and Council of St. George. The President and Council were to fill up the vacancies of Aldermen. Aldermen elected were to be fined by the Mayor's Court, in case they failed to qualify within fourteen days. Any Mayor or Alderman, being absent for any reason from the town for a year, was to vacate his office.

The President and council would have the power to remove any Alderman on a reasonable ground, on a complaint in writing. But in such cases, the Alderman concerned was to be given a reasonable time to make his defence. Again; the party aggrieved might appeal

to the King-in-Council in case of the sentence being affirmed.

The Mayor and Alderman were to constitute a court of Record by the name of the Mayor's court at Madras-Patnam to hear and determine civil suits within the town of Madras, or other places subordinate to Fort St. George. But they would not determine suits between Indian Natives of Madras, unless the Natives referred the case to the Mayor's court. Every year on the first Tuesday in December, the President and Council of Fort St. George would elect a new Sheriff, who would qualify by taking the oaths of allegiance. He was to continue until another Sheriff would be elected next year. If a Sheriff died or became otherwise absent for three months, another was to be elected in his place for the rest of the year.

The Charter also prescribed the forms and rules of practice in the said court in civil Actions, viz., the cause of action was to exceed five pagodas, and the complaint to be established in writing. The first process was to be by summons under the hands and seals of two of the judges (the Mayor and Senior Alderman being one). In default of the defendant's appearance, and upon return of the summons by the Sheriff, a Capias might be issued to the Sheriff to take the body. The Court was then to proceed to the Examination of the Complaint upon the oaths or affirmations of witnesses whose depositions were to be taken in writing, and subscribed in the open court, and thereupon the court was to pronounce judgment according to justice and right, and to award execution by process to the sheriff for buying the debt and damages, with costs of suit; and for want of sufficient distress, the defendant might be imprisoned till
satisfaction made; and where judgment was given for the defendant, the court might give him his costs.

When there would be suite against the Company, the summons etc. were to be addressed to the President and Council. In the name or in behalf of the Company, the President and council might have the power to prosecute suits in the said court.

The court would have the power to frame rules of practice, appoint officers and clerks, and administer oaths and affirmations. It could also perform other necessary acts to better the administration of justice and execute the powers of the charter. This, of course, was subject nevertheless to the control of the Court of Directors having power to make rules and orders for the betterment of the administration of justice. But if the orders of the Mayor's court were not repugnant to those made by the Court of Directors, these would be in force.

An appeal might be made from the Mayor's Court to the president and Council constituting a Court of Appeals. Unless the debts, costs, etc. would exceed 4000 pagodas, their judgment in appeal was to be final. But when exceeding that sum, or where no judgment in appeal can be given for want of a sufficient number of disinterested judges of appeal to act, (although the value be under 1000 pagodas) an appeal is given to the king in Council, and judgments in appeal would be executed by the Mayor's court.
It was further prescribed in the Charter that for a smooth remedy for the recovery of small debts, there would be a Court of Requests in the town of Madras-Patnam. The president and Council would appoint, in this connection, the first Commissioners who were to hear and determine suits, 'not exceeding the value of five pagodas each under such rules and regulations as shall from time to time be given them by the Court of Directors'. Moreover, the president and Council were to act as the justic of the peace for Madras, Fort Saint George etc. and other factories subordinate to Fort St. George. It was also empowered to hold quarter session and it would be a Court of Record, in the form of a court of Oyer and Terminer and Gaol Delivery to try offences, excepting high treason, within Madras or any other factories subordinate to Fort St. George. For the execution of the offices of justices and commissioners of oyer and terminer, the President and Council would take an oath.

It was also declared that the Company would appoint Generals and other Military officers for the town of Madras, and the town, places etc. of Fort St. George. The company also would have the power to maintain standing armies within the said town and limits.

The Charter further declared that there would be established a corporation for Bombay, consisting of a Mayor and nine Aldermen, and also a Corporation for the erection of a few courts possessing civil and criminal jurisdictions over the town or factory of Bombay, and its limits and its subordinate factories. The Mayor's court
and other courts were established in Bombay in the same manner and with the like powers as they were established previously in the settlement of Madras. The company was, on the other hand, declared to have the same jurisdictions and powers over Bombay as it had exercised over Madras and Fort St. George.

The Charter proceeded to establish a corporation, the Mayor's court and other courts at Fort William in Bengal. These courts also would have the same powers and jurisdictions over the settlement of Bengal as these courts in Madras and Fort St. George. The Charter declared that there would be a general power of the President and council of Madras, Bombay, and Fort William to make bye-laws for the good government and regulations of the several courts and corporations. The Court of Directors also was to have the aforesaid general power to make bye-laws. These bye-laws, of course, would be first confirmed by the Court of Directors and would never be contrary to the laws and statutes of the country.

It was also declared that the respective Mayor's courts would have the power to grant probate of wills and Letters of Administration. If any person died within any of these three Presidencies, or the factories subordinate thereto, and had, by will before his death, appointed any person, residing within any of the three Presidencies, to be his executor, the Mayor's court then in such case, upon proof made of the due execution of the above will, was to grant probate of such Will under its seal. But "where the party shall die intestate, or not having appointed an
executor or executors residing within the said limits, then the
Mayor's court is to grant letters of administration in the former
case, or letters of administration, with copy of the will
annexed,20 as the case might be.

Every member of the Mayor's court acting as a judge
there, was to take an oath of allegiance and an oath of office
before the President or in his absence, before any two members of
the council of the presidency.

It was further stated that for the convenience of its
trade, the Company might remove the seat of any of the Presidencies
to any other place subordinate to it. It might also remove the Mayor's
court with its same powers and jurisdictions to that new place.

Lastly, the charter empowered the king and his
successors to reserve full power and authority, upon any applica-
tion to the crown by the court of Directors, to alter, vary,
revoke, annul and make void the charter itself, and to grant to
the company any new or other powers and authorities. The king
was further empowered to grant that the Charter or its enrolment
would be valid, 'and shall be construed in the most favourable
sense for the best advantage of the company, as well in courts
of record as elsewhere', in spite of any imperfection there.

The basic points21 of difference between the two


21. Banerjee D. N., Early Administrative system of the East
India Company in Bengal Vol. I. pp. 581-582 and Francis
charters of 1726 and 1753 may be briefly noticed in passing. The most striking difference is to be found in the election of the Mayor of the Mayor's court of any of those three Presidencies.

In the charter of 1726, a new Mayor of any of the provinces was elected for the time being, out of the Aldermen, by the Mayor and Aldermen of the same. But under the Royal charter of 1753, two persons out of the Aldermen of any of the provinces, were to be elected by the Mayor and Aldermen for the time being; and then out of these two persons one was to be chosen as the new Mayor by the President and Council concerned. The second point of difference is noticed in connection with the filling up of any vacancy in the office of Alderman. Under the former charter, a vacancy in the said office of any of the provinces was to be filled, for the time being, by the Mayor and Aldermen; whereas under the latter charter, the President and council were to fill such vacancies. Thirdly, under the previous charter, the Mayor's court was empowered to try, hear and determine all civil suits and pleas between party and party, within the said province or subordinate factories; but under the latter, this court could not deal with such suits or pleas between parties and parties, without the consent of both.

The last but not the least striking point of disagreement between the two charters is, while there was no provision for the setting up of the Court of Requests for the recovery of small debts in the former charter, the new charter provided for the setting up of such a court for the recovery of small debts. As regards other points, these two charters do not, however, vary significantly.
In regard to the actual working of the Mayor's Court established at Fort William in Bengal under the charter of 1753, we may take the opinion of Mr. Whittall, an Attorney in the Mayor's Court. Although this court could not legally issue process beyond the bounds of Calcutta or its subordinate factories, yet he knew their process issued to and executed in all parts of Bengal, under special order of the Governor and council, granted or refused at their discretion; and in all these cases the process was sent to one of the Company's servants. He knew the Natives, sent from every part of the country, to be tried in that Court. Again, he was of opinion that 'he had known frequent instances of the Mayor's Court refusing to admit an appeal against its proceedings, on pretence of their being interlocutory only and not final'. He further informed that the mayor's court refused to take cognizance of cases arising within their jurisdiction, insisting that they had a right to refuse these. It is also known from his statement that an Attorney of the Mayor's court was often threatened by the Governor, and by several of the Aldermen, for attempting to bring an Action against one of the Company's servants. He further informed that he had known a servant of the Company (against whom an Action was intended), who often intimidated the Attorney by threat of applying to the Governor. Finally, Mr. Whittall was of opinion that the judges of the Mayor's Court were not persons educated to the law, but any of the junior servants. As the judges of this court were justly aware of their own deficiency of knowledge in English laws, they and even the

President and Council very often wrote petitions to the Court of Directors to lay particular points regarding the jurisdictions of the same.

We shall see in the next chapter that after several years a conflict ensued between the Governor General and Council and the Supreme Court as to the right of the court to interfere with the cases in which the revenue officers were concerned. A similar conflict took place between the Mayor's court and J.Z. Holwell, the Collector (Zamindar) of Calcutta in 1755. This served for an example of the conflict of jurisdictions—the zamindar's jurisdiction being based on the right as owners of the zamindary of Calcutta under Mughal law, and also the jurisdiction of the Mayor's court being based on the Royal Charter of England. Various correspondences relating to the abovementioned dispute have been discussed below.

The dispute began with the case of one Mons. Demondtaguy and his wife, Phoebe. On the basis of this case, the Mayor's court served upon Holwell a 'citation,' by which he was asked to appear before the Court to explain his conduct. It was a proceeding which Holwell considered to be 'so Extra-judicial and injurious' to that court.

The 'citation' which was served on Holwell was this: "An Representation made to the President and Council by Mr. J.Z. Holwell

zemr. that he was cited to appear before the Mayor's Court on
Friday ye. 23rd Inst. There to bring with him and deliver into court
one pair of Diamond Earrings a gold headed Cane 18 Gold Buttons
and silver cup and salver. Decreed as Mr. Holwell informs us by
him in capacity of his office as Zamindar to be delivered to Monor.
Deomonttaguy and Phoebe his wife on the complaint of Monor. Deomonttaguy
and Phoebe his wife against Sarah Shadow who was then in possession
of the above nam'd goods, (illegible). The President and Council
in this circumstance as Agent for the East India Company took upon
themselves as the proper persons to have been applied to from the
Mayor's court setting forth the nature of any complaint they have
to make against the Zamindar appointed by the East India Company as
for explaining any part of the charter not clearly understood that
they may give orders for the restraining any unlimited power which
shall appear to be assum'd by one said Zamindar and their opinion
in what light they Esteem such part of the charter of which their
Explanation may be requir'd by the Mayor's Court and whereas the
Mayor's court their Reply is notified to the President and Council
and their Resolutions on that reply sent them thereon the President
and Council doubt not but the citation for the Appearance of
Mr. Holwell will be recall'd and all further proceedings stop
thereon. 24.

In this case Holwell in a letter to Roger Drake, President
and Governor, Council of Fort William, on 22nd May 1755 protested

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24. Fort William, the 22nd May 1755. (Cited in Ibid, No. XXV,
p. 127.)
against the action of the Mayor's court. He complained that the Mayor's court exercised an authority which was illegal, an authority that could hardly be exercised in the annals of Calcutta. Steps should be taken to discountenance this procedure as well as to prevent the like extra-judicial attempts of the Mayor's court in future. In his letter Holwell appealed to him that as a superior court, the council of Fort William should protect against the illegal and irregular citation served on him. He also appealed to Roger Drake and the Council to screen and protect him from insults and disgrace meditated against him in the execution of an office to which he had been appointed by them. He opined that he was, excepting in criminal matters, accountable to the council only. Under the circumstances, Holwell prayed to the President and Council that they would order the Mayor's Court to stop their proceedings and recall their 'citation' against a person who was in no shape within the limits of their jurisdiction.

At this time the Mayor's Court wrote to the court of Directors that "The particulars of the process had thereon before us is herewith transmitted you by which it will appear Mr. John Zeph. Holwell, your Zmr. or Collector of your Revenues, was cited to appear before the Court at the Instance of Sarah Shadow on behalf of the Minor Sarah Perar which he accordingly did; but both before and immediately after it he presumed to deliver in several Letters to your President and Council falsely setting forth that this

Court has proceeded in an irregular Extra-judicial Arbitrary and illegal manner, and that it has assum'd an Extra-judicial stretch of power not delegated by his Majesty's most gracious charter with other injurious reflections which proceeding of Mr. Holwell with his false and groundless Aspersions cannot but be Deem'd scandalous and highly reflecting on us judges of the Mayor's court, and we know of no provocation that could have induc'd him to such ill behaviour in so grossly misrepresenting the case but that because we justly oppos'd him on application being made to us in matters which were only cognizable by the Mayor's Court. 

The Court thus appeared to have exercised civil jurisdiction in cases where Europeans and Feringie or Natives of European descent, were concerned. In the above mentioned dispute, it was considered that Holwell had interfered with their jurisdiction. The Council decided that the Zamindar should not in future, take cognizance of causes between Europeans or Feringies, unless these were referred to him as an arbitrator. This dispute was referred to the Court of Directors and they opined that as the Mayor's Court had intervened not on any complaint, but only on information given in course of the examination of a witness before it, the same (the court) had no valid ground for the proceedings it had taken against Holwell. However, the actual cause of the dispute was not settled ultimately, though there was a sweeping change in the Zamindary regime.

It appears from the records that English Criminal law was executed in the town of Calcutta at this time. Out of forty-five cases, in twenty-one cases the sentence was capital. In all, 38 Indians were involved in these cases of whom 21 received death punishment. Even forgery was punished with death. The English law, which recognised more than 160 felonies, governed the citizens of Fort William for a time. We may take up only two important cases as illustrative of the law enforced by the existing courts in Bengal. The first case occurred in the year 1762 and in this case a Native was tried at the Calcutta sessions and was finally sentenced to death. A Native detected one of his women in an act of infidelity. The Native then punished her by cutting off her nose. But the man was tried and arraigned at the Calcutta Sessions, as he punished the woman. The man confessed the fact and argued that he had not violated in any way the Native laws and customs in which he had been educated and to which he had been accustomed. He urged upon the fact that the woman was his property and so he had the right to set mark upon her. It is to be noted that throughout the Eastern countries, the women at that time were completely subject to the will of their masters. However, the Native was condemned and hanged according to the English Law.

The second interesting case tried in the English Court, was that of Radha Charen Mitra, who was convicted for the forgery of a

Codicil of a will of Cojah Solomon in 1765. The English criminal law in Great Britain at this time was to punish forgery with death. Under this law Radha Charan Mitra, a Native of Bengal was condemned.

The principal inhabitants of Calcutta expressed their astonishment and alarm in their petition addressed to the Governor and Council. In their petition to the Governor and Council, the Hindu inhabitants of Calcutta stated that by their laws, forgery was not at all a crime which would be punished with death. They wrote that this law was utterly repugnant and contrary to the laws, customs and religions of the natives; and this law, if applied to India, would greatly affect the lives of the inhabitants of India. Under the circumstances they earnestly requested the Governor and Council to suspend the execution of the sentence. Upon this proper representation, Radha Charan Mitra received a pardon. Thus this case may be regarded as a precedent for the sentence upon Nandakumar on his conviction for forgery ordered by the Supreme Court.

It is found from a record that there being wanting a proper place to hold the Mayor's Court, as well as a Court of Oyer and Terminer, and to make a Town Gaol, the Ambassador's House and

28. Ibid., P.141 and Appendix p. 177. Radhacharan Mitra was a grandson of Holwell's old enemy, Govindaram Mitra, the 'Black Collector' of Calcutta.
compound were appropriated for that service; and a tax was levied on the inhabitants of that place to pay the same. C.R. Wilson also informs us that "Ambassador's House, which stood at the corner of Lal Bazar and Mission Row, was taken for the use of the Mayor's Court" [31]. But this building being an old one, was sold on public auction in 1732. One Broucher started a charity fund and had a gorgeous building out of his charity fund. This building was let out for holding the Mayor's Court at an annual rental of £ 400/-.

This building stood near the northeast corner of Dalhousie Square and it was styled the 'Old Court House'. It is interesting to note here that the judges of the Supreme Court at Fort William held their sessions at this 'Old Court House' for a few years and it was that place where the historic trial of Nanda Kumar for forgery was conducted. We find that a sum of Rupees one hundred five and eight annas only was spent monthly for the peons and other necessary servants of the Mayor's Court in Bengal [32]. Besides this, from another report we get an account of the expenses of the mayor's Court at Calcutta for five years, with the average for one year [33].

33. Report from the Committee, House of commons, 1781, p. 79.

<table>
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<tr>
<th>Year</th>
<th>C. Rs.</th>
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<td>1769-70</td>
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<td>1770</td>
<td>14,245</td>
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<tr>
<td>1771</td>
<td>9,225</td>
<td>23,493</td>
<td>16,347</td>
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Average expense of one year = C. Rs. 16,081.
The establishment of the Mayor's Court in India was the first conspicuous attempt at administering English law, both civil and criminal, to the Native inhabitants. This attempt was made to ensure justice and protect the Natives from the irregularity and corruption of the existing judicature in India. But this system could not function properly mainly because of the scanty knowledge of the English judges about the habits and customs of the Indians. Another defect of these Courts became evident just after the grant of the Diwani in 1765. As the jurisdictions and powers of the Mayor's Courts were very limited, these were considered to be inadequate instruments for coping with the over-ambitious and unruly servants of the company.

So the Mayor's Court in Bengal and those at Madras and Bombay could not be beneficial to the inhabitants of India ultimately. By the establishment of the Mayor's Court the ends of justice could not be secured; the Letters Patent of Sept. 1726, establishing these tribunals, really speaking, could seldom render proper justice. "These courts were to consist of a Mayor and nine Aldermen, seven of whom, with the Mayor, were to be British subjects. They were, in fact, composed of the company's mercantile servants — men of the slenderest legal attainments, and the slightest judicial training. They undertook all kinds of business, civil, criminal and prerogative—but were, to a certain extent, controlled by the executive Governments, which were constituted courts of Appeal. The President and Council and the members of the Mayor's courts were thus often brought into collision; and between the two, I fear that neither law nor justice was treated with
much respect. As years passed on, the evils of a defective administration of justice, became more painfully apparent. The Natives of India had no knowledge about English law; they only knew how this law was utterly inapplicable to the social condition of either the Muhammadans or Hindus. They very soon found themselves subject to the penalties and severities of the law of which they were ignorant.

Verelet discussed the impossibility of introducing English laws into Bengal in the fifth chapter of his book mentioned earlier. He stated that the Native customs and usages were completely repugnant to and irreconcilable with English laws and principles. He was of opinion that English laws, being the product of experiences of several centuries, could not be imposed on a dependent people; these could be imposed only on a free nation. Verelet's next argument was that it was difficult for the Native Inhabitants of Bengal to receive the laws of an independent country, as they were incapable of receiving a free Government. The most important point was that since the Natives were ignorant of the English laws and accustomed only to their own laws, customs, and usages, they must be administered by their own Native judges. He suggested that it should be the duty of the Governor - General and Council only to issue, from time to time, edicts, as 'power must reside in the conquerors'.

The seventh Report of the Committee of Secrecy appointed on 6th May, 1773, detailed the condition of the native judicatures throughout the province of Bengal, which existed under the Old Constitution of the country or were affected by the Company. This Committee also enquired into the condition of judicature existing in the settlement of Calcutta and the factories subordinate to it. After such an enquiry into the state of the East India Company, it observed upon the defects of the Mayor's court at Fort William. It rightly stated that, "although it is bound to judge, at least where Europeans are concerned, according to the laws of England, yet the judges are not required to be, and in fact have never been, persons educated in the knowledge of those laws by which they must decide; and that the judges were justly sensible of their own deficiency; and that they had therefore, frequently applied to the Court of Directors to lay particular points respecting their jurisdiction before Counsel and to transmit the opinion of such Counsel to be guide of their conduct."35.

Thus upon this committee's report, the Charter of 1726 relating to the Mayor's Court at Madras, was cancelled by the Act 37 Geo.3.C.142, and by virtue of Letters patent, a Court of Record was established. The same charter relating to the Mayor's Court at Bombay, was also cancelled by the same Act, and by virtue of Letters Patent, the Court of the Recorder of Bombay was established. So far as Bengal Presidency was concerned, as it will be seen in the next chapter, the Stat. 13.Geo.3.C.63 was passed. The Bill was

carried on by an overwhelming majority in the House of Commons on June 10, 1773; and on 21st of the same month the Royal Ascent was received. Consequently, the Supreme Court of Judicature was established at Fort William in Bengal on March 26, 1774. Thus the Mayor's Court that survived at Fort William in Bengal for about half a century, was buried in oblivion.