The period from the transfer of the Diwani to the passing of the Regulating Act of 1773 and the Royal Charter of 1774 is very eventful in our judicial history. It deals with the events leading to the institution of the English Court - the Supreme Court, the judges of which threatened the revenue administration, and practically paralysed the whole Bengal Government. The Act proposed the creation of the Governor-General and Council (Supreme Council) and the erection of a supreme Court in Bengal, and the Charter established the Supreme Court defining its powers and jurisdictions. The present Chapter discusses in detail the Act and the Charter as such, and throws a flood of light on their glaring drawbacks which led to alarming consequences throughout the country.

The Battle of Plassey marked the beginning of the British expansion in Bengal. To strengthen the Company's hold, Md. Reza Khan was appointed by the Governor and Council as a Deputy to carry on the administration, and his appointment meant the virtual end of independent Indian rule in Bengal. Theoretically the powers of the Mughal Government were divided into the Diwani and the Nizamat. The Diwani meant the power of collecting revenues and administering civil justice; the Nizamat meant the power of commanding troops and dispensing criminal justice. It was the Mughal custom to vest these powers in different persons. But after the reign of Auranzeb,
the system of combining these two powers in the same person continued.

The Emperor Shah Alam took away from the Nawab his power Diwan on the 16th of August, 1765 and then conferred the Office on the East India Company to hold as a free gift. On the other side, the company appointed as its Deputy or Naib Diwan Reza Khan who had already been appointed as the Naib Nazim. He united the powers of the Diwani and Nizamat in his person. The famous grant of the Diwani meant the regularisation of the revenue settlement with Nazimuddaula and it was the first step towards the direct administration of Bengal by the Company. The significance of the new grant was that the company became the Diwan of the Emperor and it was empowered to collect all the revenues of the province and administer civil justice. The powers of the Nizamat remained nominally with the Nawab and he had by a treaty handed over its exercise to Reza Khan, the company's nominee. Thus Reza Khan became the Company's Deputy for collecting the revenues and the Deputy of the Nawab for administering criminal justice.

As the Company "nominated the nawab's deputy, Reza Khan" in effect the deputy of the company for the whole administration. This was a Dual system in a double sense. In theory the authority (under the emperor) was divided between company and nawab; while in practice the administration was divided between English Controllers

and Indian agency. It is this latter feature which was the essence of the Dual system which Hastings ended seven years later\(^2\). But in fact the whole administration was conducted almost entirely through the Native agency for many years, even though the English Supervisors were appointed in 1769 to control the Native revenue officers.

The administration from 1765-72 was in the hands of the two Naib Diwans viz. Reza Khan in Bengal and Shitab Rai in Bihar, the company itself being the actual Diwan. But the English Supervisors appointed first in 1769 controlled the activities of these two Indian Officers to some extent, since the Supervisors held 'a controlling though not an immediate, active power over the collections' in the provinces\(^3\). The court of Directors appointed in Bengal a Committee for the management of revenues and at the same time the Supervisors sailed from England with full powers to perform the company's administration, but unfortunately their ship sank in the ocean. The committee established Supervisors to make a complete enquiry into the process of collecting the revenues. Under the Dual system of Clive, the company itself was in acute financial problem, yet its servants were making fortunes by nefarious ways. The Court of Directors also felt that the Naib Diwans were intercepting a large part of the revenues. The Supervisors mentioned above soon had to face serious difficulties in performing their duties. In 1770 the Company's Government established two Boards of Revenue,

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2. Ibid, p.476  
one in Murshidabad and the other in Patna to control and supervise
the revenue collections of Bengal and Bihar. But difference of
opinion cropped up among the members of the Governor and Council,
and John Cartier was replaced by Warren Hastings who became the
President and Governor of Fort William in April, 1772.

Clive's Dual system was thoroughly discredited and the
Court of Directors declared in 1771 their decision "to stand forth
as Diwan and by the agency of the Company's servants to take upon
themselves the entire care and management of the revenues".4
Hastings's immediate task was thus the consolidation of the Company's
rule in Bengal. He was definitely appointed to put an end to the
Dual system. The instructions of the Directors by which he was
guided included a large discretion and he exercised it fully.
"We now arm you with our full powers", wrote the Company "to make a
complete reformation".5

It will be useful to give a brief review of the different
courts of judicature in Bengal at this time, before we discuss
Hastings's reforms in the revenue and judicial administration. The
Nazim was the Supreme Magistrate who presided over the trials of
Capital offenders and held a court known as the Raz Adalat. The
Divan was the Magistrate who decided cases relating to real estates
or property in land. The Daroga, Adalat al Aalea was the deputy
of the Nazim who was the judge of all matters of property excepting

   (First Part), p.6. (In a letter to the President and Council
   at Fort William on Aug 28, 1771.)
claims of land and inheritance. The Daroga Adalat Diwani or Deputy of the Diwan was the judge of property in land. The Faujdar, another important officer was the judge of all crimes excepting capital, and in charge of the police. The Judge of all claims of inheritance or succession, was known as the Kazi. He performed the ceremonies of wedding and Funerals. Another Officer was Mohtesib who had cognizance of drunkenness and also the examination of false weights and measures. The Mufti played an important role in the administration of local justice in Bengal. He was the expounder of the law. In his court the Kazi was assisted by the Mufti and Mohtesib. The Mufti wrote the law applicable to the case in question after hearing the parties and then the Kazi pronounced judgment. The Kotwal was known as the peace officer of the night. The last but not the least important officer was the Kanongaps who were the Registers of the lands. Thus it is seen that in the proper sense, there were only three courts to deal with the civil cases and one for the Police and Criminal cases. But there were great and capital defects in these local courts.

The first task of Hastings was to deal with the Diwani or revenue administration. This administration was carried on for seven years by Reza Khan and Shitab Rai as the Deputies of the Company. These two persons were now prosecuted for peculations and their offices were abolished. The company undertook the revenue collection through their own servants. This meant the direct control of the

6. Revenue Department, Fort William, November 3, 1772.
whole civil administration which included civil justice. In each district English collectors were appointed and a Board of Revenue was established. The revenue settlement was made for seven years. But the collectors were soon faced with great problem and the essence of the problem was the difference between the amount collected from the peasants by the Zamindar and the amount actually paid by him to the Government. However, along with the appointment of the English Collectors, a few civil courts with an Appeal Court were established in Calcutta. Hastings then cut down the Nawab's allowance from 32 to 16 lakhs of rupees a year. The Treasury of the Khalsa was transferred from Murshidabad to Calcutta. Moreover, in organizing the Nawab's household, Hastings decided to appoint as his guardian Muni Begum, widow of Mirjafer.

On May 14, 1772, the Governor and Council decided to set up a Committee of Circuit consisting of the Governor and four members of the Council. The members appointed in this committee were the Governor (W. Hastings), Samuel Middleton, James Lawrell, John Graham and Philip Dacres. The committee decided to place the administration of revenue entirely under the direct control of the president and council, who formed a committee of Revenue. The main purpose of the Committee of Circuit was to consolidate the control of the company over the Divani and so they took up the important task of restoring the administration of justice in the districts. The committee thus appointed drew attention to the defects of the Muhammadan law courts, and finally recommended a plan for the...

administration of justice on August 15, 1772. The plan was implemented shortly, as a result of which there was a great change in the existing administration of justice in Bengal.

In each district two courts of judicature, one civil and the other criminal, were established. The civil court or the Diwani Adalat consisted of the collector as the President who was assisted by the Provincial Diwan and the Native Officers of the Court. All cases were under the jurisdiction of this Court; Only the cases of succession to the zamindaries or talukdaries were made amenable to the Governor and Council. The criminal court or the Faujdar Adalat consisted of the Collector as the Superintendent with the Kazi and Mufti of the district and two Maulavies as interpreters of law. Moreover, two courts of Appeals were created in Calcutta - the Sadr Diwani Adalat (Supreme Civil Court) and the Sadr Nizamat Adalat (Supreme Criminal Court). The Sadr Diwani Adalat was presided over by the Governor and two members of the council, attended by the Diwan of the Khalsa and a few officers of the Native court of the city. The Sadr Nizamat Adalat was presided over by a Chief judge (called Darogah-i-Adalat) who was assisted by the Chief Kazi, Chief Mufti and three eminent maulavies.

The Committee of Circuit more or less successfully dealt with the administration of justice. However, the courts,

8. Revenue Department, Fort William, November 3, 1772; and
established on the recommendations of this committee, were not free from defects. But these courts brought great relief to the Ryots, Talukdars and cultivators, and the confidence of the people in the administration of the company began to foster after a short period. Some changes took place when the Court of Directors in April 1773 sent orders to the Governor and council to recall the aforesaid collectors from the districts and to adopt other methods for revenue collections. Consequently, early in 1774 further changes were made. In Calcutta was created a Committee of Revenue. Each district was placed under the superintendence of a Diwan; the three provinces of Bengal, Bihar and Orissa were placed under five provincial councils, and each council was to consist of a Chief, four senior servants and a Diwan. It is observed that Hastings's reform of the administration in the province was based upon the fundamental old distinction between the Diwani and the Nizam - the Civil and Criminal.

The transfer of the Diwani to the company came as a blessing to the Company's servants. They now got their opportunity to earn money by any means and took nefarious policies to make personal profit. Under the circumstances the Court of Directors felt the necessity of making an enquiry into the Company's affairs and in 1772, Sullivan, the Deputy Chairman of the Court of Directors brought a motion to bring in a Bill. In the debate that followed, the servants of the Company were severely condemned for their dishonesty and rapacity. Sullivan presented to the House of Commons the Bill 'for the better Regulation of the Affairs of the East India
Company, and of their servants in India and for the due adminis-
tration of justice in Bengal, on April 16, 1772. But this Bill
of Sullivan was not ultimately passed, because a motion for going
into a Select Committee on that Bill was brought in the House
of Commons on May 18, 1772. The members -- Cornwall, Townsend,
Rose Fuller, Whitworth, Welbore Ellis, Thurlow, Sullivan, Pulteney
and others took part in the discussion on the Bill on that day.
But nothing could meet the situation. At this time the Directors
thought of sending a Commission of supervisors for the regulation
of the affairs of the company which the Ministry did not like at
all. Lord Clive submitted a memorandum to Lord North on November
7, 1772; and in it he demanded, among other things, the transfer
of the territorial sovereignty to the crown. In the same month
Lord North carried a motion for the appointment of a secret
Committee to consider the affairs of the Company; and on December
7, the Committee submitted its report. On the recommendations of
the Committee, a bill was passed into law on December 18 to resist
the policy of the Directors to send Supervisors to India.

About this time the company was passing through a financial
crisis and the Directors appealed to the North Ministry for loan.
North on April 5, 1773 moved the resolution that the territorial
acquisitions and revenues in India should be in the hands of the
Company for a brief period of six years only; and he suggested

that he would give loan to the Company on that condition. The above resolution was passed and on May 18, the North Ministry brought forward a Bill for establishing certain Regulations for the management of the affairs of the East India Company in India and Europe. This law known by the name of the Regulating Act was thus passed in the same year. This Act proposed the creation of the Governor-General and Council or the Supreme Council and also the erection of a Supreme Court at Fort William in Bengal. In this connection it is necessary to give an account of the Regulating Act (Stat.13 Geo.3 Cap.63) — 'An Act for establishing certain Regulations for the Management of the Affairs of the East India Company, as well in India as in Europe.'

It was found by experience that several powers and authorities granted by charters to the Company were not sufficient to prevent various evils and abuses existing in the government and administration of the affairs of the Company. Hence it was highly expedient that further better regulations should be established. It was then enacted that in the next election of the Directors of the Company, six Directors instead of twenty-four Directors should be chosen for the term of one year, six other Directors for two years, six other Directors for three years and the remaining six for the term of four years and so thereafter every

12. Smout and Ryan, Rules and orders of the Supreme Court of Judicature at Fort William in Bengal, Vols. I & II pp. 3-30. (Section XLV);
and
Revenue Department, Minutes of Consultation, February 11, 1780.
year. It was also stated that no person employed in any office in the East Indies would be chosen as the Director, until he had been resident in England for two years.

(Sections : I-III)

It was declared that all transfers made in a collusive manner to verify voters at the election of the members of the Court of Directors and all Bonds, Covenants etc. with the persons in Trust, would be null and void to all intents and purposes. Every member or proprietor of the Company possessing three thousand pounds (Capital Stock of the company), would be entitled to two votes in any election; the member or proprietors possessing six thousand pounds would be entitled to three votes; and a member or proprietor possessing ten thousand pounds would have four votes. Again, every member would be qualified to vote at any election of the directors, in respect of 1,000 pounds stock after the first day of October, 1773. And upon every election of the Directors, every Proprietor was to, before admitted to vote, take the oath (sections III - VI).

The Act further stated that a Governor-General and four councillors would be appointed for the Government of the Presidency of Fort William and the whole civil and military Government of Bengal, Bihar and Orissa would be vested in them. This section of the Act runs thus: "That the whole civil and Military Government of the said Presidency, and also the ordering, management, and Government, of all the territorial acquisitions and revenues in the Kingdoms of Bengal, Behar, and Orissa, shall, ... be, and
are hereby vested in the said Governor-General and Council of the said Presidency of Fort William in Bengal, in like manner, to all intents and purposes whatsoever, as the same now are or at any time heretofore might have been exercised by the President and Council, or Select Committee, in the said Kingdom (Section VII).

It was enacted that in case of difference of opinion in the Governor-General's Council, the decision of the major part would be conclusive; and in case of death or absence of any of the members of the Council, the Governor-General or in his absence, the eldest Councillor was to have a casting vote. The three Presidencies (Madras, Bombay and Bengal) were to obey the orders of the Governor-General and Council and again, the Council were to obey the orders of the Court of Directors. The present Act declared that Warren Hastings would be the first Governor-General; John Cleveling, George Monson, Richard Barwell and Phillip Francis would be the first four Councillors. They would hold offices and continue in their offices for a period of five years from the time of their arrival in Bengal. In the eleventh section of the Act, the time of the commencement of the several provisions relating to the Governor-General and Council was also mentioned. The next section empowered the company to appoint officers in pursuance of the former Acts or Charters. (Sections VIII - XII).

The Act recited the charter, dt. 8th January, 1753 (26, Geo.2) establishing the Mayor's courts. It authorised the

13. Ibid, pp. 8-9
crown to establish a Supreme Court of Judicature, at Fort William in Bengal to consist of a Chief Justice and three other judges. The same court was declared to have full power to exercise all civil, criminal, admiralty and ecclesiastical jurisdictions, and appoint officers, and also establish Rules of practice and Rules for the process. The Court was to be a Court of Record and Oyer and Terminer and Gaol Delivery. The jurisdictions and powers of the Court were to extend to all British subjects residing in Bengal, Bihar, and Orissa, or any of them, under the protection of the company. The court was declared to have full power to try all complaints against the subjects of the king for crimes, offences and oppressions committed, and all actions against them and also against any person who had, at the time of the cause of action or complaint, been employed by the company or, directly or indirectly, in the service of the said United Company, or of any of His Majesty's subjects. (Sections XIII - XIV).

The Supreme Court was declared to have no power to hear and determine indictments or informations against the Governor-General or any of the members of the council in Bengal, Bihar, and Orissa. The court was to have jurisdiction in all actions by the King's subjects against inhabitants of India, residing in Bengal, Bihar and Orissa, upon agreement between them, where the cause of action would exceed 500 current rupees and the defendant would submit to its jurisdiction.* Actions could be brought in that

* Section - XVI.
court or by appeal from the provincial courts. The Governor-General or any of the members of the council was, however, not subject to be arrested upon any proceeding in the Supreme Court. Moreover, Appeals were declared to be allowed from any judgment of that court to the king-in-council (Sections XV - XVIII).

The Charter (26, Geo.2) relating to the establishment of the Mayor's court at Calcutta was to be repealed. All records of the Mayor's court, or courts of oyer, Terminer and Gaol Delivery in Bengal were to be delivered to and preserved by the Supreme Court. By the Act, the Governor-General was to receive per year as salary £25,000, members of the council £10,000; and the Chief justice and each of the Judges of the Supreme Court were to be paid £8,000 and £6,000 respectively annually. But such salaries of the Governor-General and council, and the Chief Justice and other judges of the court were declared to be in lieu of all fees, parrquises, and emoluments. It was declared that the Governor-General and council and the Judges of the Supreme Court would not accept any present; and no persons holding a civil or military office under the crown or the company, would accept any present. But this was not applicable to the cases of the Councillors, Surgeons or Physicians, receiving professional fees. (Sections : XIX - XXV).

But any present, gift or reward thus taken or received and also any such transaction by way of traffic, carried on contrary to the meaning of this Act, would be construed to have been received or done for the use of the Company. The Company again
might prosecute and recover every such gift or present upon waiving forfeitures. It was also enacted that no collector, supervisor, or any other of the King's subjects, concerned in the revenue collections in the three provinces, could buy goods by way of traffic within the same provinces after 1st August, 1774. Moreover, no British subject would be permitted to carry on trade in salt, betel-nut or tobacco within those provinces. But this was not applicable to any of the King's subjects not herein prohibited; it was not to extend to any outstanding debts or selling merchandises possessed by persons before such prohibition. It was also enacted that no subject of the King in India would take directly or indirectly for loan of any monies and other commodities above the rate of twelve percent per annum. (Sections : XXVI - XXX).

It was also declared that persons, making compositions contrary to the intent and meaning of the Act, were liable to be imprisoned at the discretion of the Supreme Court. Again it would be unlawful for a person, who resigned or was dismissed from the service of the Company, to carry on trade or commerce other than for disposal of stock in hand. The Company's servants prosecuted for breach of trust might, on conviction in the Supreme Court, be fined or imprisoned at the discretion of that Court. All offences, which would be tried and enquired of in the Supreme Court, would be tried by a jury of British subjects, resident in Calcutta. The Company was not authorised to release
or compound sentences of the supreme Court against Company's servants. It was enacted that the Governor-General and council of the Company's settlement in Bengal were to make and issue rules, regulations etc. from time to time for the Civil Government of the Company's settlement at Fort William and other factories, and also set and impose fines for the breach of such rules; but nevertheless it would not be valid, until the same would be duly registered and published in the Supreme Court. The Governor-General and council were to transmit copies of all rules, regulations etc. made and issued by them, to one of the king's principal Secretaries of State. The King and his successors were empowered to declare such rules, regulations etc. null and void by signifying to the company his or their disapprobation of the same. But if the King and his successors did not, within the space of two years from the making of such rules, regulations etc., signify disapprobation of the same, in that case all such rules, regulations etc. would be valid. (Sections : XXXI - XXXVII).

The Governor-General and Council, and the Chief Justice and other Judges of the Supreme Court would have full power and authority to act as justices of the peace for the above-stated settlement, and for several settlements and factories subordinate thereto. The Governor-General and Council were also empowered to hold Quarter sessions within the Settlement of Fort William. Again, if the President or the Governor-General or the Council or the Chief Justice or any of the judges of the Supreme Court,
or any other person employed by, or in the service of the company committed offence, crimes etc., the same could be tried and determined in the King's Court of King's Bench. "And whereas the provisions made by former Laws for the hearing and determining in England offences committed in India, have been found ineffectual, by reason of the difficulty of proving in this Kingdom matters done there", it was enacted that in all cases of indictments or informations laid in the King's Bench for offences committed in India, the King's Court would and might award Mandamus requiring the Chief Justice and judges of the Supreme Court to examine witnesses. (Sections : XXXVIII - XL).

It was declared by the Act that if the Chief Justice or any of the judges of the Supreme Court committed any offences against this act, it would be lawful for His Majesty's court of King's Bench to award Mandamus requiring the Governor-General and council at Fort William to examine the witnesses. In all proceedings in the parliament as to offences in India, the Lord Chancellor, or the Speaker of the House of Lords or the Speaker of the House of Commons was empowered to issue warrants to the Governor-General and Council, and to the Chief Justice and other judges of the Supreme Court for the examination of witnesses in India. No proceedings in the Parliament, touching offences in India, would be discontinued by prorogation. Moreover, when the company or any other party would commence any action or suit, in

* The Act : Section - XL.
law or equity against any other person or persons in any of the
King's courts at Westminster, it would be lawful for those courts
to issue mandamus to the Supreme Court in India for the examination
of witnesses. Such examinations being returned duly, would be
allowed and would be deemed good and competent evidence. But
any such depositions returned, would not be allowed or permitted
as evidence in any capital cases, excepting those proceeded
against in the parliament (Sections : XLI - XLV).

The removal of the evils which had their operation in
the constitution of the Company and also the removal of the evils
which operated in India, were the main directions of the policy
behind the Regulating Act. The Government and the Supreme Court
were established, by virtue of this Act, to remove those evils
which had their operation in India. By this Act, the Governor-
General and Council occupied the place of the President-in-Council
and the Select Committee, while the Supreme Court stepped into
the shoes of the Mayor's Court with larger powers and jurisdictions.
According to Firinging, the establishment of the Supreme Court
was an act of reformation rather than of innovation. The policy
behind the Regulating Act was not to establish a new Government
in Bengal, but only to make an improvement upon the existing
administrative system of the company in Bengal. "What the Act
achieved was : (1) A change in the personnel of the Governor's
council by which the doings of the company's servants would
henceforth be controlled by men who would have no personal interest
to serve by cloaking misgovernment in the districts, and who
presumably would be free from the class prejudices of the company's
servants. (2) For a Court, composed of company's servants,
removable by company's servants, it substituted a Court of King's
judges, and professional men of the law.¹⁴

Thus the Regulating Act gave birth to the provisions
relating to the Supreme Court of Judicature in Bengal. Consequently
the charter of 13 Geo.3 Cap. 63 was passed on 26th March, 1774 to
erect a Supreme Court of Judicature at Fort William in Bengal.
For a clear understanding of the powers and jurisdictions of the
Supreme Court, it is necessary to discuss in detail the different
sections¹⁵ of the above charter of 1774.

By virtue of the Act of the parliament, King George
III in the 13th year of his reign declared that, within the
Factory of Fort William at Calcutta in Bengal there would be a
court of Record, to be called the Supreme Court of Judicature at
Fort William in Bengal. The Supreme Court was to consist of a
Chief Justice and three Puine justices (being Baristers in
England or Ireland, of not less than five years standing), to
be appointed from time to time by Letters Patent and under the
Great seal. They were to hold their offices severally or
respectively during the pleasure of the crown. The Chief Justice

¹⁴ Firminger - Fifth Report (Introduction), Vol. I,
Chapter XIII, p.CC/VIII.

and the Puisne Justices were also to be appointed Justices and conservators of the peace and coroners in the provinces of Bengal, Bihar, and Orissa. They would have such authority and jurisdiction as the court of King's Bench had in England. Judgments were to be given and rules were to be framed with the concurrence of the major part of them; and when the court would be equally divided, the Chief Justice or in his absence the senior Judge present was to have a casting vote. The court again would have seal bearing a device and impression of the King's arms. It was declared that all writs, summonses etc. to be used and issued by that court, would run in the name of the crown, would be sealed with the seal of the Supreme Court, and be signed by the proper Officer. (Sections : I – VI).

It was further declared that the Chief Justice and Puisne Justices of the Supreme Court would be entitled to receive salaries so long as they would hold their offices. The salary of the Chief Justice was to be fixed at £ 8,000 a year, and that of each Puisne Justice at £ 6,000 a year. The Chief Justice would enjoy the rank and precedence next after the Governor-General and each of the Puisne Justices, according to priority of nomination, next after the members of the Supreme Council. Elijah Impey would be appointed as the first Chief Justice; and Robert Chambers, Stephen Caesar Le Maistre, and John Hyde Esqrs as the first Puisne Justices of the Supreme Court. The court would nominate three persons resident in Calcutta or its precincts, to the Governor-General and Council; and the Governor-General and
Council were to appoint one of the three persons as the Sheriff for one year only. In case of death of such Sheriff, or of his departure from the Provinces of Bengal, Bihar and Orissa, another person would be appointed as such Sheriff in the same manner for the rest of the year. It would be the duty of the Sheriff to execute all the writs, summonses etc. of the Supreme Court and make return of the same to that court. He was also empowered to receive and detain in prison persons committed by the Court. (Sections 1: VII - IX).

The Supreme Court was also authorised to appoint from time to time, such clerks and ministerial officers as would be found necessary for the administration of justice, and the due execution of the authorities of the Supreme Court. The Court was empowered to admit such and so many Advocates and Attorneys at Law upon record as they would think fit. Such Attorneys and Advocates were to be allowed to plead and act for the Suitors. A table of fees, to be paid to the Sheriff, and other officers by Suitors for all business to be done by them in this Court, would be settled by the Supreme Court and approved by the Governor-General and Council (Sections X - XII).

The charter further declared that the Supreme Court was authorised to hear, examine, try, and determine, all actions and suits which would arise, happen, be brought, or promoted, upon or concerning trespass or injuries, or "debts, and demands, or other interests whatever, or any rights,
titles, or claims to houses, lands, or other things, real or personal, within the provinces; and may hold pleas, real, personal, or mixed, in causes against the company, or against the Mayor and Aldermen of Calcutta or against any other of His Majesty's subjects residing, or who shall have resided within the provinces, or having debts or effects real or personal within the same, or against their representatives; and against any other person who, at the time of action brought, or cause of action accrued, shall be or shall have been, in the service of the company or of the said Mayor and Aldermen, or of any other of His Majesty's subjects; (but they are not to try a suit against any person who was never resident in any of the said provinces, nor against any person resident in Great Britain or Ireland, unless the suit be commenced within two years after the cause of action arose, nor if the sum to be recovered shall exceed 30,000 current rupees). The said Court may also try and determine suits against other inhabitants of India residing in the said provinces, upon contracts in writing between them and any of the King's subjects, where the cause of action shall exceed 500 current rupees, and when such other inhabitant shall have agreed by such contract that in case of any dispute the matter shall be determined in the said court. To commence a suit in the Supreme Court, a person was to file a plaint in writing, containing the cause of action or complaint whereupon this Court would issue

16. The Charter: Section XIII.
a summons to the Sheriff commanding him to summon the defendant who would appear. In case any person summoned as a witness, refused to appear and to be sworn, the Supreme Court was empowered to punish him by fine, imprisonment, or other corporal punishment. (Sec. XIII).

The Charter empowered the Supreme Court to give upon examination into the allegation of the parties, judgment and sentence, according to justice and right. The Court was also empowered to award and issue writ of execution to the Sheriff commanding him to seize and deliver the possession of houses, lands, and other things recovered or to levy any sum of money or costs recovered by seizing and selling houses, lands, debts etc. of the party concerned as would be sufficient to satisfy judgment. The Court might make interlocutory rules and orders, 'as the justice of the proceeding may seem to require'. Again where the cause of action was sworn to exceed 100 current rupees or verified to the satisfaction of the Court to be an enormous personal wrong, the court would have the right to award a capias and hold the party concerned to bail; and in absence of bail, the court might commit to prison so long as there would be no bail. The Court could award a writ of sequestration (if a non inventus be returned to any capias or summons) against debts, lands and other effect of the defendant. If the defendant refused to appear or did not appear within a limited time, the court might give judgment with costs. (Sections : XIV - XV).
The charter stated that in the case of actions or suits against the company, the Court might issue summons to the Governor or President and council in Bengal to appear for the company, "with further power to issue such process against the said company and their estate and effects; as should be necessary to compel the appearance of the said company, and to raise and levy upon their goods, estates, or effects, the debt or damages, together with such costs of suit as should be awarded by the said court, and that in case of any action or suit to be brought by the said company against any other person, it should be lawful for the said Governor, or President and Council, to appear and act for the said company; and in case of judgement given against the said company, and costs awarded, the same should be levied by the said court upon the goods and effects of the said company, as by the said charter may more fully appear. The court was further empowered to appoint an Attorney to act on behalf of the company, on whom the precepts against the company would be served. If the Attorney did not appear for the company, the Court might compel the appearance by issuing writs of sequestration against the Effects and Estates of the Company. When the Governor and Council refused to appoint Attorney, this court could appoint one "After four sequestrations against the company, and no appearance entered, after two years from the service of the Summons, "the court may hear and determine the cause exparte, and give judgement and costs, and cause the same to be satisfied out of the produce of the sequestered

17. Smout and Ryan, op.cit. p.18 (Section 16.1)
effects; and any deficiency therein may be levied by further execution. If judgment passed for the company, the Supreme Court was authorised to award the costs of the suit and the expenses of the sequestration to the company. (Section XVI).

In the case of a suit brought in any one of the provincial courts, exceeding 500 current rupees, upon agreements in writing between inhabitants of India and British subjects and where such inhabitants would have agreed that in case of dispute the matter might be determined by the Supreme Court, and where either party appealed to the Supreme Court, the Court then, on that application, might issue a writ to the other party or parties to surcease the proceeding in the above suit in that provincial court. Under the circumstances, the Supreme Court was to determine the suit. (Section XVII).

The Supreme Court, by this charter, was declared to be a court of Equity as the court of Chancery in England. It was further declared that the Supreme Court would be a court of Oyer and Terminer, and Gaol Delivery for the town of Calcutta, the factory of Fort William, and the limits thereof, and the factories subordinate thereto. It would have the power to make the Grand Inquest of treasons, felonies, murders, forgeries, trespasses etc. committed within that town or factory, the abovementioned limits,

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*1 Section XVI.
*2 Section XIX.
and subordinates. The Court was also to have jurisdiction over all offences committed in Bengal, Bihar, and Orissa, by any subject of the crown or any person in the service of the company, or of other British subjects. The Court was empowered to reprieve or suspend the execution of any capital sentence, in a proper case for mercy, until the King's pleasure could be known. During that period the offender might be detained or delivered upon bail.

(Sections ; XVIII - XX).

The Courts of Requests and Quarter sessions, established at Fort William by the Charter of the 26, Geo.2, and also the Justices, sheriffs, and other Magistrates in those districts, would be subject to the control of the Supreme Court, just as inferior courts were subject to the Court of the King's Bench. The court again would be a court of Ecclesiastical jurisdiction and it would exercise Ecclesiastical jurisdiction throughout the Provinces mentioned earlier over British subjects, as the same was exercised in the diocese of London, 'so far as the circumstances and occasions of the said provinces and people shall admit or require'. The court was to appoint registrars, appuritores etc. as there would be occasion, and also guardians of infants and of insane persons and of their estates. The court would also be a court of Admiralty and this jurisdiction of the court was to extend over Bengal, Bihar and Orissa, and the adjacent territories and islands with full power to determine all cases, civil and maritime, pleas of contracts, debts etc. Moreover the court would have jurisdiction
in crimes, maritime, according to the course of Admiralty in England. (Sections: XXI - XXVII).

In the Admiralty court, all Affidavits and Affirmations would be taken as in the Supreme Court. This jurisdiction of the court was to extend over the King's subjects residing in those provinces, and persons employed by the company directly or indirectly or some of the King's subjects. The king would reserve to himself all fines, ransom, and forfeitures imposed by the court or otherwise incurred. It was declared that any person, aggrieved by any judgment, decree, order, or rule of the Supreme Court, might appeal to the king-in-council. In civil cases, a petition to the court could be lodged by stating the cause or causes of appeal; and in criminal matters, the court was to have the power to allow or deny the appeal. But the king reserved to himself the power to refuse or admit any such appeal, and to reform, or correct any judgment or orders. (Sections: XXVIII - XXXIII).

The charter further declared that the Governor-General and council or the Chief Justice and other Justices of the Supreme Court, were not to be liable to be arrested or imprisoned in any proceeding in the Supreme Court, except in cases of treason or felony. Again the court would not be competent to try and determine any indictment or information against the Governor-General and council, 'for any offence, not being treason or felony' committed in those provinces. It was again declared that a court room would be established for holding the Supreme Court and that the Chief
Justice and other Justices would take the oaths of allegiance.

(Sections : XXXIV - XXXV).

After the proclaiming of the Supreme Court, the Mayor's court at Fort William in Bengal established by the Charter 26, Geo. 2 or the Court of Oyer and Terminer and Gaol Delivery there, would be void. Indictments and other proceedings in suits in those courts, and also the records would be transferred to the Supreme Court. This court was to appoint terms and law days and to proclaim, hold, and adjourn the sessions of Oyer and Terminer, Gaol Delivery, and Admiralty. The court was also empowered to frame rules of practice and make standing orders for the administration of justice in their several jurisdictions and then to transmit the same to the Privy Council for approval.¹ Last of all, by this charter the crown commanded all Governors, commanders, magistrates, and his other officers and subjects throughout the provinces, and their adjacent and dependent islands and territories, to be obedient to the Supreme Court 'in the execution of the several powers, jurisdictions, and authorities hereby erected, created and made'. (Sections : XXXVI - XXXIX).

From the above discussion, it becomes clear that the Supreme Court at Fort William enjoyed more powers and jurisdictions than those exercised by the previous King's Court, the Mayor's Court.

¹ Section - XXXVIII.
As for the laws which the Supreme Court was authorised to administer within its jurisdiction, they can be divided into the following classes. Firstly, the common Law that existed in England in 1726 and remained unchanged despite of the Acts of the Governor-General and council, or of any statute concerning India. Secondly, the statute Law that was enacted from 1726 and extended to India, without being repealed since that year; and also the Statutes extending to India by the Act of the Governor-General and council. Thirdly, the statute Law which existed in England in the year 1726 and which was not changed by any statute particularly extending to India, or by the Acts passed by the Legislative council of India. Fourthly, the Civil Law which was administered in the Ecclesiastical and Admiralty courts of England. Fifthly, the Regulations framed by the Governor-General and council and the Governors in council prior to the passing of 3rd and 4th Will.4 Cap.85, and registered in the Supreme Courts; also the Acts, passed by the Governor-General and Council and made under the 3rd and 4th Will.4 Cap.85. Sixthly, the Hindu Law and usages (in actions) concerning inheritance and succession to rents, lands and goods, and also matters of contract and dealing between two parties where a defendant would be a Hindu. And finally, such Muhammadan Law and usages. Of all these laws stated above which were administered by the Supreme Court, the last three classes of law seemed to be peculiar to the the Indian Court.  

The Supreme Court at Fort William in Bengal was at last opened on Saturday, October 22, in the year 1774.

The need for the establishment of the Supreme Court in Bengal was, as has been stated at the outset of this chapter, felt after the grant of the Diwani in 1765. After this, an avenue was opened before the servants of the company in India for personal profit, rapine, and plunder. The Company’s nefarious policy ultimately led to a deadlock in the revenue and civil administration of the provinces. Under the circumstances the Mayor’s Court proved to be ineffective, as it did not possess adequate powers to check the servants of the company in their career of plunder. The committee of Secrecy (6th May, 1773) in its seventh Report also made comments on the glaring defects of the Mayor’s court in Bengal. So the situation demanded a drastic change in the administration, and required a more effective and powerful judicial instrument to put an end to the anarchy in the provinces. The Regulating Act was passed to settle the question of the Company’s right to the territorial revenues, and also to root out the corruption of the Company’s servants. The Supreme Court was, therefore, erected in Bengal, because it was an institution having wider powers and jurisdictions to solve the problems arising out of the changed situation in the provinces – an institution through which the rights of the crown could be maintained and exercised in India.19

The establishment and maintenance of the Supreme Court in Bengal caused a huge expenditure which can be shown in an Account of the expenses of the Court, for five years, with the average for one year.

In the record there is "An Account of charges incurred since the Establishment, and in the Support and Maintenance, of the Supreme Court of Judicature, fixed and incidental; on account of the prosecution and Defence of Suits instituted by or against the Company, in the said court; Damages sustained by the company, on account of Decrees issued by the Supreme Court, for claims litigated therein; and of Losses incurred by Remissions granted to Zamindars, or Farmers of the Revenue, on account of Losses or Interruptions occasioned by suite instituted against them, their under Renters and Officers." It is revealed from the 'Account of charges' in connection with this court that the total charges incurred from 1774 to 1779 were, current Rupees 34,93,161.14.4 or about £ 349,000. A detailed account of the charges, item by item, during the abovementioned period, signed by the Governor-General and Council and also by W. Larkins, the Accountant General on 3rd March, 1780, has been annexed in the Committee Report of 1781. The above-mentioned total expenditure may, however, be shown under

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20. Report from the Committee, H/C., 1781, p.79.

<table>
<thead>
<tr>
<th>Period</th>
<th>Current Rupees</th>
</tr>
</thead>
<tbody>
<tr>
<td>1774 to 1775</td>
<td>3,19,867</td>
</tr>
<tr>
<td>1775 to 1776</td>
<td>3,90,701</td>
</tr>
<tr>
<td>1776 to 1777</td>
<td>3,95,872</td>
</tr>
<tr>
<td>1777 to 1778</td>
<td>5,41,030</td>
</tr>
<tr>
<td>1778 to 1779</td>
<td>5,69,126</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>22,16,590</strong></td>
</tr>
</tbody>
</table>

Average expense of one year was C.Rs. 4,43,319.

'C R.' means Current Rupees.

21. Ibid., General Appendix, No.40.
the following heads:

First charges incurred since the establishment and in support and maintenance of the Supreme Court, being fixed and incidental till Dec. 31, 1779, were current Rupees 25,76,891,2,3. Second charges incurred on account of the prosecution and defence of Suits instituted by or against the company, the same including the salaries of their advocates and attorneys, were C.Rs. 4,89,216,13,4. Third charges and damages sustained by the company on account of Decrees issued by the Supreme court for claims litigated therein, were C.Rs. 1,26,688,11,7. Fourthly, Losses incurred by remissions granted to the Zamindars on account of losses or interruptions occasioned by Suits instituted against them, their under-tenants, and officers, were C.Rs. 3,00,365,3,2. The first mentioned amount of expenses was paid from the General Department; the second one was paid from the three departments, viz. the General Department, the Revenue Department, and the Commercial Department; and the third amount was paid from the Revenue Department only.22 Evidently, the expenditure involved in the establishment and maintenance of this Court was much more than that in the case of the Mayor’s court, the first English court in Bengal established in 1726.

Just with the establishment of the Supreme Council and the Supreme Court, began two sets of struggle - one between the

22. Revenue Department, Minutes of Consultation, March 9, 1780.
Governor-General and the majority of the Council, and the other between the Supreme Court and the Council. Though we are here mainly concerned with the conflict between the two Supreme Organs, yet it is proper to discuss in brief the nature of the conflict between the Governor-General and the majority members of his council. The four councillors named in the Regulating Act were General clavering, Colonel Monson, Philip Francis, and Richard Barwell. The last mentioned councillor was resident in India and a Company's servant. The other councillors arrived in Calcutta in October, 1774; the judges of the Supreme Court had landed two days before. The six years' struggle ensued between Hastings and the majority of the council which can hardly be paralleled in the history of administration. The councillors immediately began quarrelling with their chief on some petty point of their reception. Hastings found himself outvoted steadily by the majority of the council and unable to use his casting vote for two years. They made severe attacks on the government and policy of their chief, and many of his measures were reversed. Practically Hastings ceased to be the Governor-General from 1774 to 1776. According to Richard Barwell, the Councillors from the beginning had 'a pre-determined, pre-concerted system of opposition' against Hastings.

The British parliament could never expect that Hastings's internal difficulties would be the direct consequences of the Regulating Act. Hastings was the only Governor-General who was subjected to this regulation and under this strain a less resilient or more sensitive man would have broken down. In September 1776, Monson died, but bitter debates on every issue continued. Hastings now regained control in the Council by the exercise of his casting vote, he and Barwell opposing Francis and Clavering. In 1777 the strange event of the Governor-General's conditional resignation took place. "Early in 1777 Hastings's agent in England, misinterpreting ambiguous instructions, reported his offer to resign. Clavering was appointed to succeed him, but Hastings repudiated his agent and was supported by the Supreme Court. The strain of this episode was perhaps too much for Clavering for he died in August of the same year." 24.

To Monson succeeded Wheler who at first generally voted with Francis. On August 30, 1777 Clavering died and with his death Hastings's control over his council was greatly strengthened. In the council then the usual division was Hastings, Barwell and his casting vote against Francis and Wheler. In 1779 Clavering was succeeded by Eyre Coote who though difficult of temper, never fell under Francis's spell. Thus Hastings was still strong enough to exercise his casting vote and make his influence felt. At this time Hastings wrote: "Francis is miserable, and is weak enough.

to declare it in a manner much resembling the impatience of a passionate woman, whose hands are held to prevent her from doing mischief. In 1780 Hastings disabled Francis in a duel and wounded him severely; his great enemy left India later in the same year.

Meanwhile Wheler had been won over by the strong personality of Hastings; he now held mastery and pursued policy almost as he liked. It is during this period that he earned disreputation for his policy towards chief Singh and Baguma of Oudh. So long Francis was there, Hastings had to face acrimonious debates and pass through strain and anxiety. But just after Francis's departure from India, the Governor-General became almost unopposed, uncontrolled, and enjoyed 'something like undisputed supremacy' during the last five years of his administration. The main issues on which the unfortunate dissension took place within the Supreme Council were: firstly, the Rohilla War and the policy to be pursued for its conclusion; secondly, the Treaty of Faizabad; and lastly, Nandakumar's charges against the Governor-General. The last issue, viz. the case of Nandakumar (1775) was the climax of the whole dissension.

The next set of conflict, with which we are chiefly concerned and which forms the main body of the thesis, was the conflict between the Supreme Court and the Supreme Council. Soon the Supreme Court proved to be a great menace to the security of the Government in Bengal; it affected to a great extent the civil, revenue and

criminal departments of the country. The court exercised powers which had been destructive and encroached upon the rights and jurisdictions of other institutions, especially of the Supreme Council. Hence a conflict ensued, with the arrival of the English judges in Bengal, between the Supreme Executive and the Supreme judiciary - one deriving its authority from the Company and the other from the Crown. This struggle between these two institutions continued, it will be observed, for a long period of seven years; and during this period (1774 - 81), a series of cases of different types arose. In the Kasijora affair the conflict reached its zenith, after which the British Parliament could not keep mum. In course of time, repeated complaints to the Court of Directors and then to the Parliament against the excesses made by the court, made the Parliamentary intervention imminent and inevitable. Thus its culmination, as it will be seen, was the passing of the Parliamentary Act of 1781 (Stat.13 Geo.3 Cap.70) which curtailed considerably the powers and jurisdictions of the Supreme Court and regulated it anew.

The Regulating Act by the erection of the institution of the Supreme Court attempted to strengthen the judiciary in Bengal. The malpractices of the Company's servants in India were prohibited by Sections 23, 24, 26 and 27 of this Act. It has been observed earlier that the powers of the Supreme Council were defined by Section-7 of the Act; while the Act by its Section-13 defined the powers of the Supreme Court and its jurisdictions.
by Sections-14 and 16. But within a very short time the glaring defects of the Act became evident. Some later judges of the Supreme Court criticised it by saying "That the Legislature had passed it without fully investigating what it was that they were legislating about, and that if the Act did not say more than was meant; it at least said more than was well understood" 26. The languages of the Act proved to be vague and led to different interpretations. The drafters of the Act did not see that they were establishing two independent and rival powers in Bengal - the Supreme Court and the supreme Council, powers and jurisdictions of which not being clearly defined. J.F. Stephen was of opinion that the drafters of the Act did not wish 'to face the problem with which they had to deal, and to grapple with its real difficulties'. According to him, they intended that the King should act as the real sovereign in the Bengal presidency, but they did not wish to declare him to be so. Moreover, the authors of the Act did not intend to interfere with the Mughal Emperor or with the Company 'in express terms'. Thus arose the vagueness and obscurity of the languages of the Act which left, practically speaking, the relation between the Supreme Court and the Council undefined and undemarcated 27.

It appears from the analysis of the Act and the Charter that the Supreme Court had jurisdictions only over three

classes of persons. In the first place, British subjects residing in the kingdom or in the provinces of Bengal, Bihar and Orissa under the protection of the Company; in the second place, persons employed by the Company, or directly or indirectly in the service of the Company, or any of His Majesty's subjects. And lastly, inhabitants of India, entering into contracts with any of His Majesty's subjects. The jurisdiction of the Court was to be first, over all persons whatsoever during their residence in any British territory, possession, or factory within Bengal, Bihar or Orissa; Secondly, over all natural-born subjects or others having indefeasibly the character of subjects of the British crown; and over persons in their service within Bengal, Bihar or Orissa, whether the place in which they might be were a British territory, possession, or factory, or a place belonging to some Indian prince, but under the protection of the Company. The intention was to have secured to the crown a supremacy in the whole administration of justice, but the provisions made were inadequate to the attainment of the object, and have been defeated.

According to the Act, the whole civil and military Government of the Presidency of Bengal were vested in the hands of the Supreme Council. The council were also entrusted with the

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1 The Act : Section XIV.
2 The Act : Section XVI

duty of ordering, management and government of all the territorial acquisitions and revenues in the provinces of Bengal, Bihar and Orissa. The same Act, on the other hand, by its Section 14 stated that the jurisdictions of the Supreme Court were to extend to all British subjects residing in those three provinces, under the protection of the company. The Court was also empowered to try and hear all complaints for crimes, offences, oppressions etc. against 'His majesty's subjects' and also against persons 'employed', or 'directly or indirectly in the service of the company'. Moreover, apparently it seems that Section 4 of the charter gave the court superintendence over the whole administration of justice in Bengal. The Court so far as its criminal jurisdiction was concerned, had the authority of commissioners of Dyer, Termini and Gaol Delivery for the town of Calcutta, the factory of Fort William and the subordinate factories.

Thus the important provisions of both the Act and the charter were confusing, since these could be defined and interpreted in different ways. The point was whether the ordering, management etc. vested in the Governor-General and Council were exempted from the Court's jurisdiction, or whether the revenue officers acting under the orders of the Supreme Council were subject to the jurisdiction of the Court. But it is clear that the Supreme Court was not given an unlimited jurisdiction through

*1 The Act : Section - VII
*2 The Charter : Section XIX
out the provinces; because had it been so, there would not have been in the Act and the Charter repeated references to 'Fort William', 'Factories Subordinate thereto', 'British Subjects' or persons 'directly or indirectly in the service of the company'. Moreover, if the intention of the Parliament was to transfer the jurisdiction of the company as the Diwan of the provinces to the Supreme Court or to grant this court a control over the Provincial councils and the Diwani Courts, there would have certainly been clear and specific provisions to that effect either in the Act or the Charter. However, both the Act and the Charter failed to draw a line to mark the boundary between these two Supreme Organs and as a result of this, a series of encroachments and disputes took place which threatened and weakened the Government.

The Supreme Council again and again held the view that since the administration of the Company's revenue had been exclusively vested in the hands of the council, any attempt on the part of the Supreme Court to poke its nose into revenue affairs was to be illegal. To this, the view of the Chief Justice Impey was: "The Court do disavow and always have disavowed, and every interference in the ordering, the managing of the revenue; they admit it solely and exclusively vested in the Governor and Council, but they hold they should be guilty of breach of trust, if they refused to take cognizance of the violence and oppressions

29. Report from the Committee, H/C., 1781. (General Appendix No.3 - Letter of the Court of Directors to Lord Weymouth).
made use of in the Collections" 30; and the judges stoutly defended the right of the court to deal with the suits against the revenue officers, for, His Majesty's court (Supreme Court) was established to set in order the Company's revenue administration by putting an end to the irregularity and oppressions of the Officers in the revenue collections.

On the issue of the dispute between the Supreme Court and the Supreme Council, J.F. Stephen defended the actions of the Court. But it is observed that he approached the issue 'primarily from the strictly legal and technical standpoint'. It is to be noted in this connection that much of the anomalies and ambiguities in the Act and the charter could be removed, if the English judges would have been compromising and co-operative. The Chief Justice Impey himself was one of the original drafters of the Charter, and so he knew the real intention of the Charter. Secondly, the Supreme Court could easily prevent the abuses by framing rules of practice, since the same was empowered by the Charter to frame rules of practice and make standing orders for the administration of justice. 1

Moreover, the Supreme Council in a representation (bearing dt. May 16, 1775) to the Supreme Court expressed their

30. Ibid, General Appendix No.3, Enclosure No. 28.

*1 The Charter : Section XXXVIII.
desire to the effect that the powers and jurisdictions of the Court should be clearly determined. They also desired to know what persons were amenable and what persons were not to the jurisdiction of the Court. But Impey declined to give any satisfactory answer to their representation by saying that they had no authority to make any particular description of the powers of the Court, other than was given in the charter. The Council in reply again urged their constant desire to have the jurisdiction of the Court clearly defined, because they had repeatedly observed the Court to issue Writs and Summons indiscriminately against the Zamindars, farmers and other Natives. This time the Chief Justice, being thus pressed, altogether evaded any further discussion on that issue, and refused to receive the letter of the Council on the plea that it was not addressed to all the judges collectively, though it was in answer to a letter from himself alone. The Chief Justice deliberately misapplied the constructions of the Act and the Charter, intimidated the judges and Officers of the Diwani and other Courts and ignored the proceedings. Thus he "did usurp to himself a large and unjustifiable share of power over causes, in which he did confess himself to have no jurisdiction, either originally or by appeal, and the due authority of the Company's Government was thereby much disgraced and weakened, and great interruption was given to the collection of the revenue". The dishonest persons and

defaults were encouraged by such acts of the Court and with its help they unnecessarily delayed the payment of their public debts.

That the English Court went beyond its powers and jurisdictions, and made illegal interferences with the administration of the country is evident from the fact that the British parliament, after careful examinations of the whole affair, passed the Act of 1781. The Act was passed to make an improvement upon the defective Regulating Act, to limit the powers and jurisdictions of the Supreme Court, and to strengthen the hands of the Supreme Council.

Colonel Monson, in the case of Kamaluddin Ali, opined regarding the interference of this Court in the revenue affairs by saying: "I do therefore, on behalf of the Hon'ble Company, and in support of the powers vested in me by the authority of the Parliament, and in vindication of my conduct on this occasion, protest against the acts of the judges, as irregular, illegal, and subversive of the established and constitutional modes of collecting the rents and revenues of those provinces, and tending to introduce anarchy and confusion into the civil government, and as pregnant with the most fatal consequence to the Interest and Welfare of the Company"32. The Provincial Council of Revenue at Calcutta also expressed their grave concern about this Court's interference with their department. They

32. Revenue Department, Minutes of Considation, September 13, 1775.
experienced difficulties in the transaction of the business of their department and wrote to Warren Hastings: "These Difficulties chiefly arise from our situation within the Town of Calcutta, where the Jurisdiction of the Supreme Court of Judicature operating in its whole force and extent against those persons who are at the same time objects of our authority, not only lessens the Efficiency of our measures, but prevents our acting with that firmness and Decision so necessary to ensure the success of the objects entrusted to our management."  

The judges of the court, therefore, took advantage of the vague and indistinct languages of the Act and the charter, and attempted to extend the Court's jurisdiction to such an extent as it was not the intention of the Act of Parliament. Macaulay remarked: "English law, transplanted to that country, has all the vices from which we suffer here; it has them all in a far higher degree; and it has other vices, compared with which the worst vices from which we suffer are trifles." He stated that the arrest on mesne process was frequent; Writs of sequestration were issued by the Court whimsically and by its orders the sacred apartments of the native women were often polluted by the Englishmen.

33. Revenue Department, Ibid, Fort William, April 13, 1780.

With respect to the Zamindars, the Provincial Council of
Revenue at Calcutta wrote to the Governor-General, "We are also
under peculiar Embarrassments; for whatever Necessity there may
be for their appearance before us, yet to compel them to come to
Calcutta would be a measure replete with Danger to the Company's
Interests; as it would bring them within the immediate circle
of the Court's Jurisdiction". It is observed that with the
increase of the usurped control of the Court, the powers of the
Native courts began to decline and the Adalat of Calcutta ceased to
act. The Faujdars, Kazis, Muftis and other executive officers in
different places refused to exercise their functions for the
Court's attempt to exercise unlimited powers and jurisdictions.
The Supreme council had also to face the same difficulty in
performing their duties. On 21st November, 1775, General clavering,
Colonel Monson and Mr. Francis in a joint-minute wrote to the
Court of Directors: "If we attempt to enforce our demands by
confinement, a writ of Habeas Corpus immediately issues. The
Judges enter into the merits of the cause, declare our proceedings
illegal, discharge the prisoner and threaten our officers with
Fine and Imprisonment, if they presume to molest him."35

Thus the situation came to such a pass that this quickly

35. Revenue Department, Minutes of Consultation, April 13, 1780.
36. Revenue Department, Original Consultation, January 5,
1776, No. 71.
drew the attention of the Court of Directors. In November, 1777, the Court of Directors sent a letter to Lord Weymouth, Secretary of State for the Southern Department. In this letter complaints were made under four heads against the excesses made by the Supreme Court. They complained that the Court extended its jurisdiction to persons whom it was not the intention of either the king or the Parliament to submit it to its jurisdiction. The Court issued writs against many Zamindars and farmers into all parts of the provinces at the suit of other Natives in unjust and irregular ways. Secondly, the Court interfered with such matters, as it was the clear intention of the King and the Parliament to leave to other Courts. These were practically speaking, the revenue matters, the ordering and managing of which were solely vested in the Supreme Council. It is to be noted that this revenue jurisdiction was the principal bone of contention between the Court and the Council. Thirdly, the Court on the pretext of requiring evidence, claimed a right of demanding evidence and of inspecting secret records of the Government; and this was one of the illegal rights that the court attempted to exercise.

The Directors, under the fourth head of complaint, represented that the criminal law of England, which the Court enforced over the Natives of Bengal, were contrary and repugnant to the laws by which they had been governed previously. They referred to the case of Maharaja Nanda Kumar who was tried and

37. Mill James, History of British India, Vol.IV, pp. 321-322
ultimately executed for the offence which was not capital by
the laws of the Natives. The general principle that the Court
laid down in their proceeding against Nandakumar was that the
whole criminal law existing in England was 'in force, and binding,
upon all the inhabitants within the circle of their jurisdiction
in Bengal'. Nanda Kumar was executed under the Act of Geo.II for
a forgery committed several years before the establishment of the
Supreme Court. 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. Moreover, "If it were legal to try, to convict,
and execute Nandcomar for Forgery, on the statute of George
the Second, it must, as we conceive, be equally legal to try,
convict, and to punish the Subahdar of Bengal, and all his Court,
for Bigamy, upon the statute of James the First".38

It was, therefore, certain that the jurisdictions which
the English judges were bent on exercising and actually exercised
throughout the provinces 'must inevitably tend to render the
collection of the Company's Revenues impracticable; to abridge
the power of the Supreme Council and subordinate Factories, and
thereby to prevent the carrying of any useful plan into Execution
for settling the Country, and for establishing the government
thereof on a solid and permanent Foundation'.39

38. Report from the Committee, H/C., 1781 (General Appendix No.3.)
39. Ibid. (General Appendix No.3 - Letter of the Court of
Directors to Lord Weymouth).
Indeed, a reign of anarchy and terror began with the establishment of this English Court in Bengal. Almost all classes of men, whether the Natives or the English, were in despair and tried to make an articulate protest against the fearful oppression of the Court. This tribunal consisted of Lawyers who were not at all familiar with the customs and usages of the Natives over whom they exercised unlimited jurisdictions; and the law they administered was English law which was also peculiar to the Natives and repugnant to their usages and legal system. Under the circumstances "Many natives, highly considered among their countrymen, were seized, hurried up to Calcutta, flung into the common gaol, not for any crime even imputed, not for any debt that had been proved, but merely as a precaution till their cause should come to trial".40

Whatever might have been their points of defence, the judges of this Court undoubtedly made a wanton use of their powers, as a result of which the whole Bengal Government was paralysed; and hence their conduct got no parallel in the whole British Indian history. The criminal jurisdiction of the Court was confined only to the town of Calcutta, Fort William and its subordinate factories; but the judges illegally served writs even upon the responsible officers of the Nizamat which was a separate and independent institution. The activities of the Court created despotism and tyranny throughout the provinces, before which other earlier oppressions in those places paled into insignificance. This judicial

tribunal was established, as has been pointed out earlier, to act as the saviour of the Natives from the oppressions of the Company's servants; but unfortunately it itself became an instrument of coercion and oppression to those Natives. However at last, the Governor-General and Council suggesting a revision of the jurisdiction of the Supreme Court, wrote in 1780 to the Court of Directors: "A jurisdiction, which, if admitted, we do not hesitate to say were in its Exercise as subversive of the peace of these provinces, and in that degree injurious to your interests, as it appears to be preposterous in its principle, unnecessary to the End for which we conceive the Judicature was Instituted, and unauthorised by the statute that creates it." 41

41. Revenue Department, General letters to the Court of Directors, Fort William, January 25, 1780.