UNIVERSAL
LIBRARY

OU_148402

UNIVERSAL
LIBRARY

OSMANIA UNIVERSITY LIBRARY

Call No 340.954/F27F Accession No G5579.

Author Fawcett. Sir. Charles.

Title First century of British justice in India.

This book should be returned on or before the date last marked below.

THE FIRST CENTURY OF BRITISH JUSTICE IN INDIA

THE FIRST CENTURY OF BRITISH JUSTICE IN INDIA

AN ACCOUNT OF THE COURT OF JUDICATURE AT BOMBAY, ESTABLISHED IN 1672, AND OF OTHER COURTS OF JUSTICE IN MADRAS, CALCUTTA AND BOMBAY, FROM 1661 TO THE LATTER PART OF THE EIGHTEENTH CENTURY

BY

SIR CHARLES FAWCETT

Indian Civil Service (Retired), formerly a Judge in the High Court of Judicature, Bombay

PUBLISHED UNDER THE PATRONAGE OF HIS MAJESTY'S SECRETARY OF STATE FOR INDIA IN COUNCIL

OXFORD

AT THE CLARENDON PRESS

1934

OXFORD
UNIVERSITY PRESS
AMEN HOUSE, E.C. 4
London Edinburgh Glasgow
New York Toronto Melbourne
Capetown Bombay Calcutta
Madras Shanghai
HUMPHREY MILFORD
PUBLISHER TO THE
UNIVERSITY

PRINTED IN GREAT BRITAIN

PREFACE

THE history of the Courts of Law in British India may be roughly divided into three stages. The first comprises the period from Charles II's Charter of 1661—the earliest one to provide for the exercise of judicial powers in the English settlements—to the grant of the *Diwani* of Bengal to the Company in 1765. This and other territorial expansions were the main cause of plans for improving the administration of justice and of the parliamentary attention to the affairs of the Company that culminated in the Regulating Act of 1773. The latter was the 'writing on the wall' before the extinction of the system, deliberately adopted by the Company, of manning its Courts of Justice almost entirely by covenanted servants, subject to strict administrative control. The second stage brought the professional lawyer on the scene and is mainly associated with the establishment of the Recorders' and Supreme Courts in the three Presidency towns. It lasted till 1861, when the Queen's Courts and the Company's *Sadr* (chief) Courts were amalgamated by the High Courts Act of that year, thus inaugurating the existing system. As indicated by its title, this publication deals with the first stage of about a century.

Its main justification is the dearth of information available on the subject. Existing authorities on the history of the Indian Courts mostly start with the second stage, and if they notice the first, confine their attention to the Charters establishing the Mayor's Courts. Thus Cowell's *History of the Constitution of the Courts in India* dismisses the subject with the remark that, previous to 1781, the history of Courts is mingled with the history of the executive, and conveys the impression that no effective action was taken to establish Courts of Law prior to 1726. Morley's *Digest* and *Administration of Justice in British India* contain no information as to any Courts before the same year. Kaye's *History of the Administration of the East India Company* has a little information about them, but is misleading. Shaw's *Charters* and Hunter's *History of British India* mention the temporary Courts set up at Bombay in 1670, but make no reference to the more important Court of Judicature established in 1672. Malabari's *Bombay in the Making*, Edwardes's *Gazetteer of the City of Bombay*, and Khan's *Anglo-Portuguese Negotiations* are exceptions in the last-mentioned respect, but the information they give about the Court is scanty and

defective. This is only natural in view of the small amount of published material on the subject. Considerable research has been necessary to obtain the information required for the full account of the Bombay Court of Judicature that is given here.

I do not think I need offer any apology for making this my main topic. The records relating to that Court are much fuller than those for any other Court of the same period. It also had the distinction of being established by special authority under the Bombay Charter of 1668. The 'Laws' made by the Company for its constitution and guidance form the first civil and criminal code enacted for any part of British India. I am glad to have rescued them from oblivion.

The book, therefore, will, I trust, open up a new vista of a part of the judicial history of the Indian Empire that has hitherto been neglected, or at any rate not investigated to a full extent, and reveal points of real interest. It will probably come as a surprise to most people that trial by jury, for both civil and criminal cases, began in Bombay and Madras as early as 1672 and 1678 respectively, and that full reports of trials before Gerald Aungier in 1670 and Streynsham Master in 1678 are extant, as well as of the speech that Aungier made at the opening of the Bombay Court of Judicature in 1672.

It will also, I hope, help to prevent such a travesty of the truth as the following mis-statement contained in a book much read by Indian students: 'it [the Company] applied for Charters, for Courts of Justice, and got them --with subsequent horrors related by Macaulay'. It is scarcely necessary to point out that the 'horrors' emphasized in his essay on Warren Hastings arose out of proceedings taken by the Supreme Court at Calcutta, which was established by Parliament in opposition to the wishes of the Company, and had nothing to do with the previous Courts, presided over by merchant-Judges,[1] who at any rate had (what the Judges of the Supreme Court lacked) a good knowledge of native customs and ideas, while neither they nor the Company desired to force undiluted English law on the Indian residents in the settlements.

Footnotes are anathema to many readers, but cannot well be avoided in a work of this kind. I have confined them to explanations,

[1] It would be a misnomer to call them Civilian Judges, though they were the prototypes of the present-day Judges of that ilk. In the seventeenth and eighteenth centuries 'Civilian' meant a person who was learned in Civil (i.e. Roman) law.

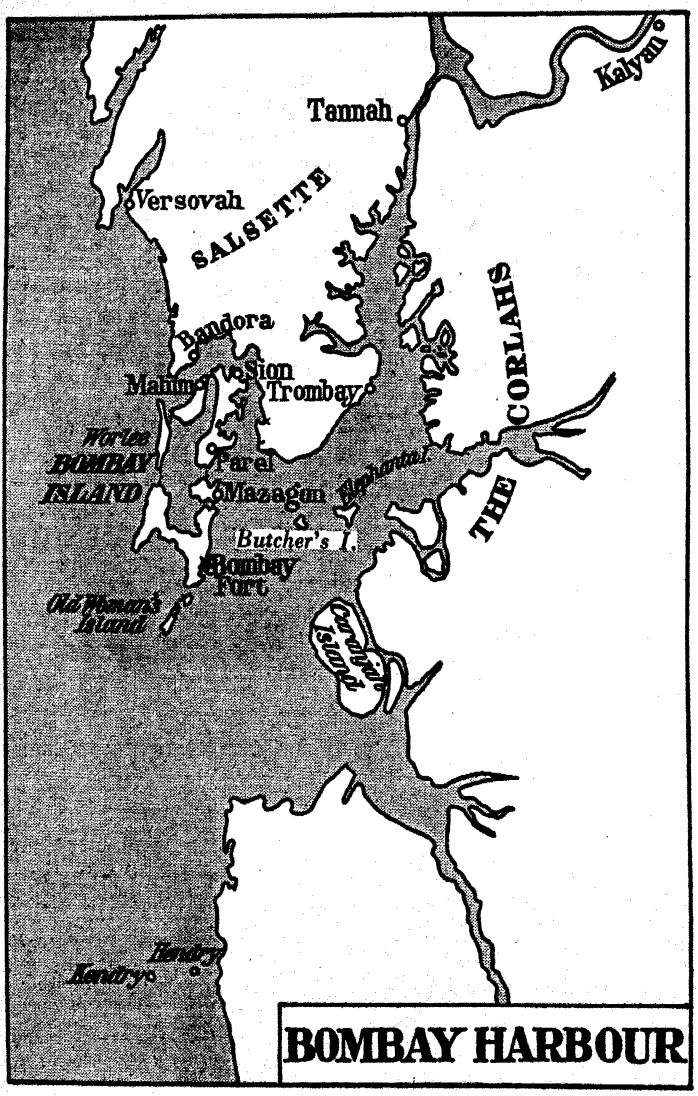
or information, other than mere references to authorities. The latter are placed together in an Appendix.

In giving quotations, I have generally retained the capital letters that appear in the original passages and that serve to emphasize particular words, but have modernized the punctuation in cases where this helps to make the sense clear. For the convenience of ordinary readers I have also converted *Old Style* dates, under which a new year began on the 25th March, to the present chronology.

In conclusion I must express my deep acknowledgements to all those who have helped me in writing this book—in particular Sir William Foster, C.I.E., whom I am proud to succeed as Editor of the series *The English Factories in India* and whose encouragement has been a great asset to me; the late Mr. J. E. G. Montmorency, Quain Professor of Comparative Law in the University of London, who suggested some of my notes on legal points; Miss L. M. Anstey and Miss E. B. Sainsbury at the India Office, who have always been ready to give me the benefit of their great knowledge of the early records of the English in India; and Mr. W. T. Ottewill, M.B.E., Superintendent of Records, India Office, who has facilitated my access to the records. I also owe a great debt to Mr. Phiroze B. M. Malabari, Official Assignee in the Bombay High Court, whose interesting book, *Bombay in the Making*, first instilled into me a desire to learn more about the early history of Bombay and aided me in my research. Others, whose previous labours in the same field have been of special assistance, are Dr. Shafaat Ahmad Khan, the late Mr. S. M. Edwardes, C.I.E., and the late Mr. (afterwards Sir) James Campbell. Finally, I tender my grateful thanks to the Secretary of State for India in Council for his patronage and the grant of a subsidy towards the cost of publication.

My friend and former brother-Judge, the Rt. Hon. Sir Dinshah Mulla, P.C., C.I.E., not only gave me valuable advice on the scope of this book, but also had very kindly agreed to write a Foreword to it. My sorrow at his recent death is enhanced by the consequent loss of an addition that would have derived special weight from his eminence as a Jurist and success as an Author in India.

May 20th, 1934. C. F.


Kalyan
Tannah
Versovah
SALSETTE
Bandora
Sion
Mahim
Trombay
THE CORLAHS
Worlee
BOMBAY
ISLAND
Parel
Mazagon
Elephanta
Butcher's I.
Bombay
Fort
Old Woman's
Island
Caranjah
Island
Henery
Kenery
BOMBAY HARBOUR

CONTENTS

FULLER TITLES OF PRINCIPAL WORKS AND RECORDS CITED xi

GLOSSARY xiv

INTRODUCTION xv

A. BOMBAY

I. JUDICIAL ARRANGEMENTS, 1665–8 1

II. SIR GEORGE OXENDEN'S ADMINISTRATION, 1668–9 8

III. THE COMPANY'S LAWS 13

APPENDIX 17

IV. AUNGIER'S VISIT, 1670 29

V. THE ADMINISTRATION OF JUSTICE, 1670–2 . . 39

VI. THE ESTABLISHMENT OF THE COURT OF JUDICATURE. 48

VII. THE WORKING OF THE COURT OF JUDICATURE . 57

VIII. THE JUDGES AND HISTORY OF THE COURT OF JUDICATURE, 1672–83 83

IX. THE COURTS OF JUDICATURE AND ADMIRALTY, 1684–90 121

X. THE ADMINISTRATION OF JUSTICE, 1690–1718 . 157

XI. THE COURT OF JUDICATURE, 1718–28. . . . 178

B. GENERAL

XII. THE COURTS IN MADRAS AND CALCUTTA . . 201

XIII. THE MAYOR'S COURTS IN THE PRESIDENCY TOWNS 214

REFERENCES TO AUTHORITIES 229

INDEX 255

MAPS: Bombay Harbour. viii

West Coast of India xx

FULLER TITLES OF PRINCIPAL WORKS AND RECORDS CITED

I. Books or Journals

ANDERSON, REV. PHILIP. *The English in Western India.* 2nd ed. London, 1856.

BOMBAY BRANCH OF THE ROYAL ASIATIC SOCIETY *Journals* (abbreviated to JBBRAS).

BRUCE, JOHN. *Annals of the Honorable East-India Company, 1600–1708.* London 1810.

CAMPBELL, JAMES M., *Materials towards a Statistical Account of the Town and Island of Bombay*: vol. xxvi of the *Bombay Gazetteer.* Three vols. Bombay, 1893–4.

CRUMP, HELEN J. *Colonial Admiralty Jurisdiction in the Seventeenth Century.* Imperial Studies, No. 5. London, 1931.

DA CUNHA, J. G. *The Origin of Bombay.* Journal of the Bombay branch of the Royal Asiatic Society, extra number, Bombay, 1900.

DODWELL, HENRY. *The Nabobs of Madras.* London, 1926.

DOUGLAS, JAMES. *Bombay and Western India.* London, 1893.

EDWARDES, S. M. *The Rise of Bombay*: A Retrospect. Bombay, 1902.

EDWARDES, S. M. *The Gazetteer of Bombay City and Island.* (Abbreviated to *Bom. City Gazetteer or Gaz.*) Three vols. Bombay, 1909–10.

FORREST, SIR GEORGE. *Selections from State Papers in the Bombay Secretariat. Home Series.* Two vols. Bombay, 1887.

FOSTER, SIR WILLIAM. *The English Factories in India, 1618–69.* (Abbreviated to *E.F.*) Oxford, 1906–27.

FRYER, JOHN. *A New Account of East India and Persia, being Nine Years' Travels, 1672–81.* London, 1698. Also edited by Sir William Crooke. Three vols. Hakluyt Society, 1909, 1912, 1915.

HAMILTON, CAPTAIN ALEXANDER. *A New Account of the East Indies.* Edinburgh, 1727. Also edited by Sir William Foster for the Argonaut Press. Two vols., 1930.

HEDGES, WILLIAM. *The diary of.* Edited by Colonel H. Yule. Three vols. Hakluyt Society, 1887–9.

HUNTER, SIR WILLIAM. *History of British India.* Two vols. London, 1899, 1900.

ILBERT, SIR COURTENAY. *The Government of India.* Oxford, 1898.

KAYE, J. W. *History of the Administration of the East India Company.* London, 1853.

KHAN, SHAFAAT AHMAD. *Anglo-Portuguese Negotiations relating to Bombay, 1660–77.* (Abbreviated to Khan.) Oxford, 1922.

LONG, REV. J. *Selections from the Unpublished Records of the Bengal Government, 1748–67.* Two vols. Calcutta, 1869.

LOVE, HENRY DAVISON. *Vestiges of Old Madras, 1640–1800, traced from the East India Company's Records.* Four vols. (Indian Records Series.) London, 1911–13.

MALABARI, PHIROZE B. M. *Bombay in the Making.* (Abbreviated to Malabari.) London, 1910.

OVINGTON, REV. J. *A Voyage to Surat in the year 1689.* London, 1696. Also edited by H. G. RAWLINSON. Oxford, 1929.

RAWLINSON, H. G. *British Beginnings in Western India, 1579–1657.* Oxford, 1920.

SAINSBURY, ETHEL B. *A Calendar of the Court Minutes, &c., of the East India Company, 1635–73.* (Abbreviated to *Court Minutes.*) Oxford, 1907–32.

SHEPPARD, SAMUEL T. *Bombay.* Bombay, 1932.

STRACHEY, RAY AND OLIVER. *Keigwin's Rebellion (1683–4): An Episode in the History of Bombay.* (Abbreviated to *K.R.*) Oxford Historical and Literary Studies, vol. vi. 1916.

WHEELER, J. TALBOYS. *Madras in the Olden Time; Being a History of the Presidency from the First Foundation to the Government of Thomas Pitt, Grandfather of the Earl of Chatham, 1639–1702.* Madras, 1861.

WILSON, C. R. *Early Annals of the English in Bengal.* Three vols. Calcutta, 1895–1917.

WRIGHT, ARNOLD. *Annesley of Surat and his Times: The True Story of the Mythical Wesley Fortune.* London, 1918.

YULE, COLONEL H., AND BURNELL, A. C. *Hobson-Jobson: A Glossary of Colloquial Anglo-Indian Words and Phrases.* Edited by Sir William Crooke. London, 1903.

II. RECORDS

(a) *India Office, Whitehall, London.*

The following abbreviations are used:

Bom.	Bombay.
B.P.P.	Bombay Public Proceedings.
Consltn.	Consultation.
Court Books.	The Books in the General Records containing the Minutes of the Court of Committees.
F.R.	Factory Records.
L.B.	Letter Books in the Factory Records.
Misc.	Miscellaneous. *Home Misc.* refers to the Home Miscellaneous series in the General Records.

O.C. Original Correspondence from India in the Factory Records. In citing these the No. of a document is given, not the volume in which it is contained.

Progs. Proceedings.

(b) *Public Record Office, Chancery Lane, London.*

P.C. Privy Council.

P.R.O. Public Record Office.

C.O. 77 denotes the East Indian portion of the Colonial Office Records.

GLOSSARY

The figures in brackets show the page on which an explanatory note relating to a word appears.

aldea, a village.
arrack, spirit distilled from the coco-palm (118).
Banian, a Hindu trader.
batty, paddy, rice.
Bhandari, toddy-drawer (52).
buzzar (*bazar*), market, streets of shops.
bunder, quay, landing-place.
Codgi or *Codgee* (*Kazi*), Mohammedan high-priest.
Coffry or *Cofferee*, a negro slave (75).
Cooli (*Koli*), fisherman, labourer.
Collumbee (*Kunbi*), cultivator.
Gentu or *Jentu*, Hindu (52).
grab, a big two-masted vessel.
Jogue (*Jogi*), religious mendicant.
laree (*lari*), a Persian coin worth about 6*d*.
lascar, native sailor.
mora (*muda*), a measure of rice.
Moorman, Mohammedan (52).
oart or *orta*, coco-nut garden (135).
pagoda, a gold coin worth about three rupees.
palkhi, palanquin.
parah (*phara*), a measure of grain.
Parbhu, a caste of Hindus.
peon, orderly, messenger.
pention (*pension*), the fixed rental payable under Aungier's Convention.
povo, people, parishioners.
punch-house, inn, tavern.
sepoy, native soldier.
Sinay (*Shenvi*), a caste of Brahmans.
shibar, coasting vessel (110).
xeraphin or *zerafin* (abbreviated to X.), a Portuguese coin worth about 1*s*. 6*d*.

INTRODUCTION

THIS account of British Justice in India during the seventeenth and eighteenth centuries naturally assumes that the reader has some knowledge of the previous and contemporaneous history of the East India Company, as well as of its main settlements—Surat, Bombay, Madras, and Calcutta. Such knowledge is, however, very far from universal: I have, for instance, met persons of education who imagined that the Company started in the time of Clive. I accordingly give a brief outline of their early history, which, though very inadequate, should assist readers who know nothing about it, or whose memory of it needs refreshing. For further information reference should be made to Sir William Hunter's *History of British India*, or some other appropriate authority mentioned in the list at pp. xi and xii.

The Portuguese was the first European nation to acquire territory in India. On 20th May 1498 Vasco da Gama anchored off Calicut, after a voyage round the Cape of Good Hope. In February 1509 a Portuguese fleet defeated the combined navies of Egypt and the Indian coast off Diu, and in the following year Albuquerque captured Goa. In 1534 the Portuguese acquired Bassein and its dependencies Thana, Bandra, and Bombay, by cession from the King of Gujarat, who desired their aid against the Mughal Emperor. But by the end of the sixteenth century, when the English appeared upon the scene, their power had begun to decline.

The first Charter of the London East India Company was granted by Queen Elizabeth on 31st December 1600. Its first expeditions were, however, confined to the Eastern Archipelago, and it was not till 1608 that a vessel reached the Coast of Gujarat, bringing Captain Hawkins with a letter from James I to the Emperor Jehangir. Though he succeeded in gaining the Emperor's favour, his mission to obtain permission for the Company to trade in India eventually failed; but in 1609 its factors managed to get a precarious footing at Surat. The real foundation of the factory there dates from 1612, when the gallant victory of Captain Thomas Best, with only two ships, over a Portuguese fleet of four galleons and some twenty-six frigates resulted in an Imperial *farman* or decree, granting permission to the English to trade there on payment of a moderate customs duty.

The Factory, however, inevitably suffered from the drawbacks

associated with subordination to the Governor and other Mughal officials; and in 1652 the Surat Council was so exasperated by their treatment that they seriously thought of moving down the coast, and urged the purchase of Bombay from the Portuguese. This proposal naturally came to nothing; and the cession of the Island by Alphonso VI in 1661, as part of the royal dowry of his sister on her marriage to Charles II, was mainly due to the latter's promise to help him against the Dutch.

A squadron of the Royal Navy under the command of the third Earl of Marlborough was accordingly sent out in 1662, conveying Sir Abraham Shipman, whom the King had commissioned to take over the Island as its first Governor, and four newly raised companies of infantry to garrison it. It reached Bombay in September 1662, but the Viceroy of Goa refused to hand over the Island to Shipman, on the ground that his authorization was not in proper form. As he was not allowed to land at Surat, for fear of giving offence to the Mughal authorities, he was obliged to settle with his troops on the unhealthy and uninhabited island of Anjidiv, 12 leagues to the south of Goa.

By the time the objection was removed, Shipman and most of the troops had died, and it was to his Secretary, Humphrey Cooke, and some 100 survivors of the four companies that the Island was handed over on 18th February 1665. On the 5th November 1666 Cooke was superseded by Sir Gervase Lucas, who had been sent out from England. Lucas died in May 1667 and was succeeded by Henry Gary, formerly a factor in the Company's service, whom he had appointed Deputy Governor of Bombay.

Charles II, finding that the Island made heavy demands on his purse, was glad to transfer it to the East India Company at a quit-rent of £10 a year on 27th March 1668. It was accordingly handed over on 23rd September 1668 by Gary to Commissioners sent by Sir George Oxenden, the President at Surat, who became the first Governor of Bombay under the Company.

Oxenden died at Surat in July 1669, and was succeeded by Gerald Aungier, in whose Governorship of nearly eight years the main foundations were laid for the subsequent progress of Bombay.

Surrounding conditions were certainly unfavourable to its prosperity. Disputes with its Portuguese neighbours in Salsette and Bassein had started from the time the Island was handed over to Cooke, and resulted in hostility and harassment that hampered its trade and security. This bad feeling was enhanced by the attachment of the large estate

on the Island held by the Jesuits of Bandra, whom Lucas charged with treason; their dispossession also caused hardship and dissatisfaction among the resident cultivators. On the mainland hostilities between Sivaji, the Mahratta leader, and the Emperor Aurangzebe endangered the peace of the Island and impeded its trade and supplies. Further anxiety was caused by the annual 'wintering' in the harbour of a large fleet kept up by the Siddis of Janjira for Aurangzebe's service: their men were unruly visitors and good relations with Sivaji were endangered by incursions on his territory from Bombay. At Surat the Mughal Governor was naturally jealous of the new settlement, which threatened the trade and importance of Surat, and did his best to hinder its development.

The second war with Holland between 1672 and 1674 added the danger of a threatened attack by a Dutch fleet in 1673, which scared the inhabitants, but was frustrated by Aungier's exertions in mobilizing all the available forces for defence. And even the European garrison, though a small one, was sometimes a cause of serious trouble, such as occurred when Capt. Shaxton's company mutinied in 1674.

Aungier, however, overcame these difficulties, and his wise and just administration encouraged traders and others to settle in the Island, especially in view of Sivaji's looting of Surat in 1670 and the generally disturbed state of the country.

The main events in the subsequent history of Bombay during the seventeenth century were Capt. Keigwin's Rebellion, when the mutineers held the Island for nearly a year in 1683–4, and its invasion by a strong force from the Siddi's fleet in 1689–90 during Sir John Child's Governorship. After this Bombay fell on evil days, and it was not till about 1715–20 that conditions improved under Governor Boone. The chief trouble in his time was the long-standing depredations of the Angria pirates whose capital was Gheria on the Malabar coast. He opposed them without much success, and it was not till 1756 that their fleets and fortifications were finally suppressed by Clive and Admiral Watson.

Turning to Madras and Calcutta, the former settlement arose out of a grant of land by the local Hindu Raja to Francis Day, a member of the Masulipatam Council, in 1639. He christened the place Fort St. George in honour of the patron saint of England. The Company was annoyed at the cost of building the Fort and gave it little encouragement until 1653, when Madras was raised to the status of an inde-

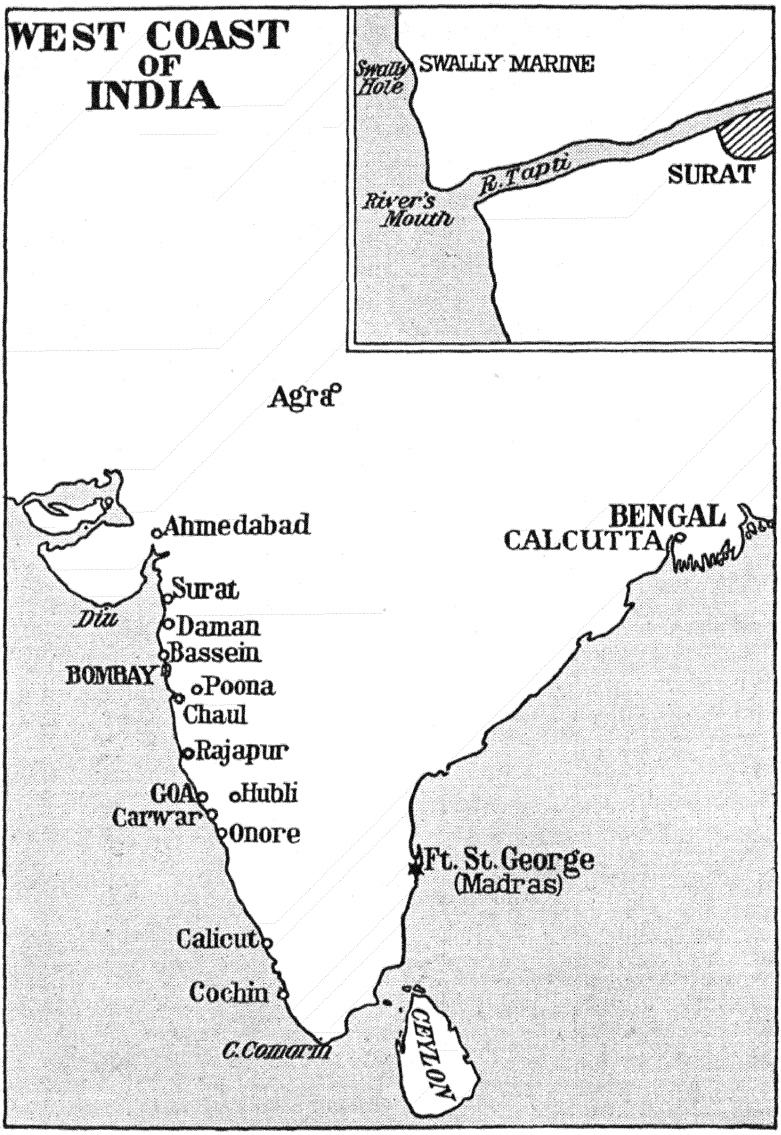
pendent Presidency. In 1658 the Company went further and declared all its settlements in Bengal and the Coromandel coast subordinate to Fort St. George. It did not suffer from the constant dangers that threatened Bombay, but in 1677 a large army of Sivaji came within 82 miles of it, and in 1681 it was blockaded by a neighbouring chief, who reduced it to the verge of starvation. The French occupation of St. Thomé on its outskirts, and the fear of attack by a Dutch fleet in 1673 also gave cause for anxiety. Its trade, however, prospered up to 1746, when it was captured by the French. The Company's seat of government was then moved to Fort St. David, 12 miles to the south of Pondicherry, till Madras was restored to the Company by the Peace of Aix-la-Chapelle in 1748.

The chequered story of the wanderings of Job Charnock and his band of followers that led to the foundation of Calcutta is too long to be recounted here. They first settled there in 1686, but its permanence as a settlement dates from the 24th August 1690, when they returned from their second exodus. Within a decade it had become a busy mart and, though it was occasionally threatened by the Marathas and perpetually harassed by the Nawab of Bengal, it enjoyed a profound peace till the attack of Suraj-ud-Daula and the tragedy of the 'Black Hole' in 1756. It was recaptured by Clive early in 1757 and the results of his victory at Plassey in the same year placed Calcutta in a position to become the capital of British India.

In 1698 a New Company was incorporated with a legal right to trade to the East Indies and entered into competition with the London or Old Company at Bombay, Surat, Madras, and Calcutta. In the first two places the struggle went in favour of the New Company, mainly owing to the intrigues and misrepresentations of its President, Sir Nicholas Waite, who among other things wrote to Aurangzebe accusing the Old Company of confederating with pirates in the Indian Ocean. Under the Emperor's orders the factory at Surat was seized, all trade stopped, and Sir John Gayer, the Old Company's President, was imprisoned along with the factory servants for some ten years. In the other two Presidencies the New Company was not so successful, but the conflict naturally absorbed the main energies of the rival bodies, even for some time after the two Companies were amalgamated in 1702. The union was finally completed in 1708 under the title of the 'United Company of Merchants of England trading to the East Indies', which received at intervals new charters prolonging its trade monopoly but

gradually curtailing its sovereign powers until the transference of its dominions and revenues to the Crown in 1858.

It remains only to add a few introductory words regarding the provision made in the Company's Charters for administering justice in its settlements. Apart from the special case of Bombay, and until 1683 when the establishment of Courts of Admiralty was authorized, the only Court of Law available was that of the Governor and Council. Under the Charter of 1661 this body in each factory was empowered to 'judge all persons . . . under them, in all causes, whether civil or criminal, according to the laws of this kingdom, and to execute judgement accordingly'. This general provision put judicial power in the sole hands of the executive government and restricted the law to be administered to that in force in England. The Charter of 1668 transferring Bombay to the Company, and the 'laws' passed by the Company thereunder, made a marked departure from this narrow path, as related in the account of the Bombay Court of Judicature that follows.


WEST COAST
OF
INDIA
Swally Hole
SWALLY MARINE
R. Tapti
SURAT
River's Mouth
Agra
Ahmedabad
BENGAL
CALCUTTA
Surat
Diu
Daman
Bassein
BOMBAY
Poona
Chaul
Rajapur
GOA
Hubli
Carwar
Onore
Ft. St. George
(Madras)
Calicut
Cochin
C. Comarin
CEYLON

CHAPTER I

JUDICIAL ARRANGEMENTS, 1665–8

THE early history of Bombay, after its acquisition from the Portuguese under the Marriage Treaty of 1661, presents many different sides, such as military, naval, commercial, political, and civil. At first the military aspect had a natural tendency to predominate, for the isolated occupation of this strip of land and water had dangers to face not only from Indian potentates like Aurangzebe and Sivaji, but also from Portuguese and Dutch rivalry and hostility. The raising of fortifications and a military force to defend them was a prime necessity, which was continuously attended to, with the result that in 1673 a threatened attack by a Dutch fleet was successfully frustrated* and in 1689 the Siddi, with a much superior force and in possession of most of the island, yet failed to drive the English into the sea.† But after Bombay was transferred to the East India Company in 1668, the civil side of Government became of more importance. The development of trade was naturally one of their main objects. For this purpose it was necessary to attract settlers of the commercial and labouring classes; and the policy of religious toleration, equal justice, and freedom of trade adopted by the Company was so successful that, according to Dr. Fryer, the population was in the course of ten years raised from about 10,000 to 60,000.‡

* The fleet under Rickloffe van Goen arrived in February, hoping to take Bombay by surprise. Its approach had, however, been rumoured for some time, and Aungier's display of force deterred it from an attack. Fryer, *New Account of East India and Persia*, vol. 1, p. 170, writes 'The Dutch attempting to surprize the Islanders, found them and the Fort in so good a condition that they were glad to betake themselves to their Boats without any Booty, and the next day hoisted sails (for, said they, Bombaim been as stark as de Deel)'. It was on this occasion that (says Orme) Aungier exerted himself 'with the calmness of a philosopher and the courage of a centurion'. For further information, see Edwardes, *Bom. City Gaz.*, vol. 2, p. 63, and Anderson, *The English in Western India*, pp. 125, 126.

† For an account of this invasion and siege, see Edwardes, *Bom. City Gaz.*, vol. 2, pp. 83, 84. The Siddi (Hind. *Sīdi*, a lord) was the Admiral of a fleet which from 1670 was employed in Mughal service. The Siddis came from Janjira near Bombay; cf. Sheppard, *Bombay*, p. 31.

‡ Loc. cit., let. 2, p. 68. His actual statement is that in 1675 the population of Bombay numbered 60,000, 'more by 50,000 than the Portuguese ever had'. This has been taken to mean that at the time the English gained possession of Bombay,

Sir George Oxenden, who was President of the Company's Factory at Surat when Bombay was handed over to the Company in September 1668, died in June 1669 and was succeeded by Gerald Aungier, who has been well called the 'true founder' of Bombay.[1] Writers on this period of its history have done full justice to the latter's high qualities and beneficent rule, which started Bombay on its rise to greatness. His introduction of better Courts of Law, and his determination to see equal-handed justice and protection given to all its inhabitants without fear or favour, have been suitably noticed; but no adequate and detailed account of his achievements in this connexion, and in particular of the Court of Judicature that he established in 1672 and its subsequent history, has yet been published. A study of the Records available in the India Office and Bombay reveals many misconceptions and mis-statements that have been made on this subject.

Bombay was the first place in India where British justice was administered to native inhabitants by a special Court of Judicature, and the history of its introduction and progress deserves more notice than has yet been accorded to it. Equal and impartial justice is one of the main foundations on which British rule in India rests; it brought new ideals and prospects of peace, contentment, and good government in a country where the administration of justice had hitherto been impeded by gross tyranny and corruption; and it affects the life and well-being of every villager and townsman in India. It can safely be said that, whatever political changes may ensue in the Government of India, the aims and methods of British courts and justice will survive, at any rate in their main features.

Before coming, however, to Aungier's reforms, it is necessary to get a general idea of how matters stood when the Company obtained possession of Bombay in 1668. The Island had then been under English rule for three and a half years, and it naturally might be supposed that English laws had superseded those of the Portuguese. It was in fact judicially held in 1845[2] that there was not the least vestige of any survival of Portuguese law or Portuguese Courts in Bombay after the cession of the Island by the King of Portugal to Charles II. This is, however, opposed to the real truth. When

the inhabitants numbered about 10,000 souls. On the other hand Humphrey Cooke in his first report of 3 March 1665, relying on the reckoning of the Jesuit priests, gave the population as upwards of 20,000. This was probably an over-estimate, and Sir Gervase Lucas in his report of 2 March 1667 puts 'the whole body of the people of the island' as upwards of 12,000.

Bombay was delivered to Humphrey Cooke on 8th February 1665, the Island had been under Portuguese rule for over a century and a quarter;* and Portuguese laws and customs had become firmly established. Cooke apparently at first intended to introduce English law, for in his first official report of 3rd March 1665 he mentions the necessity of translating the 'Statutes and Lawes' into Portuguese,[3] but subsequently he changed his mind. In his second report of 23rd December 1665 he writes:

'The Portugalls on the Maine and Neighbouring places in these parts, have some lands on this Island, and many Inhabitants heere, have lands ther, so that I have been forced (to excuse a confusion) to settle the Civill law among them in this Island, the which hath hugely pleased boath partys; among ourselves is marshall law, and for religion liberty of conscience is given to all.'[4]

This clearly means that, in order to avoid a conflict of laws, he had allowed the Portuguese civil law to continue to govern the Portuguese and other non-English inhabitants of the Island. Cooke, who had formerly been a trader at Lisbon, was undoubtedly venal† and may have unduly favoured the Portuguese by this decision. On the other hand it would have been extremely difficult, if not impossible, for him to have effected an immediate change of laws. He had no English lawyers or clerks at hand to give him assistance; the general language in use was Portuguese, not English; and the petition-writers and ministerial officers would be familiar only with Portuguese forms and customs. It is not surprising, therefore, that he followed the line of least resistance.

A complaint was also made against him that the officers he appointed were mainly Portuguese.‡ On this point Cooke in his report of 3rd March 1665 says:

'In this Island was neither Government or Justice, but all cases of Law was carried to Tannay and Bassin; now it is in his Majesties Jurisdiction there must be a settlement of Justice, according to such Lawes as his

* That is, from its cession (with the city of Bassein, &c.) by Sultan Bahadur of Gujarat in 1534.

† Sir Gervase Lucas, who made an inquiry about it, reported that he had been guilty of bribery: cf. *E.F.*, *1665–7*, pp. 199, 294. As to his having been in Lisbon, cf. ibid., *1664–5*, p. 332, n. 1.

‡ This was one of the charges brought against Cooke by Gary and two others, see ibid., p. 74. They also complained that 'all suites and differences among the people of this island hee [Cooke] hath determined, not according to the English, butt Portugueze lawes'.

Majestie shall think fitt. For the present I have nominated for the whole Island a Tannadar, which is a kind of an under Captain; hee had the place afore with 300 Serapheems a yeare, I am to allow as much; I have likewise nominated a Justice of peace, to examine all causes with a Bailiffe, that matters being brought to a head, they may make report to mee, to sentence as I shall see cause; I have likewise nominated two persons to take care of Orphants Estates, one for the white people and one for the Black, as it was formerly; with other Officers under them. I have enordered a Prison to bee made to keepe all in quietness, obedience and subjestion, these people generally being very litigious. I have also nominated two Customers, one at Maym and another at this place.'[5]

This shows that under the Portuguese régime the main official at Bombay was a *thanadar*, a military officer charged with the policing and defence of the place; and Cooke continued this office. Bombay being little more than an insignificant fishing village in the time of the Portuguese, there was no judicial Court in the Island; and cases had to be taken to the Judge (*Ovidor*) at Thana, or to the higher Court (*Relaçao*) at Bassein.* Cooke of course had to alter this, and appointed one John Anthunes as *Ovidor* or Justice of the Peace.† He and the Bailiff had to inquire into all causes and submit reports to Cooke, who gave the final decision. This was clearly an unsatisfactory arrangement; moreover the accusation brought against him that he took bribes in deciding cases‡ is probably well founded. For the reasons already given, he had, however, to depend largely on Portuguese officials.

Cooke was superseded by Sir Gervase Lucas,§ who arrived from England in November 1666, but no material change in the judicial arrangements appears to have been made during the six months of his governorship. It is, however, to his credit that he put a stop to the irregular punitive powers exercised by the big Portuguese landlords over their tenants. In a letter of 2nd March 1667 he writes:

'I am in my instructions commanded to addresse my selfe with all

* That there was an *Ovidor* at Thana is shown by a reference to him in a document of 1673 (F R. Bom., vol. 6, p. 218). As to the *Relaçao* at Bassein, cf *Bombay in the Making*, p. 24. Cooke in his second report says, 'this Island is hitherto but a meere Fishing place'.

† He is also mentioned in Gary's charges against Cooke (*E.F.*, *1665–7*, p. 74)

‡ Gary said that 'hee hath taken many bribes from severall people uppon the passing of sentences, to considerable summes of money', and specified one case where the bribe is stated to have been Rs. 300 (ibid., p. 74).

§ Sir G. Lucas had taken part in the Civil Wars as a staunch royalist; and as Governor of Belvoir Castle he escorted Charles I in his escape from the field of Naseby.

civillitie to the Portuguize magistrates and government upon this island; neither of which I found upon this place, nor one Portuguize in the whole island of parts or quality, nor any vestigia of government. But the Jesuites, who pretend to all the dominion of the Lordshipp of Maim, both by sea and land,* Barnadine de Tavora to the Lordshipp of Mazagoan,† and Donna Ignis de Miranda to the Lordshipp of Bombaim,‡ commanded as lords and governors over all the persons and estates of the whole island, imprisoning and whipping husbands, wives and children, if they paid not in their rents every weeke according to such rates as themselves demanded for their farmes, of which the poore people could not live; severall of which have been starved, others left the island, not haveing authority or justice to releive them. Many of which are since my arrivall returned, findeing I have taken the sole power of punishing into my owne hands as His Majesties Governour upon the place.'[6]

In another letter of the same date he amplifies this by saying he was 'allowing no power to any to punish but by order of his Majesties Governour upon the place, or by such Justice[s] of peace as are appointed by the Governour'.[7] He also asked for a Commission 'to constitute and appoint all civill Officers and Magistrates for the decision of Controversies arising among the people, which they hourely trouble me in'. This indicates that he took some personal interest in the administration of justice, but there is nothing to suggest that he interfered with the main arrangements of his predecessor.

Henry Gary,§ a former factor of the Company, whom Lucas had nominated to the Deputy Governorship, succeeded him on his death.

* The College of Jesuits at Bandora claimed to hold most of the land in the northern part of the Island, and a Church and Convent belonging to them stood on what was afterwards the site of Government House, Parel, (*Bom. City Gaz.*, vol. 2, p. 39, n 1, and vol. 3, pp. 287, 288).

† Bernadino de Tavora held the Mazagaon estate under a grant by King Philip of Portugal in 1637 (*Bom. City Gaz* , vol 2, pp. 391, 392); but on the sequestration of his estate by Lucas, he and his family left Bombay (*E.F.*, *1665–7*, p. 308).

‡ Donna Ignes de Miranda was the widow of Dom Rodrigo de Monçanto, and it was her house in the Fort (on the site now occupied by the Arsenal) that afterwards became the head-quarters of the English administration, known as Bombay Castle (*Bom. City Gaz.*, vol 1, p. 32, and vol. 3, p. 287; *E.F.*, *1665–7*, pp. 39, 40, 68, and 69).

§ He was appointed a Factor in December 1643 (*Court Minutes*, *1640–3*, pp. 367, 368), and rose to be a Member of Council at Surat. In 1662 he was deputed to assist Sir Abraham Shipman, and in 1664 to assist Cooke (*E.F.*, *1661–4*, pp. 105, 335, 336). Cooke appointed him 'Cheife Customer', or Head Customs-Officer, at Bombay (ibid., *1665–7*, pp. 51, 53), and he was the principal Assistant both of Cooke and Lucas.

He was a good linguist* and appears to have tried cases personally.† He took a step forward by representing the need of a Judge Advocate for Bombay, in other words that a Judge trained in English and Roman law should be sent out.[8] But (apart from the extensive use of martial law,‡ which Cooke had instituted) the Portuguese laws and officials continued.

All possible doubt on this point is dissipated by an express statement made by Aungier in his speech on the opening of the Court of Judicature on the 8th August 1672.[9] He there says that some people had wondered 'why the English having had possession of this Island now seaven years have not in all this time governed by their own laws'. Records also show that Portuguese laws were formally abolished from the 1st August 1672,[10] and that the post of *Ovidor* existed in January 1670.[11] Proposals for Bombay, which Aungier drew up in 1671, moreover, mention the inconvenience caused by the continued employment of Portuguese officials and the keeping of proceedings in that language.[12]

The Charter of 1668, under which Bombay was transferred to the East India Company, limited the Company's power of enacting laws, not only by requiring them to be 'consonant to reason, and not repugnant or contrary to' the English laws, but also by prescribing that they should be 'as near as may be agreeable to' such laws. It further directed that the Courts and their proceedings should be 'like unto those that are established and used in this Our Realm of England'. In accordance with these provisions the Company in 1669 sent out detailed instructions for establishing a Court of Judicature in Bombay,

* Thus Samuel Burgess, who had come out as Secretary to Lucas, declared that 'no person ever govern'd with greater love of the natives, whose language (with many others, both of Europe and Asia) he understands, speaks, and writes in perfection' (*E.F., 1665–7*, p. 310). Similarly Dr. Fryer says of him that '[he] is skilled in most of the languages of the Country . . . he understands Italian, Portugueze and Latin perfectly' (*New Account*, &c., vol. 2, p. 30).

† The petition purporting to be from the principal Inhabitants of Bombay to King Charles in 1667 mentions Gary's 'expedient administration of justice; his continual assisting us with dispatches, the brevity which he uses in concluding our pleas, and his patience in heareing even the least of them; his kindness in [a]voiding our expences' (Khan's *Anglo-Portuguese Negotiations*, &c., p. 452). The praise must be discounted, as it is alleged that Gary instigated the petition (*E F., 1668–9*, p. 51); but there is no reason to disbelieve the statement that he personally heard cases.

‡ It appears that not only Englishmen and military offenders, but also natives accused of capital crimes, were dealt with by courts martial (ibid., p. 70, as to a man accused of the murder of his wife being tried by court martial in 1668).

as will be seen later; but it was not till 1672 that steps were taken to comply with this direction. There were serious difficulties in the way, and of these the main one was the continuance of the Portuguese laws, language, and methods—an inconvenient anomaly, which has been strangely overlooked.*

* The only reference to it that I know of is by Edwardes in the *Bom. City Gaz.*, vol. 2, p. 207, where he says that 'Aungier gave orders for the final supersession of Portuguese custom by the English law'. In a note, however, he quotes Sir E. Perry's judgement that the Portuguese law was not recognized after the cession.

CHAPTER II

SIR GEORGE OXENDEN'S ADMINISTRATION, 1668–9

SIR GEORGE OXENDEN* was President at Surat in the beginning of September 1668, when the ships from England arrived with the Company's extensive orders about Bombay. The objection of the Mughal Governor of Surat and other circumstances prevented his going himself to Bombay to take it over, so he deputed four of the Company's servants at Surat to perform this duty. Gary accordingly handed it over to them on the 23rd September 1668.[1] Oxenden was, however, able to pay a three weeks' visit to the Island in January 1669.† He took a keen personal interest in Bombay; and as Sir William Foster remarks,[2] 'but for his untimely death, he would doubtless have anticipated Aungier in carrying out some of the measures for which the latter has had the sole credit'. But in fact Oxenden has received credit for supposed accomplishments in excess of the real truth. Thus Anderson[3] says that, during his stay in Bombay, he 'framed a set of regulations for its administration'; Hunter[4] says the same in other words; while Da Cunha[5] and Malabari[6] attribute to him the enactment of complete codes for the civil and military administration of the Island. The India Office records contain a letter written by Oxenden to the Company on 15th January, giving a full account of his proceedings on the Island, as well as the Instructions left by him on his departure. There are also extracts from Council proceedings held during his visit. But none of these[7] contain any reference to Regulations or Codes of the kind attributed to him. He appears to have been mainly occupied with military and trade affairs, and though he settled its form of civil government by a Deputy Governor and Council, this was merely carrying out the directions of the Company.[8] There is, however, among the records of this period a copy of 'The Laws and ordinances of warr for the better governing the militia now under the government and in the service of the Hon. East India Company'. Sir William Foster sur-

* He was knighted at the Restoration and appointed President in 1662. In 1664 he gallantly withstood Shivaji's army at Surat and was rewarded both by the Emperor Aurangzebe and the Company. For further information see Hunter's *History of British India*, pp. 212, 213.

† He landed on the 7th and left on the 28th Jan.

mises[9] that their drawing up should be assigned to the period of Oxenden's stay at Bombay, and Bruce in his *Annals of the East India Company*[10] also attributes these Regulations to Oxenden. It is apparently on this foundation that the statements about Oxenden framing Regulations and Codes for the administration of Bombay are based. There is, however, the clearest authority of Oxenden himself against the supposition that he was the author of these 'Articles of Warr'. When Capt. Young,* the Deputy Governor of Bombay, relied on them as authorizing a court martial to pass a sentence of death on his principal military officer, Capt. Toldervy, for alleged mutinous behaviour, Oxenden, in upsetting the proceedings as unjustifiable, stigmatized the Articles as of doubtful legality, saying:[11]

'Your Articles of Warr though wee deny not they may bee such as are used in other garrisons,† yet we have heard that they were not sent out as appointed and allowed of by the King and his Councill, but brought out by a private man; and though such the Company by the Kings pattent‡ have power to governe by, yet its said the law allows of no such, onely the Kings prerogative;§ and wee have knowne a very greate man called to answer at the barr for condemning a man by court martiall.‖ All which are but cautions for us to proceed very warily in thes cases, when wee may bee called to answer for ourselves many yeares hence.'

* He had first come out to India as a purser's mate in 1645, but at Surat was taken into the Company's service ashore, and after employment there and in Persia was appointed a Member of Council at Surat in 1668. He was one of those who took over the government of Bombay on behalf of Oxenden in that year, and was put in charge of Gary's company of soldiers, from which he derived his title of Captain. He became Deputy Governor of Bombay in Jan. 1669. For further information see *E.F., 1668–9*, pp 215, 216.

† As, for instance in Tangier, which (like Bombay) was granted to Charles II under the Marriage Treaty of 1661.

‡ By this is meant the Charter of 1668, which gave the principal Governor of the Island the same powers that a Captain General of the English Army had, to resort to martial law, in case of rebellion, mutiny, and other military offences.

§ This view seems correct The only foundation for such Articles, at the time that Oxenden wrote this, was an asserted prerogative of the Sovereign to frame such regulations for the maintenance of military discipline (see Col. Clifford Walton's *History of the British Standing Army*, p. 53). It was not till 1689 (after the accession of William III) that the first Mutiny Act was passed, containing *inter alia* the prescribed Articles of War

‖ I have been unable to trace the case referred to in this passage. Possibly the 'very greate man' was Thomas Wentworth, Earl of Strafford, who was tried and executed in 1641. But there was no charge against him of condemning any one by court martial, though the 15th article of the Indictment accused him of arbitrarily enforcing his orders against individuals by military force (*State Trials*, vol 3, pp. 1394, 1433–5).

In a subsequent letter[12] Oxenden repeated his opinion that the Articles went beyond the law and said:

'I doe now againe tell you that the Articles are not allowable by the Common law of England,* which wee must answer to, should wee [be] called to account. Neither were they made for Bombay Garrison, but brought out by a private hand, nor doe wee know whether the Hon. Company will [approve] thereof, for sure I am they desire theire yoke should be easy; wherefore I pray you moderate these things when possible you can, nay I would the Articles were quite taken away, but if there be a necessity of them use them onely in publicke things to keep the Garrison in awe.'

It is ridiculous to suppose that he would have used this language if he had himself drawn up the Regulations in question or introduced them into Bombay. His remarks show that they had been brought there before it came under the rule of the Company, and they were in fact an adaptation of those issued by Lord Peterborough for the Garrison of Tangier in 1662, which are reprinted by Col. John Davis in his *History of the Second Queen's Royal Regiment*, vol. 1, pp. 283–96. The latter Articles were in turn based on those of Essex and Fairfax in the Civil War.[13] This explains their extreme severity, for Cromwell (in the words of Macaulay)[14] subjected his soldiers to a discipline more rigid than had ever been known in England. Most of the Articles follow those of Tangier practically *verbatim*, and the main differences are for the purpose of adapting them to the conditions of military service in Bombay. It is not unlikely that Gary made these changes and first used the Articles in Bombay, for one of the charges of which he was convicted in July 1674 was that he had told some English soldiers that 'the Governour and Councell had noe Kings or Martiall Laws on the Island but what they had from him'.[15] There are, however, three references to the East India Company that must have been inserted after the transfer of Bombay to the Company in 1668. Oxenden may possibly have taken a hand in this alteration, but even this small part in their introduction is improbable in view of his remarks about them. Young sent him a copy of the revised Articles

* This is in accordance with the Petition of Right (1627), which established the predominance of the common law and forbade martial law in time of peace. The contemporary debates in the House of Commons show that the men of those days did not contemplate the legality of martial law as applied to civilians in any circumstances, and considered that at common law even soldiers were not, in times of peace, subject to martial law (*Encyclopaedia Britannica*, 14th ed., vol. 14, p. 984).

in February 1669,[16] and this accounts for its being on the Surat Records. The Articles made an invidious distinction between non-commissioned officers and privates, who were punishable with death for neglect or breach of duty, and commissioned officers, who could only be cashiered or reduced in rank for the same offence. This has been the subject of severe comment,[17] and it is only due to the memory of Sir George Oxenden, whose high qualities of justice and mercy are evident, to point out that he did not frame them, and in fact disapproved of them. On the other hand he did not absolutely prohibit their use, and they continued to operate in Bombay for many years.*

Before his departure from Bombay† Oxenden gave instructions for the issue of a proclamation prohibiting the sale of land without the consent of the Deputy Governor, and requiring all such sales to be announced in the bazaar and registered by the notary public.[18] This was the first step towards compulsory registration,‡ which was subsequently made part of the duties of the Judge of the Court of Judicature. Otherwise Oxenden appears to have left civil and judicial

* Bruce's *Annals*, vol. 2, p. 243; *E F*, *1668–9*, p. 219, n. 2. The revised edition of the Articles differs from the original ones, mainly in its mitigating their extreme severity, the death penalty being excised from about 25 Articles. The copy of 1747, to which Sir William Foster refers in the note just cited, shows that the Articles were adopted (with modifications) by the Company; but his supposition that they were still in force in 1747 is very questionable. The copy is accompanied by copies of the Company's Laws of 1669 for Bombay and of Boone's Commission as President and Governor of Bombay in 1715—neither of which were still in force. Col. Wilson's *History of the Madras Army*, vol. 1, p. 48, states that in 1747 the Madras Government made certain selections from the Articles of War then in force in England and directed they should be applied to their own troops. These appear to have been taken from the Articles of War issued in 1717 under the authority of the Mutiny Act of that year (4 Geo. I, c. 3, s. 40), cf. Clode's *Military and Martial Law* (1872), pp. 71, 185. The same Articles were used in Bombay in 1729, as is clear from the correspondence of a reference to the 10th Article as containing the penalty of death for desertion (Bom. Consltn. of 8 Aug. 1729, *B P.P.*, vol. 6). The Regulations of 1748 framed by the Company for its Military Forces in India expressly directed that military offences should be tried 'according to the Rules, Articles and Customs of War in His Majesty's Service' (*L.B.*, vol. 27, art. 14, at pp. 130, 131, 155, 162, 163).

† On 28 Jan. 1669.

‡ It is curious that Oxenden in this anticipated a Resolution of the Court of Committees on 30 Sept. 1668 that the President and Council at Surat were 'to see that the people bring in the titles to their lands and tenements that these may be duly registered, and if any lands are sold, that notice be given that this may also be registered' (*Court Minutes*, *1668–70*, p. 99). This could not have been known in India till the spring of 1669, and Oxenden probably saw the need for controlling sales, so as to help the settlement of the town.

matters in much the same state as he found them, and it remained for Gerald Aungier to effect the reforms which are associated with his name. Oxenden would naturally wait for the 'directions and instructions for the establishing rules for the well-government of Bombay', which the Company in their dispatch of 24th August 1668 stated they were preparing,[19] but which were not received in India till after his death in July 1669.[20]

CHAPTER III

THE COMPANY'S LAWS

AS already mentioned, the Charter of 1668 granting Bombay to the Company contemplated the establishment of Courts on English lines, with 'Judges and other Officers' appointed 'to judge and determine all Actions, Suits and Causes whatsoever' and to award punishment 'according to such Laws, Orders, Ordinances and Constitutions' as were made by the Company for the 'good government' of Bombay. The power to enact these laws was vested in the Company's General Court or their Court of Committees,* and they had to be engrossed under the Company's common seal before publication. The Laws and the penalties prescribed by them were to be 'consonant to Reason, and not repugnant or contrary to, but as near as may be agreeable to the Laws of' England. In their dispatch of 27th March 1668 the Company proposed to wait for the advice of the President and Council at Surat before framing the Laws;[1] but this would have meant their postponement for at least a year, and a few months later this intention was altered. On 30th September 1668 Mr. Thomas Papillon,† a member of the Court of Committees, and Mr. Moses, the Solicitor of the Company, were instructed to draft rules for the civil government and equal distribution of justice upon the Island.[2] After revision of their draft by the Court of Committees and the Solicitor-General, the Laws were settled and engrossed[3] in time to be sent out with the Company's dispatch of the 12th March 1669.[4] They arrived at Surat on 17th November 1669,[5] and Aungier brought them with him on his first visit to Bombay in January 1670.‡[6] The main part of them was translated into Portuguese and 'Cannarin'

* The word *Committee* is here used in the sense of the committeeman or individual to whom the trust was committed, not of the body of committeemen, as in later times.

† He was a Director of the Company from 1663 to 1682 and became its Deputy Governor under Sir Josiah Child. The two fell out over the question of Interlopers, with the result that Papillon was thrown out of office in 1682. For further details see Hunter's *History of British India*, vol. 2, pp. 283–7.

‡ Strictly speaking it was not his first visit, as in Sept. 1662 he was deputed by the Surat factory to accompany the Earl of Marlborough when the latter claimed the town and island of Bombay on behalf of Charles II; but he could not then have seen much of the place.

(i.e. the coast dialect of Marathi)* and published in February.[7] In view of this and the importance of the Laws, as an enactment that thereoretically remained in force until they were superseded by the provisions of the Charter of 1726, constituting the Mayor's Court in Bombay,[8] it is strange that no contemporary copy of them is forthcoming in either the Bombay† or the India Office records. Fortunately, however, there is a copy of the Laws that was apparently made in 1748 and is contained in a volume of so-called *Miscellanies* in the India Office records.[9] It is reproduced at the end of this chapter. Similar Laws were framed for St. Helena in 1682,[10] and these would enable the Bombay Laws to be substantially reconstituted, even if all traces of them had disappeared.

The Laws were divided into six main sections, as follows:

I. Touching Religion and the Worship of God.
II. Touching the Administration of Justice and Common Right.
III. Establishing a Method for Due Proceedings.
IV. Directing Registration of Sales, &c.
V. Prescribing Penalties for Certain Offences.
VI. Touching Military Discipline and the Prevention of Disorder and Insurrection.

* The word 'Kanarese' has been wrongly substituted for 'Canarin' by Campbell and Malabari in reproducing the Bombay Consultation of 2 Feb. 1670 (*Materials*, &c., vol. 3, p. 2, and *Bombay in the Making*, p. 149). The latter term no doubt primarily referred to the inhabitants and language of the district known as Kanara on the Malabar Coast, but it was also used by the Portuguese to denote the Konkani people of Goa and their language (Yule's *Hobson-Jobson*, p. 154). Thus the Grammar in the Konkani or coast dialect of Marathi, written by Father Thomas Stevens, S.J. (probably the first Englishman to visit India), was entitled 'Arte da Lingua Canarin' (Da Cunha, *Origin of Bombay*, p. 165, and Rawlinson, *British Beginnings in Western India*, p. 26). Fryer also gives a similar extensive meaning to the 'Canorein' language (let. 4, p. 162). He even gave the same name to Salsette, which he calls 'the island of Canorein' (let. 2, p. 71), and (in his Map) 'Canora Island' being probably misled by the tautophony of Kanheri, the famous Caves, which he visited and styles 'the ruined City of Canorein'. This may account for the later common application of the term to the native inhabitants of Bombay. Thus Clement Downing, who was in Bombay in 1715, calls the original inhabitants of Bombay 'Keneyreans', and his remarks show that he includes the Farash (or Mhar) and Cooli communities (i.e. Marathas) under this head: see p. 7 of the edition of his book *A History of the Indian Wars* by Sir William Foster, 1924. In view of this, there is no need to fall back on the ingenious explanation suggested by Edwardes (who was misled by Campbell's substitution of 'Kanarese' for 'Cannarin') as to the early population of Bombay being to a large extent of Dravidian origin (*Rise of Bombay*, p. 111, and *Bom. City Gaz.*, vol. 2, p. 206).

† I have verified this by a reference to the Record Keeper, Bombay.

The first section enjoined the proper observance of the Lord's Day by attendance at public worship, and 'abstinence from all bodily labour and secular employments', as also from all 'gaming and other unlawful pastimes'.* It included directions about the church services and the catechism of the young. The last three paragraphs grant freedom of religious belief, observances, and customs, not only to Roman Catholics, agreeably to article 11 of the Treaty of 1661, but generally to all inhabitants. It also prohibited the use of abusive or contemptuous language about another person's religion, under penalty of fine or imprisonment.

The second contained the following main provisions:

(1) rights existing at the time of the surrender of the Island were confirmed;

(2) in all cases justice should be administered impartially without favour or affection;

(3) no person should be divested or dispossessed of houses, goods or lands or other rights, or suffer corporal punishment for any cause or crime, before trial and conviction by a Jury of twelve men, except as otherwise provided by the Laws or any future law similarly enacted; and

(4) no person should suffer civil or penal imprisonment without a specific warrant for his commitment, and any such person might be released without bail, if the cause or matter of the imprisonment were not prosecuted within two Court days after his commitment had been certified to the Court.†

The third was the most important. It provided

(1) for the establishment of a Court of Judicature for the decision of all suits and criminal matters under a Judge to be appointed by the Governor and Council;

(2) that all trials in the Court should be by a Jury of twelve Englishmen, except when any party to the dispute was not English, in which case the Jury was to be half English and half non-English;

* This was in accordance with the Sunday Observance Acts of Charles I (1 Car. I, cap. 1, and 3 Car. I, cap. 2), which were supplemented by an Act of Charles II in 1677 (29 Car. II, cap. 7), so it was natural that the Laws should contain this section. The Company had also laid down strict injunctions on this subject (see Ovington, *Voyage to Suratt*, pp. 406, 407, and Yule, *Hedges' Diary*, vol. 2, p. 317).

† This followed statutory provisions in England, e.g. 3 Hen. VII, cap. 3 (1468), which provided that every jailer had to certify the names of all prisoners in his custody to the next Court of jail delivery, there to be calendared before the Justices.

(3) for the appointment of Justices of the Peace and Constables for the maintenance of order, apprehension of criminals, and the executions of warrants, &c.;

(4) for regular sittings of the Court, the recording of its proceedings in Registers, and the fixing of reasonable Court-fees;

(5) for a right of appeal from the Court of Judicature to the Governor, or Deputy Governor, and Council, which was constituted the Supreme Court in the Port and Island.

The fourth section provided for the registration of all sales, mortgages, or other engagements relating to houses or land or other rights.

The fifth section prescribed penalties for profanation of the Lord's Day, swearing and taking the name of God in vain, drunkenness, fornication, adultery, theft or robbery, house-breaking, perjury or subornation of perjury, forgery, cheating, criminal assault and wounding, murder, and opposing an officer in the execution of his duty. Except for drunkenness and the preceding offences, there had to be a conviction by a Jury before punishment could be inflicted. Death was the prescribed penalty for murder; but in the case of other felonies there was a marked departure from the severity of English law, which then treated them as capital offences. Thus in the case of robbery, the extreme sentence on an offender was limited to putting him in the pillory, whipping, confiscation of his estate and banishment from the Island, in addition to the punishment for theft, viz. paying back the value of the stolen property threefold. In case of inability to pay this, he could be forced to work for the owner of the stolen property till he made up its value, as estimated by a Jury; and if, after banishment, he returned without leave, he could be sentenced to hard labour for seven years. As will be seen later, objection was often taken to these provisions as being unduly lenient; and in practice convicted thieves were dealt with more severely, and sometimes sent as slaves to St. Helena, till this was stopped by the Company in 1678.[11] In cases of perjury, forgery, or cheating, the same idea of restitution, to an extent adjudged by the Jury, underlay the prescribed punishment, though in the last two cases the offender was also liable to fine and the pillory. Similarly in the case of unlawful assault or wounding, the penalty was in the nature of compensation and fine, unless the assault was one on an officer in the execution of his duty, in which case the convict could be whipped or imprisoned.

There was equal leniency in the military portion of the Laws, except in regard to mutiny, sedition, insurrection, or rebellion, which were punishable with death. Even a soldier who slept on his post could be sentenced only to a fine not exceeding two months' pay and corporal punishment.[12]. Their inadequacy soon became the subject of bitter complaint, with the result that the President and Council gave permission to resort to the Articles of War 'on necessary occasions'.[13] A noticeable point about this military section was that the offences were to be tried by a Jury or by the Governor and Council, instead of by court martial.*

It was no wonder that Aungier in referring to the Laws in the Surat General Letter of 26th November 1669 said 'they will appear somewhat new at first, as different from the severity of court martials to which your people of Bombay have bin long accustomed'.[14] The spirit of even-handed and temperate justice that animated the Laws does credit to the Company; but they had grave defects, due mainly to their being drafted without reference to the special circumstances of Bombay and without the advantage of the prior consultation that was at first contemplated. Moreover, no steps were taken by the Company to send out a Judge or other staff for the proposed Court, though the difficulty of starting it without them should have been obvious. In effect the President and Council were being asked to make bricks without straw.

APPENDIX

The following copy of the Company's Laws for Bombay is taken from a volume of miscellaneous records, mostly consisting of copies of letters about the Company's marine affairs in England between January 1748 and December 1751 (*Miscellanies*, vol. 11). It lies between copies of the Company's Articles of War and of Boone's Commission as President and Governor of Bombay in 1715.[15] I have found nothing that shows directly why these copies were made, but my surmise is that they were a sequel to the surrender of Madras to La Bourdonnais in September 1746, under a promise that it could be ransomed, which was repudiated by Dupleix. The Company were very angry about this, and directed that, even if Madras were restored, Fort St. David, a few miles south of Pondicherry, should

* Thus Capt. Shaxton was tried by a Jury in the Court of the Governor and Council for abetting mutiny, &c., in 1674 (F.R. Bom., vol. 1, pp. 112, 113, 116).

in future be the head settlement on the Carnatic.[16] A factor, by name John Hinde, was appointed Governor of Fort St. David, and his Commission follows that of Boone almost *verbatim*, except for necessary alterations.[17] The Company at the same time resolved to reinforce their garrisons at Fort William, Bombay, and Fort St. David, especially on the Artillery and Engineering sides, and framed military regulations to assist this object.[18] The Company's Laws, which included a military section, and the Articles of War may have been referred to in this connexion.* The copy of the Laws shows signs of having been compared with the original and corrected; and its authenticity is further supported by its resemblance to the corresponding Laws for St. Helena, which the Company itself stated were drawn on the model of the Bombay Laws.

The copy proceeds as follows†:

By the Governour and Committees of the English East India Co^{y} at a Court of Committees holden the 12th day of Feby in the One and Twentieth year of the Reign of Our Sovreign King Charles the 2^{d} by the Grace of God King of England Scotland France & Ireland Defender of the Faith &c Annoque Domini 1669.‡

Whereas His Most Excellent Majesty Our Sovreign Lord Charles the Second by the Grace of God of Great Britain France and Ireland King Defender of the Faith &c hath by His Letters Patents bearing Date the 27th of March in the 20th year of his Reign granted unto the Governour and Company of Merchants of London Trading into the East Indies all that Port and Island Bombay in the said East Indies and thereof made and constituted them the true and absolute Lords and Proprietors and hath also given therein power and Authority to Us to make Laws and Constitutions for the good Government thereof and to Establish Courts of Justice forms of Judicature and manners of proceeding therein and to dilligate and Appoint by Ourselves, or by Ourselves [*sic*] or our Governour or Governours of the said Port and Island, Judges and other Officers to Award process, hold pleas, Judge and Determine all Actions, Suits and Causes whatsoever of any kind or nature whatsoever and to execute all and every

* The Military Regulations were dispatched in June 1748, so that those framed for Bombay might well have been consulted in March 1748, when the copies appear to have been made. The Bombay Articles of War were not, however, utilized for the Military Regulations of 1748, as the latter directed Military offences to be tried according to the Articles of War for His Majesty's Service (cf. n. * on p. 11 *ante*).

† For convenience of reference, I have inserted Nos. (I to VI) at the head of the different sections.

‡ The date 12 Feb. 1669 agrees with the entry in the Court Minutes of that date (Miss Sainsbury's edition, 1668–70, p. 157). 1669 is called the 21st year of the reign of Charles II in accordance with the practice that then prevailed of including the Commonwealth years 1649–59 (cf. n. * on p. 40 *post*).

such Judgment as in and by the said Letters Pattents to which reference is had may more largely appear NOW KNOW all persons that in pursuance of the said Authority to us granted and for the better government of the said Island and places and of all the Inhabitants that do or shall reside and Inhabit therein and for the due and impartial Administration of Justice to all, to the glory of God and the Honour of the Protestant Religion and of our King and Country We the Governour and Court of Committees aforesaid have made Ordained and do by these presents make Ordain constitute and appoint Our Governour and Council of and for the Island for the time being and in the Absence of Our Governour his Deputy and our said Council or the Major part of them under us to have and to exercise the Supream Command power and Authority in the said Port and Island of Bombay in all Causes and matters whatsoever unto whom all the Persons and people there residing and inhabiting of what quality and condition soever are to give and yield due obedience and for the prevention of all oppression disorder and irregular proceedings that there may be some known rules for the Governours and people to walk by We have ordained, and by these presents do make ordain constitute and appoint the several Laws, Rules, Orders, Directions and forms of Proceedings hereafter mentioned and expressed to be carefully and punctually observed in the said Port and Island of Bombay and the Territories and places thereunto belonging, that is to say—

(I) Touching Religion and the Worship and Service of God

1st. We do Direct, Order and Appoint that the Lords day be religiously observed by abstinence from all bodily Labour and secular employments as also from all gaming and other unlawful pastimes and that our Governour or his Deputy and Council take care not only to appoint one or more publick place or places for the Worship of God whither all Persons of the Protestant Religion may resort to attend upon & join in the publick exercises of Religious Dutys as prayers, reading the Word of God, hearing of Sermons, Singing of Psalms, and on occasion the Administration of both the Sacraments of Baptism and the Lords Supper but also by their presence to encourage the Minister or Ministers in the Discharge of his or their Dutys and the people in their attendance on the Ordinances and that all be don with due Reverence with Decency & Order and that in such place or places where there is no Minister yet they shall in solemn manner assemble together on the Lords day, and the Chief in such a place shall cause some part or portion of the Holy Scripture and some Godly Sermons to be read with prayers and such other Dutys to be performed as that [*sic* ? they] are advised & directed by Our Governour or his Deputy and Council with the Advice of the Minister or Ministers resident at the Chief place of the Island.

2ndly. That in the Publick [?Assembly the Minister]* or such as discharge the Duty of Prayer in the Absence of a Minister be mindful to pray for our Sovreign Lord the Kings Majesty the Peace Happiness and Prosperity of His Kingdoms as also for the good and Welfare of the English East India Company; and also that in the Publick Assembly every Lords day at such times as may be most convenient the Creed commonly called the Apostles Creed or sometimes in place thereof the Creed commonly called the Athanatius Creed, as also the Ten Commandments of the Moral Law out of the 20th Chapter of Exodus together with the Summary thereof as it is contained in the 22th [*sic*] Chapter of St. Matthews Gospel 37th 38th 39th & 40th Verses be read unto the people.

3rdly. That where there is a Minister there shall once every Week on some working day be a public Sermon or Lecture and that the Minister once in every Week either on the Lords day or on some other day shall Cathechize the Youth and Younger people in publick at the publick place of Worship and then open and expound the Doctrine of the true Christian Religion that so the people may be well grounded in the Principles and Doctrin of Faith and be able to give a reason of their hope and on good grounds to maintain their Religion against all opposers and gainsayers the time for the said Lecture & Catechizing shall be appointed by Our Governour and Council or his Deputy and Council who are to be present thereat if not hindered by necessary Affairs.

4thly. Though we could and do heartily pray and wish that all people were brought to the full knowledge of the Truth and especially that all Christians were of One heart and one Way, that the Lord might be one and his name One in all the Earth yet forasmuch as for the present it is otherwise We do strictly enjoin that none be troubled or molested for their Religion, Civil Laws and Constitutions of the place [? but all] be permitted to enjoy the [*sic*] liberty in their Houses, and that Life and Conversation be only used to draw people to a Love and embracing of the true Religion but that no force or constraint be put on any in Religious matters.

5thly. That in pursuance of the aforesaid Pattent and Conformable to the 11th Article of the Treaty concluded at Westminster 23rd June 1661 between His Majesty Our Sovreign Lord the King of England and the King of Portugal (a copy of which Article is herewith transmitted) all persons of the Roman Catholick Religion be permitted to enjoy the free exercise of the said Religion in the same manner as they did at the time of the Surrender of the said Port and Island Bombay by the King of Portugal to our Kings Majesty.

6thly. That for the preventing and avoiding all disorder that may arise

* The words 'the Minister' appear in the corresponding passage of the St. Helena Laws. That 'Assembly' should follow 'Publick' is shown by the reference to it in the next sentence.

by reason of the difference in their Religion We do order and enjoin that no person whatsoever of one Religion or other shall abusively in language reproach any for his Religion or use the [*sic*] unbeseeming irreverent and contemptuous words of the Religion of any other or otherwise by words or actions affront or disturb any other in the exercise of their religion and that if any Transgress in this kind they shall be punished with imprisonment not exceeding One Months Imprisonment for one offence or be mulct the [*sic*] Fine not exceeding the value of ten Ryalls of 8/8* for one offence at the discretion of our said Governour and Council or his Deputy and Council as they shall find the matter to deserve.

(II) Touching the Administration of Justice and Common Right

1st. We do direct and appoint in all cases Justice be administed [*sic*] impartially without favour or affection.

2ndly. That all the Inhabitants and other His Majestys Subjects in the said Port and Island shall and may peacefully and quietly have hold possess and enjoy all their several and respective propertys Priviledges and Advantages whatsoever which they or any of them lawfully had or enjoy'd or ought to have had enjoy'd at the time of the Surrender of the said Port and Island by the King of Portugal to His Majesty our Sovreign Lord the King of Portugal to His Majesty our Sovreign Lord the King of England or at any time since unless they or any of them of their own consent shall part with sell or dispose thereof or otherwise shall forfeit the same.

3dly. That no Person be divested or dispossessed of Houses Goods or Land or other Right whatsoever or suffer any Corporal Punishment for any cause or crime before a due Tryal be had and Verdict given against such person by a Jury of twelve Men as hereafter directed unless in such cases as are herein particularly expressed as [*sic* ? or]† shall be hereafter declared by some Law to be made by the said Company or by the Court of Committees of the said Company.

4thly. That no Person be imprisoned upon any Private Action of Debt on [*sic* ? or]† Injury or for or by reason of any Felony offence or misdemeanour or public crime whatsoever without the cause or matter of such imprisonment be expressed in the warrant for his commitment, and in case the same be not prosecuted within the two first Court days after such commitment is certified to the Court which the Marshall or prisonkeeper is and shall be bound to do immediately upon such commitment then such person may sue out his Discharge from the said Commitment and the Judge shall grant the same without bail.

* The 'rial of eight' or a 'piece of eight' was a Spanish coin which had a large circulation in India and the East. It was then worth about 5*s*. (cf. *E.F.*, *1668–9*, p. 129).

† The word 'or' appears in the corresponding passage in the St. Helena Laws.

(III) and for the better settling and Establishing a way and method for due proceedings we do direct and appoint

First That our Governour and his Council or in his Absence our Deputy and our said Council be the Supreem Court in the said Port and Island Bombay unto which all persons in case of male* Administration of Justice wrong or injury done them by Judge Jury or other Officer may appeal and make complaint who thereupon are required to appoint a day for the hearing such cause and to issue out Warrants for the return of a Jury to try the same accordingly and shall give judgment and Award execution according to the verdict of a Jury and the Laws established in such Cases.

Secondly that our Governour or his Deputy with the Major part of the Council do appoint some able Persons to make and take a due Survey of all the said Port and Island with all the appurtenances with the names of all the Persons inhabiting and possessing the same and claiming any property privilege or Advantage therein particularly expressing all such claims and priviledges which Survey shall be register'd in a Book to be kept for that purpose.

Thirdly That there be appointed by the Governour or Deputy with consent of the Council from time to time some one or more able honest and understanding person or persons to be a Justice or Justices within the said Island and one or more Constables under him which said Justice or Justices shall inspect all matters and Affairs within the said Island both for preserving the Company's Rights and for the maintaining of Peace Amity & good order amongst the Inhabitants, punishment of the Crime Sin and wickedness as hereafter is expressed and for the executions of all orders writs and Summons from the Governour and his Deputy & Council or from the Court of Judicature (to be erected as hereafter expressed) for returning of Jurys, apprehension of Criminals and such like Affairs and may also be appointed to Arm Muster and Train such persons within the Island as shall be thought convenient and necessary to be always in readiness for Defence of the place and suppressing any Tumults and Insurrections & to act in all matters according to such Orders Instructions and Directions as he or they shall from time to time receive from the Governour or the Deputy and Council and all Officers both Civil and Military and all other persons are hereby required to be aiding and assisting unto the said Justice or Justices in the due execution of his or their offices, the said Justice or Justices shall take an Oath before the Governour or his Deputy in these words. You shall swear to be good and true to our Sovreign Lord the King of England & his Heirs and Successors you shall to your utmost preserve and maintain the Right of the Governour and Company of Merchants of London Trading into the East Indies in and to the Island of Bombay and

* This is the Latin word *malĕ* corresponding to *mal* in maladministration.

to your power shall not suffer any wrong or detriment to be done to them or their Estate but shall give Advice and notice thereof to his [*sic* ? the]* Governour and his Deputy and Council, you shall impartially Administer Justice according to the Law established and shall cause all Writs orders and Summons & Sentences of the Court of Judicature or of the Governour and Council or his Deputy and Council to be speedily and duly executed and in all things you shall behave yourself duly and truly in your Office as Justice according to good conscience and shall from time to time give due notice of all moneys by you collected for Fines or otherwise [? and]† thereof make payment to the Treasurer or Receiver that is or shall be appointed by the Governour and Council or his Deputy and Council when you shall be thereunto required, so help you God.

Fourthly That at the Chief Place of the Island where the Governour and Council reside there be erected our Court of Judicature for the hearing deciding and determining of all causes and differences between party and party and of all Criminal matters and that our Governour and Council or his Deputy and Council do from time to time appoint and dilligate some fit person to be judge of the said Court who shall before he enter upon the said employment take the following Oath before the Governour or in his Absence before the Deputy Governour in these words, vizt. You shall swear to be good and true to our Sovereign Lord the King of England and to His Heirs and Successors You shall Administer Justice from time to time to all persons without favour or affection according to the principles of Common Right the Laws that are or shall hereafter be for the East India Company or their Authority legally made and Established You shall neither directly nor indirectly take any bribe or reward from any person whatsoever but you shall in your place as Judge behave yourself duly and truly towards all according to justice, good conscience and so help you God.

Fifthly that the said Court shall sit, once a week or oftener if occasion be unless for such Weeks in the Year as the Governour and his Deputy and Council shall think fit to Appoint for Vacancy as being time for little transaction which shall not exceed twelve weeks in a whole year and that the Judge take care that all proceedings and Sentences be duly recorded in Books to be kept for that purpose and all Officers requisit for the said Court be appointed from time to time from [*sic* ? by]‡ the Governour and his Deputy and Council and such moderate and reasonable Fees as may be necessary for the Service not burthensome to the People a Table whereof shall be publickly set up in the place appointed for the Court to sit and that any Officer that shall take any greater Fee or Reward for anything in the

* 'the' appears in the corresponding passage in the St. Helena Laws.
† 'and' similarly appears in the St. Helena Laws.
‡ 'by' similarly appears in the St. Helena Laws.

execution of his place than in the said Table is set down or shall refuse or delay the doing of his Duty being thereto required shall loose his place and make satisfaction of double damages to the greived.*

Sixthly That all Tryalls in the said Court be by Jurys of Twelve Men where if the matter in variance shall be between English and English there the Jury shall be all English, when the matters in variance are between English and other Nations or between Stranger and Stranger then the Jury to be One half English the other half of the Inhabitants of the Island that are not English the Jury is to be returned by the Justice or Justices of the Island and the like to be observed in Criminal cases each Juryman to take an Oath in these words You shall Swear well and truly to try the matter in question between A and B according to the Evidence, good Conscience and the Law Established so help me God

(IV) And to the end that all mens propertys Rights & Priviledges may be known and preserved it is Ordained Directed and Appointed for the future that all Sales & Alienations of Houses or Land or other Rights & all Mortgage[s] and Engagements Charges and Incumbrances of any of them be Registered and be Recorded in the Publick Register whereby to prevent all Cavils & Disputes touching Titles in future and that the persons that shall first register such Mortgages Engagements, Charges and Incumbrances shall have the first Right to be satisfyed.

(V) And to the intent Religion Morality and Vertue may be countenanced and Vice Suppressed and punished and that it may be known what is required and what Punishment shall be Inflicted We do Ordain and Appoint

1st. That all and every person or persons of what Religion so ever that shall publickly prophane the Lords Day by travelling, working, gaming and other Unlawfull Pastimes shall for the first Offence be only reproved and admonished but for the Second Offence he shall be fined at the Discretion of the Justice not exceeding the value of Five P^{s} [Pieces] of 8/8† nor less than one P^{s} of 8/8 for One Offence.

2dly. That all Prophane Swearing, taking of the Name of God in vain be carefully Avoided and that if any Person after he has been once publickly admonished for that fault shall offend by Swearing he shall be fined at the Discretion of the Justice not exceeding the value of one P^{s} of 8/8 nor less than $\frac{1}{4}$ of a P^{s} of 8/8 for one Offence.

3rdly. That all Intemperance & Drunkeness may be Abstained from as being Destructive both to the Bodys and Souls of Men and if any shall Drink to Drunkeness for the first Offence he shall be Admonished by the Governour or his Deputy or by the Judge or by the Justice or if after

* i.e. 'aggrieved party'. 'party' appears before 'greived' in the St. Helena Laws.

† See p. 21, n.*.

Admonition he shall Offend again and be thereof duly convicted then he shall be Fined at the Discretion of any of the said Partys not exceeding the value of 5 p^{s} 8/8 nor less than ½ a p^{s} 8/8 for one Offence it being intended that if any Person of Quality who should be examples to others be found guilty that they pay a greater Fine than Persons of meaner rank.

4thly That all Fornication Uncleaness and Adultery be forborn & if any shall be found guilty and convicted of the said Crime by Confession or by Verdict of a Jury that in such Cases until it be otherwise provided our Governour or his Deputy & Council do take care to Discountenance & punish the same in such a way as shall by them be found most efficatious and agreeable to the nature of the People & not contrary to the Laws & Statutes of the Kingdom of England.*

5thly That none do Steal or take from another that which doth not belong unto him, and in case of Theft the Person being duly convicted thereof by a Jury that then if it be a Theft by taking away anything by Force or Threats from the person of any man or woman whereby they might be put in fear or by breaking open any House or Room or Cupboard or Trunk that is locked and [*sic* ? then]† the Party Convicted thereof shall not only Restore what he took away to the Party from whom he stole the same but also three times the value thereof and the rest of his Estate after his Debts are paid be forfeited to the Company and he shall stand in the Pillory in a Publick Place and be Whipped from thence to Prison and that it be then left to the Discretion of the Governour or Deputy & Council to Discharge him [? or]‡ if he be an Englishman to keep him in Prison and return him by the next Ships for England and if he be any Person of any other Nation that then he be banished from the Island and if at any time after he shall return unto the Island without the leave of the Governour or his Deputy first had in Writing and shall be Apprehended in such case he shall be put to to [*sic*] hard Labour till the Party injured receive Satisfaction and afterwards for the benefit of the Company so that the time of such his Service do not exceed the term of Seven Years, If it be any other kind of Thievery and the Party convicted he or she shall return what he Stole and three times the value more to the Person from whom he stole the same and in case of nonability he or she shall be forced to work till the same be by work made up according to the Judgment of the Jury.

6thly If any Person called or tendring himself to be a Witness in any case shall Witness falsely through malice or covetousness or on any other Account and shall be thereof Convicted the same damage pain or prejudice as his testimony had it been true & received would have procured (excepting

* Cf. the similar injunctions that the Company had issued and that are reproduced in Ovington's *Voyage to Suratt*, p. 407 (ed. H. G. Rawlinson, p. 237).

† The word 'and' is omitted in the St. Helena Laws.

‡ 'or' appears here in the St. Helena Laws.

Death) to any other Party he shall be Judged to sustain according to the Verdict of a Jury and for ever after his Witness and Testimony shall be deemed and adjudged invalid to all intents and purposes, and if it appear that such Witness was suborn'd then both the false Witness and the Person that Suborned him to be equally liable to make Satisfaction as aforesaid and shall both stand in the Pillory.

7thly If any Person shall Counterfeit any Deeds, Writings or other papers, or by any device cheat another of any Lands, Goods or Money and thereof be convicted by a Jury he shall make satisfaction to the party injured and shall be also fined the like summ to the Company and to stand upon the Pillory three Publick days that so he may be known, in case of unability to make satisfaction or pay the Fine he shall be obliged to work for the Party injured and the Company gratis such a time as by a Jury shall be adjudged.

8thly In case any Person should Quarrell with another not being his Servant or under his Command and Strike and wound him the party offending shall make satisfaction to the party injured according to the Verdict of the Jury and over and besides shall also be fined at the discretion of the Jury* to the use of the Company for breach of the peace the said Fine not to exceed the value of 100 P^{s} 8/8 for one offence.

9thly In case of Wilful Murder the Party being convicted by a Jury shall suffer Death the manner of this Death to be at the discretion of the Governour or his Deputy and Council agreeable to the Law of England.

10thly In case any shall strike or oppose an Officer being about the execution of his Office and shall be thereof convicted by a Jury he shall be fined at the Discretion of the Governour and Council to the use of the Company not exceeding 100 P^{s} 8/8 or be publickly whipt or Imprisoned unless the Governour or his Deputy and Council shall think good to pardon him

(VI) and for the better preserving of the Peace of the said Port and Island keeping all Persons in a due Subordination and Securing the said Port and Island against Enemys We do Ordain direct and Appoint

1st That no Person whatsoever shall imprison or lay Violent hands on or Strike the Governour or his Deputy or any his Superiour Officer or Minister or Attempt or Conspire so to do and in case any shall Offend therein and be thereof convicted by a Jury he shall suffer such a Corporal punishment (not extending to the taking away Life) as the Governour or his Deputy and Council shall Adjudge according to the nature of the Offence.

* This should, I think, be 'Judge'. In the St. Helena Laws the corresponding word is 'Governor', who was given the powers of the Court of Judicature in Bombay.

2dly That all Captains Officers or Soldiers that having entertained themselves in the Companys [service]* in the said Port or Island shall desert the same without leave of their Superiour Officer or of the Governour or his Deputy or that shall run away or entice other Soldiers so to do, or that shall neglect his Duty, Sleep upon or be Absent or Depart from his Watch or Station or make any Quarrell or Disturbance whilst on the Guard and be thereof convicted by the Testimony of two Witnesses upon Oath he or they shall be fined by the Governour & Council or his Deputy and Council to the use of the Company not exceeding two Months pay and shall also suffer such Corporal punishment (not extending to the taking away Life) as the Governour and his Council or Deputy and his Council shall adjudge the matter to deserve.

3dly That if any Captain or Officers Soldiers or Mariners that have entertained themselves into the Companys Service in or at the said Port or Island shall raise sedition or make or abett any Mutiny and shall contrive or endeavour either himself or to entice or corrupt any other Officer Soldier or Mariner to fire or Destroy or to Yeild or deliver up any Fort, Ship, Vessel or Magazine in or at the said Port and Island to any Enemy whatsoever such Captain Officer Soldier or Mariner being thereof convicted by a Jury shall be sentenced to suffer Death and to forfeit and Loose all his Estate to the use of the Company which Sentence shall be executed accordingly unless the Governour and his Council or his Deputy and Council shall pardon or remit any part of the same.

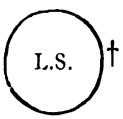
4thly That there be no Wastefull expence of any Powder, Shott, Ammunition or other Stores in the Port or Island nor any Imbezlement of the publick Stores, and if any shall Imbezzle or Steal any powder, Shott, Ammunition or any other Stores and sell the same both the persons so imbezling or Stealing as also the Abetters, Buyers and Receivers thereof shall be lyable over and above the penaltys appointed in the Cases of Theft to be Imprisoned (not exceeding six Months) or to suffer such other Corporal punishment (not extending to deprivation of life or Limbs) as the Governour and Council or his Deputy and Council shall Adjudge the matter to deserve.

5thly In case any Person or Persons shall make any Insurrection and gather together in a hostile manner without the Special Command of the Governour or his Deputy and Council or of such as have Authority from him or shall not upon Command from the Governour or Deputy and Council lay down their Arms and Submit to the Ordinary Justice, as also if any Person or Persons shall contrive to betray or deliver up the Island or any Fort, Castle, port or place therein or Ships or Vessels belonging to the English into the hands of any other people or Nation or in order thereto

* 'service' appears in the St. Helena Laws.

shall hold Intelligence or Correspondency with any that are declared Enemys to the English in this Island Bombay and shall be legally convicted by a Jury of twelve men of any of the said Crimes he or they shall be sentenced to suffer death and to forfeit all their Estates which said Sentence shall be executed accordingly unless the Governour and Council or his Deputy and Council shall on good Conditions* think fit to pardon or remit any part thereof.

Given under Our large Seal the Day and Year above written



†

ROBT. BLACKBOURNE
Secy.

* This should, I think, be 'Considerations', the word that appears here in the St. Helena Laws.

† i.e. Large Seal.

CHAPTER IV

AUNGIER'S VISIT, 1670

THERE were urgent reasons for Aungier's presence in Bombay at the beginning of 1670, quite apart from any question of judicial reforms. In January 1669 Oxenden was able to assure the Company that Bombay was then 'in a good, quiet, and orderly government',[1] but this did not last long. On Goodier's departure for England in that month Capt. Henry Young became Deputy Governor, and his term of office resulted in unhappy dissensions, which tore the small English community of Bombay into two bitterly hostile factions. The first volume of the Bombay records in the India Office contains lengthy correspondence and other papers on this subject, which are summarized by Sir William Foster in *The English Factories in India, 1668–9*, at pp. 225–52. Young fell out both with Capt. Toldervy,* his principal military assistant, and Adams,† the senior of his two members of Council. He accused them of conspiring against his authority and had Toldervy court martialled for mutinous conduct‡ on very flimsy grounds. Oxenden and his Council declared the charges to be 'grounded more on private grudges than any true publike cause',[2] and cancelled the Court's sentence that Toldervy should be cashiered.§ Young prohibited Adams and Toldervy from meeting or communicating with one another, and Adams complained that he was threatened and assaulted by Young.[3] On 27th March[4] an incident occurred that resulted in a charge of murder against Young. Suspecting that Toldervy and Mrs. Adams were together at the house of Dr. Bird,‖ he forced open a door against which the

* He was Captain of one of the two Garrison Companies. He was in Bombay during Cooke's Governorship, being one of the signatories to the charges against him (*E.F., 1665–7*, p. 298, and *1668–9*, p. 232), and had presumably come out with Sir Abraham Shipman.

† He was appointed a Factor by the Company in 1668 (*E.F., 1668–9*, p. 15) and appears to have come to Bombay with Oxenden in Jan. 1669 (ibid., p. 216).

‡ The charges were actually brought by Young's son-in-law, Richard Ball; but there can be little doubt that this action was concerted with Young, and Toldervy not unnaturally objected to Young's presiding at the court martial (*E.F., 1668–9*, p. 226).

§ Young and another officer of the Court actually proposed to sentence him to death (*E.F., 1668–9*, p. 226).

‖ Toldervy admitted he had met Mrs. Adams there and talked with her; also that he fled on Capt. Young's approach; but he alleged the meeting was accidental

lady had placed her back in an attempt to bar his entrance; and in consequence she received an injury that was alleged to have caused her death some six months later. After this incident Young confined Mrs. Adams in the Fort till she was released under Aungier's orders.[5] The dissensions continued to the end of October 1669, when Young was summoned to Surat, and six Commissioners were appointed to carry on the government of Bombay.[6] Young's violent and insubordinate behaviour at Surat necessitated his confinement on the 23rd December 1669,[7] and in January 1670 he was brought to Bombay with Aungier and his colleagues who took over its administration from the Commissioners.[8]

The first thing they did was to inquire into the charge of murder against Young. For this purpose a 'General Council' was formed, consisting of Aungier, two members of his Council,* two ministers,† two ship-commanders, three military officers, and four others. The proceedings lasted three days and a full account of them is in the India Office records.[9] They illustrate Aungier's scrupulous impartiality and thoroughness. Thus Adams and Young were allowed to be present at the examination of the witnesses; and before Young was called upon for his defence, the depositions of Adams's witnesses were read over to his witnesses, so that they might be the better able to defend him. An objection that was raised to the admissibility of testimony by two of Adams's witnesses was carefully considered, and the decision appears to have been in accordance with the then English law.‡ The inquiry was no doubt defective, in that (as was then in

and denied any intentional disobedience to Young's orders (Bom., vol. 1, p. 5). Dr. Bird was the Company's surgeon in Bombay from 1668 to 1686 (with some intervals), and in a Consultation of 16 Oct. 1677 he is styled 'Chyrurgeon Generall' at Bombay (Crawford's *History of the Indian Medical Service*, vol. 1, p. 68).

* Of the two others, Matthew Gray excused himself from attending and Thomas Cotes was absent owing to illness, though he gave evidence in the trial on behalf of Adams.

† They were the two Chaplains in Bombay, Messrs. Stirling and Hutchinson, the former of whom had been one of the Commissioners to take over the management of the Island from Capt. Young.

‡ Young objected to the admissibility of testimony by Toldervy and Samuel Burgess on the ground that he had punished them, and to testimony by Lieut. Burgess on the ground that it would be contradicted by what he had sworn to previously. The Council by a majority decided that their testimony should not be admitted; but the next day Aungier got this decision reversed, saying that the law admitted all witnesses in cases of felony and murder. This accords with the statement in Phipson on *Evidence*, 6th ed., p. 436, that 'with regard to Criminal trials, there appears, before Coke's time, to have been no disqualification of witnesses for

accord with the law and practice) neither Adams nor Young gave evidence, and there was no cross-examination of the witnesses. But there was little dispute as to the main facts. Thus Richard Ball, who was Young's son-in-law, deposed that Young went to the door of the room where Mrs. Adams was and found she had shut it to and was endeavouring to bolt it. 'He commanded her to open it, She answered him she would not obey his command, whereupon he told her if she would not he would force it open. She bidd him doe if he durst, upon that he putt his hand on the doore and thrust it open.' He suggested that Mrs. Adams had received no injury, but this was opposed not only to the probabilities, but also to the evidence of Richard Adams that Young 'went to the Chamber where she was, and not being admitted after calling to her to open the dore, she replying that she would not, he answered, I command you, you slutt you, upon which he threw the dore open upon her, which gave her such a blow on her back that she told mee many times she should never recover of'. This was corroborated by the evidence of the maid Hannah Browne that the next morning Mrs. Adams 'complained of a great paine in her back which she gott by a blow that Capt. Henry Young gave her at Mrs. Bird's house the evening before, forcing the dores open upon her as she stood with her back against them for her defence'. She described the resulting bruise as 'more than the breadth of both my hands'. But apart from alleged statements by the deceased of the kind mentioned by Richard Adams, there was no evidence that this injury had caused her death; on the contrary the two Doctors who attended her in her last illness attributed it to 'flux and feavour' entirely unconnected with the blow. There was also no evidence of any intent to murder. The Council's unanimous opinion that the charge was not made out was, therefore, fully justified. On the other hand Young's ill treatment of her and her husband no doubt had a prejudicial effect upon her health, which may have contributed to her death.* As Aungier well put it, the evidence showed that 'the blow said to be given Mrs. Mary Addames by Capt. Young forcing of the doore upon her, as also her confinement to the

the prosecution on the ground of interest; and even when introduced it was but feebly enforced'.

* Thus, according to the deposition of Samuel Burgess, Mrs. Adams told him in July 1669 that Young's 'barbarous usages did worke such effects upon her as would bring her to the place of Buriall called Mendham's point ere three months were expired', and evidence was given that she cursed Young on her death-bed.

limmitts of the Fort or house were accidents of passion, not through any willful intent to do her hurt; that some months passed betwixt those passages and her death, in which interval to outward seeming she enjoyed her perfect health, as 'tis affirmed. That Capt. Young's unkindnesses to her might be great cause of greif and disturbance of mind, but that he was not willfully accessary to her sickness, much less her death'.

The ships for England were on the point of departure, and the Council decided to send home both Young and Adams, as well as the two other chief disputants, Toldervy and Samuel Burgess.* This was deemed necessary for the future peace of Bombay,[10] and undoubtedly put an end for the time being to dissensions of this kind. They appear to have been largely due to Young's passionate and quarrelsome nature,[11] which again showed itself to his undoing on his return to the Company's service in 1672.[12] He was sent as second in Persia, and soon quarrelled violently with his Chief, Thomas Rolt. In 1674 Aungier described his actions as those of an enraged madman.[13] Orders were given for his removal; but before they could be acted on he had died at Gombroon.[14] Another underlying cause of the disputes was the friction or jealousy between soldier and merchant, which Fryer noticed in 1672,[15] and which continued for several years to give rise to trouble in Bombay.†

Nothing was done about the other charges against Young, except to refer them (as well as the accusation of murder) to the Company,[16] which naturally replied that it was impossible to try them in England.[17] Edwardes is wrong in saying these other charges of tyranny, irreligion, and drunkenness, were investigated by Gerald Aungier.[18] He seems to have been misled by Anderson, who gives prominence to the charges of blasphemy and drunkenness, and states that 'no fewer than twenty charges were brought against him on the 22nd January 1669 before the President in Council'.[19] These charges had no doubt been filed and were before the Council, but they never came to trial.‡

* Burgess originally came out as Secretary to Sir Gervase Lucas, and on the transfer of Bombay to the Company was given employment in their service as Secretary at Bombay (*E.F., 1668–9*, pp. 60, 63).

† As in the case of Capt. Shaxton in 1674 and Capt. Keigwin in 1683. It may also have been partly a case of *Cherchez la femme*. Adams accused Young of attempting to seduce Mrs. Adams, while Young alleged an intimacy between Toldervy and Mrs. Adams.

‡ F.R. Surat, vol. 3, pp. 138–40. The first ten charges were clearly made before 26 Nov. 1669, when a copy of them was sent home (O.C. 3374). At the General

Though they very likely were substantially true, it is only fair to point this out, as Anderson on the strength of them denounces Young as 'a drunkard, scoffer, and avowed despiser of the Christian religion'.

After the disposal of this urgent business and the departure of the ships on the 24th January, Aungier and his colleagues were able to take up the question of reforming the judicial arrangements of the Island. The Commissioners on their arrival in November 1669 had already ordered that they should sit every Tuesday and Friday for judicial matters,* but otherwise they appear to have left things as they found them. On the 31st January a Committee consisting of four of the Commissioners and Robert Barbor, the customs officer at Bombay, was appointed to consider the petitions of the inhabitants, and its members were asked to sit in Council, 'when the President and Councill think fitt to enter upon the regulation of the Government civil and military, publication of the Company's laws', and other important questions.[20] Accordingly on the 1st February a full Council was held, at which the Company's Laws were read and Aungier asked them to consider whether they should be published or not, 'having regard to the present Juncture of the times and Disposition of the people'.[21] The discussion was put off till next morning and resulted in the well-known orders, providing for the appointment of two Benches of Justices, one to sit in Bombay and the other in Mahim once a week for the trial of minor disputes and offences,† while the Deputy Governor and Council were also to sit once a week as a superior Court for the hearing of appeals or the trial of any cases beyond the jurisdiction of the Justices or relating to 'the public Government and civil polity of the Island and the Company's interest and estate thereon'. In the superior Court all trials were to be by Jury, 'as provided by the laws'.[22]

It will be seen that Aungier departed from the orders of the Company for the establishment of a single Court of Judicature to try all

Council in Bombay it had already been decided on 20 Jan. that the four principal disputants should be sent home and the differences between them decided in England; and on the 22nd the order was merely reaffirmed (F.R. Surat, vol. 3, pp. 34, 35), though some further charges against Young appear to have been brought by Lieut. John Burgess on that date (ibid., pp. 143–5).

* The actual wording is 'for hearing and cognoscing of all Petitions, plaints, etc of the inhabitants and administration of Justice between man and man' (Surat, vol. 105, p. 177; *E.F., 1668–9*, p. 247).

† The civil jurisdiction was limited to sums not exceeding 200 Xeraphins (about Rs. 150).

but petty cases by a Jury.* He explained to the Company that 'want of assistance disabled us from appointing a distinct Judge and Court as you enorder, but wee came as near as wee could; when wee are better furnished wee shall proceed more regularly'.[23] The orders of 2nd February also speak of the 'want of men able and understanding in the laws'.[24] It was rightly considered that a Court of Judicature of the kind contemplated by the Company's Laws could not be properly established without a suitable person to fill the responsible office of Judge. Accordingly Aungier recommended the Company to send out some person 'skilled in the Civell Law',[25] and meanwhile did the best he could with the available material to put things on a better footing. The difficulty about the continuance of Portuguese laws, language, and customs in the administration of justice remained; but this was to some extent mitigated by the introduction of the Company's Laws and the direction that 'the respective Customers [i.e. customs officers] of Bombay and Mahim being Englishmen be always present and preside as Chairman in these respective Courts'.[26] The other Justices appear to have been all natives of Bombay, in view of the limited number of Englishmen, 'who being able for such a trust can be spared from other necessary service'.† Thus out of four Justices nominated for Bombay, Mazagaon, and Girgaon,‡ only Robert Barbor, the customs officer, was English; the other three (viz. Antonio Ribero, Luis Cazada, and Francesco Antonio) were Portuguese Indians. This was in accordance with the policy 'of sweetning§ the present Government to the natives by a concurrence with Englishmen in matters of small importance', which is mentioned in the orders of 2nd February. Malabari is, therefore, wrong in supposing that the justices on each Bench were all Englishmen.[27]

Another step forward was the definite establishment of a superior Court, consisting of the Deputy Governor and Council, with a

* The Company's dispatch of 10 March 1669 does not specifically refer to the point of trial by Jury, but the Company's Laws provided for it, as already mentioned.

† Malabari in his quotation of this passage at p. 146 wrongly substitutes 'for' for 'from'.

‡ F R. Surat, vol. 3, p. 41. The fact in question is also borne out by Surat letter of 30 March 1670, in which Aungier says that each Bench consisted of 'some of the Countrey Justices with whome one of your Customers is always to preside' (O.C. 3415).

§ Campbell and Malabari have wrongly substituted 'suiting' for 'sweetning' in their quotations of this passage, as I have verified by a reference to the Record-keeper, Bombay.

prescribed jurisdiction and directions for regular sittings and a proper record of their proceedings. This was an improvement on the irregular control and interference that had previously been exercised, and the Deputy Governor and Council were probably the best body available in Bombay for the disposal of other than petty litigation.* It suffered, no doubt, from the defect of being identical with the executive Government; but this was modified by the direction that in this Court all trials should be by Jury.[28] A Consultation entry of 31st January 1670 also mentions, in accordance with the sixth clause of Section III of the 'Laws', that 'all cases of difference between English and Portugalls [should] be decided by a jury of halfe English and halfe Portugalls'.[29] A jury was formed accordingly for the trial of the charge of murder against Richard Ball, which formed the subject of the second trial,† over which Aungier presided in Bombay. A full report of it is among the records of the India Office.[30] In view of all this it is surprising that Anderson should state that in Aungier's reforms 'allusion was made to trial by Jury; but it was not considered practicable'. Sir William Hunter has followed him in this mistake.[31] On the other hand it would probably be correct to say that the Deputy Governor and Council, after Aungier's departure from Bombay, did not fully act up to this order, though there is evidence that felonies were tried by a jury.‡

The orders of 2nd February do not confer any right of appeal from the Court of the Deputy Governor and Council, and Aungier steadily set his face against making the President and Council at Surat a Revisional Court. In his letter of 30th March 1670 to the Company he writes that the Court was to be 'without appeal unless in cases of absolute necessity'.[32] This position he constantly maintained. Thus on 14th April 1670 he wrote to Bombay: 'Several petitions have been tendered the President with demands of Justice, who have returned them to tender their petitions to the Deputy Governor, in order to the procuring their right, with severe reprehensions to those that brought

* It was also the Court contemplated by the Charter of 1661, by which the Governor and Council of each Factory or place of trade was to judge all persons belonging to the Company or living under them.

† The inquiry into the charge of murder against Capt. Young was also a 'trial', except that no final order was passed.

‡ The four or five cases dealt with in the period April to Sept. 1670 that are contained in the Consultation Book of 1669–70 in F.R. Bom., vol. 1, were all decided without Juries. See Chap. V *post*.

them, and threatening to punish them, if they brought any more.'[33] Again on 17th July 1670 he assured the Deputy Governor and Council that he and his Council at Surat would not interfere with any of their decisions in civil cases, 'provided it were grounded on law and right reason'.[34]

Two small points remain to be noticed. Malabari was naturally puzzled by an apparent gap from 5 to 200 Xeraphins in the jurisdiction of the Justices and that of the superior Court,* due to a mistake made by Campbell in reproducing the Consultation of 2nd February. The Justices' jurisdiction is there fixed at 'summes of money not exceeding the vallue of *two hundred Xeraphins and all thefts not exceeding the value of* five Xeraphines'.[35] Campbell has missed out the words in italics. The reason for the Justices' jurisdiction over thefts being limited to the low sum of 5 Xeraphins was probably the direction in the Company's Laws that cases should ordinarily be tried before a Jury.

Another misapprehension that has arisen is the idea that Englishmen 'accused of grave offences' were exempted from the jurisdiction of the superior Court and had to be deported to England for trial. Edwardes says this system was continued till 1685, when the Court of Directors ordered English misdemeanants to be tried in India.[36] This appears to be based on Anderson's statement that up to that time 'Englishmen accused of grave offences had been sent to their own country for trial'.[37] No doubt there were occasional cases of that kind, such as that of Capt. Young, where it was thought desirable to send the accused home for special reasons; but Young's son-in-law was tried for murder in Bombay, and Europeans were ordinarily just as much subject to the jurisdiction of the Courts as Indians.† This was in accordance with the directions of the Company in 1676, which, referring to the reported misbehaviour of most of the English in Bombay, said: 'We do require you to put our Lawes in execution against any such, and where you find that neither example, advice or correction, will reforme them, that you send them home.'[38]

Aungier did not content himself with the issue of the orders of 2nd February 1670, but (as already mentioned) presided over the

* See his notes on pp. 148 and 159 of *Bombay in the Making*. Thirteen Xeraphins were then equal to about Rs. 10, or roughly one Xeraphin was worth 12 annas (*E.F., 1668–9*, p. 52, n. 1).

† Thus Capt. Shaxton was tried in Bombay for abetting mutiny, and many other cases could be cited.

first Jury trial that took place in Bombay. In this Richard Ball was charged with the murder of a Portuguese Indian, by name Diego Rodrigues. The deceased's son-in-law had the misfortune to be imprisoned for a month and a half for failure to furnish bail that he would duly appear and prosecute Ball, 'whereby the other Inhabitants of the Island [were] much discouraged, thinking it strange that any should be secured on the Guard for bringing in their just complaints'.[39] On hearing of this Aungier at once had him released, and arrangements were made for twelve Englishmen and twelve 'honest and well respected Portugalls' to attend the Court, so that a mixed Jury of half and half could be empanelled. The Minister Stirling, four Military officers, and two others were also appointed to assist the Governor and Council, 'it being a case of Felony which touches life'.[40]

The trial took place on the 4th February and resulted in an unanimous verdict of acquittal. This is not surprising, as the depositions of the witnesses[41] show that the evidence was very discrepant both as to the details of the alleged assault by Ball, and its effect on the deceased, who lived for some months after the assault and (according to two witnesses) seemed quite well for some time afterwards. Nor was there any medical opinion as to his injuries and the cause of his death. The record states that Aungier summed up the case to the Jury, and that they debated for two hours before bringing in their verdict.

In his letter to the Company of 30th March 1670 Aungier says he and his Council 'gave the people a taste of your justice by the tryall of several cases to their great satisfaction';[42] but the only other trial which is on the India Office records is one that was dealt with under martial law. The following terse summary of it appears in the Consultation entries of 6th February:[43]

'Antonio Ribero* having made complaint to the Governour of abuses done him by William Havens, William Middleton, William Minchell, and John Raines in cutting down and breaking his potts, wherewith he watered his Coacoanutt Trees etc. It was concluded (for the preventing further abuse of the like nature) this being the second time they have committed said wrong, that William Havens being a saylor have 12 drubbs given him with a Ropes end at the Guard Doore by the Boatswaine of the Bunder,†

* He was one of the Justices appointed for Bombay on 2 Feb. 1670.

† He was 'an antient and able seaman', by name Zachery Daniell. F.R. Surat, vol. 3, p. 46.

and that the other three being souldiers be tyed neck and heeles* one houre under the wooden horse.'†

Aungier thus showed a clear determination to deal impartial justice in cases between Europeans and Indians. Though his visit only lasted about a month,‡ the inspiration of his personal interest in the proper administration of Justice, no less than his reforms in the Court arrangements, must have resulted in a greater feeling of security in the enjoyment of life and property that encouraged the inhabitants of Bombay and tended to its prosperity.

* This was a common punishment for soldiers in those days. The offender was securely tied, chin in contact with his knees, and remained so trussed for the period of his punishment.

† This consisted of a lofty frame on four legs, which supported a gabled top made of planks. The culprit was perched on the sharp ridge. A musket was slung to each foot to give him a firm seat. In the present case the sentence was the more merciful one of being trussed *under* the Wooden Horse.

‡ He embarked on the *George* for Swally on 5 March 1670 (O.C. 3415; Home Misc., vol. 49, p. 224).

CHAPTER V

THE ADMINISTRATION OF JUSTICE, 1670–2

MATTHEW GRAY,* who had been appointed Deputy Governor of Bombay before Aungier's departure, was well fitted by character, experience, and association with Aungier's government during his visit to Bombay, to carry on the latter's policy. He had had no legal training, but he and his colleagues disposed of the cases that came before them, with common sense and no little legal acumen. This assertion can be definitely made, for the first Bombay Consultation Book that happens to be on the records of the India Office,† consists almost entirely of the judicial proceedings of Gray's Council for six months, and we thus get an unexpected glimpse of its Court work. The first entry of judicial interest is dated 14th April 1670 and runs as follows:

'Upon the heareinge of John Saule a private Centinell‡ who by his owne confession, did upon Easter day last viz. the 3 instant Aprill seduce and leade away diverse soldiers and others to a conventicle to the number of 20 persons and upwards at the Common burieinge, called or knowne by the name of Mendham's pointe,§ where the said John Saul prayed preached and sunge psalmes, without any Leave or License from the Deputy Governor so to do, by which meanes he hath disturbed the peace and tranquilitie of the Islande, and is contrary to an act of Parliament enacted in the 13 & 14 yeare of the raigne of our Soveraigne Lord the Kinge, that now is, by which his unwarrantable proceedings, he hath not onely brought a scandall on our whole nation, but hath alsoe rendred our religion rediculous in the esteeme of all our neighbour nations, as well Romane Catholiques as Mahummedans, pagans and infidells, to the greate dishonour of the true and onely God: The Councell takeinge into their serious Consideration, the heyniousnes of the Crime, doe enorder that the said John

* He had been Secretary of the Surat Council for about ten years until Jan. 1669, when he was promoted to Membership of Council and accompanied Sir George Oxenden to Bombay. He had also been a member of the Bombay Council from 18 Jan. (*E.F., 1668–9*, pp. 37, 93, and 252).

† That is the Consultation Book of 1669–70 in F.R. Bom., vol. 1.

‡ Sentinel, corresponding to the more ordinary form in military use—sentry, was then commonly used for 'soldier'.

§ This lay on and round the site of the present Legislative Council Hall near Apollo Bunder. According to Dr. Fryer it was so called 'from the first man's name there interred'. Cf. *Bom. City Gaz.*, vol. 3, p. 63.

Saul for his said offence be imediately discharged the honourable Company's service, and not to be lis[ted again on the] Rolls, till he first petition for the same, and alsoe [make confession] before the ministers of his fault as abovesaid.'

The reference was to the Conventicle Act of 1664,* which (in pursuance of the policy of persecution then adopted against the Puritans) prohibited, under severe penalties, all meetings of more than five persons for any religious worship but that of the Common Prayer. The same incident is obviously referred to in a letter of Streynsham Master, dated 18th January 1672, in which he writes:[1]

'There was a Souldyer that came out that yeare [1669] alsoe, who pretended the light of the Spiritt, which moved him to Preach, and he had sometimes Delivered his Doctrine in Publicke among them, offering to Dispute it with any of the two Ministers, that he was as lawfully sent to Preach the Gospell as they were. But the Deputy Governour did not think it convenient to let him have the like liberty, and therefore tooke hold of him and clapt him in Prison, where after a short time he came to a soberer understanding.'

The imprisonment to which Saul was sentenced, seems, therefore, to have had the desired effect, and presumably he apologized to the two ministers, Stirling and Hutchinson,† as he was again taken into the Company's service.

The 'beggar-nuisance' existed even in these early days, as is shown by the following entry of the same date:[2]

'Upon complainte made unto the Councell of the daily resorte to the Island of a Company of Idle sturdy beggers called Fuckeers,‡ who by eatinge the breade out of poor peoples mouths, have caused a scarcity of all manner of Provisions: a great number of which goe openly through the streetes bearinge arms, behavinge themselves very insolent towards the inhabitants of this place, to the disturbance of the peace and tranquility

* The proper citation was Car. II, cap. 3 and 4, instead of 13 and 14, as in the Consultation entry; but the difference is probably due to the then common practice of counting the Commonwealth years 1649–59 as part of the reign of Charles II.

† Their unorthodoxy—they were from the extreme Puritan section and objected to using the prescribed liturgy—was criticized both by Aungier and Master (*E.F., 1668–9*, pp. ix, 248, 249, and Yule, *Hedges' Diary*, vol. 2, p. 317). This did not, however, prevent Aungier from subsequently praising them (ibid., p. 225), and in his instructions to Matthew Gray (F.R. Surat, vol. 3, pp. 149–51) he recommended Stirling as a person whose advice was especially useful 'in matters of justice'.

‡ This term was probably intended to include Hindu mendicants (cf. Yule's *Hobson-Jobson*, p. 347).

thereof contrarie to the Laws of this Government for the redress of which greate inconveniencies, it is the resolution of the Councell that a proclamation be forthwith Issued out Commandeinge all and every one of the said sturdy beggars to departe the Islande, within three days after Publication of said Proclamation.'

The result of the Proclamation is unfortunately not recorded: probably it was only a temporary alleviation of a nuisance, which has resisted all attempts to put it down for over two and a half centuries.

Most of the book is occupied with civil litigation about a ship called *St. Christopher*. She had been chartered by Capt. Young, in conjunction with his son-in-law Ball and other friends, to take a cargo of rice to Gombroon, where the Company had a factory, and which is now known as Bunder Abbas. The ship's commander, Elias Hill,* extended the voyage to Kung, a rival port farther up the Persian Gulf. The owner's agent, by name Pero Luiz Symon, complained of this as contrary to Hill's instructions.[3] On the other hand Young and his fellow adventurers had advanced money for fitting out the ship for the voyage, and Ball and Hill sued Symon to recover about Rs. 4000.[4] Symon admitted the bonds on which he was sued, but counter-claimed for damages in respect of alleged wrongs committed by Young and Hill. The bonds, however, expressly barred any suit or claim by Symon, until he had satisfied his debt; and the Council accordingly ordered the sale of the ship, unless he paid up within thirty days.[5] Dissatisfied with this decision, Symon hurried off to Surat to try to get Aungier and his Council to intervene. They refused to interfere except to the extent of supporting his request for a further twenty days' respite before the order for sale of the ship was put into execution. At the same time they made it clear that the Bombay order was a proper one, saying that in fact it gave Symon 'more time than the Law in such cases did admitt', and that they only intervened as 'Mediators to his Creditours at Bombay' that they should reasonably allow him this extra time.[6] This, however, expired without his making payment, and the ship was accordingly sold by auction. A copy of the Proclamation for sale is in the Consultation Book[7] and shows that considerable care was taken over its drafting. It recites the circumstances leading up to the final order for sale and refers to the Deputy Governor and Council as 'the Supreme Court

* He had been a servant of Humphrey Cooke (*E.F.*, *1665–7*, pp. 71 and 304).

of the Island for Justice'. The 6,000 Xeraphins realized by the sale were deposited in the Company's Treasury, pending the settlement of the other disputes between the parties.

On the other hand Symon's claim against Hill for breach of orders, which delayed the ship's return to Bombay, was decided in favour of Symon; but the latter waived his claim for damages on Hill's taking a special oath that he had diverted the ship to Kung in the honest belief that this would be for the owner's benefit.[8] The dispute between Ball and Symon was more complicated, and there is nothing to show how it was eventually settled. It seems to have been still undisposed of in September 1671, when Aungier tried unsuccessfully to get it taken up again on Capt. Young's return to India.[9] In fact it must be admitted that the Bombay Council were disinclined to try the case, which it was difficult to decide satisfactorily in Young's absence. After failing to get the parties to agree to arbitration, they wrote to Surat for advice, expressing the opinion that 'both have dealt very unjustly each with the other'.[10] But they were told that the matter was 'wholly referred to' them, as they were in the best position to decide it.[11] They did, however, take steps to dispose of an offshoot of the dispute. Cotes, a member of the Bombay Council, put in a claim to be paid his share in the venture out of the proceeds of the sale of the ship. Symon admitted the claim, but Ball strongly objected to Cotes being paid anything, unless he produced some authority from Capt. Young for the payment he demanded. The Deputy Governor and Council* called in some others to assist them, and rightly rejected Ball's contentions as 'quibbles'.[12] To enable them to pass orders on Cotes's claim, they required Ball to bring in full accounts, under pain of imprisonment in default.

The records give little information about the administration of criminal justice during this period, but correspondence between Bombay and Surat shows that trial by Jury was resorted to in the case of crimes like theft, murder, and mutiny.[13] The last-named offence is referred to in the case of a soldier called Lush and two others, about whom the following instructions were given by Aungier:[14]

'For the tryall of those notorious mutiners that tore the Proclamation and opposed the execution of justice on the wench you caused to be shaved and sett on an ass, lett a Jury be empannelled, whom if they finde guilty of mutiny, lett them be sentenced, condemned, and executed according to

* Cotes, however, did not sit in Council on this occasion.

the 3rd. Article of the Hon. Company's lawes for the preservation of the peace and suppression of mutiny, sedition and Rebellion.'

The punishment of the wench resembled one used by Moslems, when they wanted to humiliate an offender,* and shows that the Bombay Council did not consider itself tied down to the penalties prescribed by the Company's Laws, or even the Laws of England.

A still more interesting case is one of witchcraft. On the 8th May 1671 the Bombay Council wrote to Surat:[15]

'Wee have sent your honours Coppie of the Justices examinations of wittnesses against a noted wizard, and desire your order what to doe therein. This person hath bin banished twice before, once in Capt. Gary's time and once in the Portugall time of Government, and yet hath presumed to come on the Island againe and bewitched to death foure persons. There are 4 more in prison on the same account. The County people brings in dayly their Complaints of their losses and abuses received by them.'

Aungier ordered him to be tried according to the Company's Laws,[16] and the result is thus reported in a letter of 14th June 1671 to Surat:[17]

'The wizard formerly wrote of was by a Jury of 12 men found guilty both of witchcraft and Murder, there names are here in the Mergent. He would confesse nothing till sentence was read, and then acknowledged himselfe to be a wizard, and that there was severall as guilty as himselfe, some of whom he named and they are fled. He died very obstinate, never showing the least signe of feare. To the last wee intended to have hanged him; only it was generally advised that burning would be farr the greater terrour, as alsoe that a single wizard deserving hanging, whereas he had now murthered 5 men in 6 months and had bin twice banished before for a wizard, soe we burnt him. There happened one thing very observable, that when he lay in the midst of so great a fire one of his armes quite burnt of[f], yet notwithstanding his great knot of haire on his head, and his Clout betwixt his leggs was intire, though they perfectly flamed above an houre togather.'

It is quite clear that the Council were fully convinced of the wizard's supernatural powers, and this illustrates the almost universal belief in witchcraft at this time.[18] The sentence of burning was one authorized by a statute of 1603, which continued in force till 1736;[19]

* An instance that occurred at Surat is given by Dr. Fryer (ed. W. Crooke, vol. 1. 244), where a goldsmith, found guilty of coining false rupees, was similarly treated. Again a Surat letter of 26 March 1667 mentions that in a Persian town the Governor caused a whore 'to have her head shaven and led through the town astride upon an Asses backe' (F.R. Misc., vol. 2, p. 19).

and the Company's Laws left the mode in which a sentence of death should be carried out to the discretion of the Deputy Governor and Council.

Minor civil and criminal cases were presumably dealt with by the two Benches of Justices, which would be more inclined to follow Portuguese laws and precedents than the Company's Laws, especially when (as sometimes happened)* there was no English 'Customer' to preside over them. Before he left Bombay, Aungier had appointed one Simon Serron as legal adviser to the Company. He was a Portuguese resident, 'well read in the civill and Imperiall lawes and one who by his experience and practice in the Lawes and customes of the Portugalls is ably qualified to doe the Company effectuall service in discovering their Just rights and privilledges'.[20] But his employment appears to have entailed some drawbacks, to judge from the following complaint about him in a Bombay letter of 18th May 1672:[21]

'As to the affaires of the Island wee shall give your Honours an account of in the following lines. The inhabitants are very quiet and seeme very well contented; neither do they complaine in the least, havinge Justice impartially administred: only when the intricacy of Simon Ceron's advise to a Plaintiff puts the Defendant to a Non plus for want of a good Councell as that other, which wee cannot remedy, being forced to make use of his advice in some difficult disputes among the natives, unless your Honour will forbid him giveing, or any receiving Councill from him; for on all occations he quotes so many Authors and spins out his advice into so many hard words, that the Justices of the Peace are so startled at the perusall of it, that being not able to contradict what therein contained they agree with his opinion though never so unjust, to the no small detriment of the contrary party. Something of this will be remided when two Englishmen is appointed to reside in each Custome house as Cheife Justice,† who should administer Justice as nigh as they could to the laws of England; and when that is not knowne, according to the best of their reason and contience; never admitting any delay or long law suites to the great charge and loss of time to the Inhabitants.'

In December 1672 Simon was removed from his office, having been found guilty of various 'cheates';[22] but his utility had then in

* For instance there was no 'settled Customer and Justice of peace' at the Bombay Customs House in May 1672 (F.R. Surat, vol. 106, p. 69).

† This of course is used in the sense of Chief of the Justices. As will be seen later, Capt. Gary was the first of the Bombay Judges to be given this title.

any case been diminished by Aungier's reforms. Aungier clearly realized the main requirements for improving judicial work in Bombay, and the well-thought-out proposals for improving its revenue and administration that he sent to the Company in January 1672, included one for the substitution of English for Portuguese as the language of the Courts, and the appointment of Englishmen as Justices, Constables, and Clerks.[23] He had also in January 1671 repeated his request to the Company for a Judge Advocate as 'necessary for the more orderly regulation of your Courts of Judicature'.[24] In September 1671 five of the Company's ships arrived at Surat,[25] bringing with them a dispatch dated 22nd February 1671. In this they answered Aungier's letter of 30th March 1670, in which he had given an account of his proceedings during his short visit to Bombay. Their comments show they had not then received a copy of the Council's orders of 2nd February 1670, for they say:

'. . . though wee like well what you have done in generall, yett in regard you write not the perticulars as to the setling your Courts of Justice, wee cannot give soe fully an answere thereto, but hope you will have had regard to our established Laws and Tryalls by Jewries, as wee have therein directed.'[26]

In the same dispatch they make an important pronouncement about their policy in appointing Judges:

'You write it would be useful to have a person skilled in the Civell Law, upon consideration whereof had, wee doubt, to send a person only in that capacity would doe more hurt than good in many perticulers, espetially in stirring up of strife and contention and therefore forbeare to send any, and the rather because there are some Factors that are now going, which are not only schollers, but have studied something both of civell and common Law or bin used in the Courts of Justice and the practizes of Justices of Peace, here in England, whome wee forbeare to name, because wee would have noe persons to depend on a recommendation on that account, and that wee would leave all to you to bee imployed as you shall find their abilities, to which purpose make such enquiry and try all of them as you shall think fit.'[27]

Aungier, therefore, had to content himself with the limited assistance thus afforded; but it at any rate put him in a better position to carry out the reform, which he had had to postpone in 1670, of establishing an English Court of Judicature in Bombay. He lost little time in preparing the way for the new Court. The first step was to select one

of the nine Factors, who had come out in September,* as its prospective Judge. His choice soon fell on Mr. George Wilcox,† who (according to his own statement) had served three years as a Clerk in the 'Prerogative Office'.[28] This service must have been in one of the two Prerogative Courts of Canterbury and York, which were presided over by Judges appointed by the respective Archbishops, and had jurisdiction to grant 'prerogative probate' in cases where a deceased testator had goods in more than one diocese.‡ As he was a married man with four daughters, he was probably middle aged. In November 1671 Aungier appointed him to the post of Secretary to the Council at Bombay, and recommended him as 'a person well quallified for it, and one whome we doubt not will deserve your respect and kindness'.[29] At the same time Mr. Thomas Niccolls§ was appointed 'to assist Mr. Wilcox and to be clarke of the Court of Judicature'. Wilcox must have given satisfaction, for on the 16th

* The first of these was Capt. John Shaxton, who was designated to command the troops and become Deputy Governor. The last of them was Mr. Samuel Burgess, who had been sent home with Capt. Young (L.B., vol. 4, p. 433).

† His surname is spelt *Wilcocks* in the dispatch appointing him a Factor; but he himself signed as *Willcox*, and Wilcox was the usual spelling of his name.

‡ Wilcox probably worked in the London office of the Canterbury Court, as his surety was a gentleman of Kingston, Surrey (*Court Minutes, 1670*, p. 380).

§ Though Niccolls is stated to have been 'bread as seaman' (Bom. consltn. of 18 Aug. 1673, F.R. Bom., vol. 8, p. 72), he came out as a recruit for the Bombay garrison, arriving on the *Humphrey and Elizabeth* in Oct. 1669 (see list of passengers on that ship, F.R. Surat, vol. 105, p. 145, the reference to 'divers soldiers' sent out by the Company, in their letter of 10 March 1669 to Surat, 4 L.B. 239, and Oxenden's statement, quoted on p. 97 *post*, as to Niccolls 'coming out a souldier'). His name appears as a private in Capt. Toldervy's company in Jan.–Feb. 1670 (O.C. 3396). On 22 July 1670 he was convicted by a court martial of insubordination and the use of 'scandalous and seditious words tending to mutiny', and was sentenced to confinement pending deportation to Surat and thence to England (Bom. letter of 5 Aug. 1670, F.R. Bom., vol. 6, p. 39). The proceedings and sentence were confirmed by the Surat Council (Surat letter of 16 Aug. 1670, F.R. Bom., vol. 19, p. 44). Accordingly he was sent to Surat on the *Berkeley Castle* in Sept., arriving at Swally Hole on 23 Sept. 1670 (F.R. Surat, vol. 105, pp. 19, 26, and O.C. 3489). Gray described him as 'a most pestilent and turbulent fellow, one that hath all along disturbed the peace of the Islande' (F.R. Bom., vol. 6, p. 39), and 'of such a turbulent spirrit that the peace of the Island cannot be maintained while he is on it' (F.R. Surat, vol. 105, p. 26). Aungier evidently saw that he was capable of better conduct and gave him a chance of proving it. Within three days of his arrival he was given the delicate task of searching the ships that had come out from England for goods illicitly put on board for private trade, describing him as 'a person quallified for that office' (Surat consltn. of 26 Sept. 1670, F.R. Surat, vol 3, p. 90). He appears to have had some legal experience. Thus he was appointed to execute a Commission received from the Court of Chancery in Sept. 1672

May 1672 he was appointed a member of the Bombay Council, and Aungier added against his name the remark: 'who being at present Secretary wee have thought necessary to appoint to his assistance Mr. Samuel Walker,* intending he shall succeed him in a short time; have designed said Mr. Wilcox for another employment.'[30] In the circumstances this clearly designated him for the post of Judge. This selection and his promotion to Council only nine months after his arrival in India show the high regard in which Aungier held him. In the same letter from Aungier mention is made of 'a forme of Legall proceedings' that Wilcox had drawn up. Malabari deplores the loss of this document;[31] but it is in fact reproduced in an interesting report by Wilcox, which is referred to later on. We have now reached the stage when Aungier was able to pay his second visit to Bombay, which lasted for over three years,† and resulted in the laying of stable foundations for its development.

(F.R. Surat, vol. 105, p. 136, and Surat, vol. 87, p. 84); and orders of 1674 refer to his judicial attainments (F.R. Bom., vol. 1, pp. 97, 98, and Bom., vol. 6, p. 162 —see p. 90 *post*) He subsequently became Judge of the Court of Judicature.

* He was a Factor who had come out with Wilcox and understood Spanish (F.R. Misc., vol. 2, p. 146). He died at Goa, while on a mission there in Jan. 1673 (Bom. letter of 29 Jan. 1673, F.R. Surat, vol. 106, p. 65).

† Namely from 7 June 1672 to about 28 Sept. 1675.

CHAPTER VI

THE ESTABLISHMENT OF THE COURT OF JUDICATURE

AUNGIER wanted to go to Bombay in April 1672, but had great difficulty in leaving Surat owing to the opposition of the Moghul Governor, who 'plainly told him he shall not goe, pretending openly his jealousy that Bombay will spoyle this Port [Surat]'.[1] The Governor even demanded a large sum of money, as the price of giving permission to go; but Aungier and his colleagues stoutly refused to yield to such extortion, although the state of affairs at Bombay called for his presence. There was trouble between the Deputy Governor, Philip Giffard,* and the second military officer, Capt. Burgess, which might have developed on the lines of Capt. Young's quarrel with Toldervy, had not Aungier sternly nipped it in the bud.† On the 21st May he at last succeeded in leaving Surat, and after a protracted and perilous voyage reached Bombay on the 7th June.‡ It was not long before he began to put into execution the plans he had formed for establishing the English Laws and a Court of Judicature. A full account of the preliminary discussions and other steps taken for this purpose is contained in a Report written by Wilcox in December 1672, which has been published by Dr. Khan.[2] It is fortunate that a copy of this Report (or 'Remonstrance', as it was also then termed in its old sense of a narrative) has been preserved in the Public Record Office,[3] as the other copy of it that was sent home has disappeared.[4] It is well worth perusal and throws a flood of light on this interesting epoch in Bombay history. The account of the matter given by Wilcox is confirmed by some entries, summarizing Council Consultations,[5] of which the original record is not now forthcoming. Thus on the 22nd June 1672 we have the following entry:

'The English Lawes voted to be put into practise, and the method

* He succeeded Matthew Gray in Sept. 1670 and held the office of Deputy Governor till Capt. Shaxton took his place in Sept. 1672.

† For further details see Malabari's *Bombay in the Making*, p. 246, and F.R. Surat, vol. 106, pp. 100–3. Burgess was removed from his command, but on his submission was sent to Surat in August 1672 and put in charge of a frigate there (F.R. Surat, vol. 87, p. 69, and vol. 106, p. 125).

‡ A graphic account of the voyage is contained in Bom. letter of 14 June 1672 to the Company (O.C. 3649 and Home Misc., vol. 49, p. 31). The ship met with a violent storm, lost all her sails and was nearly stranded.

thereof brought in by Mr. Wilcox Confirmed, and himself chosen Judge. Officers appointed and their fees established.

An office for proveing of Wills and granting Administrations to be settled according to the forme delivered in by Mr. Geo. Wilcox and hee to be Register [Registrar].'

A Proclamation was accordingly issued (as Wilcox says)[6] 'for abolishing [from and after the first day of August next] the Portugal laws, and for establishing the English, and likwise to make void al Commissions of the Peace in the Portugal hands'. In a subsequent letter to the Company, Aungier says the Proclamation gave great satisfaction, 'not only other Nations, but even many of the Portugalls themselves being weary of their owne Lawes'.[7]

The 1st of August was the day originally fixed for the opening of the Court of Judicature,[8] but on that day 'there fel so prodigious a quantity of raine' that the opening ceremony had to be put off to the 8th.[9] Before, however, we come to that, the 'forme and method' settled for the Court may be noticed. These were based on Wilcox's proposals, as set forth in three papers, which are reproduced in his Report.[10] The first one deals with the civil side of the Court, but the provisions are of the simplest nature.* They contain a draft of the form of summons to a defendant in an action, giving him notice of the date fixed for hearing and warning him that, in case of his non-appearance, 'the Court will proceed to Judgment on evidence of the Plantiff'. That, however, would only be after due service had been sworn to by the 'messenger'. His provision for a speedy trial is enviable in these days of the Law's delays. 'The next Court day after summons the Plantiff to give in Declaration', or statement of claim, as it is now styled. 'Two Court daies after Declaration', Wilcox continued, 'to come to a Tryal, without sufficient cause shewed to the Contrary. A Court to be held every weeke if there be occasion.' Nothing is said in the paper about the defendant filing a written statement, but a Table of Fees stated to have been levied by Wilcox and his successors[11] shows that 'pleas' were taken and 'issues joined'. In accordance with the Company's Laws, a Jury was to be summoned for the trial. Wilcox's draft Table of Fees provides for a 'sub-pena'

* They certainly cannot be properly described as a 'Code' of Civil procedure, as suggested by Malabari (p. 149, n.) and Edwardes (*Bom. City Gaz.*, vol. 2, p. 207, n. 2). Their further surmise that in drawing up this Code in May or June 1672 Wilcox was helped by Statute and other law-books sent out by the Company in *December* 1672 is obviously unfounded.

to a witness as well as for entering Judgement and taking out execution. Imprisonment of the judgement-debtor, and a Court-sale of his 'vissible estate', if he failed to pay up within six months, were to be the ordinary modes of obtaining execution.

His second paper gave reasons for having a Court of Probate and Administration, and for insisting on the Executor or Administrator filing inventories and accounts. As in the case of civil actions, provision was made for court officers* and court fees. The books to be kept were also specified.

The third paper related to the Sessions Court, and the division of Bombay into 'hundreds'.† Instead of the two sub-divisions of Bombay and Mahim, which had been fixed in 1670, Wilcox proposed to have three, viz. those of Bombay, Mahim, and Mazagaon. In each of them there was to be a Justice of the Peace and a Constable. This meant a reduction in the number of Justices, which was 8 or 9 under the orders of 1670. Their status was also to be reduced: they were no longer to sit as punitive Courts, but each was to act as a sort of Committing Magistrate for his 'hundred': that is to say, upon a complaint, they were 'to issue out their warrant, the crime to be incerted in it', and to hold a preliminary 'examination' of the witnesses. The record of this was to be sent to 'the Clerk of the Peace', who was then 'to draw up an Indictment'.‡ On the other hand, the three Justices were to sit with the Judge at the monthly Sessions in the Court of Judicature. No mention is made of trial by Jury, probably because the Company's Laws already provided for it.

This paper also contained other proposals, of which the chief were:

1. Separate prisons, 'one for debt, the other for felons'.

* These included an 'Appariter', a term applied only to messengers in the Spiritual Courts. This corroborates Wilcox's statement that he had been a clerk in an Ecclesiastical Court.

† This was then a familiar term in England, signifying a territorial division of a county. The origin of the name is doubtful. One theory is that the hundred denoted first a group of a hundred families, and then the district which these families occupied. Another view is that the hundred was originally a term of measurement denoting a hundred hides of land, the hide being as much land as could support one family. But its area varied in different parts of England, and a quarter hide became the normal peasant tenement (*Encyclopaedia Britannica*, 14th ed., vol. 2, pp. 543, 887).

‡ The procedure in the main had a close resemblance to that still prevailing in committals to, and trials in, the Sessions Court of Bombay, except that the Committing Magistrates now draw up the charges, though the Clerk of the Crown can alter or add to them.

2. A Constable to be elected annually 'by the major voices of the Inhabitants' of each hundred.
3. Churchwardens to be annually chosen at the Sessions, and their duties in presenting 'defaulters' to the Sessions* prescribed.
4. 'Overseers of the high waies' to be annually chosen and to have customary duties.
5. A Register of all mortgages, sales, and other alienations to be kept.
6. 'A Coroner to be made to enquire after al murders and casual deaths, and to retourne them into Sessions, he to be an able man.'†

Wilcox says in his Report that all these proposals were approved by the Council;[12] but in fact an important modification was made. This is that Bombay Island was divided into four 'hundreds', viz. Bombay, Mahim, Mazagaon, and Sion, instead of the three proposed by Wilcox. Two Justices (instead of one) were also assigned to the Bombay hundred, so that there were five Justices, all Englishmen, appointed on the 28th June 1672.[13] It was further settled that 'the Great Roome next the Accomptant's Lodgings' should be got ready for the sittings of the Court of Judicature, and that it should in future be known as 'the Guildhall'.[14] This room appears to have been in the Customs House, and it continued to be used for the Court of Judicature till 1675.[15]

Another decision of importance was that the Judge should be debarred from private trade, and should receive a salary of Rs. 2000 a year,‡ which was to be met from court fees, as far as possible.[16] For this and other charges of the Court, a fee of 5 per cent. on 'every cause determined in the Court of Judicature' was to be levied.[17] Accordingly on his appointment as Judge in June 1672, the Governor and Council (Wilcox says)[18] 'tooke me off of al manner of trade and commerce appointing me wholy to the study of the Law, and to

* They did this for such offences as non-attendance at church, 'drunkenness, swearing, uncleanness and other debaucheries' (Khan, p. 493).

† This shows that the Coroner's office in Bombay is much older than has hitherto been supposed. Malabari (p. 180) and Edwardes (*Gaz.*, vol. 2, p. 230) fix the creation of the office in 1701; but the Commission issued in that year was probably based on one issued by Aungier in 1672. One Daniel Naylor was given the vacancy in 1675 (F.R. Bom., vol. 2, p. 119).

‡ There was considerable delay and trouble in getting the Company to agree to Wilcox's salary, which was eventually settled at £120 a year, see Chap. VIII *post*.

spend my time in reading such bookes as might advantage me to performe my duty in so high a place'. In taking such steps on his own responsibility, Aungier showed a fearless determination to do his best to put the Judge in a position of independence and above the temptation of bribery. In his letter of 21st December[19] to the Company he made a powerful defence of his action, which (as he expected) was not well received by the Court of Committees.*

Wilcox gives an interesting account of the proceedings at the opening of the Court on the 8th August.[20] There was a ceremonial procession from the Fort through the Bazaar to the Guildhall in the following order:

'Fifty Bandaries† in Green liveries marching two by two.
20 Gentues‡ } each representing their several cast or sect marching two by two.
20 Mooremen§ }
20 Christians }
His Honours horse of State lead by an Englishman.
Two trumpets and Kettle Drums on horse back.
The English and Portugal Secretary|| on horse back carrying his Majesties letters Patents to the Honble. Company and their Comission to the Governor tyed up in scarfes.
The Justices of the Peace and Council richly habited on horse back.
The Governor in his Pallankeen with fower** English pages on each side in rich liveries bare headed Surrounded at distance with Peons, and blacks.
The Clerke of the Papers on foot.
The fower Atturneys, or Common pleaders on foot.
The keeper of the prisons and the two Tipstaffs on foot, bare headed before the Judg.

* In fact they deferred action for so long a time that both Wilcox and his widow were dead when they passed orders in 1678.

† They were the hereditary tappers of toddy-trees. A body of them was in regular attendance on the Governor or Deputy Governor, and on occasion they did military service (cf. Edwardes, *Gaz.*, vol. 1, pp. 145, 146, and *E.F.*, *1668–9*, p. 246).

‡ Hindus. The word is a corruption of the Portuguese *Gentio*, a Gentile or heathen (Yule, *Hobson-Jobson*, p. 367).

§ Mohammedans. The term comes from the Portuguese, whose contact in the Iberian Peninsula had been with the Mussulmen of Mauritania and who consequently called all Mohammedans *Mouros* (Yule, *Hobson-Jobson*, p. 581).

|| This should have been in the plural, as there were two separate Secretaries, one the English Secretary and the other the Portugal Secretary, as is clear from the following paragraph of Wilcox's report.

** This or 'feower' is the old English form of *four*.

The Judg on horse back on a Velvet foot cloath.
His Servants in Purple serge liveries.
Fower Constables with their staves.
Two Churchwardens.
Gentlemen in Coaches and Palankeens.
Both the Companies of foot (except the main Guard) marching in the Reare.'

It must have been an imposing procession and, no doubt, was one of the occurrences, which led to the accusation of undue 'grandure' that the Company subsequently made against Aungier.[21] But the occasion surely justified a ceremonial display that drew adequate attention to the importance of the establishment of the Court of Judicature and the introduction of English laws. The mention of the four Attorneys is interesting, as showing that the legal profession had already obtained a footing in Bombay. Wilcox's proposals included 'Councill', i.e. Counsel, among the officers of the Court, and fixed a 'Counciller's fee' at a little over one Rupee.[22] His draft form of summons also allowed a defendant to appear 'by his Atturney'.[23]

The proceedings at the Guildhall can best be given in Wilcox's own words:

'. . . the Governor entring the Court, tooke the Chaire, placing me next to him on his right hand, and the Gentlemen of the Council and Justices tooke their places accordingly. Proclamation being made and silence commanded, the Clerke of the papers read his Majesties letters Patents to the Honble Company for the Island Bombay, then the English Secretary read the Company's Commission to the Governor, which being done he was pleased to give me my oath as Judg, as also my Comission, which was likewise read; next I swore the Publick notary and Coroner, then the Clerk of the Peace swore the Churchwardens and Constables, and their staves were delivered to them by the Governor, with a charge to execute their respective offices and places honestly and uprightly; after this the Governor standing up (and the Court also rising) was pleased to make a most excellent speech on commendation of the English laws, which afterwards was interpreted to the Portugess in their own language by the Portugal Secretary. . . .'

Aungier's speech is given at length in Wilcox's Report[24] and well repays perusal. It is, however, too lengthy for full reproduction in these pages. Its first part deals with the change from Portuguese to English laws and compares Bombay to 'an hopeful Child fed with

foreine milk; which not agreeing with its natural constitution, hath hindered its growth, and increased evill humors; But now being restored to the breasts of its own mother, there is no question, through the Providence of God, it will in time grow in Stature, good fortune and in favour with God and man'. He goes on to say: 'Formerly the name of the English Nation was knowne to these parts only by the honesty of their traffique, but now I trust in God through the just execution of these laws, that our Neighbour Nations will have cause to say of us . . . (here he aptly paraphrases Deuteronomy, iv. 6 and 8) . . . Surely this great nation is a wise and an understanding people, for what nation is there soe great which hath statutes and Judgements soe Righteous as all these Laws which I set before you this day?'

He then praises the English Laws as 'compiled from the quintessence or best part of all other Laws, especially those of the Roman Empire', but freed from 'intricacy and corruption', and refers to the Company's Laws as 'that Excellent Abredgement of them* recommended by the Honble. Company'. He then points out that 'Laws though in themselves never so wise and pious are but a dead letter and of little force except there be a due and impartiall execution of them', and addresses the Judge in a peroration, which shows the intensity and earnestness of his desire to see impartial justice dealt to all, without fear, favour, or respect of persons:

'The Inhabitants of this Island consist of severall nations and Religions to wit—, English, Portuguess and other Christians, Moores, and Jentues, but you, when you sit in this seat of Justice and Judgement, must looke upon them with one single eye as I doe, without distinction of Nation or Religion, for they are all his Majesties and the Honble. Companys subjects as the English are, and have all an equall title and right to Justice and you must doe them all Justice, even the meanest person of the Island, and in particular the Poore, the Orphan, the Widdow and the stranger, in al matters of controversy, of Common right, and Meum and Tuum;† And this not only one against the other, but even against myself and those who are in office under me, nay against the Honble. Company themselves when Law, Reason and Equity shal require you soe to doe, for this is your Duty

* This is, however, too euphemistic, in view of their manifold defects. They were also more than a mere abridgement, as they varied from the English laws in some respects.

† Mine and thine. This was then a common expression for disputes about private rights.

and therin will you be justified, and in soe doing God wil be with you to strenthen you, his Majestie and the Company will comend you and reward you, and I, in my place, shal be ready to assist, Countenance, honour and protect you to the utmost of the power and Authority entrusted to me; and soe I pray God give his blessing to you.'

It is a pity that some of his successors did not keep the same ideals before them, and this passage reveals his high standard of uprightness and fair-dealing. Well does Hamilton say that Aungier 'came to Bombay and rectified many things that were amiss and brought the Face of Justice to be unveiled'![25]

His thoroughness is shown in various ways. Thus Commissions were drawn up for the Judge and Justices, and oaths as to the due execution of their offices were administered to them and minor custodians of the law. The day was also celebrated by a distribution of medals, bearing the Company's Arms, which had been specially minted for the occasion,[26] and by a general release of prisoners.[27]

The ceremony in the Guildhall was concluded by Aungier rising from his chair and placing Wilcox in it, 'commanding that obedience should be given me by the Court, and al else in that place of Judicature'. This was typical of the support that he consistently gave the Judge, and his Instructions to the Deputy Governor and Council on his leaving Bombay in September 1675 include a direction that 'you must give due countenance and respect to the Judge of the Court of Judicature, in the execution of his office; and also to the rest of the Officers under him'.[28]

Aungier has a clear right to fame* as an able administrator and a highly esteemed Governor; but his work in laying well and truly the foundations of British Justice in Bombay, in the face of great difficulties, is perhaps the most remarkable of his many achievements. The fortunate survival of Wilcox's Report helps us to a proper appreciation of the great personal and influential part he played in establishing the new Court of Judicature on a sound footing.

The establishment of this Court has not received the notice from historians that it deserves. Bruce's *Annals* are silent on the subject,†

* Yet he is not so famous as he should be; his name, for instance, does not appear in the *Dictionary of National Biography*.

† He merely says that Aungier '*suggested* in this season the expediency of erecting Courts of law and establishing a police at Bombay'. This probably has reference to Aungier's 'Proposals touching Bombay Island', which he sent home in Jan. 1672 (O.C. 3611).

probably because Wilcox's Report of 1672 did not atract his attention. This seems to have misled Hunter[29] and Malabari[30] into treating the orders of 1670 as Aungier's main achievement in establishing Courts in Bombay; and Edwardes[31] is the only one who gives due weight to Aungier's final work in erecting (to use Hamilton's words) 'a formal Court, where Pleas were brought in and debated'.[32]

CHAPTER VII

THE WORKING OF THE COURT OF JUDICATURE, 1672–83

UNDER the Company's orders a Register had to be kept of all the proceedings of the Court of Judicature and an annual report about them submitted to the Company.[1] Wilcox's Report of December 1672 accordingly contains some account of the Court's Sessions work;[2] and in January 1674 he wrote another detailed Report, which was sent home.[3] This was accompanied by a copy of the Register of the proceedings of the Court;[4] and thus arose an annual practice of transmitting Registers.* Incidentally, the first recorded Court Vacation was due to the work thus entailed, for in December 1675 a month's vacation was ordered, 'the judge of the Court of Judicature being now very busy in getting the yeares register ready to be sent to England by this yeares shipping, in soe much that he cannot for some time attend the Court in his owne person'.† If all these Registers had been preserved, there would have been more than ample material for obtaining a clear insight into the working of the Court; and valuable light would also have been thrown on the manners and morals of the inhabitants of Bombay during these early days of British rule. Unfortunately none of these documents are now forthcoming in the India Office records,‡ except the Registers of November 1723 to November 1724 and January 1726 to December 1726. Malabari also found the original Register for the period June 1726 to January 1727 (which was one of the last before the establishment of the Mayor's Court in Bombay) in the Record Room of the High Court and has given an interesting résumé of it in his *Bombay in the Making*.§

There is, however, other material which gives a fair general idea of the Court's working. Besides Wilcox's two Reports, which afford valuable authentic information, there exist copies of the Table of

* Thus in 1678 the *Sampson* took home a book containing 'the transactions of the Court of Judicature at Bombay, commencing the 22 August 1677 and ending the 22 August 1678' (O C. 4568, item 23).

† Bom. Consltn. of 22 Dec. 1675 (F.R. Bom., vol. 2, p. 7). There may, however, have been previous vacations, as they were authorized by the fifth clause of Section III of the Laws.

‡ They were presumably destroyed, as being of no further official use, at a time when the historical or antiquarian value of a document was not taken into consideration.

§ The second Register in the India Office covers part of the same period as that of the Court 'Minute Book' discovered by Malabari.

Court fees in force for the first five years, and of the amended Table that was sanctioned in November 1677.[5] These not only give useful particulars as to officers of the Court and their work, but also contain some Court Rules. Correspondence between the two Councils of Bombay and Surat is an occasional source of further knowledge.

A detailed description of the Court's working would contain technicalities of interest only to a lawyer. The following remarks are mainly confined to what is of more general interest.

First as to the Judiciary—Wilcox's proposals speak of the Justices assisting the Judge only in his Sessions work;[6] but Aungier, in the full account of Bombay which he wrote in December 1673,[7] says they assisted 'to heare and determine all causes criminal and civil'.[8] This is corroborated by Wilcox's second Report,[9] which uses the plural 'wee' to denote the Court in its civil, as well as its criminal, side. At first the main responsibility would naturally rest on the Judge, and the Justices would occupy a position analogous to that of Assessors under the Indian Code of Criminal Procedure. Thus we learn that, under their Commissions, none of the Justices could 'sit upon life and death, but only as assistants'.[10] When, however, the title of Judge was in 1678 altered to that of 'Chief Justice', meaning thereby that he was only the 'Chief' of the Justices,* the superiority of the Judge's position was weakened. It is at any rate clear that towards the end of the Court's existence the Justices were full members of the Court. On the other hand, from 1718 to 1728 the Court included representatives of the four principal communities in Bombay, who (at any rate in 1727) were merely appointed as 'Assistants',[11] and thus occupied a position similar to that formerly held by the English Justices.

The Judges in the first decade of the Court's existence were:

1. George Wilcox, from 8th August 1672 to 9th August 1674.
2. James Adams,† from August 1674 to end of July 1675.
3. Capt. Thomas Niccolls, from August 1675 to 20th August 1677.
4. Capt. Henry Gary, from August 1677 to 26th December 1683.

* This is emphasized by Surat letter of 6 Feb. 1678 to the Company, which speaks of the office of Judge being *reduced* to the title of Chief Justice, just as the salary was reduced from £120 to £90 a year (O.C. 4341).

† His tenure of the appointment is overlooked by Edwardes (*Gaz.*, vol. 2, p. 207). His appointment was intended to be only provisional; and on 18 Jan. 1675 Aungier again asked the Company to send out 'some persons practised in the law' (F.R. Bom., vol. 7, pp. 60, 61), but the Company with their dislike of professional lawyers turned down the suggestion.

It has been wrongly asserted that Niccolls was the first English Judge of Bombay.[12] This is based on the statement that 'Niccolls was the first to have a Judge's emoluments and honours'.[13] It is true that Wilcox was not alive when a salary of £120 a year was eventually allowed him by the Company;[14] but he was, on his appointment, given a definite salary as Judge beyond that of a Factor, and was authorized to pay himself accordingly out of the court fees realized. The Company, no doubt, did not at once confirm Aungier's proposal, with the result that Wilcox seems to have received no portion of his extra salary; but for this he deserves commiseration, not disparagement. Niccolls may have suffered in the same way, though probably not to the same extent, as the orders approving his drawing a salary of £120 did not arrive till after his suspension in August 1677.[15] In fact salaries were not then paid with the regularity to which we have become accustomed. Thus Aungier in January 1674 mentions that he had not received his salary for four years,[16] and this state of things seems to have continued for some time, as in December 1707 it was reported that, for want of orders, all the Military servants on the Bombay side of India had 'near four years' salary due to them'.[17]

Wilcox was regularly appointed as the first Judge, and received full honours as such, not only in Bombay, but also from the Company in London. Thus the Court of Committees recognized Wilcox as their Judge and Registrar at Bombay,[18] and in October 1673 allowed Mrs. Wilcox and her four daughters free passages to Bombay, 'in regard her husband is in an eminent employment in the Company's service'.[19] They also advanced her £25 on account of his salary as Judge and Registrar,[20] thus acknowledging that he was entitled to such a salary. In the face of this it is absurd to say that he was merely a kind of honorary magistrate, and that his position was inferior to that of Niccolls.[21] In fact Wilcox had a superior position, as he was also a Member of Council, whereas Niccolls was not.* The latter work did not prevent him from giving proper attention to his judicial duties, as the Court days were ordinarily different from those on which Council meetings were held.† In addition to his judicial duties,

* The Company's order of 15 March 1678, appointing the Judge an *ex-officio* member of Council, was passed after Niccolls' suspension.

† The Council under Aungier sat on Monday, Wednesday, and Friday mornings, whereas the Court ordinarily sat on Tuesdays and Thursdays. O.C. 3910; *JBBRAS*, Aug. 1931, pp. 36, 37.

Wilcox had to attend to his registration and probate duties, as well as the administration of estates of deceased servants of the Company.[22] The Council meetings occupied him on three mornings a week, and he was sometimes called on to report to the Council on matters of a legal nature.[23] He was at first also in charge of the Treasury; but on the 14th March 1673 he was relieved of this, 'his other duties wholly takeing up his time'.[24] He was evidently conscientious in the performance of his duties, and in December 1673 Aungier reported that he had 'a full and laborious employment' in his office of Judge.[25]

The Civil and Criminal work of the Court can best be taken separately.

1. *Its Civil Side*

The Court proceedings generally followed the lines proposed by Wilcox and approved by the Council; but an important addition was made on 16th August 1672. This was the establishment of a 'Court of Conscience, where the Poore may have justice done them gratis, to sit every Saturday and all causes under 20 Xeraphins to be decided there'.* Wilcox presided over this Court; and as no fees were charged, the innovation must have been welcomed. The name was derived from the similar Courts established by Acts of Parliament in England for the recovery of small debts, usually sums under £5, till they were superseded by the County Courts Act of 1846.[26] As a sequel to the erection of this Court, ordinary actions for debts under Xs. 20 were forbidden,[27] and in 1677 one John Pereira† was fined Xs. 10 for disobeying this rule.[28] The Judge also decided petty quarrels other than monetary claims in this Court. The Justices apparently sat with him in his Court, as Wilcox says: 'I act as Cheife in this as in the rest';[29] but the trials were of course summary and without a Jury.

In all other civil cases a Jury of twelve persons was empanelled and was allowed a fee of Xs. 3.‡ The Juries were ordinarily composed of Englishmen; but in accordance with the Company's Laws, in suits between English and Portuguese, a 'party jury' of half and half tried

* F.R. Misc., vol. 2, p. 14; Wilcox's second report, para. 4, O.C. 3930. This Court corresponded to the Court of Requests established under the Charter of 1753 for the summary disposal of small causes (see Edwardes, *Gaz.*, vol. 2, p. 219).

† He was a clerk employed in the Court, and was still in service in 1681 (F.R. Bom., vol 2, p. 23).

‡ In 1677 this was reduced to 1½ Xeraphin if the value of the suit was less than 190 Xeraphins.

the case.[30] This system appears to have lasted until the Court's cessation in 1690.*

As already mentioned, Attorneys† were in existence when the Court was started and were allowed to practise in it. Their increase was not, however, encouraged by the Company. In July 1674 the Court of Committees resolved that no Attorneys or Lawyers' clerks should be sent out to serve in the Court of Judicature, as suggested by Aungier, 'in regard of the inconvenience that may arise thereby, to the increasing of law-suits and differences among the Inhabitants'.[31] And in 1677 and 1678 they ordered the Bombay Council to 'allow noe more than are absolutely necessary',[32] as well as to 'admit of noe Sollicitors or Atturneys to plead or manage causes in our Courts, but such as you shall first allow of, upon your knowledge of them to be men of good and honest reputation'.[33]‡ The Company further told them to encourage litigants to manage their own cases;[34] and the Table of Fees of 1677 contained a provision that no one was obliged 'to take an Atturney, in case he be capable to plead himself'.[35]

Barristers are not referred to, though they then existed in England.[36] Forrest's transcript of Aungier's letter of 8th February 1676[37] no doubt represents Aungier as enjoining the Bombay Council to discourage 'vexatious suites, and contrivances layed by common Barristors to disturb the quiet of good people'; but the word which Forrest gives as 'Barristors' is really 'Barritors',§ meaning vexatious litigants or inciters of vexatious litigation. This is confirmed by connected correspondence, which uses the words 'common Barrators'.[38] In

* Thus the names of the Jurymen in a criminal case of 1683 are all English (see p. 76 *post*). It was not till 1826 that Indians (other than Christians) were admitted to the Jury Lists. See n. * on p. 227 *post*, and cf. F. D. Drewitt, *Bombay in the days of George IV*, pp. 248–52).

† Attorneys were then well established in the English Courts and were beginning to be persons of some legal education. It was only gradually that they ceased to be able to plead in Court for their clients (cf. Holdsworth's *History of the English Law*, vol. 6, p. 433). An Attorney could, however, practise only in the Court to which he had been 'admitted' (ibid., pp. 435–6)

‡ This passage shows that, under the Company's orders, an Attorney was to be admitted to practise in the Courts at Bombay, not by the Judges of the respective Courts (as was the rule in England at that time: Holdsworth, op. cit., vol. 6, p. 434), but by the Governor and Council, who were the Judges of the highest Court on the Island. An Attorney admitted to practise in the Court of Judicature was sworn to do justice to his clients to the best of his power: see Samuel Hayes's petition of 1685, cited at p. 130 *post*.

§ The Record-keeper, Bombay, has informed me that, in both places where the phrase in question occurs, the word is clearly spelt 'Barritors'.

view of the Company's policy, it is of course unlikely that there would be any one in Bombay entitled to call himself a Barrister. The four Attorneys, or Common Pleaders, that took part in the procession at the opening of the Court were probably Parbhus or Portuguese Indians who had had previous experience in the Courts at Bombay. In a case of 1727 in the Court of Judicature we similarly find mention of three Attorneys, whose names show they were respectively a Portuguese, a Parbhu, and a Shenvi.[39]

The Company provided the Court-house, but otherwise the Court was intended to be self-supporting; and all expenses, including the Judge's salary, were ordered to be met from fees and fines.[40] Not content with this, the Company in 1674 also ear-marked one-third of the fines for the 'Poplar charity', a Hospital or Alms-house established by the Company at Poplar in 1627.* The fees were on a moderate scale, and were reduced in 1677,[41] so there was some difficulty in complying with this requirement. In 1680 the Bombay Council reported that the fees, &c., would only cover office expenses, and that the Judge's salary would have to be borne by the Company; also that raising the fees was impracticable, as it would drive people to arbitration and result in decreasing the Court's income.[42] The question was accordingly referred to the Company,[43] which turned down all such objections by saying that the President and Council at Surat had liberty to make minor alterations in the Bombay establishment, provided the total expenditure did not exceed the sum laid down by the Company.[44]

Wilcox's second report of January 1674[45] mentions that the whole charge of an action was 'under twenty shillings', and that 'ten or twelve daies at the most puts a period to any suite, without good cause shewed to the contrary, soe that'—he adds with pardonable complacency—'there is no complaining in our streets; everyone according to the meritts of their cause goes away satisfied and contented, and bless God for this happy establishment'. Such a state of affairs was too good to last, and Capt. Gary in January 1678 speaks of the people having been 'strangely harrassed with many oppressions and exorbitant proceedings';[46] but, as he was vigorously blowing his own trumpet, this statement must be treated with some caution. Aungier

* Dispatch of 13 March 1674 (L.B., vol. 5, p. 101, and Home Misc., vol. 50, p. 96). As to the *Poplar charity*, see Sir William Foster, *John Company*, chap. ix. In its dispatch of 7 March 1677 the Company allowed the money to be diverted towards maintaining the Hospital at Bombay; but it is doubtful whether there would be any surplus thus available.

reported in October 1673 that, though the charges of the Courts were 'moderate enough', 'yet in regard to the poverty of the people [they] at present seeme to[o] hard for them, and therefore I have caused them to be rectified in a greate measure to their much satisfaction'.[47] On the other hand he deprecated unreasonable complaints that had been made to the Surat Council, saying, 'We know you are well acquainted with the letigious nature of this people . . . who, if they will, goe to law for 5 Xs. . . .; its reason they should pay the charges thereof as the Yorkshire men in England doe, who they say goe to law for a groate'.[48] In 1676 and 1677 the Bombay Council intervened on complaints as to excessive impositions by the Marshall (or Prison-keeper) on civil debtors, and the unauthorized exaction of fees by the Clerk of the Peace.[49] The Table of Fees was revised in 1677, with a view to a reduction of the charges and removal of irksome restrictions;[50] and, as already mentioned, a suggested enhancement of 1680 was vetoed. In general, therefore, civil justice seems to have been administered by the Court of Judicature cheaply and speedily. In addition, the Rules of 1677 provided for a suit *in forma pauperis* by any person who 'brings a certificate from two Justices of the Peace he is not worth Xs. 60'.[51]

It would be interesting to know what was the form of oath used in the case of non-Christian witnesses; but Wilcox's Report gives no information on this point. It is almost certain that it was not one on the Bible, but given in a form that directly appealed to the religious belief of the witness. When, for instance, the Company proposed that Hindu accountants should be sworn on the Bible, the Deputy Governor and Council objected that to do so would give them 'notable advantage of all Christians and others', whereas 'many of them are very scrupulous how they swear after their owne rites'.[52] This may have been by a Hindu witness laying his hands on a cow's or a calf's head when he took the oath, as Streynsham Master (writing in January 1672) says was 'their custome',[53] or he may have been made to take hold of a cow's tail, as was done in the Mayor's Court till 1747, when after considerable agitation the practice was stopped.[54] Mohammedan witnesses were presumably sworn on the Koran.*

The procedure in civil cases followed that then in force in England,†

* Instances of this being done in proceedings before the Bombay Council will be found in Consltns. of 24 and 25 Feb. 1721 (B.P.P., vol. 5).

† For a succinct account of the English Civil Procedure at this period see Edward Jenks, *A Short History of the English Law*, 4th ed., chap. xii, pp. 162–79.

but with less technicality. The litigation, at any rate at first, was of a simple character. Wilcox says that most of it was 'upon specialties' —that is, upon written contracts—'soe that wee have little or noe intricacy, not being troubled with dubious and various titles of land caused by multiplicity of words to vex poore people'.[55] Owing to none of the Court Registers being now extant, we have no details of the cases tried, except for an occasional glimpse given by Consultations of the Bombay Council about appeals made to them from the Court of Judicature. Thus in 1673 one Francisco Morzello Cotinho sued Capt. Gary for having been dispossessed of his estate the previous seven years; the Jury brought in a verdict for the defendant, and the plaintiff appealed.[56] The dispossession was no doubt one of the confiscations made by Sir Gervase Lucas in 1666–7[57] and Gary could plead that any action he took in the matter* was under orders of superior authority, so it is not surprising that the case against him failed. Gary was also sued in 1674 by some English soldiers, who claimed arrears for their services during the time the Island was under His Majesty, on the ground that Gary had enough money of Sir Abraham Shipman's in his hands to satisfy their dues.[58] The result is not recorded, but as Cooke had administered Shipman's estate and apparently remitted most of the money home, this suit also probably failed.[59]

Another appeal related to a suit by one Thomas Pearse against Capt. John Burgess, who had been put in command of the frigate *Revenge* at Surat after his suspension for mutinous behaviour in 1672. Pearse had sent some goods on the *Revenge* to be delivered in Bombay, and though Burgess alleged he had duly delivered them, he 'had a verdict against him to pay the[ir] value . . . by reason he had nothing to show under hand for the delivery thereof'.[60] What the result of his appeal was is not on record; but it was laid down in the order for its admission that it should not be taken as a precedent 'to appeale to the Governor and Councill, in regard such appeals may be prejudiciall to the Court of Judicature . . . except in cases of necessity and for want of justice in the lower Court'.[61]

In 1674 there was a suit between Sonu Shenvi and Jadu Naik, in which the Jury gave a verdict in favour of Sonu. Jadu appealed, and there was a re-hearing of the case before the Governor and Council

* There is testimony on record that he had taken a leading part in seizing the lands (F.R. Bom., vol. 1, p. 34).

and a fresh Jury. The Consultation entry notes that there was a strong conflict of testimony; and the second Jury 'in regard of the difficulty of the case' pleaded inability to bring in their verdict, and left it to the President and Council to decide. After a 'full debate' they held that Sonu's witnesses had been proved to be false and subborned. The verdict in the lower Court was reversed, and four witnesses were ordered to be prosecuted in the Court of Judicature for perjury.[62] The case is interesting as showing how Aungier did his best to carry out the direction in the Company's laws that all trials should be by Jury; but a re-trial by another Jury sitting in appeal was anomalous; and Wilcox's second Report contains a submission that appeals should be decided without a Jury, as was done in the Court of Chancery and the House of Lords.[63] The question, however, probably lost importance, as after 1677 there is no record pointing to any regular hearing of appeals by the Deputy Governor and Council.*

In one case a suit was entertained even though the entire cause of action arose outside the jurisdiction of the Court and the defendant resided in Portuguese territory. When in 1673 a Dutch fleet threatened an attack on Bombay, John Cooper, the Company's 'Chief Gunner' at Bombay,† sent his wife, with all his goods and money, to Bassein, whereupon 'his said wife with all his goods was inveagled away by the Padre Vicario of Bussein, who kept the woman and the money and caused all the goods to be sold at a publick outcry'.[64] As Cooper failed to get any redress from the Portuguese authorities, he petitioned the Bombay Council, who (having ascertained that the Padre and persons under his jurisdiction had lands in Bombay) referred Cooper to the Court of Judicature.[65] The Judge had the lands attached, and the result was that, as Aungier reported to the Company, 'the said Padre hath now considered his evill proceedings and promiseth to doe what justice he can, whereupon the said lands are restored to them.'[66] This was, however, an exceptional case, and the procedure can be justified under the equitable principles which allow of an action in England for a tort committed abroad.[67]

* The last case of an appeal during this period that I have traced is a Consltn. entry of 13 Aug. 1677 (F.R. Bom., vol 2, p. 9); but there may, of course, have been other cases unrecorded.

† His name appears as one of the two Gunner's Mates on the roll of the Bombay Garrison in Sept.–Oct. 1668 (F.R. Surat, vol. 105, p. 28). He served as Chief Gunner till his death in 1694 (Bom. Consltn. of 28 May 1694, F.R. Bom., vol. 4, p. 2).

Among the measures adopted by Aungier to encourage foreign merchants to settle in Bombay was one giving them protection for five years from liability to be arrested or sued in Bombay for previous debts contracted elsewhere.[68] It had been found that without this protection they were 'much molested' by arrests and suits brought in the Court of Judicature.[69] In November 1677 this privilege was extended so as to exempt all inhabitants of Bombay from liability to be sued by foreigners on bonds or other obligations, except with the previous consent of the Deputy Governor and Council, 'who will consider it a case in Chancery whether it may stand with convenience to determine thereof'.[70] This was a serious departure from the general rule that a defendant can be sued on personal obligations at his ordinary place of residence or business; but it did not of course affect the recovery of local debts.

Care also appears to have been taken to avoid undue hardship by arrest and imprisonment. Mention has been already made of the Company's law which provided for the release of the person arrested if he was not proceeded against during the next two Court days after his commitment to prison. In 1677 this was supplemented by a rule that no person was to be arrested 'for private quarrells or debts', unless there was 'feare of his leaving the Island' or he failed to appear upon summons.[71] Accordingly when Neema Parrack, an eminent merchant of Diu who wished to settle in Bombay, requested among other privileges that he should not 'be publiquely arrested, dishonoured or carryed to prison without first giving him due notice of the cause depending', the Deputy Governor and Council pointed out that this was only asking 'that justice be done respectfully, which he need not doubt of'.[72]

On the other hand imprisonment for debt in those days (as in England) operated much more harshly than the law now allows. Debtors were liable to be kept in jail till they had satisfied their decretal debts, and even their dead bodies were liable to attachment. Thus a Consultation entry of 16th Aril 1673 says:[73]

'Ramjee Purvoo being dead and his body arrested for a debt he owes the Hon. Co. ORDERED that his body (it being requested by his friends) should be buried or burnt, and all his kinsmen secured and their estates seized to satisfy the said debt.'

The duration of imprisonment for debt was then unlimited and

remained so in India till the Insolvent Debtors Act of 1812 was extended to the three Presidency towns.[74]

Arrest and imprisonment of the judgement-debtor were not, however, the only remedies of his creditor; a decree could also be executed (in accordance with Wilcox's proposals) by sale of his 'vissible estate', if he failed to pay up.[75] That attachment was allowed is shown by orders of 1677 restricting the cases in which it could be resorted to, and laying down that 'the person that layeth the first imbargo or attachment shall be first satisfyed'.[76] In accordance with this principle Neema Parrack's request that 'in case any person be indebted to him and also to other Banians, and be not able to pay all his debts, his right may be preferred before other Banians' was refused. The inequity of the proposal in cases where another creditor had already sued was pointed out; but he was assured that 'all justice shall be done him with speed according to law and the party forced to pay the full debt if able, and ly in prison for the rest till hee pleases to release him, which wee suppose may well content him'.[77] Writs for giving possession of lands 'condemned in Court or other execution' and the general writs for executing judgement, known as *fieri facias*,* were also issued, as shown by the Table of Fees drawn up in 1677. The execution work seems, therefore, to have followed the lines of English practice.

The Probate and Administration work of the Court was of importance, in view of the heavy mortality of Europeans at Bombay in those days and the frequent necessity of sending administration accounts home. Previously there had been no regulations on this subject, and Aungier admitted to the Company that there was some truth in the assertion that it had been the practice to burn the books and papers of the deceased.[78] On the establishment of the Court, all wills were required to be registered, and inventories and accounts filed, by the executor or administrator.[79] Copies of these were regularly sent home,† but are now missing. There is, however, a copy of the Will of Nicholas Searle,‡ dated 23rd July 1672, and of the endorsement

* *Fieri facias* literally means 'see that (the payment, &c) is made'.

† Thus Aungier's report on Bombay of 15 Dec. 1673 mentions the Register of Wills and Inventories as an accompaniment (O C. 3910, last para.).

‡ He was appointed a Factor in 1668 (*E.F., 1668–9*, p 15), but was put under arrest on 29 Nov. 1669 for mutinous language (F.R. Surat, vol. 3, p. 3). Aungier brought him to Bombay with the intention of sending him home, as unfit to be a Factor; but on the intercession of the Deputy Governor he was employed as Steward

of its admission to Probate by George Wilcox.[80] The latter was in a form similar to that used in England and set forth the names of the executors and their right to administer the deceased's estate. Aungier suggested that the wills of all servants of the Company dying in any factory under the Presidency of Surat should be registered at Bombay;[81] but there was no provision in the Company's Charter of 1668 conferring extra-territorial jurisdiction on the Court of Judicature, and the Surat Council naturally questioned the validity of the Court's grant of Letters of Administration in respect of property at Surat, belonging to a Company's servant who had died at that place.[82]

Besides wills, the registration work of the Judge covered sale-deeds, mortgages, and other alienations of immoveable property.[83] Bills of sale, i.e. documents evidencing the sale of goods, had also to be registered[84]—a provision which anticipated the first Bills of Sale Act (of 1854) in England. They were also proclaimed at the Church* on three several Court days.[85] Wilcox says: 'The benefitt of this (registration) redounds much to your Honours Island: it prevents al frauds and cheats that is usually put upon honest and good people.'[86] It must at any rate have put a check on forgery and fraud; and its introduction at this early date comes as a surprise, having regard to the usual belief that registration in India was originally copied from the legislation in the time of Queen Anne establishing Registry offices in Middlesex and Yorkshire. The Company probably adopted the idea from the earlier legislation of 1664, providing for the registration of deeds in that part of the Fens known as the 'Bedford Level'.[87]

Another step that Aungier and his Council took with the same object was to prohibit the writing of any bonds, leases, mortgages, sale-deeds or other alienations, except by the Notary Public, under a penalty of Xs. 50;[88] but this order was obviously too sweeping and the Company disapproved of it, pointing out that 'by the Laws of our Land, a bond is obligatorie, without respect to him that writes it'.[89] The Court Rules of 1677[90] accordingly laid down that no person was

for the Fort. Owing to misbehaviour he lost this appointment after a few months (F.R. Bom., vol. 6, p. 39), and appears then to have engaged in private trade, as the endorsement of Probate describes him as 'late of Bombay, Merchant'. He was on the Council which sat to inquire into the charge of murder against Capt. Young, and was foreman of the Jury at Richard Ball's trial.

* This could not have been St. Thomas's Church (the Cathedral), which was not then built. It probably referred to the Gallery of the Governor's house at the Fort, where service was held (O.C. 3910).

obliged to employ the Clerk of the Papers or the Notary Public for this purpose, and that such documents could be drawn up where and by whom he pleased. The professional Bond-writer no doubt flourished in those days, when literates were few and far between.

2. *Its Criminal Side*

The Court ordinarily sat once a month for its 'General Sessions' and any cases undisposed of were adjourned to a 'Petty Sessions', which was held before the next General Sessions.[91] The scene at a Sessions in those days would probably present many points of resemblance to that familiar to those who attend a present-day Sessions in the High Court of Bombay. The Judge no doubt was not arrayed in scarlet robes, as he is now, nor were there any Barristers in their Gowns to lend dignity to the scene; but there would be the usual crowd of prospective Jurors, witnesses, and spectators. One of the Bhandaris was probably also present to blow his long trumpet, called *Bhongulee*,* on the Judge's arrival, as is still done during a Session in Bombay. The preliminaries to trial also were somewhat similar. All persons accused of murder and other felonies, or breach of the Peace, were proceeded against by indictments, which were prepared by the Clerk of the Peace from the record of the examination of witnesses before one of the Justices.† The procedure, therefore, resembled that under which accused persons are now committed to the Sessions by a Presidency Magistrate; and the Indictments were presumably read out in Court by the Clerk of the Peace, in order to obtain the Accused's plea of guilty or not guilty, just as the charges are read out now by the Clerk of the Crown. There would be Interpreters‡ and a Court-Crier§ in attendance, as at present. The police

* As to this practice, see Mr. Murphy's account cited in the *Bom. City Gaz.*, vol 1, p. 232, n. 4. Aungier's insistence that the Judge should keep up some state supports this suggestion. Thus in his letter of 21 Dec. 1672 to the Company he wrote that the Judge 'must have some thing of a small equipage to bear the gravity of his place, otherwise he will be despised and neglected by the People' (O.C. 3722 and F.R. Bom., vol. 6, p. 39).

† Wilcox's proposals (Khan, p. 493), and his second report (O.C. 3930). In the case of culpable homicides, the Coroner could also 'retourne' or commit persons to the Sessions.

‡ Wilcox's first report mentions 'Interpreters of the Portugal and Cannary languages' (Khan, p. 495). See note * on p. 14 *ante* as to what is meant by the Cannary language.

§ Khan, p. 493, as to 'Officers belonging to the Sessions', and O.C. 4298, which shows that the Court Crier was allowed a small fee for every prisoner indicted.

officers present would not be so numerous, but would be represented by the four Constables,* the Churchwardens,† and other officers,‡ who (Wilcox writes) attended with 'their presentments' of 'Sabboth-breakers, common swearers, common drunkards and uncleanesse'.[92] Even the lunch given to Jurors in the High Court had its prototype in the meal that was provided for the Justices, Juries, and officers attending the Sessions. The cost of this was defrayed from the Court fees and fines;[93] and it was also claimed that the fact that at every Sessions some natives were condemned to be slaves in the Company's service should be taken against the expenditure.[94]

This sentence of slavery was one that was often imposed on persons convicted of theft or robbery. As already noted, the Company's Laws did not allow a death penalty in such cases, and when the offender was too poor to pay monetary compensation to the owner of the property stolen, he could be forced to work instead. This was construed as allowing a sentence of slavery, which of course was not then regarded with the horror it now excites.§ And in effect it did not differ much from a sentence of transportation or long imprisonment, which can still be passed on the Habitual Offender. The latter was a problem even in Aungier's time, and Wilcox's second report complains that the punishment for theft under the Company's Laws was an insufficient deterrent. He says:[95]

'The people of this country differ much from others; they value not corporal punishment, their bodies being as wel prepared to receive it as the law is to give it, and this by meanes of opium and other things they take, which soe stupifies their sences that paine is as little to them as their crime is as great to us; restitution they are not able to make being poore, and to turn them off the Island, they returne as fast back as they are sent

* There was a Constable for each of the four 'hundreds' or parishes into which Bombay was divided. They were first appointed under Aungier's orders of 1670, and each was given 'a staff tipped with silver and the Company's arms thereon engraved' as a badge of office (*Bom. City Gaz.*, vol. 2, p. 206).

† These were 'chosen yearly for examination of the lives and conversation of the people, taking notice of all disorders in religion, breach of the holy sabbath, prophanesse, swearing, drunkennesse and other licentiousnesse'; Aungier's report of 15 Dec. 1673 on Bombay, O.C. 3910 (*JBBRAS*, Aug. 1931, p. 33).

‡ These would probably include the various Caste and Community headmen (or *Povo* representatives), who in 1674 were given definite powers of arrest and committal to the Sessions; see p. 82, *post*.

§ Thus slavery existed in Scotland till within eight years of the abolition of slavery by Wilberforce's Act of 1833, and an English Act of 1799 relieved certain colliers from a state of bondage.

away, soe that theivery rather encreases then otherwaies. The way that wee proceed to prevent the growth of this sinn at present is by causing restitution to be made according to your laws (which they can never make) and condemning them to worke upon your Honours workes during his Honours pleasure and they are noe less in number now then twenty.'

In March 1675 Aungier and his Council laid down a regular scale of slavery punishments for thievery. They ordered that 'for the future, whatever persons that shall be condemned for slaves, shall have their heads imediately shaved, and the Company's marke chopped* upon their shoulders, and be sent to St. Hellena; for the first fault any comitts [he] shall be made a slave for five yeares, for the second, fifteen yeares, and for the third forever to serve the Honble. Company at St. Hellena as aforesaid'.† But Wilcox recommended that the Court should be entrusted with the power of life and death in such cases 'to frighten them', adding it would 'be used with such moderation that felons shall be discouraged and al good people freed from the feare of loosing their goods and estates'.[96]

As a matter of fact, Aungier, in spite of the Company's Laws, did occasionally resort to the death penalty for theft as a deterrent, in exercise of his exceptional powers as Governor of Bombay. In the first case of this kind Wilcox had passed a death sentence, presumably subject to its confirmation by the Governor and Council. There was, however, a difference of opinion in the Council, three being for confirming the sentence and two against this.[96] Aungier, before deciding, referred the matter to the Surat Council in the following terms:[98]

'The inclosed is a coppy of a Consultation of the 4th current occasioned by a Gentoo goldsmith of Mayim who robbed a Banian of the same place of gold, silver and jewells to a great value, and was tryed and condemned to dye the last publique monthly sessions. I thought good to deferr the execution and convene my Councell thereon in regard of a clause in the Company's lawes relating to crimes of this nature, where the Company are pleased to order that those persons that are convicted of theft shall pay back againe the vallue threefold and receive severe corporall punishment, but not extending to death, and banished from the Island also. The person condemned is a notorious rouge [rogue] and hath before been condemned

* This (from Hind. *chhāp*) means branded.

† Bom. Consltn. of 8 March 1675 (F.R. Bom., vol. 2, p. 43). The Company objected to such slaves being sent to St Helena, but approved of their being kept at work in chains at Bombay: dispatch of 15 March 1678 (L B., vol. 5, p. 524; Home Misc., vol. 51, p. 54).

to dye in the Portugall country for theiving and came away thence to secure himselfe.

'The vallue of the theft is very greate. The clemency and moderation of the Government, as it is esteemed by those who are good, so it begins to be slighted and contemned by those who are hardned in their sinns. Theives are multiplyed; Banians and other merchants are extraordinarily discouraged and unsecure in their houses. This is the state of the case and of the Island at present; whereupon I desire the question may be moved in your Councell whether in cases of such importance, for the terror and discouragement of so hainous crimes and for the security and encouragement of honest men and common good of the Island, the Governour may with safety deviate from the law appointed by the Company and make use and exercise the power given him in commission by vertu of his Sacred Majestys Charter. I desire the result of your consultation may be sent with all speed by the bearer whome I have sent on purpose, for I will suspend execution untill I receive your judgment.'

The Surat Council were also divided in opinion,[99] but the majority held that it was desirable to confirm the sentence for deterrent purposes and that this departure from the Company's Laws would be warranted by the Charter of 1668.* It was thereupon ordered that 'a gibbot be sett up against the doore of the Banian at Mahim where the theft was comitted', and the condemned thief there executed;[100] but he was ultimately reprieved as shown by the following extract from a letter of Aungier's:[101]

'The President hath received yours of the 20th past with your opinion concerning the Gentue theife, who was ordered to be executed on Wednesday last, but the Banians being very importunate with the President useing strong intercessions for the pardon of his life, their request was graunted, and the rather in regard it was the first person condemned by Court of Publique Sessions to dye; but to deterr others from the like villionous acts, punishment was not wholly laid aside, for he had a halter about his neck fastned to the Galloes about a quarter of an houre: then was brought downe and under the Galloes his right hand was cut off and nailed to the Gibbit, and after that was burnt in the forehead with a hott Iron, and soe returned to prison againe.'

Aungier and his Council again confirmed two death sentences for

* It is doubtful what provision of the Charter of 1668 is here referred to, as the power of government conferred on the Governor seems to be limited to punishment 'according to such Laws', &c., as the Company established. Possibly the Surat Council referred to the earlier Charter of 1661, which gave a Governor power to judge, and execute judgement, according to the Laws of England.

theft in 1674[102] and did the same in 1675,[103] but commuted a third sentence to slavery for life. The Company in March 1677 noticed the executions, and said they did not approve of putting any one to death for theft.[104] Consequently the Surat Council afterwards deprecated capital punishment for theft, except as a 'last remedy' in a very bad case;[105] and no other instance of thieves being executed during the seventeenth century appears on the records in the India Office. In the main, therefore, the Company's Laws were observed in dealing with theft and robbery.

Under the same Laws the only punishment for murder was death, and many such sentences must have been passed by the Court of Judicature and carried out.* This applies equally to the case of Europeans. Thus in 1675 one Thomas Barly,[106] and in 1679 one Henry Sands,† a Serjeant of the Militia, were hanged for murder under sentences of the Court. The Crown's prerogative of mercy was, however, occasionally exercised. For instance, in the case mentioned below, the Surat Council, while leaving the decision to the Deputy Governor and Council, intimated that they thought a pardon should be granted:[107]

'Wee [the Bombay Council] inclose the last Generall Sessions by which you will see a lad condemned, in whose behalfe many addresses have been made to us. Hee gave the padree in Conzee‡ a sort of yellow paint, that was tried on a dogg afterwards, unto whom a large quantity was given but did the dogg no harme. Now the Padree was ill, and those that attended him declare he died of his distemper and not of the paint [that] was put to his Conzee, but the Jury brought him in guilty because hee gave the paint with reall intent to poison the Padree, and our Chirurgeons declaring that it might hasten his death. Wee humbly leave him to your Honours mercy. He is about 13 years of age.'[108]

* Douglas, *Bombay and Western India*, vol. 1, p. 74, and Edwardes, *Bom. City Gaz.*, vol. 2, p. 208, n. 3, say the first execution in Bombay under English law was that of Corporal Fake [*sic*, should be Forke] on 21 Oct. 1674; but this is clearly wrong. Thus, according to John Martyn, Capt. Gary had two English soldiers executed in 1668 (*E.F., 1668–9*, p. 51). Again, the Surat Council in June 1672 refused to interfere with a death-sentence that had been passed on a conviction of murder by a Jury in the Court of the Deputy Governor and Council (Forrest, *Selections*, vol. 1, p. 66).

† Bom. letters of 5 June 1679 and 3 July 1679 (F.R. Bom., vol. 8, pp. 21, 22, and 23). He had already been sentenced to death in connexion with the mutiny of Capt. Shaxton's company in 1674, but was pardoned on his confessing his fault before both companies (Bom. letter of 23 Oct. 1674, F.R. Bom., vol. 6, pp. 210–13).

‡ i.e. water in which rice has been boiled; the word is also used for slops, or other invalid diet.

Under English law a person may be guilty of murder, whether he causes or accelerates death,[109] so the verdict of the Jury may have been justified; but it was obviously a proper case for leniency. It was a common practice of the Bombay Council to refer death sentences to Surat for orders whether they should be executed; and in 1682 John Child, who had vacated the post of Deputy Governor for that of President at Surat, gave orders that this should be done in all cases.[110]

Other felonies not provided for by the Company's Laws were dealt with in accordance with the Laws of England. Wilcox in his second Report says:[111] 'Wee are guided as to punishment by Acts of Parliament and by your Honours good laws, every crime receiving punishment according to its demeritt.' And in his first Report he mentions a case where a Dutch 'Centinel'* was convicted by a Jury of raping an Indian woman and sentenced to be hanged.[112] In fact the Company's Laws were treated as if they had contained a provision that, in all cases not covered by them, English law should be followed, so far as it was properly applicable to the circumstances of the particular case.† Their serious deficiencies rendered some such extension of the Laws necessary, and the Company tacitly acquiesced in this position, as is shown by their never objecting (at any rate until the masterful Sir Josiah Child denounced all Acts of Parliament as 'an heap of nonsence').[113] On the contrary, in 1672 and 1674 they sent out a 'Statute Booke' and other English Law-books to assist the Court of Judicature.[114]

Witchcraft was consequently treated as punishable with death, in accordance with the English Law; but in 1683 John Child rightly wanted to be convinced of the credibility of the evidence against two condemned wizards, before sanctioning their execution.[115] He called for all the papers; and though those of the actual trial are not now forthcoming, the records contain a translation of a curious agreement that had been put in evidence. In this one of the convicts admitted that he, with his wife and son, had caused the death of four persons

* That is a soldier of the Garrison at the Fort. Frenchmen, Dutchmen, Germans, and Swedes were among the men recruited (cf. Edwardes, *Gaz.*, vol. 2, p. 258, and Campbell, *Materials*, &c., vol. 3, p. 80).

† This was a justifiable view, and in *Perojeboye* v. *Ardaseer* Perry C.J. held that the effect of the provision in the Charter that the Company's Laws should be 'as near as may be agreeable to the laws' of England was to introduce those laws in all cases not specially provided for (Perry's *Oriental Cases*, p. 63).

by witchcraft, and promised to abstain in future from causing sickness and death by such means. Child, however, hesitated to accept this confession as conclusive, desiring to know whether he did so 'voluntarily, or by constraint, or by perswasions in hopes to escape justice: for there is many poor silly souls on the island'.[116] In doing this he showed a sense of justice and moderation in advance of that of most of his contemporaries;* but the wizards were still confined when Keigwin's Rebellion came in December 1683, and the sentiments expressed by the mutineers regarding the 'odious and detestable sin' of witchcraft† leave little doubt that they must have been put to death.

The papers sent by the Deputy Governor and Council in connexion with this case give us an interesting glimpse of the proceedings of the Sessions Court in the time of Capt. Gary. The record runs as follows:[117]

'The Generall Sessions held at the Guildhall of this Island on Wednesday, 7th. Nov. 1683.

Present.

The Wor. Henry Gary Esq. Cheife Justice.
John Jessop‡ Esq. One his Majesties Justices of Peace.

Persons Indicted, viz:

Joseph de Sencation and Remano de Megallanis Coffrys§ stood indicted for committing burglary by breaking into the dwelling house of Jeremiah Booker in the night time and thereout feloniously taking and carrying away one and a halfe parra of batty and 18 pounds of beefe, being the proper goods of the said Jeremiah Booker, contrary to the peace of our Soveraigne Lord the King, his crowne and dignity. Joseph de Sencation pleaded Guilty and by the Court, in consideration it was for victualls, was sentenced to nine and thirty lashes at the Pillory and then turned off the Island, Remano de Megalnis pleaded Not Guilty and by the Jury being found soe, was by the Court discharged.

* An exception was Sir George Mackenzie, the Lord Advocate in Scotland, who in his book on Criminal law (first published in 1678) denounced the light-hearted way in which supposed witches were condemned on ridiculous and contradictory confessions.

† O C. 5062; cf. *Keigwin's Rebellion*, pp 83, 84. They charged Ward, the Deputy Governor of Bombay, with abetting witchcraft, because he defended Child's hesitation to confirm the death sentence.

‡ He was a member of the Bombay Council and was in charge of the Accounts (Surat letter of 6 Sept. 1683, F. R. Surat, vol. 91, p. 173).

§ This term usually meant negroes, but here it seems to be equivalent to 'coolies'.

John, a slave boy, stood indicted for aiding and assisting Diego Borges by permitting him to enter at the window of the dwelling house of Domingos de Mesquita at Mahim out of which the said Diego Borges took a[n] escretore and a small chest, in which were severall peices of gold and silver and other valluable things to the amount of 1090 Xs. and one laree, contrary to the peace of our Soveraigne Lord the King, his crowne and Dignity. Prisoner pleaded guilty and by the Court (being a boy) sentenced to be whipt 3 times, with one and thirty stripes each time, once at the pillory at Bombay, once at S. Michaells at Mahim and once at Salvation.

Venturai, Umberack, Domingos, Maria and Anne, coolies stood jointly and severally indicted for laying violent hands on the body of Gemara, cooly woman, and malliciously casting her in neare the Cooly Rowe on this Island, where she was drowned contrary to the peace of our Soveraigne Lord the King his crowne and dignity. Prisoners all pleaded Not Guilty and by the Jury being found soe, was by the Court discharged.

The Names of the Jurors.

Mr. William Vergis*	Mr. Benjamin
Ensigne Daniell Hughes†	Mr. Tobias Brock
Mr. Thomas Sugar‡	Mr. Jame Godson
Mr. John Butler§	Mr. Willm. Harrison
Mr. Richard Hocknell	Mr. John Turner
Mr. Samuel Meddowes	Mr. Thomas James.

Sessions adjourned till Wed. 5 Dec. 1683.

William Newman. Clerk of the Peace.'

This extract shows that a sentence of whipping to the extent of 39 lashes was then a standard form of punishment, as it was in 1726–7. It also goes to refute the idea that Capt. Gary was an atrociously bad Judge—a point more fully dealt with later on.

In some cases the prosecution of offenders was not as rigorous as it is in these days of a regular police force. Thus on the 26th September 1676 the Bombay Council wrote to Surat:[118]

'A Frenchman belonging to the French Pink did wound a Lascar belonging to the Blessing|| and is doubted to be mortall, it passing into his

* He was a member of the Bombay Council.

† He was in command of the Militia, cf. *Keigwin's Rebellion*, p. 68.

‡ He was a sergeant of the garrison and became ensign in the Rebellion (cf. ibid., pp. 68, 82).

§ He was in the Company's service and became a Justice of the Peace in 1685.

|| This was a ship that had been built by one Capt. Anderson for the King of Siam (*E.F., 1668–9*, p. 255).

stomake. The Frenchman we have detained in prison. If the party die we suppose it will appeare wilful murder, there being no provocation on the Lascar's side. The Court will proceed according to law the next Sessions. Wee desire your Honours [opinion] in such case whether we shall suspend or put in execution the sentence; for we shall not venture in this or any other case to see execution done upon any malefactor without a safer comission than at present we have.'

What caused these doubts is not clear, for the Charter of 1668 and the Company's Laws fully justified the execution of any inhabitant of Bombay who had been convicted of murder on his trial by a Jury and been sentenced to death by the Court of Judicature; but (in spite of the generality of the words 'in this or any other case' and 'any malefactor') the objection was probably due to the offender's nationality. However, no conviction for murder eventuated, as on the 26th October the Bombay Council reported that 'the Lascar which the Frenchman wounded is recovered; he has not yet satisfied for the cure nor his fees, which when done we shall release him'.[119] This leniency incurred the righteous disapproval of the Company, who wrote to Surat:[120]

'Wee observe a Frenchman wounded a Lascar to the danger of death and you order if he did die, he should be tryed, and if condemned, not executed without your further order. Wee doe not approve of such stops of Justice, for you would have found yourselves importuned for his pardon, and wee as little approve of your discharging him after the Lascar recovered with only paying charges, when as by Law, he ought to have given the poor man satisfaction and been fined for breach of the Peace.'*

The charges here referred to may have included fees payable to the Clerk of the Peace, the Constable, and the Court-Crier,† which the Judge often directed the accused to pay, if he was in a position to do so. It was also a common order (at any rate in 1726–7) to direct an accused to be 'discharged, paying his fees'.[121]

Offences against religion and morality were also dealt with at the Sessions, as already mentioned. This was a special feature during Gerald Aungier's campaign of reform, as is stated in his letter of 15th December 1673 to the Company.[122] The latter had sent out an absurd order for the translation of the Ten Commandments, the

* This refers to the provisions of clause 8 of Section V of the Laws.

† The two Tables of fees in O.C. 4298 contain some such fees for every prisoner indicted, acquitted by Proclamation in Court or released on bail.

Lord's Prayer, and the Creed into 'the country language', with a view to inviting the inhabitants to embrace the Christian faith. Aungier pointed out that this was inopportune, 'freedom of religion being one of the cheife motives which invites strangers to settle on your Island'. He added:

'. . . to the shame of many Christians in India be it declared that Mahometans and Jentues live more strict and vertuous in their conversation than they. Wee must first reforme ourselves before wee hope to convert others to our beleife; wee are most serious and resolved in our endeavours to suppresse profaneness and licentiousnesse, and wee blesse God the greatest part of your people are much reduced to a sober and Christian conversation, but among the meaner sort there are some soe besotted that noe exhortation, noe reproofe, noe punishment how rigorous soever will reclaim them. Wee have bin very severe with them by fines, imprisonments and corporall punishment but nothing will doe; our severity in these cases hath caused many of your English seamen and soldiers to leave the Island and serve the Portuguesse and Moores, where they live at greater liberty, which hath forced [us] in respect of the war, haveing soe very few English and fearing least they should turne Romanists or Moores, to hold our rigour for a time till wee are better supplyed with English and soe bee in a better condition to maintain the authority of your Government and pious laws, to countenance religion, suppresse vice and defend your Island and interest against all enemies, which now God knows how weekely we are able to performe, haveing scarce any Englishmen enough to make under officers of your Militia, file leaders and bringers up for your garrison companies.'

This shows there were difficulties in the way of severe punishments for such offences, and in his Report of 15th January 1674 Wilcox wrote:[123]

'The best way of punishing wee found was by fines; that effected more then corporal punishment for they had rather spare their purses then their backs and I think iniquity had not soe soone stoopt to Government had wee not taken that course.'

Warnings were also resorted to,[124] as contemplated in the Laws. These offences were tried without a Jury, except cases of 'fornication, uncleanness and adultery' of which a person could only be convicted 'by confession or by verdict of a Jury'.*

Closely allied with this part of the Court's work was its super-

* Clause 4 of Section V of the Laws. Minor offences falling under clauses 1 to 3, could be dealt with by a Justice, and Wilcox's reports make no mention of a Jury in such cases.

visionary jurisdiction over public-houses. Wilcox in his first Report[125] gives an account of 'what hath passed at our private Sessions'. This includes:

'A french man had his house puld down* for seling drink and permitting publick gaming on the Lord's day in time of prayer, as also for harbouring lewd women, and suffering al kind of debauchery, and al this after warning given to the contrary.

'Several persons fined for their contempt and obstinacy in refusing to come to Church, spending their time in publick house to the scandoll of our Christian religion and contempt of Government.

. . . . . .

'Several publick drinking houses put downe for permitting al manner of debauchery and wickedness and seling drink with out a license.'†

There was constant trouble about 'Punch-houses'. Punch and other strong drink could only be sold under a licence; and in 1671 Capt. Gary got into trouble for selling arrack contrary to a Proclamation.[126] In July 1672 regulations for Punch-houses penalized the manager in the sum of 10 Xs. for every one found drunk on his premises, as well as for profaning the Lord's day by selling drink thereon in the time of prayer, and for keeping unseasonable hours.[127] On 1st September 1674 the Council ordered that there should be only two Punch-houses or Taverns for the sale of strong liquor.[128] Illicit sales, however, continued, and in 1676 Judge Niccolls was instructed

'to make a narrow inspection into those houses that sell without licences, and alsoe those that keepe ill orders in their houses, and especially Henry Walton's coffee house against whome severall complaints have been made of his keeping untimely houres to the disturbance of his neighbours by suffering lewd and wicked persons to tarry all night in his house, and that as you find any of them faulty, they be severely fined for the same to deterr others from the like practises.'[129]

In November 1680 the Deputy Governor and Council reported that there were only four Punch-houses on the Island;[130] but in 1685 they had increased to twenty-one, and were ordered to be reduced to four again.[131]

The Sessions Court in Wilcox's time also looked after 'the mending

* This was in accordance with old English statutes, which gave the Justices of the Peace power to suppress ale-houses where drunkenness or disorderly conduct was permitted (Holdsworth's *History of the English Law*, vol. 4, p. 515).

† A statute of Charles I in 1627 was the first one requiring all ale-houses to be licensed (ibid.).

and making publick highwaies from place to place at the publick charge',* and the regulation of prices.† The latter jurisdiction was still exercised by the Court of Judicature in 1727.[132]

The Court's strict enforcement of the Company's Laws about Sunday observance, drunkenness, &c., and the exercise of its punitive powers over public-houses, naturally led to some resentment. Thus in a letter of 18th January 1675 to the Company,[133] Aungier refers to the death of George Wilcox on 9th August 1674 and says his loss was generally lamented, 'his equity and moderation being acceptable to all but to those turbulent English humours who did for a time soe violently oppose the settlement of the Court of Judicature'. Wilcox had to bear the brunt of this opposition, but with Aungier's strong support came out victorious. We find an instance of this in September 1673, when a 'freeman',‡ by name Anthony Roby,§ 'comitted a great and notorious crime in abusing the Judge as he sate publickly in his chair hearing of tryalls by casting out rude and unhandsome words against him.' For this 'insolency' Roby was ordered by the Bombay Council to pay a fine of Xs. 100 and to 'ask the Judge publick forgiveness in open Court on next Court day'.[134] Roby having done so and expressed his contrition, the fine was remitted.[135] The garrison soldiers were particularly abusive, and one of the charges against Capt. Shaxton at his trial on the 11th November 1674 was that 'he did not only by his evill and indiscreet example in his own person publiquely affront the Judge and officers of the said Court [of Judicature], but thereby encouraged and animated the souldiers in Generall and similarly the Officers and private souldiers of his owne Company to follow that evill practise, to the apparent dishonor of the said

* Wilcox's first report, Khan, p. 500. In England Constables and Churchwardens used similarly to be appointed overseers for the repair of highways leading to any Markets (Holdsworth's *History of English Law*, vol. 4, p. 566).

† Wilcox's first report (ibid.). This followed English legislation; for instance a statute of Richard II (13, cap. 8) authorized Justices of the Peace to fix the wages of labourers and craftsmen. Aungier had also appointed a Committee to fix prices at the beginning of each month, and directed the *Panchayats* to attend their meetings and give advice (Bom. Consltn. of 24 July 1674, F.R. Bom., vol. 1, pp. 66–9).

‡ These were free 'planters', who were allowed by the Company to trade privately on the Island (cf. *Keigwin's Rebellion*, pp. 14, 15).

§ He had originally come out as a soldier of the garrison (F.R. Surat, vol. 105, p. 55, and Bom., vol. 19, pp. 55, 59). He sailed for England in Jan. 1674 (Khan's *Sources for the History of British India in the XVIIth Century*, p. 249), and he and Keigwin came out as 'free planters' in 1676 (Surat letter of 22 Jan. 1677, O.C. 4258, and Home Misc., vol. 51, p. 41).

Judge and publique violation of the proceedings of the said Court'.[136] The Consultation entry about this says:

'As to the Complaint against the Court of Judicature it was notorious that none were so abusive to the Judge and Justices and the Officers of the Court, but the Officers and Souldiers of his Company; witness Hurly who tooke the Judge by the Throate and strooke up the Judge's heeles; also Corporall Laborne, Serjeant Cross, Serjeant Stevens and severall others of that Company were continually affronting and abusing him etc., which they might be very well animated unto, when they saw their Captain soe publiquely affront the Judge before them.'[137]

The Jury convicted him on this charge,[138] and this confirms the statements as to the affronts to which Wilcox was subjected. Aungier not only supported him to the best of his ability, as he promised to do in his speech at the opening of the Court of Judicature,[139] but was careful in his Instructions to the Deputy Governor and Council on his departure for Surat in September 1675 to include one that they 'must give due countenance and respect to the Judge of the Court of Judicature, in the exercise of his office; and alsoe to the rest of the officers under him'.[140] In his second Report[141] Wilcox handsomely acknowledges the Court's obligations to Aungier, and referring to the 'envy' it excited in some people, says, 'His Honour understanding their designes makes them to be as unhappy to themselves as they intended to be to the Government'. Aungier had a difficult task, but his firmness and tact quelled the opposition to the Court. Wilcox also seems to have helped by tempering his zeal with mercy. Thus in December 1674 Aungier reported to the Company that the complaint by the soldiers against the fines imposed by the Court of Judicature for their Sabbath-breaking, debauchery, &c., was 'most false and unjust, for as to your fines, your late pious and good servant Mr. Wilcox was exceeding moderate therein, and did frequently remitt them, where he saw the least hope or promise of amendment'.[142]

Aungier not only supported the Judge in this way, but was also careful to prevent any diminution of the Court's power or jurisdiction. Accordingly in establishing *Panchayats*, i.e. community or caste Representatives, in 1673–4, he restricted their judicial powers to the decision of cases amongst persons of their own castes, who agreed to submit the controversies to their arbitration; otherwise disputes had to be brought to the Court of Judicature for determination.[143] Incidentally it may be noted that, though Aungier had included the

forming of *Panchayats* in the 'Proposals touching Bombay' that he submitted to the Company in January 1672,[144] their establishment was first suggested by the Company in their dispatch of 10th March 1669.[145] An assertion, therefore, that 'such a proposal could only have emanated from the resourceful mind of a Gerald Aungier'[146] is unjustified. But it was impossible to give fruitful effect to the suggestion while the inhabitants of Bombay were discontented; and it was mainly due to Aungier's settlement of the dispute arising out of Sir Gervase Lucas's seizure of lands, and his firm and just administration, that the ground was prepared for their successful initiation in 1673. He showed his usual thoroughness by laying down their exact powers and duties in black and white. The 'paper of instructions' for their guidance was very detailed,[147] and (in addition to the arbitration functions already mentioned) conferred on them police powers of a wide nature, viz.:

'to appoint a strict watch and ward to be kept every night in all convenient places for the preservation of the peace and security of the inhabitants and . . . to make strict search into the houses, lives and conversations of all persons whatsoever of their religion within their province and to seize and secure whatsoever persons they shall discover or suspect to be vagabonds, thieves, night walkers, comon drunkards, whoremongers, gamesters, comon swearers and prophaners of Gods holy name or Sabbaoth, keepers of howses of uncleaness, as also of all persons guilty or suspected of felonies, witchcraft, enchantments, sorceryes, magick arts, trespasses, forestallings,* regratings,† engrossings,‡ extortions, and unlawful assemblyes, all such persons soe offending they shall take notice of and returne their names to any of the justices of the Peace with a certificate of their crimes, that they may be seized and punished according to Law.'

It would be interesting to know how far these instructions were acted on: probably the *Panchayats* were mainly useful as representatives of the respective castes and communities for bringing to notice grievances and for consultation. In pursuance of his policy of supporting all officers of the Law, Aungier exempted the members of a *Panchayat* from 'arrests in suits of Law', and directed that 'whoever shall offer them any publique affront or injury shalbe severely chastised'.[148]

* Buying up goods before they had been displayed at a *stall* in a market, in order to profit by selling them at a higher price.

† Buying up goods (especially victuals) with a view to retailing them at a profit—a practice formerly prohibited.

‡ Buying a whole stock (of corn, &c.), so as to get a monopoly.

CHAPTER VIII

THE JUDGES AND HISTORY OF THE COURT OF JUDICATURE, 1672–83

1. *WILCOX* (*1672–4*)

OF George Wilcox, the first Judge, some account has already been given. He appears to have performed his duties conscientiously and satisfactorily; and his premature death in August 1674 was generally deplored. Thus Aungier wrote to Surat:[1]

'On Sunday last the 9th current it pleased God to take from us Mr. George Wilcox, Judge of the Court of Judicature, who dyed suddainly and intestate, of a violent feavour. The Company have lost a very good servant in him, and all the Island in generall are sensible how much they shall want him, for he was a just and pious man and well versed in that office, which being now soe well established, to the generall content of the people, it seemes absolutely necessarie, as well in obedience to the Companys orders as for the convenience of our little commonwealth, to keepe up the same forme of proceedings. . . .'

The Surat Council, on hearing of his death, gave similar testimony to his merits, describing Judge Wilcox as 'a just and prudent man, who by his experience in the English Laws and great sobriety and moderation did administer that employ to the great satisfaction of all the good people of the Island'.[2] He evidently had judicial qualities and some knowledge of English law, although (as far as is known) he had received no training beyond his having served for three years as a Clerk in the 'Prerogative Office'.[3] Most of the trials, over which he presided, must have been mainly dependent on the verdict of a Jury; but he had to guide them with the help of the Justices, and had to decide cases in the Probate Court and the 'Court of Conscience'. A report that he submitted[4] regarding Alvaro Perez de Tavora's desertion of his post as a Captain of Militia,* when the Dutch Fleet threatened Bombay in February 1673,† gives some insight into his legal capabilities. The news of its approach caused a scare among the inhabitants, and in December 1672 and February 1673 Aungier and

* Alvaro was the Mazagaon Estate-holder and had been given a Commission as Captain of the Mazagaon Company of Militia. According to Capt. Shaxton, he had under him 150 infantry and 150 lances (Shaxton's report of 3 Jan. 1674 cited by Edwardes in *Bom. City Gaz.*, vol. 2, p. 256).

† See note * on p. 1 *ante*.

his Council issued proclamations against persons fleeing from the Island.[5] Alvaro was, however, granted a licence by Aungier 'to carry his goods' to Bassein, and taking advantage of this he accompanied them off the Island. Wilcox pointed out that the licence did not say 'go and carry your goods' and argued that it did not therefore cover his departure, especially as Aungier had not only refused to sign a licence drafted by the Portuguese Secretary permitting Alvaro to leave in person, but had torn it up in the latter's presence.* As Alvaro never returned to his post, nor presented himself to the Governor, Wilcox contended that he was guilty not only of a breach of the Proclamations, but also of 'running away from his Colors'. The Council agreed with this opinion, and on Alvaro's failure to comply with a notice to appear before the Council† his Mazagaon estate was attached and ordered to be administered by a Receiver for the benefit of his mother and other relatives, until he came and cleared himself of the accusation against him.[6] Instead, however, of doing this, Alvaro resorted to various high Portuguese and other foreign authorities, and represented that his estate had been arbitrarily and unwarrantably seized, an assertion vigorously contradicted by Aungier in an answer to Alvaro's Protest, which was drafted with the help of Wilcox.[7] The attachment was justifiable, not only under the terms of the Proclamation of 21st December 1672, which gave notice that any deserter would be treated as guilty of 'misprision of treason'‡ and his estate confiscated, but also under the liability to military service, which was an essential condition of the tenure of the Mazagaon estate and other Bombay lands.§ The position of the Company in this respect was strengthened by outlawry proceedings taken against Alvaro in the Court of Judicature in 1676 and 1677[8] at the suggestion of the Company's Solicitor.[9] These were based on an Indictment of Alvaro as guilty of Treason 'for endeavouring the

* The same argument was put forward by the Company's Counsel at the hearing of the case before the Plantation Committee of the Privy Council on 12 June 1677 (see Sir J. W. Williamson's notes of the Arguments, printed in *Domestic State Papers, Calendar of Charles II, 1677–8*, p. 190).

† Alvaro subsequently admitted he was aware of this notice, but said he did not comply with it as he was afraid of being arrested by Aungier (Khan, p. 557).

‡ This term meant the concealment or keeping secret of high treason.

§ Cf. Malabari, pp. 411, 415, 416; Edwardes, *Bom. City Gaz.*, vol. 2, p. 319; and the Company's contentions of 18 March 1692, cited in Khan, p. 562. It was not till 1718 that this liability was commuted to a tax imposed on all the inhabitants residing within the town walls (Malabari, p. 420).

delivery of the Island to the Dutch by absenting himself from his Command'. The charge seems far-fetched, as Alvaro's absence from his post was probably due to cowardice rather than treachery; but the Grand Jury consisting of twelve English and twelve Portuguese found a true Bill against him, and as Alvaro did not appear in response to the numerous writs that then issued in accordance with the technicalities of English Law on the subject, the Marshall—who, it is stated, 'on this Island executes the office of Sheriff'—eventually returned him as 'outlawed'. The requisite proceedings for the attachment of his estate until he 'shall submit himself to the Law and Reverse the Outlary' then followed. A point was made of these proceedings, when the matter came before the Committee of the Privy Council for 'Trade and Plantations';[10] but the main question in the arguments of the Counsel, who appeared for Alvaro and the Company respectively, was whether the Committee, instead of dealing with the complaint themselves, should not refer Alvaro to such legal redress as he was entitled to seek in Bombay itself. The Company contended that this was the proper course to be taken, as Bombay was a place 'where, upon a triall the truth may be ascertained upon the oath of 12 men or more, half English and half Portugeze, according to the laws of this Kingdome, and where the Judges do endeavour to act with all fairness, and encouragement to the Inhabitants, so as may consist with the safety and welfair of the Island'.[11] Alvaro's answer was that, owing to Aungier's oppressive and threatening attitude, he did not dare to enter the Island to be tried.[12] On the 12th June 1677 the Privy Council upheld the Company's contention and advised His Majesty that Alvaro should be referred to the Courts at Bombay for redress.[13] They pointed out that the cause originally belonged to the Courts at Bombay, which had been duly constituted under the Company's Charter and were such 'as by the Laws of England are requisite for the decision of cases of this nature', and that Justice had not yet been denied him by any final trial, such as a resident in Bombay had a right to demand. This was an important testimonial to the legality and adequacy of the Court of Judicature. Having thus failed in his appeal to the King, Alvaro then capitulated.*

* Alvaro had, however, arranged to get a favourable hearing from the Company through the mediation of Mr. Parry, the English Ambassador at Lisbon (Khan, pp. 550, 551). Queen Catharine, the Portuguese wife of Charles II, also induced him to desire the Company to pardon him (L.B., vol. 9, p. 280).

In October 1677 he presented a petition to the Company, acknowledging his misconduct and the justice of the proceedings of the Governor and Council at Bombay.[14] Aungier had already in December 1673 reported to the Company that 'we never intended any seisure* or confiscation of his Estate, but only desired to make him sensible of his misdemeanours and upon his submission to receive him againe into our favour'.[15] The Company accordingly accepted Alvaro's submission, and directed the Governor and Council to issue a pardon to him and restore him his estate, upon his appearing before them and making the same acknowledgement.[16] The Council directed that this should be publicly done in the Court of Judicature,[17] and on the 12th September 1678 Alvaro 'did there in publique present his petition and with all submision acknowledge the delinquencies he stands charged with'.[18] Thus Aungier's firmness, moderation, and foresight, were rewarded by a signal success, and incidentally the prestige of the Court of Judicature must have been considerably enhanced.

Wilcox, as a member of the Council, was also a signatory of the well-known 'Convention' associated with Aungier's name, which fixed the land-revenue at an annual sum of Xs. 20,000 and restored the lands that had been attached by Sir Gervase Lucas to their former holders. He had been one of the ten Commissioners appointed in March 1672 to examine and report on the titles of the claimants to the attached lands;[19] this was after the Jesuits, who at first adopted a policy of non-cooperation, had agreed to produce their documents and other evidence.[20] But the inquiry, in the words of the Convention, raised 'many doubts and important causes' to the disquiet of the claimants; and to avoid this the chief landholders submitted proposals, which resulted in the agreement that was signed on the 12th November 1672.† This was an important 'summary settlement'‡

* This of course means an absolute seizure, as opposed to a temporary attachment.

† Campbell's *Materials*, &c., vol. 3, pp. 258–62, reproduced by Malabari, pp. 398–406, and by Edwardes in *Bom. City Gaz.*, vol. 2, pp. 311–18.

Though the Convention was not confirmed by the Company in a document under their hands and seal, as contemplated by the Convention, they generally approved of it, and Aungier dropped the proposal for a document of this kind (Dispatch of 15 March 1674, L.B., vol. 5, p. 101, and Bom. letter of 16 Dec. 1674, O.C. 4051). The Company also relied upon the Convention in the proceedings of Alvaro's case (Khan, p. 554).

‡ It resembled the summary settlements that were validated by Bom. Acts Nos. II and VII of 1863.

of a dispute, which had caused serious discontent and friction, particularly among the Portuguese inhabitants, from soon after the Island came into the possession of the English; and the Convention by allaying this ill feeling must have materially facilitated the proper working of the Court of Judicature.

The English owners of lands, however, raised objections to contributing their share of the Xs. 20,000 on the ground that they were not parties to the Convention.[21] At the instance of Aungier, a conference about it was held in October 1673 with the *Povo*, or representatives of the people; but this resulted in no agreement, except that the question should be left to the Governor and Council to decide.[22] They in turn referred the matter to the Company, and in the meanwhile did not insist on the English landholders paying up.[23] This, we are informed by Aungier, was because the Council did not think it 'prudent to take much notice of their refusal during the war'.[24] It was not till the 17th February 1674 that the War with the Dutch was concluded by the Treaty of Westminster, and in May 1675, after the news of Peace had reached India, vigorous steps were taken to recover all such dues.[25] This decision met with the full approval of the Company.[26] Meanwhile, however, the English 'planters' appear to have been agitating against the Convention; and Capt. Gary, who had been made a Justice of the Peace,[27] got into trouble for this and other alleged seditious conduct. In June 1674 he was suspended from this office,[28] and on the 6th July he was tried on various charges, one of which was that he had endeavoured to dissuade the people from paying the Xs. 20,000 annually and denounced the Agreement as an unjust one.[29] The trial was one by Jury in the Court of the Governor and Council and resulted in a verdict of Guilty against him on this and two other charges.[30] Wilcox was a member of the Court, and 'the Judge's Register' is mentioned as containing a 'full relation of the whole trial'.[31] This is not now forthcoming; but another account of the case shows that Gary was sentenced to three months' imprisonment and to enter into a recognizance in the sum of £500 to keep the peace.[32] He was, however, released after a few days' imprisonment, on his acknowledging his fault.[33] A Portuguese supporter of Gary, who asserted that the latter was the real Governor of the Island, was also (on his plea of Guilty) convicted of seditious language and sentenced at the Court of Sessions to the Pillory and whipping.[34]

Aungier thus nipped the agitation in the bud, but he was not the

man to rest content with this. Doubts had been thrown on the justice and validity of the Convention, and he took steps to have them settled once and for all by calling a meeting of the *Povo* on the 16th July 1674. At this the *Povo* disclaimed having any grievance about the Convention, and requested the Governor and Council to ratify it, which was done by both parties.*

The precedent of the trial of Capt. Gary by a Jury in the Court of the Governor and Council was followed in the similar trial of Capt. Shaxton in November 1674 for complicity in the mutiny of his company.† This trial is the subject of adverse comment by Dr. Fryer.[35] He says 'a select Court of Judicature'‡ was erected for his trial; but it was merely the ordinary Court of Appeal with some additions, and both the then Judge, Mr. James Adams, and Shaxton's son-in-law, Mr. John Child, were members of the Bench. The fact that Shaxton was tried by a Jury in accordance with the Company's Laws is sufficient to meet any suggestion of unfairness,§ and Aungier was able to report that Shaxton 'confessed he had a faire and kind triall'.[36] These two cases were exceptional and did not affect the prestige and ordinary jurisdiction of the Court of Judicature, which Aungier, as already mentioned, did his best to maintain. Capt. Gary had been Governor and Capt. Shaxton was Deputy Governor, of Bombay, so it was fitting that the highest Court on the Island should sit for their trials. But this was not the real reason, as is shown by the fact that

* F.R. Bom., vol. 1, pp. 61, 62, reproduced in Campbell's *Materials*, &c., vol. 3, p. 262. Edwardes, *Bom. City Gaz.*, vol. 2, p. 318, is wrong in saying that the confirmatory convocation was held because the Agreement had 'remained a dead letter'. On the contrary the objection of the Englishmen arose from their being required by the Collectors to pay their contributions to the instalments due in June and Sept. 1673 (Bom. Consltn. of 26 Sept. 1673, F.R. Bom., vol. 1, p. 90).

† This was a mutiny on 29 May 1674 by some 50 to 60 English soldiers, mostly belonging to Capt. Shaxton's company. A full account of it, and of the subsequent plot that was discovered in Aug. 1674, is given in Aungier's letter of 20 Aug. to the Company (O.C. 3990).

‡ That is the Court of the Governor and Council, which had original, as well as appellate, jurisdiction from the time of its institution in 1670, cf. pp. 34, 35 *ante*. For an account of the trial see F.R. Bom., vol. 1, pp. 116 et seq.

§ Dr. Fryer's statement that Capt. Shaxton 'cleared himself so handsomely of all objections that they had no more to answer than that it should be referred to the Company' ignores the fact that the Jury convicted him of five out of the sixteen articles in the Charge-sheet (F.R. Bom., vol. 1, p. 116); and it was only because Shaxton objected that the members of the Court (except his son-in-law John Child) were parties to the dispute, that it refrained from passing sentence and referred him to the Company (F.R. Bom., vol. 1, p. 116, and vol. 6, pp. 226, 227).

Ensign Kennedy (of Capt. Shaxton's company) was also tried in connexion with the mutiny, by a Jury before the Governor and Council.[37] The fact was that the fifth clause of section vi of the Laws, under which the officers in question were prosecuted, required cases of mutiny and insurrection to be tried in this way.*

Fryer's allegation that there was jealousy between the merchants and the military officers in the Company's service, which contributed to Capt. Shaxton's downfall, was no doubt based on personal observation.† There is ample evidence of ill feeling between the two sets at various times in the history of Bombay; thus we read that in October 1672 'upon Judge Wilcox's Report to the Governor and Councell of the great animosities that are arisen 'twixt the officers and their wives and some of the Councell &c., the precedency [was] settled to prevent evil consequences, &c.'[38] This must have been the first 'warrant' to issue on the vexed question of Precedence in Bombay, and Wilcox showed initiative and courage in tackling the question. He cannot have been prompted by his wife in taking it up, as unfortunately she and his daughters did not reach India till after his death.‡ They were naturally given 'kind usuage and assistance' in accordance with the Company's orders,§[39] and Mrs. Wilcox lived in Bombay till her death in October or November 1677.‖ One of her daughters, by name Sarah, married William Mildmay, a factor, at Surat.** Their only son William was created a Baronet in 1765.[40] Caroline, the other

* The decision to try them under the Company's Laws will be found in Consltns. of 23 Oct. and 6 Nov. 1674 (F.R. Bom., vol. 1, pp. 106, 112, 113). On the other hand it was resolved that the soldiers tried should be dealt with under martial law, as by their mutiny they had renounced the Company's Laws (Consltn. of 24 Sept. 1674, F.R. Bom., vol. 1, pp. 94, 95).

† On the other hand I can find no ground for attributing any malevolence to Aungier in his proceedings against Capt. Shaxton, nor for disbelieving his statement that he hoped Shaxton would prove his innocence and wanted to be 'tender' in dealing with him (Bom. letter of 15 Aug. 1674, F.R. Bom., vol. 6, pp. 162, 163).

‡ They were about to proceed on the voyage to India in Dec. 1673 (Court Book, vol. 28, progs. of 15 Oct. and 19 Dec. 1673).

§ Mrs. Wilcox was allowed to draw the balance standing to the credit of her husband's account (Surat letter of 4 July 1676, Forrest, *Selections*, vol. 1, p. 96), as well as a diet allowance (Bom. Consltn. of 30 June 1675, F.R. Bom., vol. 2, pp. 90, 91).

‖ She is mentioned as lately deceased in a Surat letter of 27 Nov. 1677 (F.R. Surat, vol. 89, p. 71).

** Mildmay was appointed a factor in 1695, and became Secretary to the Council of Surat in 1702. He was at Karwar in 1705–8, and then became Member of Council at Bombay. He died in 1710.

surviving daughter of Wilcox, was still in Bombay in 1683, when President Child and his Council gave her permission to come to Surat.[41] He was not as strict as Aungier, who wrote on the 6th December 1675 to the Bombay Council:[42]

'Wee understand that severall of the Gentlewomen of Bombay have inclinations to come hither to Surratt. Wee desire you to signifie to them that it is not the Company's intention att their sending out, that they should reside or dispose of themselves anywhere but at Bombay, and that wee cannott, nor will not, permitt their being at Suratt. For besides the breach of the Company's orders and designe for plantation of the Island, . . . it is a great inconveniency and scandall to the nation that English women should come to Suratt to gett husbands; besides it may prove a noe meane disturbance to our Masters' affairs, for wee shall not admitt any to live in the Company's house, but those that are married to their servants, to avoid publique scandall, of which wee are already sensible of the effects; and for English maides or widdowes to live in the towne wee judge it wholly inconsistent with their creditt, or that of the nation. If any of the Company's servants here are inclined to marry, wee shall rather permitt [them] to goe downe to Bombay; of this wee pray you take notice, and act accordingly.'

Anyhow Sarah Wilcox successfully overcame these difficulties, and it is satisfactory to find that the two orphans were looked after by charitable persons, for the delay in settling their father's account put them in need of assistance for necessaries and education.[43]

2. *ADAMS* (1674–5)

On Wilcox's sudden death in August 1674, some difficulty ensued in finding a suitable successor. It was decided that Mr. James Adams was 'the fittest person to undertake the charge and place of Judge', but that (as he was 'not thoroughly versed in the Law') 'a Commission for the peace and associate to the Judge' should be given to Mr. Thomas Niccolls, 'he being a person that hath bin conversant and acquainted with such proceedings'.[44] The Surat Council agreed that Niccolls 'doth best understand the proceedings' of the Court, but proposed that he and some others should be appointed 'Commissioners' to manage the office of Judge, until the Company should 'supply that place with an able and fitting person from England'.[45] This suggestion did not, however, commend itself to Aungier and his Council, who adhered to their previous orders and hoped that

'though [Adams was] not at present so well versed as Mr. Willcox, yet practice and experience will render it more facil unto him, and he understanding the languages much better than Willcox did'.[46] Adams had been appointed Justice of the Peace for Mahim in June 1672,[47] and must have attended sittings of the Court of Judicature. From August 1672 he had also been officiating as Attorney-General, in which capacity he had to appear for the Company in any litigation affecting its interests.[48] Consequently he would have some familiarity with the Judge's work. Niccolls had been appointed in November 1671 to assist Wilcox and to be Clerk of the Court of Judicature,* but his deputation to negotiate a treaty with Shivaji in May 1673,[49] and his appointment as Commander of the Company's frigate *Revenge* in August 1673,[50] must have interrupted his Court duties. In view of the references to his capability for judicial work,[51] it seems probable that he had had some legal training or experience.

In what manner Adams, with the assistance of Niccolls and the other Justices, performed his work, we have no means of judging, as there is no reference to this in the records of this period; but probably he did not care for the post, as he gave it up in July 1675, in order to take up another appointment.† Later on he served in Persia,‡ but fell ill and died at Surat in March 1679.[52] In 1681 the Surat Council complained of his 'irregular actings', which included 'his allowing himself £200 per annum as Judge at Bombay, and £60 salary, when settled but at £40'.§[53] He was reported to owe the Company considerable sums, which looked like being irrecoverable.[54]

3. *NICCOLLS* (1675–7)

It was natural that Niccolls should succeed Adams, in view of his having been appointed his chief Assistant and the small field available for selection. The Council unanimously chose him, saying 'they knew none fitter';[55] and he took over charge at the end of July 1675.[56]

* See p. 46 *ante*.

† Bom. Consltn. of 2 July 1675 (F.R. Bom., vol. 2, p. 92). The appointment was apparently one in Persia (Bom. letter of 27 May 1675, F.R. Bom., vol. 7, p. 93), but he was still in Bombay in 1676 (Bom. letters of 24 Feb. and 21 Aug. 1676, F.R. Bom., vol. 7, pp. 20 and 55), and he was discontented about not getting some appointment (Surat letter of 17 Jan. 1676, O.C. 4163).

‡ He was second in Persia in 1678, F.R. Surat, letter of 6 Feb. 1678, F.R. Surat, vol. 89, p. 46 (*a*).

§ The fixed salary of a 'Merchant' was then £40 a year. Adams probably took £200 as equivalent to the Rs. 2,000 proposed for Wilcox in June 1672.

A few months later he raised the question of his annual salary,[57] and Aungier and his Council fixed it at £120.[58] The Judge was also allowed a horse or *palkhi* 'with a *Sumbrera** boy' and a Gown yearly at the Company's charge;[59] but all fees and fines (after defrayal of office expenses) had to be paid into the Company's cash.[60] These orders were approved by the Company in March 1677.[61] At first he seems to have got on well with the Bombay Council, for in November 1675, in forwarding a request of Niccolls for orders, they commended him, saying 'His deportment' as Judge of the Court of Judicature 'merits our good character as a person very deserving all reasonable encouragement'.[62] But it was not long before they appear to have altered their opinion. In January 1676 the Council must have imputed his being biased in a case pending before him, for Aungier refused 'to stop the course of Justice upon an idle suggestion of the Judge's partiality whome wee have a better opinion off than to thinke he will forfeit his creditt, and it may be his office also, by an unjustifiable sentence'.[63] It is probable, however, that this case prompted Aungier's significant message to the Judge a fortnight later, 'that wee expect he maintaine the gravity and authority of his office; and that he doth not bring a disrepute on the Court of Bombay by lightness, partiality, self-seeking or countenancing common Barritors,† in which sort of vermine they say Bombay is very unhappy'.[64] This sounds like a veiled censure, but in January 1677 Aungier reported to the Company that Niccolls 'manageth the office of Judge and Registrar to our satisfaction and that of your People'.‡ In these circumstances it may be inferred that Niccolls had not up to then incurred Aungier's serious displeasure, though a President that lacked his stern sense of justice and respect for law might have shown his resentment at a snub Niccolls gave to a suggestion of Aungier's in December 1676. The Court of Judicature had attached the lands of one Robert Fisher,

* i.e. an umbrella (Portuguese *sumbreiro*). This was a mark of dignity granted to high officers.

† i.e. inciters of vexatious litigation, see p. 61 *ante*, and cf. n. 38 of Chapter VII.

‡ Surat letter of 22 Jan. 1677 (O.C. 4258; Home Misc., vol. 51, p. 35). By that time Aungier had received the Company's dispatch of 8 March 1676, nominating one Mr. Benjamin Sangar as 'a very fitt person for the Judge's imployment' (L.B., vol. 5, p. 275). They repeated the recommendation in their dispatch of 15 March 1678 (L.B., vol. 5, p. 428, and Home Misc., vol. 51, p. 50). But Mr. Sangar (who apparently was in service at Bantam) was reported to have 'noe desire to come into these parts nor performe that employment' (Bom. letter to Company of 6 Jan. 1679, O.C. 4555).

and the Bombay Council under instructions from Surat had asked Niccolls to remove the attachment: this Niccolls refused to do, 'pretending [the Bombay Council report] it is contrary to his oath'.[65] In this refusal Niccolls would seem to have very properly resisted executive interference with his judicial work, but it evidently offended the Bombay Council. A more serious cause for their resentment arose out of a monetary dispute between John Child, then a member of the Surat Council, and Niccolls himself. Child claimed to be empowered by the Executors of Richard Francis,* a deceased factor, to recover an alleged debt of a Mr. Ball,† whose widow had married Niccolls. Child contended that Niccolls was liable to pay this debt,‡ because by virtue of this marriage he became Executor of Mr. Ball's Will. Niccolls refused to pay and Child complained to the Deputy Governor and Council. They referred the matter to Surat in March 1677, explaining the facts and contentions and saying:[66]

'Mr. Child did wholly refer himselfe to us, but the Judge it seems mistrusting our integrity and justice, that wee would either give a partiall sentence or else take upon us to decide controversies not under our authority to determine, under which notion he pretended his case was, did appeal to a higher power, though wee had thought our carriage hitherto, both to the world and him, might have been a sufficient motive to induce him to believe us not so unjust as to give sentence in matters beyond our power, or given to partiallity. However, we well knowing the Judge to be but an officer under our power, and subject to our determinations,§ should have proceeded to have given verdict according to our consciences, but considering Mr. Child was one of your Honours &ca Councells and not sent hither to reside and assist us here, who though subject to the laws of England of whom wee are immediate Judges on the Island, yet not subject to the necessary processes of law of any inferiour Court to your Honours &ca Councells: and without due and legall proceeding what desition can be made; then consequently not in our power to doe him justice in the case, so have referred them to your Honours &ca to make their severall applications as they shall think best.'

* He was in Surat in Aug. 1668, but was apparently posted to Bombay a month later (*E.F., 1668–9*, pp. 12, 63).

† This was the Mr. Richard Ball who had married Capt. Young's daughter.

‡ Under the English common law a husband was liable for the ante-nuptial obligations of his wife, prior to the Married Women's Property Act of 1882 (cf. Halsbury's *Laws of England*, vol. 16, p. 407, n. (i)).

§ This refers to the powers of the Governor and Council as a higher Court of Judicature.

Aungier and his Council decided that Child's authority to recover the debt was 'such as wee in these remote parts of the world are usolly sattisfied with, yett seeing Mr. Niccolls thinks good to make scrouple thereof, wee judge it reasonable that he be sattisfied as to the truth of the said authority'. On the other hand they thought that Child ought to be 'secured as to the money', and accordingly they ordered it to be paid into the Company's Treasury and kept there as a deposit, pending the procurement of 'a sufficient and legall confirmation of' the documents 'to the just satisfaction of said Mr. Niccolls'.[67] This was an equitable and practical decision; but naturally it would allay neither the animosity between Child and Niccolls, nor the resentment of the Bombay Council at the Judge's mistrust of their 'integrity and Justice'. Niccolls apparently did nothing to smooth matters; on the contrary, according to the minute of the Council suspending him in August 1677,[68] he gave them cause for further offence 'by his contempt of the Government, [and] his slighting and scandalizing our authority'. They go on to give two instances of this, viz.

'lately in a case decided by us wherein the cause not being adjuged to his likeing he did not stick to say that he plainly saw that any man might sware himself out of a debt and that a friend should not want a knave in Court, and he himself drawing up bills and therein [did] privately taint, slander and defame his superiours actions, telling the Deputy Governor &ca that if they were afraid of those the case concerned he was not.'[69]

Niccolls was evidently courageous and outspoken, whatever the rights of the matter were; and, without more information on the subject, it would be unfair to assume that he was in the wrong in his quarrel with the Bombay Government. He may have been showing an honest and sturdy independence, which did him credit, though no doubt the Council could properly object to his publicly scandalizing them and throwing contempt on their authority. It is a matter of some suspicion that they did not take action against him until after Aungier's death in June 1677, and while Rolt, the new President, was still in Persia.* Aungier had shown a tendency to support Niccolls against the Council's wrath and imputations; and his report to the Company in January 1677 that Niccolls had been performing his duties 'to our satisfaction and that of your People'[70] conflicts with the Council's assertion that his actions gave 'generall dissatisfaction' to all people.[71]

* Rolt did not reach Bombay until 15 Jan. 1678 (O.C. 4317).

The only instance of this that they specified was the recent complaint of a Jury that 'having brought in a verdict according to equity and good conscience [they] were never the less publiquely checked and rated by the Judge, [he] telling them that they were men of large consciences',* and that in 'a tryall wherein the same Jury had brought in judgement for the defendant, the Judge yet ordered the Clerk of the Papers to enter verdict for the plaintiff for the cost and charges of the Court'.[72] Niccolls, no doubt, thereby gave marked public utterance to his disagreement with the Jury's verdict, and such action might (as the Council pointed out)[73] lead to Jurors refusing to be empanelled; but a Judge's speaking disrespectfully about a Jury's verdict is certainly not unique,† and a warning to Niccolls against repetition of this conduct should have been sufficient. In any case under ordinary principles of Justice, they should have charged Niccolls and given him an opportunity of being heard in his defence, before removing him from his office; and it was on this ground that the Company intervened and ordered further inquiry.[74] When these orders reached Bombay, towards the end of 1680, he was again at loggerheads with the Council, over which John Child now presided as Deputy Governor of Bombay. In September 1679 Niccolls had made a scandalous charge against Mr. John France,[75] the senior Bombay chaplain, and on the matter coming before the Council in March 1680 his insolent behaviour towards them resulted in their suspending him from the military office he then held.‡ The Surat Council further fined him Xs. 400 'as an example to deter others and to bridle his lavish tongue';[76] and it was not till September or October 1680 that, on his assurance of future good behaviour, his restoration

* This appears to be the same case in which Thomas Biggott appealed on the ground that the verdict of the Jury was due to partiality and bribery. This allegation was held by the Bombay Council to be defamation, for which he was dismissed the Company's service (Bom. Consltn. of 13 Aug. 1677, F.R. Bom., vol. 2, pp. 9, 10). He was, however, subsequently taken back, and was Marshall in 1682–4 (O.C. 4906 (*a*) and 5178). Capt. Adderton was concerned in the case and one of the complaints against Niccolls was that he told the Deputy Governor and Council that 'though we were afraid of Capt. Adderton, yet he was not' (Bom. letter of 24 Aug. 1677, Forrest, *Selections*, vol. 1, pp. 135, 136).

† Many instances, even of recent times, could be cited. One such is given in Carey's *Good Old days of Hon. John Company*, vol. 1, p. 479, where the Judge told the Jury they were too merciful: 'if they can, let them reconcile their verdict to God and their consciences.'

‡ Bom. Consltn. of 17 March 1680 (F.R. Bom., vol. 2, pp. 24–8). He was Capt.-Lieutenant of the 'eldest Company'.

to his post was ordered.[77] When, therefore, in the latter month he was called before the Council to give his statement in the further inquiry that the Company had directed into his alleged misconduct as Judge in 1677, he was naturally not in the best of tempers. According to the Council, 'he flew out telling the Deputy Governor that he had prejudice against him att that time . . . and then confirmed the business about the Jury that exhibited the Bill in Chancery against him, saying . . . that they did bring the verdict only to cross him';[78] that 'the cause of his being suspended was more through Mallice of those in Place at that time then any other reason they could alledge against him; and that as the present Deputy Governor and most of the Councill were then of that Councill, he could not expect they would do him justice now'.[79] Niccolls had substantial grounds for objecting to the Council as biased in the matter, for two of its four members were on the Council that passed the order for his suspension;* and though the Deputy Governor, John Child, does not seem to have been an actual party to it,† his dispute with Niccolls about Ball's debt led to the suspension, and he plainly showed his animosity by refusing in November 1677 to sign a letter from the Surat Council to Bombay, because it contained a recommendation for Niccolls's future employment.[80] In view of the latter's 'reflections on the Deputy Governor and Councill', they decided 'not to concerne [themselves] any further with him'.[81] This did not, however, prevent them from expressing a strong opinion that his removal in 1677 was 'truely just and that there was then a pure necessity not to suffer him longer in that place'.[82] The Surat Council put off going into the matter until the arrival of John Petit,[83] who had been Deputy Governor when Niccolls was suspended and who was on his way from Persia to answer charges of malversations brought by the Company's auditors.[84] No further reference to the proposed inquiry appears, however, on the India Office records, and the probability is that it was quietly dropped, with Niccolls's consent. Nor did the Company press the matter; and any idea of reappointing Niccolls came to an end in 1682, when he fell under the Company's displeasure and was dismissed from his military employment.[85]

These later proceedings, therefore, throw no further light on the

* These were Messrs. Day and Hornigold.

† The Consultation entries show he did not attend any meeting of the Council before 10 Sept. 1677, while the order for Niccolls's suspension was passed on 20 Aug.

question whether his suspension was justified. So far as can be judged from the records of 1677, it certainly looks as if the main objection that the Bombay Council had to Niccolls was his insubordinate and insolent behaviour and language, rather than any substantial misconduct or negligence in the performance of his judicial duties. It has already been mentioned* that, apart from his open disagreement with a Jury's verdict, no specific charge of the latter kind was brought against him. The Surat Council, in confirming his suspension, expressed their determination not to 'countenance in the least anyone under your Government that are so forgetful of the [respect] they owe their superiors',[86] and evidently regarded this as Niccolls's main shortcoming. Nor did they consider that he should be debarred from other employment in the Company's service. They sent him on a special mission to the Viceroy of Goa in October 1677,† and in November recommended him for employment in some other post in Bombay as a person who 'notwithstanding his misbehaviour [was] one of good capacity and hath expended estate in building and [has] a family to maintain'.[87] The Bombay Council naturally did not favour this suggestion and replied that there was no vacancy in which Niccolls could be employed.[88] However, on Henry Oxenden's becoming Deputy Governor in December 1677, the difficulties in the way of Niccolls's re-employment disappeared. He even suggested that Niccolls should be reappointed as Judge, 'no great excesses being laid to his charge [so far] as he can here'.[89] This is an independent and authoritative opinion that corroborates the view that Niccolls's removal was really due to his falling out with the Council; and in a letter to the Company Oxenden pretty plainly says so. 'Mr. Niccolls', he writes, 'was this last yeare putt by his office of Judge by the late Deputy Governour, Mr. John Petit, and his Councell upon some misunderstandings between them.'[90] He pressed the Surat Council to find Niccolls some suitable employment, and in February 1678 wrote:[91]

'Capt. Niccolls coming out a souldier and versed in millitary affairs from which he was taken to serve in other employments, wherein he ever behaved himself like a man, will have wrong done him if some employment equivalent to his quallity be not conferred on him.'

* See p. 95 *ante*.

† O.C. 4301. He took with him a letter from Charles II to the Portuguese Viceroy.

Acting on this suggestion, the Surat Council in March gave him a Commission as Captain-Lieutenant of the Governor's Company,[92] much to the disgust of Lieut. Fletcher, whom he superseded.*

There seems, therefore, to have been a good deal of truth in Niccolls's complaint that his suspension was due more to 'mallice of those in Place at that time then any other reason they could alledge against him'.[93] But 'malice' is perhaps too harsh a term to apply. In fairness to Petit and his colleagues of 1677, it must be admitted that Niccolls was at times a 'naughty, turbulent Man', as John Child called him after a mad brawl on 30th June 1683, when he joined Capt. Consett, the Commander of the *Berkeley Castle*, and his Mate in aggressive behaviour on board the Siddi's flag-ship in Bombay harbour, with the result that all three were thrown overboard.† He had also a 'lavish tongue'[94] and evidently vituperated the Council of Bombay (which was also a superior Court) in terms that naturally drew reprisals on his head. On the other hand he undoubtedly showed courage and independence—valuable assets on the Judicial Bench, especially in those days. His suspension, therefore, does not much impair the good report about his work that Aungier made in 1675. He certainly cannot be properly described as 'totally unworthy of his charge', as he has been called;[95] and after Keigwin's Rebellion his assistance was again sought for the Court of Judicature.

Another accusation against him is less serious. Malabari and Edwardes say[96] that his tenure of office was remarkable for two trials of theft, which evoked a remonstrance from the Court of Directors, who objected to his sentencing two natives to be executed for theft and to his punishing a European thief with slavery. In passing a sentence of death on an habitual thief,‡ Niccolls would have been merely following the precedent set up in Aungier's time,§ and it would be no new departure of his own. But as a matter of fact the Company's objections arose not out of any case that came before

* Fletcher, however, subsequently obtained the command of the other Company (cf. *Keigwin's Rebellion*, p. 67).

† Bom. letter of 30 Nov. 1683 (O C. 5001, para. 67). For a good description of the incident see *Keigwin's Rebellion*, pp. 72, 73. Niccolls was alleged to have drawn his sword and wounded one or two of the Siddi's men (ibid. and Surat letter of 16 Aug. 1683, F.R. Surat, vol. 91, p. 159).

‡ Two such cases are mentioned in a Bom. letter of 27 Jan. 1676 (F.R. Bom., vol. 7, p. 14); but in one case (that of a woman) the death-penalty is stated to have been commuted, as it also probably was in the other.

§ See pp. 71–3 *ante*.

Niccolls, but in consequence of the Council's orders of 8th March 1675, which confirmed two death sentences passed by Adams and commuted a third death sentence to slavery for life.* The Company, as already mentioned,† did not approve of thieves being put to death. They also erroneously assumed that the third thief was an Englishman and objected to a sentence of slavery in such a case. The mistake was pointed out by the Bombay Council, who said:[97]

'Your Honours are misinformed concerning making a slave of an Englishman. It is a thing never was acted nor soe much as intended, nor were any executed for theft, indeed some blacks were condemned and sent to St. Hellena as your Honours' slaves.'

Any death sentences passed by Niccolls on thieves must, therefore, have been commuted, and in any case it is clear that he was not to blame in connexion with the Company's orders in March 1677.‡

A noteworthy event during Niccolls's term of office was the removal of the Court of Judicature in 1676 into the Courthouse, which had been built under Aungier's orders in the bazaar, and the remains of which still exist in the building known as *Mapla Por*.[98] It was styled 'Justice Hall'§ and contained an upper room of suitable dimensions for a Court room.‖ It appears to have continued to be used for this purpose till 1690, when the Court of Judicature ceased to exist for nearly thirty years.

The rest of Niccolls's judicial career will be noticed in its due place.

4. *GARY* (*1677–83*)

On Niccolls's suspension in August 1677, the post of Judge was temporarily put in Commission. Capts. Gary and Keigwin** were

* This is clear from a comparison of the Consultation entry in F.R. Bom., vol. 2, pp. 41–3, with the details in the relevant paras. of the dispatch of 7 March 1677 (L.B., vol. 5, p. 412).

† See p. 173 *ante*.

‡ Edwardes and Malabari are also wrong in citing the Company's dispatch of 6 May 1685 as containing these orders. That dispatch is silent on this subject.

§ This is for instance the title given in the proceedings of 12 Jan. 1676, connected with the case of Alvaro Perez (O.C. 4738 (3)).

‖ Its length was 54 feet and its breadth 22½ feet (O.C. 4379).

** Capt. Keigwin came out to Bombay as a 'free planter' at the end of 1676 and was shortly afterwards given command of a troop of forty horse (cf. *K.R.*, p. 29).

appointed additional Justices of the Peace, and with the two others, who were both members of Council,* were told to 'act jointly' in the work of the Court.[99] The Deputy Governor and his Council evidently did not want any more 'insubordination', and objected even to the name of 'Judge' and his salary of £120 being continued. On 11th November 1677 Petit wrote to Surat:[100]

'Wee doe not see the absolute necessity of allowing 120 pounds to a Judge, not that wee would have the Island destitute of a person invested with authority to determine the weightiest causes, but the very name sounds too great for the place. It lookes like the great Gate of little Pendus that made Diogenes afraid the city would runn out at them.† Those who come to these parts are commonly mean persons or young men but very little skilled in our law, and the name of a Judge does fill them with such a pride that they loose their reason in the contemplation of their greatness and think no man their superior, scarcely their equall; and if he, that is the principle Justice, be invested by the same power and act by a full Commission, why is it not the same thing. It is not the name that makes any difference. The Governments of provinces are committed to persons who are sometimes stiled Lieutenants, sometimes Deputys, and sometimes Viceroy, though their power is equall. The Company formerly ordered that only someone of their factours that was a sober and discreet person might officiate in that place, who wee suppose would be well satisfied to have only the proffit of the Seals allowed him to his sallary which the former Judge had, There is Mr. Gary or Mr. Robert Harbin,‡ very fitting persons for such an employment or whom else your Worships shall please to appoint, which pleas to order so soone as may be, for none of the Justices by the Commissions can sit upon life and death but only as assistants. Wee imagine a joint Commission for so many Justices of Quorum will doe better than singly invested in any one person. This is only but our opinions which your Worships better judgement can correct.'

The suggestion that the principal Justice should perform the duties of Judge at a reduced salary was adopted, and Capt. Gary was

* These were Messrs. Ward and Day. The former, whose wife was John Child's sister, became Deputy Governor of Bombay in Feb. 1682.

† Petit evidently had classical attainments. The original of this reference to Diogenes, the 'Cynic', is to be found in Diogenes Laertius, vi. 57, which (as translated in 'The Loeb Classical Library', vol. 2, p. 59) runs as follows: 'On coming to Myndus and finding the gates large, though the city itself was very small, he cried, "Men of Myndus, bar your gates, lest the city should run away".' The copyist probably misread the first letter of the name of the city in Petit's letter.

‡ He was a factor, who had been in Bombay for at least two years (O.C. 4142).

selected for the post, with the title of 'Chief Justice'.* On the 26th January 1678 Rolt and his Council wrote to Bombay:[101]

'The Great Paines and Trouble Capt. Gary hath undergone in perfecting those Accounts he was desired to Regulate,† and that into a necessary method, as likewise his readinesse to officiate as one of the Four Justices Wee have duely considered, and therefore through the great confidence wee have of his integrity, and uprightnesse, with the assured knowledge of his great experience and suffeciency, to which adding his venerable yeares, Wee have not only to gratify him, but Oblige him by a higher Trust, Conferred upon him the Title and Office of Cheife Justice instead of that of Judge with the Annuall Sallary of 90£ per Annum and a Gowne, the Fees allowable to the said Office to be brought to the Honourable Company's Creditt according to their Order. This Wee hope he will receive with Content and Cheerfulness as an assured Earnest assurance and Testimony of our Respect untill we shall receive further Orders herein concerning him from the Hon orable Company, and whom wee shall not be unmindfull to recommend to their favour and further encouragement.'

They paid similar compliments to him in their letter to the Company announcing his appointment as Chief Justice, 'which employment' they write:[102]

'we have conferred upon Capt. Henry Gary your Ancient Servant; who being now settled with his wife and family upon your Island Bombay, hath not only been very assistant and serviceable as a Justice of the Peace without the least benifitt accrewing to him thereby (for the support of his charges) but [also] hath taken great paines in composing into an Intelligent Method the distracted Accounts of the Island, therefor in gratification of these his valuable services, with some charitable respect to his yeares, and Regard to his eminent abillitys and experience, have concluded this employment a proper station for him, which wee hope your Honours will confirme, with some favourable incouragement of your further respects towards him, as he shall be found meriting thereof.'

The Company was, however, clearly disinclined to view this appointment with favour. Gary's opposition to their interests at the time he was Governor of Bombay in 1667–8‡ had probably not been for-

* It is quite clear that (contrary to its significance nowadays) this title was regarded as inferior to that of Judge, for in their letter to the Company about it the President and Council say they had been 'induced to *reduce* (the office of Judge) to the title of Cheife Justice' (O C. 4341) It meant in this case 'Chief of the Justices'.

† This refers to the Bombay accounts, which were in disorder.

‡ He had, for instance, embarrassed the President and Council at Surat by his claim to be the sole proper authority for the issue of passes to Indian vessels (*E.F.*,

gotten; and he evidently had enemies, who reported that he was a Papist, a serious charge in the days before the 'Catholic Emancipation Act' of 1829. Apart from the question of his disqualification on that account, the Company could not well object to his fitness for the post of Judge, in view of the testimonials that had been given him by the President and Council at Surat. They accordingly took the opportunity afforded by the summary removal of Niccolls to object that Gary had been admitted as Judge 'without a due ejection of Mr. Niccolls', and ordered that, if Niccolls was found to be innocent of the charges against him, he should be 'readmitted to the said place of Judge'.[103] As an alternative bar to Gary's appointment, they added that they were informed that he was a Papist, 'although he sometimes goes to Church', and directed that 'in case you find him such' he should be dismissed.[104] These orders reached Bombay towards the end of 1680, when Gary had been Judge for nearly three years. There was obviously no desire on the part of the Deputy Governor and Council to get rid of him in favour of Niccolls, with whom they were then at loggerheads, as already mentioned. On 23rd November 1680 they wrote to Surat:[105]

'Capt. Henry Gary hath been in our opinions heighly abused to the Hon. Company. Wee have a great deale of reasone to thinke him a protestant. He duely comes to our publique devotions, communicates with us and publiquely disownes to be anything of a papist; and indeed its a rare thing to see a papist to contribute towards building our church as he hath liberrally done.'

And in January 1681 a certificate of Gary's protestantism was signed by the three Chaplains in Bombay,* the Deputy Governor, John Child, and all the members of his Council, as well as by twenty-six others including Niccolls,[106] who thereby showed that he had no wish

1665–7, p. 274, *E.F.*, *1667–9*, pp. 5–12). He had sided with Sir Edward Winter in his revolt at Madras against the Company's authority, and issued a flamboyant proclamation, calling upon all His Majesty's subjects in India to consent to the imprisonment of the lawful Governor, George Foxcroft, and two others (*E.F.*, *1665–7*, pp. 323–5; Yule, *Hedges' Diary*, vol. 2, pp. 323, 324; Hunter, *History of British India*, vol. 2, pp. 202, 203). And he had written letters to Lord Arlington and other high officers in England, containing strictures on the Company and its representatives in India (cf. his letters of 10 Oct. 1668, *E.F.*, *1667–9*, pp. 53 and 55, asking that what he had said against the Company in his zeal for His Majesty might be forgotten).

* One of them, Mr. France, was under orders of transfer to Surat (Surat letter of 24 Jan. 1681, O.C. 4716, para. 73).

to take advantage of the objection the Company had raised on this point. Gary also sent an 'Attestation concerning his religion', which was forwarded with the other papers to the Company.[107] The Surat Council agreed that Gary had been 'very unjustly wronged in the charge against him of being a papist',[108] and that is the last we hear of the matter. The accusation was not only unsubstantiated, but was met by weighty testimony to the contrary.* Even if he had been brought up in the Roman Catholic religion—and there is no special reason to suppose this to have been the case†—it seems to have made little impression upon him, for he showed such hostility to the Jesuits in Bombay and Salsette that in 1666 he was denounced by the Viceroy of Goa as 'an awful heretic' and 'a great enemy of the Portuguese nation'.[109]

The Surat Council, as already mentioned, dropped the proposed inquiry into the propriety of Niccolls's suspension in 1677; and Gary continued to hold the office of Chief Justice till Keigwin's Rebellion in December 1683. During this term of six years, there is no evidence of any dissatisfaction with his judicial work or general behaviour. On the contrary he is consistently praised. Thus on the 25th November 1678 the Surat Council write to Bombay:[110]

'It is very good satisfaction to us to understand from you that Capt. Gary discharges his office of Cheife Justice with soe generall a content and uprightness, and wherein you may assure him he shall not want our fitt respect for him, and due incouragement in soe laudable actions.'

On the 7th December 1679 the Deputy Governor and Council speak of Gary as 'a worthy gentleman that now officiates . . . as Judge'.[111] On the 1st January 1680 the Deputy Governor and Council, in forwarding a petition from Gary to the Surat Council, inform them that

* The suggestion made by R. and O. Strachey in *K.R.* (p. 44) that the remonstrance was due to Gary being 'one of the institutions of Bombay' has a suspicious taint of playing for literary effect. It seems to me far more reasonable to suppose that the certificate was simply due to its being in accordance with the real truth and a general feeling that he was wronged by the Company's insinuation that he was a Papist.

† Though Gary was born in Venice, his parents were (according to Dr. Fryer, vol. 2, p. 30) both English; and Gary writes that, on coming to England, he was 'brought up for some time' in the house of Lord Holles, 2nd earl of Clare, who held offices under the Crown and was not a Papist (*E.F., 1665–7*, p. 308; *Dictionary of National Biography*, vol. 27, p. 170). Nor is it likely that he would have received an appointment as Factor, if there had been any suspicion of his being a Roman Catholic.

'he truely deserves well'.[112] Two years later John Child, who had just succeeded Thomas Rolt as President, was equally laudatory. In the Surat General Letter of 23rd January 1682 he wrote to the Company:[113]

'Mr. Henry Gary, your very antient servant, hath now for some yeares discharged the office of Cheife Justice of Bombay with great prudence and moderation, and is soe true a well wisher to all your other affaires, espetially to your Island, that wee should be really wanting to his Ingenuous meritts should wee not owne it to your Honours by some signall remarke of respect to him, which we know not how better to doe then by recommending him to your favour and further encouragement, which with all submission wee are humble Petitioners to you for.'

They evidently wanted approval to his appointment as Judge, which had been withheld in 1680.[114] But there being no response to this appeal, they repeated their request in their letter of 23rd April 1683, saying:[115]

'Your ancient servant Mr. Henry Gary hath given such continuall and frequent testimonys of his zeal to your service and soe extraordinary dilligent and carefull in discharging that trust he now hath, that wee are obliged for his encouragement to humbly recommend him to your Honours.'

It was not, however, till the 7th April 1684 that the Company, writing in ignorance of Keigwin's Rebellion, gave a grudging consent. They wrote:[116]

'Wee find you so true and cordiall to our Interest that wee can deny no recommendation of yours and therefore you may preferr Mr. Henry Gery in our Service, as you shall think fitt.'

Meanwhile Gary had requested to be allowed to resign. On the 11th October 1683 the Deputy Governor and Council wrote to Surat:[117]

'Capt. Gary, having officiated as cheife justice upwards of six years, requests your honours to be dismissed of that employ, not but that he is ready to serve the Hon. Company in any other that you shall think him fitting and capable of; he being soe well known to your Honours and the rest of your Councill [we] need not write how well quallified and deserving he is.'

The Surat Council evidently shared this good opinion of Gary, for on the 17th September 1683 they had written to Bombay:[118]

'Wee cannot deny the request of that Worthy Gentleman the Worship-

full Henry Gary, although it goes against us to think of his being off the island; therefore desire he will order his business soe as that he may returne to the island by one of our Europe ships that wee may order to call in at Bombay to put him on shore in her voiage down the coast.'

In consonance with this, they were disinclined to accept his resignation, and replied:[119]

'Wee could heartily wish Capt. Gary could have patience till our fleet had arrived, or that he had spoken with us. Wee are thoroughly satisfied in his fidelity and abillities to serve the Hon. Company and out of respect to him doe not at present think of supplying his place with another; but if in answer to this he is resolv'd to lay it downe shall provide for it.'

Gary seems to have agreed to wait a bit, for on the 17th December the Surat Council express their obligation to him for his compliance with their desires,* adding:

'wee shall be forward to shew our respects to him, and soe much pray lett him know; when he comes to us, if he shall continue of the mind to lay down his place, wee shall see to supply it.'

Gary's discharge of his duties as Judge, therefore, gave satisfaction at any rate to the Company's representatives at Surat and Bombay. They also showed their esteem of his abilities by employing him on various missions. Thus in November 1679, at the time of the trouble about Shivaji's seizure of the island of Kendry at the mouth of Bombay harbour,[120] Gary was sent with John Hornigold, a member of the Council, to see Siddi Cossim and try to find out his intentions.[121] A year later he was twice similarly employed on interviews with the Siddi.[122] In December 1682 he was sent on an embassy to Ramnaut Khan, the Moghul General at Kalyan,[123] and the Surat Council said that they could 'pitch on none soe fitt or qualified to undertake' it.[124] In December 1683 the Deputy Governor and Council proposed to send him on a mission to Sambhaji, the latter 'having by his owne letter desired Capt. Gary to come'.[125] And he was employed accordingly by Capt. Keigwin with satisfactory results.[126]

During Keigwin's Rebellion, Gary was in a difficult position, and he no doubt desired to keep in with both sides. He refused to join in the Rebellion; but (as Child reported to the Company) he kept 'a

* Surat letter of 17 Dec. 1683 (F.R. Surat, vol. 91, p. 24). The statement by R. and O. Strachey in *K.R.* (p. 63) that 'in vain Child begged him to wait till he could find a successor' is incorrect, and Gary was still Judge when the Rebellion broke out on 27 Dec. 1683.

fair esteem with the Mutineers',[127] and went on missions in their service.* Child accordingly looked upon him as 'a great encourager of the Mutineers'.[128] On the other hand he showed a disposition to help Sir Thomas Grantham to recover the Island for the Company;[129] and the latter in March 1686 wrote that they looked upon him as pardoned for what he did in the Rebellion.[130]

John Child, however, never forgave him, and showed his resentment in various ways. Thus in February 1685 Zinzan, the Deputy Governor, in discussing the appointment of some one to take the place of Dr. St. John as Judge of the Court of Judicature,[131] said that the only persons in Bombay that he thought 'capable of that place' were Capt. Gary and Capt. Niccolls;[132] but Child replied that '[as] for Capt. Gary, he we account not worthy any countinance from us, much lesse such an imployment'.[133] It is clear that the objection was not based on any unfitness for the post, but on his conduct during the Rebellion, of which Child had complained to the Company in September 1684.[134] In a previous letter Child (using his favourite expression of opprobrium) called Gary 'a very naughty man', and refused to credit Gary's denial on oath that he had been using abusive language about the President.[135]

Until, however, he fell into this disfavour, we find a remarkable unanimity of praise as to the performance of his duties. He was undoubtedly a clever man and an exceptionally good linguist. Fryer, who knew him personally, describes him as 'a Person of a Mercurial Brain, a better Merchant than a Soldier, is skilled in most of the languages of the Country . . . he understands Italian, Portugueze and Latin perfectly and is an accomplished Courtier'.[136] 'Mercurial' is there used in its then complimentary sense of gifted with qualities connected with the planet Mercury, such as eloquence, ingenuity, and aptitude for Commerce.[137] This accords with his frequent employment on diplomatic missions. At the time of his engagement by the Company in 1643, he headed the list of prospective factors as one of the 'three most able',[138] and was described as 'a bred merchant and skilful in accounts and languages'.[139] This again is supported by his career as a 'freeman' and his assistance to the Bombay Council in

* Thus in Sept. 1684 four soldiers, who had escaped from Bombay, deposed that 'Capt. Gary present Judge of the Island dayly frequents the Fort and is in all Consultations with Keigwin and the rest of the Rebells, who sent him as Ambassador to Sambajee Rajah one time and another time to the Portuguese,' (&c.) (O.C. 5201).

reducing to order 'the distracted accounts of the Island'.[140] But there is also disparagement on the other side of the shield. Anderson, for instance, says 'he is represented (at the time he was Governor of Bombay) to have been a vain, headstrong, and over-bearing, but plausible man'.[141] Though this accusation comes from an interested source, viz. the officials of the Company, with whom he was quarrelling, there is a good deal to substantiate it. Thus he was undoubtedly conceited about his abilities and the value of his services;* he intrigued to get himself confirmed as Governor of Bombay;† and he acted in a high-handed manner towards the Company's servants at Surat.[142] But when he became Judge some ten years later, the circumstances were very different and there was little scope for the development of this side of his character. His trial and sentence for opposition to Aungier's Convention, and the fate that befell Niccolls for his outburst against the Council, as well as his more timorous nature,‡ would tend to restrain him from similar conduct. The praise accorded him also shows he did not offend the Deputy Governor and Council in this way.

Nor is there any evidence that he acted oppressively in the performance of his duties as Judge. The Jury system still prevailed and would necessarily act as a check on any idiosyncrasies of the Judge. If he gave offence by overbearing conduct or language, complaints would almost certainly have been made against him, and there would have been some reference to them in the correspondence between Bombay and Surat. President Rolt had asked the Bombay Council to keep an eye on him and to give their impartial views on 'all affaires and

* An instance of this is the self-complacency of his letter to King Charles II about his services (*E.F.*, *1667–9*, p. 47). Oxenden complains of his 'unadvised vaine glorious boastings' (Forrest's *Selections*, vol. i, p 122); and John Martyn remarks ' 'tis not imaginable what difference there is between the Honble. Henry Gary, Esquire, and once Mr. Henry Gary, merchant, so strangely hath honour altred him' (*E.F.*, *1667–9*, p. 51). Fryer (let. 2, p. 64) mentions Gary's pride and says that when acting as Viceroy he used to carry his Chair of State about with him.

† This statement is supported by the petition of the *Povo* of Bombay to King Charles, which was probably got up by Gary, as John Martyn states (*E.F.*, *1667–9*, p. 51); cf. p. 6 *ante*, n.† Gary himself drew attention to this petition and its praise of him in a letter to Joseph Williamson, who was then Lord Arlington's secretary (*E.F.*, *1667–9*, p. 308) and wrote other letters to high officers in England to solicit their interest on his behalf (cf. ibid., pp. 300 and 310).

‡ Cf. Fryer's remark (Hakluyt edn., vol. 2, p. 30) that he was 'a better merchant than a soldier', and John Child's statement in 1685 that he 'hath but a meane poore spiritt that may be easily freitend into anything' (O.C. 5563).

persons . . . for the better balancing of things in doubt'.[143] Only one complaint appears on the extant records, and this was that he had wrongly granted Letters of Administration in respect of a garden at Mahim, belonging to a widow, who had died intestate and without relatives or creditors. The Jesuits of Bandra claimed to be entitled to the Letters on the ground that the deceased was their parishoner, and Gary allowed the claim. Much to the indignation of the Jesuits, the Bombay Council (acting as a Revisional Court) set aside the grant, holding that the land fell to the Company on the analogy of the Crown's reversionary rights.*[144] This may be said to reflect on Gary's legal attainments; but no claim appears to have been made before him on behalf of the Company, and the Jesuits probably cited precedents in their favour. At any rate the Bombay Council did not attach much importance to the episode, for they praised him a few months later.†

Not only is there no evidence of oppression or high-handedness on his part, but also one of his first acts as Judge was to get the Table of Fees revised, with a view to relieve litigants from harassment and excessive charges.‡ There can be little doubt that this was done on his initiative and with his assistance; and though a side-motive may have been a desire to belittle his predecessors and glorify himself, the result was a beneficial reduction of fees, which conformed with the desire expressed in the Orders of 1677 to prevent abuses in the administration of Justice, so that 'the benefitt and sweetnesse [of the English Laws] may redound to the content and quiett of all the Inhabitants of the Island'.[145] One instance of the reductions effected was no doubt due mainly to Gary's knowledge of the vernaculars, which his predecessors had lacked. The previous fees for interpreting evidence and administering oaths 'in Gentues, Moores, or other language' were abolished, and it was laid down that no man should be put to the charge of having 'Bills or Bonds' translated without a Justice's order.[146] Again, when Rolt suggested in 1680 that the fees should be raised with a view to make the Court self-supporting,[147]

* The analogy, strictly speaking, was the right of escheat, which was an incident of feudal tenure and was based on the want of a tenant to perform the feudal services (Halsbury's *Laws of England*, vol. 11, p. 24). The Company could claim this right under the Charter of 1668, which granted them all privileges and hereditaments, in as large a manner as the Crown of England enjoyed or ought to enjoy them under the grant of the King of Portugal in the treaty of 1661 (see the portion of the Charter quoted by Malabari, at pp. 107, 108).

† See p. 103 *ante*, as to praise in 1679 and 1680.

‡ See p. 62 *ante*.

Gary resisted the proposal and urged that it would rather increase the charge than lessen it, 'for the Fees are so heigh allready as the people dread much goeing to law, and if raised heigher its thought you will have few or none bring a cause in the Court but [they will] deside all by arbitration, which at present is much used on the Island'.[148] He was clearly in favour of making Justice as cheap as it reasonably could be.

When he was Governor of Bombay, it was alleged that he was unduly severe in his punishments,* but there is nothing on record about his having passed any out-of-the-way sentences during his Judgeship. It must be remembered that punishments that now seem barbarous were sanctioned by the law and notions of the time;[149] and Gary cannot be blamed for not departing from the general practice. Thus he reports to the Company that at the Sessions on the 3rd October 1677 'sentence was passed on two Theives to be burnt in the hand (both Blacks) one a Christian, th'other a Gentue, th'one for stealing a small quantity of your Tinn, th'other for about Xs. 20 in mony from a Taverne Keeper, it being the first Fact'.†[150] Such hand-burning was a common form of punishment in those days, and was lenient compared with the penalty of death prescribed by the English law of that period.

There are indications that Gary continued to trade after his appointment as Judge. This was not unnatural, as he was a 'freeman' with a family, and his salary of £90 a year would scarcely be likely to content him. The Company in March 1678 ordered that the Judge should be fourth in Council at Bombay, 'but that he wholy attend to the Judicatory and not be concerned with mercantile affairs'.[151] This proviso was probably the reason why Gary never availed himself of the invitation to be a Member of Council.‡ Shortly after the receipt of this order in September 1678,[152] he made offers for the purchase of copper and iron belonging to the Company, which the Council accepted,[153] so that his continuing to trade was not apparently considered objectionable. He was also allowed to coin the copper at the Mint.[154] This was, however, an exceptional transaction; and his

* This was by John Martyn, the Secretary of Sir Gervase Lucas, whose main complaint was that European soldiers were sentenced to death by Gary for insufficient reasons or on inadequate evidence (*E.F.*, *1667–9*, p. 51).

† This word is used in its old sense of 'offence'.

‡ The Consultation entries show that he did not attend Council meetings, though he was at any rate on one occasion in 1680 called upon to give his advice to the Council (F.R. Bom., vol. 2, p. 24).

ordinary coasting trade was probably left to his son Theophilus,* who was described by Gary as the owner of 'a *shibar*† bound for Goa', for which he requested Sir Thomas Grantham to grant him a pass in November 1684.[155] He would of course be interested in it, and he was stated in November 1683 to have been a partner with one Vissundas in the 'Tobacco Rent'.[156] He would not, therefore, be in the same independent position as Wilcox, but on the other hand he had not the close connexion with the Government that Wilcox had as a member of the Council. He was practically on the same footing as Niccolls, who was also a 'freeman' and trader.

So far, there is nothing that seriously detracts from the praise given to Gary by both the Bombay and Surat authorities, and I have tried to bring out anything to his discredit—as well as to his credit—that my research in the India Office records has revealed. Why then is it that Gary's reputation is so bad that Malabari for instance says[157] he 'turned out as great a scamp as Cooke', who was corrupt and became a traitor? The sole basis for this is Capt. Hamilton's well-known story about Gary that he summoned a man to appear before his Court on Friday, although he had been executed, according to the Judge's own sentence, on the previous Tuesday.[158] Hamilton's comment runs, 'the poor dead Fellow was ordered to be called before the Court, but he would not comply with the orders'. Anderson improves upon this by saying, 'The Court waited, but death was guilty of contempt, and no prisoner appeared, in spite of the fuddled judge's mandate'.[159] The suggestion that the Judge's forgetfulness was due to drunkenness rests on pure surmise, but it has been accepted as if there was reliable testimony that Gary was an habitual drunkard. Thus Arnold Wright says:[160] 'Gary must have appeared a quaint figure on the bench. According to his contemporaries‡ he indulged deep in potations, and we may picture him with wig awry and face inflamed with the overnight's debauch, laying down the law in the rude language of the military camp to evil-doers brought before him.' This is no doubt

* That this was his name is shown by Child's letter of 15 Aug. 1685 (F.R. Surat, vol. 92, p. 155). Foster is wrong in describing (*E.F., 1661–4*, p. 209 n.) his son Henry, who died in 1658, as his '*only* son'.

† This was a kind of coasting vessel (cf. Yule, *Hedges' Diary*, vol. 2, p. 175, n. 1).

‡ It would be interesting to learn who these 'contemporaries' were. Dr. Fryer, who was in Bombay with Gary and went to Goa with him, certainly does not say he was a drunkard; nor does Hamilton, who, however, first came to Bombay in 1688 and was scarcely a 'contemporary', make any such statement.

picturesque writing, but it is as unjustified as the same writer's statement that Gary was 'an old Irish soldier'.* Even the authors of *Keigwin's Rebellion*, though they recognize the caution necessary in accepting uncorroborated statements of Hamilton and Anderson,[161] have apparently been influenced by this story, to the extent of assuming that Gary's administration of the law was 'mercurial' and that any change from it would have 'its bright side'.[162]

Hamilton himself does not say that the Judge was fuddled, as he would probably have done, if that was the point of his story; and a fairer view is that it was intended to illustrate Gary's bad memory. It does not necessarily even do that. The sentence of death would probably be passed at least a week before the date of execution, and it may have been a good deal longer, so that the details of the order might well have been forgotten without it following that the Judge had a bad memory. Thus Henry Sands was convicted of murder on or before the 5th June 1679, but was not executed till the 2nd July following.[163] In fact the date of execution would ordinarily be fixed by the Council, and not by the Judge, for all death sentences were subject to confirmation; and in 1682 John Child ordered that they should also be referred to Surat before being carried out.[164]

But there are strong grounds for doubting whether the tale can legitimately be fastened on to Gary at all. As related by Hamilton, it plainly refers to an incident that happened after Keigwin's Rebellion was over and Bombay had again passed into the Company's hands. It comes in the chapter dealing with the Rebellion, and is preceded by the words: 'After General Child had gotten the Reins of Government again into his Hands, he became more insupportable than ever. He erected a Court of Inquisition, and made an old Greek, one Capt. Garey, Judge.'[165] This contains two obvious inaccuracies. First of all, Gary was not a Greek,† and secondly he was certainly not appointed

* *Annesley of Surat and his Times*, p. 76. Gary never did any military service proper, and derived his title of 'Captain' from his position as acting Governor of Bombay and therefore *ex officio* Captain of the 'elder' Company of the Garrison soldiers (cf. *E.F.*, *1667–9*, p. 64, n. 2).

† According to Dr. Fryer (n. † on p. 103), his parents were both English. One Edward Knipe, who went out to India with Gary on the ill-fated voyage of the *John*, and was elected Commander of the passengers deserted at Johanna, stated he had been told Gary was 'borne in Venice, his father an Irishman, his mother a Venetian' (*E.F.*, *1662–5*, p. 245). This may have been true, but did not make him a Greek. 'An Italian by birth', as John Martyn called him (*E.F.*, *1667–9*, p. 51), would have been a better description.

Judge in any Court by Child after the surrender of Bombay in November 1684, for (as we have already seen)* he rejected Zinzan's suggestion of the appointment of Gary as Judge of the Court of Judicature on the ground that he was unworthy of any such employment. The story has hitherto been accepted as applicable to Gary, during the time that he was Chief Justice from 1678 to 1683; but is there any more justification for this surmise than the reverse one that Hamilton wrongly ascribed the incident to Gary, instead of to the Judge, who actually presided over the 'Court of Inquisition' that he mentions?

This alternative suggestion is one that receives support from a somewhat similar story which appears in the anonymous *Account of the Island of Bombay* dated 12th May 1710,† and known to have been written by Ensign John Burnell, who commanded Dongri Fort in the time of General Aislabie's Governorship (1708–15). He says:[166]

'To begin with military government it will be proper to say something of martial law once in force in the island; it had a Sessions house, a sumptuous pile (tho' now ruinated) and a Judge advocate; the Bench consisted of a Judge, two Captains, Ditto Lieutenants, Ensigns and Attorney, who proceeded legally with criminals according to Law established till, as it happened through mistake of the judge, they hanged a man first and in part to wipe away such a blemish they thro' ignorance had been guilty on, forthwith summoned the Court who being assembled gravely entered upon the tryal of the aforesaid person after he was dead, and then found him guilty of the crime for which he suffered before ever he was brought to a trial; these and other enormous complaints being made home, was the forfeiture of that power.'

This story looks as if it was the same as Hamilton's in another form. From the mention of a Judge Advocate the date of the incident appears to be subsequent to the surrender of Bombay by the mutineers, for Dr. St. John, the first Judge Advocate, did not take up his duties till after that event.‡ This agrees with Hamilton's story, as already shown. Consequently the Judge, whose mistake led to the premature execution, could not have been Gary. Burnell's account also says it happened in a case dealt with under martial law, and it

* See p. 106 *ante*.

† This is contained in the *Orme Collection* in the India Office; the volume is called 'Extracts from India, vols. 8, 9 and 17'. It has now been published, with an introduction and notes by Samuel T. Sheppard, under the title of *Bombay in the Days of Queen Anne*, for the Hakluyt Society, 1933.

‡ On the 20 Nov. 1684, cf. *K.R.*, p. 151.

is very unlikely that Gary ever presided at any court martial while he was Judge of the Court of Judicature. The practice was for the Deputy Governor to do this; if he was prevented, the senior commissioned officer took his place; thus we find that, though Wilcox sat on a court martial in April 1672, the President of the Court was Capt. Shaxton.* In Gary's time two soldiers, named Buckingham and Ellis, had been tried and sentenced by court martial, but John Child ordered them to be tried by the Court of Judicature.[167] He would hardly have done this if the Judge of that Court had already presided at the court martial.† A double duty of this kind would be very unusual, and there is nothing to suggest that it was ever resorted to during Gary's judgeship. It is only after the surrender of Bombay that a case of a Judge presiding at a court martial is mentioned in the records, and the Judge was Dr. St. John.[168] There was, however, a special reason for this, the prisoner being accused of mutinous language to Sir Thomas Grantham, while he was in command of the Island. Later on, when Dr. St. John, seeking to extend his jurisdiction, claimed that soldiers, who were prisoners on the guard, should be tried in his Court, the Bombay Council refused and decided that 'the Deputy Governor &c. should sitt on them, as hitherto had been accustomary'.[169]

But there came a time when the Judge Advocate did in fact preside over all courts martial in Bombay. When Child dismissed Dr. St. John on the 9th September 1687, he appointed in his place the then Deputy Governor of Bombay, Sir John Wyborne, in accordance with the orders of the Company that he should be given the first offer of the vacancy.[170] Wyborne, who owed his appointment as Deputy Governor to the favour of James II,[171] was commissioned to stop at St. Helena on his way to Bombay and try the planters and others who were involved in the mutiny of 1684 at that place.[172] Sir Josiah Child was then strongly in favour of martial law being used effectively for the government of Colonies like St. Helena and Bombay,‡ and had

* F.R. Surat, vol. 106, p. 92. The Deputy Governor did not preside on this occasion, as the accused was charged with using insulting language about him.

† The more so, as the Bombay Council objected to the retrial (Bom. letters of 25 Feb. and 28 March 1682, F.R. Bom., vol. 9, pp. 10, 13).

‡ Cf. Company's dispatch of 6 May 1685 to St. Helena: 'We have His Majesty's Commission to govern our Plantations by Martiall Law, which is absolutely necessary in such remote places' (L.B., vol. 7, p. 458). See also dispatch of 26 March 1686 (L.B., vol. 8, p. 115), as to using martial law in Bombay.

books of 'Laws Martial' sent out to each of those places.[173] Sir John Wyborne was also recommended as 'one who hath seen the order and government of his Majesty's late* garrison of Tangier, in conformity whereto we would have you in all respects govern our garrison of Bombay'.[174] The civil jurisdiction of the Island was, however, to be left as settled when Dr. St. John was sent out,[175] that is, the Courts of Admiralty and Judicature were to remain unaffected. In these circumstances it is natural that Sir John Wyborne should have had a predilection for martial law. This is strongly shown in a letter of September 1686, which he and his Council sent to Sir John Child, remonstrating against his order for the retrial by the Court of Judicature of one Robert Clark, who had killed the Gunner's mate of the *Phoenix* in a quarrel.[176] Its terms show a remarkable contempt for the Court of Judicature, its Judge and Jurors, and even for the pompous and learned Dr. St. John; but it must in fairness be admitted that Wyborne had reasonable ground for his objection that Clark, who was a soldier, had been properly tried by a court martial. The letter runs:

'As to the trying of Robert Clarke by the Court of Judicature, the Judges advice [in] our opinion is of little value; the laws of warr say quite another thing so if your Excellency please to adheare to Dr. St. John's advice as to governing of an island or garrison, the Deputy Governour never expects anything but confusion, for he dare sweare if we doe not punish souldiers by martiall law, noe officer nor inhabitance can be safe in their lives or estates. We know the common law will cleare Clarke for murder, and so it will any man for theft, great part of the Jurymen not knowing how soon it may be their turnes to be brought to the barr on the same scoare.† The Deputy-Governour is sure Sir Josiah Child is wholly for governing per martiall law and has been at a great deal of trouble to obtaine it in times past, and now write to that purpose; however will submitt to your directions, and Clarke shall be tryed accordingly that he may live and murder some other poore man.'

Wyborne's tenure of the office of Judge Advocate appears to have ceased by June 1688, probably on the receipt of the Company's orders of August 1687, giving Child discretionary power to remove him and

* This garrison had been abandoned in 1684 on account of the expense involved.

† Perhaps Sir John Wyborne had in mind Shakespeare's words (*Measure for Measure*, Act II, Sc. i):

> The jury, passing on the prisoner's life,
> May in the sworn twelve have a thief or two
> Guiltier than him they try.

directing that the same person should not be both Judge Advocate and Deputy Governor.[177] He was succeeded by Vaux, the Judge of the Court of Judicature, so that the two Courts then became merged.* In these circumstances there is no likelihood that Vaux would preside over courts martial, nor is there any record of his having done so. Vaux ceased to be Judge on his becoming Deputy Governor of Bombay after Child's death on 4th February 1690, or at any rate when he handed over charge to George Cooke on the 28th of that month.[178] There then ceased to be any Judge either of the Court of Judicature or of the Court of Admiralty for a period that lasted till well after 1710,† when Burnell's *Account of the Island of Bombay* was written.

It is clear, therefore, that the Judge referred to in that Account cannot have been Gary; and if it was any of the Judge Advocates between 1684 and 1690, the finger of probability points to Sir John Wyborne as the culprit. But against this is the fact that martial law certainly did not cease to be in force in the Island during his lifetime or thereabouts. Courts martial were for instance held during the Siddi's invasion of Bombay in 1689–90;‡ and in view of the Company's strong orders about its exercise§ and the necessity of keeping discipline in the garrison, it is unlikely that it ever was entirely dispensed with.‖

To return to Hamilton's story, the 'Court of Inquisition', which he says John Child erected after Keigwin's Rebellion, was certainly not the Court of Judicature, for Hamilton in a subsequent passage of his book[179] mentions Vaux as 'Judge of the Island in petty affairs'. The only Court to which this opprobrious term is likely to have been given by Hamilton, whose sympathies were with the 'Interlopers',**

* Vaux is mentioned as Judge of the Court of Admiralty in Bom. letter to the Company of 9 June 1688, para. 27 (F.R. Misc., vol. 4, p. 172). Again in Bom. letter to the Company of 7 June 1689 (O.C. 5671) Child says: 'John Vaux being now Judge of that Court [i.e. the Court of Admiralty], and [that] is all the Courts you have on this Island except that of Chancery' [i.e. the Court of the Deputy Governor and Council].

† See Chap. X *post.*

‡ Cf. entry in the *Diary of the Siege*, p. 13, about a court martial held on Isaac Scott, who had deserted to the Siddi. The invasion began on the early morning of the 15 Feb. 1689.

§ See pp. 113, 114 *ante.*

‖ We hear of it, for instance, in 1891 (F.R. Surat, vol. 93, p. 41); and there is no reason to believe that the exercise of ordinary martial law over soldiers ever ceased.

** Hamilton, who traded only in Indian and Persian waters, was not himself an 'Interloper' in its proper sense of one who interfered with the Company's direct trade between Europe and Asia (see Foster's Introduction to the Argonaut Press edition of Hamilton's *New Account*, &c., p. xiv).

is the Court of Admiralty, which was specially established for dealing with that 'horrid trade', not by John Child (as Hamilton inaccurately says) but by Charles II at the instance of the Company. This is corroborated by another passage, in which Hamilton refers to the same Court as the 'General's Tribunal'.[180] Speaking of the action taken in 1685 against some officers of the interloping ship *Bristol*, he states:

'The Bristol's men were looked on as pirates, and one Mr. Mews, a supercargo, was arraigned before the General's Tribunal, where he [John Child] himself sat [as] Lord Chief Justice, and after his usual manner of bestowing opprobrious names, he condemned Mr. Mews to lose all that he had in the world, and 1000 pounds beside, and to lie in prison, at his own charges, till the fine was paid; but Mr. Vaux, who was Judge of the Island in petty affairs, showed him the weakness of the sentence, and persuaded him to set the poor man on liberty and order him a passage for England.'

I have given the passage at length, because it affords a good illustration of Hamilton's gross inaccuracy and untrustworthiness in many of his statements, especially in regard to Child.* As a matter of fact, the records clearly show that Child was not a member of the Court which tried Mews; it consisted of Dr. St. John and the two factors, who acted as his Assistants, by name John Jessop and James Butler; they sat in Bombay on 9th August 1685, when Child was at Surat;[181] the fine imposed was £200[182] and not £1,000; the remission of this and the other punishments inflicted on the officers was at once proposed by the Bombay Council;[183] and this was approved, and the goods seized ordered to be returned, by Child,[184] who laid down that 'bare interlopers' like the officers of the *Bristol*, who delivered up their vessels and goods without resistance, should be leniently dealt with. Hamilton, who was in Bombay during the Siddi's invasion, should have known that the first Judge of the Court of Admiralty was Dr. St. John† and not Gary.

* For instance, his statement that Child misappropriated money that had been contributed towards the cost of building St. Thomas's Church in Bombay, which has been disproved by R. and O. Strachey in Appendix D to *K R.* Child in fact encouraged the raising of subscriptions for this purpose, but refused to sanction any start on the work of finishing it until enough should be collected to cover the estimated cost (Surat letter to Bombay of 11 June 1685, F.R. Surat, vol. 92, p. 101, and Surat letter to the Company of 21 April 1685, ibid., p. 120).

† Hamilton arrived in Bombay in Nov. 1688, only about a year after Dr. St. John had left the place, so it is unlikely he did not hear of him.

Having regard to this haziness on the part of Hamilton, it seems not improbable that Ensign Burnell, who was in Bombay when there were no Courts other than that of the Governor and his Council and when the Courts of Admiralty and Judicature had disappeared for some twenty years, was really repeating some old story, not about a Military Court, but about the Court of Admiralty. This would explain the reference to the Judge Advocate and the former Sessions Court-house, in which the Court must have sat at any rate during the time that Vaux combined the two posts of Judge of the Courts of Admiralty and Judicature. The mention of 'criminals' as coming under the jurisdiction of the Court does not destroy this suggestion, for the Court of Admiralty had power to deal with crime in maritime cases, just as the High Court of Admiralty in England had from early days,[185] and (apart from that) the story may refer to the time when it was amalgamated with the Court of Judicature. It would also be consistent with the mention of the two Captains, who assisted the Judge, if we suppose that, under a misapprehension about the Court being a military one, they became substituted for the two factors who sat with the Judge Advocate in the Court of Admiralty. The same misapprehension would explain the addition of Lieutenants and Ensigns. Thus the two stories merge into one about a Judge of the Court of Admiralty. If so, it cannot be that the Judge in question was Gary. It is much more likely to have been told about Vaux, who was a friend of Hamilton at Surat* and whom he (or his memory unconsciously) might therefore shield.

The absurdity of Hamilton's statement that Gary was appointed Judge of the Court of Admiralty is increased by the fact that the latter himself suffered at the hands of the Court of Admiralty by the condemnation of a *shibar*† belonging to him and all his goods in it. The letter referring to this incident[186] shows that it happened when John Child still reigned as 'General'; and Vaux is cited as authority for the statements about it, so that he was probably the Judge who decreed the confiscation. A natural surmise would be that it was due to Gary's trading with interlopers, as the Bombay Council suspected he was doing in 1685.[187] But the real cause appears to have been a charge of treachery against Gary during the Siddi's invasion of

* For instance, he told the President at Surat that he 'always ate with Mr. Vaux' (see passage in Vaux's Diary cited by Arnold Wright in *Annesley of Surat and his Times*, p. 185).

† A big coasting vessel, see n. † on p. 110.

Bombay, as is shown by the following remarks of Sir John Gayer and his Council in a letter to the Company of 3rd December 1695:[188]

'Mr. Gary, son of old Capt. Gary deceased, has severall times Petitioned us that his Fathers estate might be restored him, which Petitions wee have not granted, for that he was generally reputed in the warr to be treacherous to your Honours Interest, tho' all the evidence that wee can heare of that was brought against him was of two returning runaways, which swore that he gave the English fugitives with the Siddee a hogshead of Arrack* and bid them be of good courage. He was employed by the Generall to negotiate matters between him and the Siddy in the time of the Cessation a little after the Siddees Landing,† in the time of which Cessation the Siddy fortyfied himself on Dungaree hill;‡ this and other treacherous actions of the Siddy greatly enraged the Generall and his Councill and all others, and made him to conclude that Capt. Gary as treacherously managed the treaty as the Jesuiticall Padre did,§ and wee believe at that time every one allmost would have been ready to have cast a stone at him,—however when the Cessation ended the General sent for him the day before he assaulted Dungaree hill,‖ and he returned answer that he would come to him in the morning, but he not coming at the time appointed, the Generall did not begin his Assault as soone as he thought by two hours still expecting his coming; but he came not, being as wee really believe afraid that if he had come every one would have been ready to run him through, and this he was fully informed of, which caused him the next day to retire to the Portugeeze countrey, and never durst more to returne to this Island; the Siddee had at this time a warehouse of his Arrack** in his Possession, and whether he did say to the fugitives they might take a hogshead of it or no, is uncertaine, but it is certaine 'twas not in his Power to restraine them from taking of it. The two persons that swore the above against him it's more

* Spirituous liquor distilled from the coco-palm.

† This is corroborated by entries in the *Diary of the Siege* contained in F.R. Bom., vol. 3. According to these (p. 3), on the 17 Feb. 1689 Capt. Gary came from the Siddi 'with a message of a Cessation of Armes', and on 22 Feb. he was passing 'to and from the Siddy' in an attempt to negotiate terms of peace.

‡ This hill was situated on about the site of the present European General Hospital and commanded the Fort. It was partly demolished in 1769–70 (Campbell, *Materials*, &c., vol. 2, p. 377; *Bombay in the Days of Queen Anne*, p. 33 n.).

§ I have not succeeded in tracing anything to explain this allusion, but the Jesuit priests were always regarded as tricky. It may refer to the assistance given by the 'Padree Superior' of Bandra to the Siddi during the invasion (cf. *Diary of the Siege*, under date 29 Aug. 1689).

‖ From the *Diary of the Siege*, this assault appears to have been made on 16 March 1689.

** Even as early as 1671 Gary was selling arrack, and got into trouble for doing this contrary to a Proclamation (Bom. letter of 24 June 1671, F.R. Surat, vol. 105, p. 178).

than probable did it out of hopes to obtaine favour, having as before [mentioned] run from their Collours; what more the Generall and Councill might have against him, wee cannot find, but its certaine they made a prize of all they could get of his; for not long after a *Shybarr* of his* and his plate was taken, which was imediately sold; wee have made the strictest enquiry possible into this affaire, and cannot have any further account than wee have here given, therefore wee humbly referr it to your Honours decision. His Orta was almost all cut downe in the warr, that and his house which is ruined,† if sold, would not yield 200 Xs.; his *Shybarr* and plate wee believe was sold for more.'

Gary thus fell on evil days in his old age, and Child must have been gladdened at the fulfilment of his spiteful remark in February 1687: 'Old Gary may meete with his reward; forbearance is not payment.'[189] Sir John Gayer and his Council evidently thought that his guilt was not established, and the Company did not differ. They left the decision to the Bombay Council 'according to equity and good conscience',[190] and though I have not been able to trace any further reference to the matter, beyond a promise to inquire into its 'true state' to the best of their ability,[191] their previous report makes it probable that the confiscated property was restored to Gary's son.

It is difficult to believe that Gary, who had property in Bombay and whose trade would necessarily disappear if the English were ousted by the Mughals, deliberately sided with the Siddi and connived at his surreptitiously fortifying Dongri Hill or encouraged deserters from the garrison of the Fort; but it is possible that, living as he did at a distance from the Fort, he fell into the Siddi's hands and was frightened into conduct of the kind alleged against him.‡ The evidence of the two 'returning runaways' was suspect, as pointed out by Sir John Gayer. Gary had also good reason to believe Child was biased against him, and his flight from Bombay cannot in the circumstances be rightly regarded as an admission of guilt. As he 'never durst more to returne to' Bombay, and he is not likely to have gone to Surat, where the English were suffering on account of supposed complicity with European pirates in Indian seas,[192] Gary probably died somewhere in Portuguese territory.

* It seems a fair presumption that this *shibar* corresponds to the one mentioned in the correspondence of 1691, see p. 117 *ante* and n. 186.

† This is also corroborated by the *Diary of the Siege*, which mentions bombs falling near 'Judge Gary's House', pp. 26, 31.

‡ Cf. Child's remark about him cited in n. ‡ on p. 107 *ante*.

But whatever may be the truth as to the charge of treachery, Gary should, I think, be cleared of the insinuation that he was a drunkard and a bad Judge. In addition to the reasons already given for discrediting Hamilton's story about him, the mere fact that he was alive in Bombay in 1689,* able to 'pass to and from the Siddy' in negotiations with him,[193] goes to contradict the charge of insobriety that has been brought against him on such a slender foundation. He must have been then at least seventy years old, and it is scarcely likely that he would have survived the notorious insalubrity of Bombay for Europeans in those days for the long period of twenty-five years, if he had indulged in intemperance. So far as reliable records go, he appears to have given satisfaction in his work as Judge, and he almost certainly has been undeservedly maligned by Hamilton's story and the inferences that have been drawn from it.

* In *K.R.*, p. 161, n. 2, it is stated that Gary died in 1688 at Surat; but this is obviously wrong. The tomb at Surat which bears his name was erected for his son Henry, who died in 1658 (*Bom. Presidency Gaz.*, vol. 2, p. 324). Gary's wife was also buried there in 1667 (*E.F.*, *1665–7*, p. 299).

CHAPTER IX

THE COURTS OF JUDICATURE AND ADMIRALTY 1684–90

DURING Keigwin's Rebellion the Company's Courts of course ceased to operate, and John Thorburn, 'a Scotch Tayler that went out a Common Soldier',[1] who had risen to the rank of Ensign of the 1st Company of the Garrison, but who had been dismissed by the Company for signing a petition that was deemed to be mutinous,[2] appears to have taken on the judicial work. He was in fact a sort of 'Pooh-Bah'.

'I am employed,' he writes, 'in all the chiefest offices of the Island, as Attorney Generall for his Majesty, Treasurer, Chief Justice, Accomptant, Secretary, Captain-Lieutenant of the first company of Garrison souldiers. The Inhabitants are exceedingly well pleased with my equitable decisions in composing differences of litigious law suits, so as they complain of the former corruptions and injustice of the Law.'*

He was one of the prime movers in the Rebellion, and evidently had literary ability, as he drafted the 'Proclamation for the Liberty Felicity and Tranquillity of the Inhabitants and Indwellers of Bombay' and other documents required for the enterprise.[3] But in spite of his self-complacency as to his merits, his judicial qualities were probably not of a high standard; and we hear of torture being used to extort confessions during the time of the Rebels.† There is, however, no other information available as to the administration of justice during the year of the Rebellion.

The surrender took place on 19th November 1684, and on the next day Sir Thomas Grantham formally 'delivered the Chaire of Justice' to Dr. St. John,[4] who had reached Swally on 15th September and had accompanied Sir Thomas Grantham to Bombay. The Company's dispatch announcing his appointment says:[5] 'We have chosen Dr. St. John,‡ Doctor of Civell Law, to be Judge of the Admiralty Court in

* O.C. 5068, cited by Strachey, *K.R.*, p. 82. He is also mentioned as having been Attorney-General during the Rebellion in the Company's dispatch to Fort St. George of 12 Oct. 1687 (L.B., vol. 8, p. 444).

† Lighted 'matches' (i.e. wicks or cords of combustible material) were put to the fingers of persons suspected of complicity in the murder of an Englishman (Bom. letter of 19 Sept. 1685, F.R. Surat, vol. 109, p. 235, and Surat Letter of 9 Mar. 1686, F.R. Bom., vol. 3, p. 169).

‡ St. John was a member of the Middle Temple, who had received degrees of

the East Indies, and of all our Maritime Affairs there to be erected, in pursuance of his Majesty's additional Charter of 9th August last at a sallary of £200 a year.' They at the same time directed that 'all other Judicatures upon our said Island are to remayne in the same condition and order as they now are, and under the management of the same persons, untill you receive our further Orders, after we have an account from you of the good deportment of the said Doctor'.[6] In reply Child and his Council promised to send a report about his work in due course and expressed the wish that 'his behaviour may be such as to encourage your Honours to conferr on him all Judicatures on your Island, which may be an encouragement to him and ease your Honours of some charge'.[7] Dr. St. John, however, took a different view of his appointment, and from the first arrogated to himself the jurisdiction of the Chief Justice. As the Court of Judicature was not then in existence, this was perhaps convenient; and Sir Thomas Grantham, who was the *de facto* Governor* and who had confided the 'Chaire of Justice' to Dr. St. John, naturally raised no objection. Zinzan took over charge of the Island from Sir Thomas Grantham on 18th December 1684,[8] and did not of his own initiative interfere with these arrangements. Mention has already been made of a court martial held on 31st December 1684, at which Dr. St. John presided;† and in the copy of the proceedings that Zinzan sent to Surat the Doctor is described as 'Judge of the High Court of Admiralty for these easterne parts and Judge of Bombay'.‡ He also sent to Surat, without comment, a 'paper relating the proceedings, said to be in Court of Judicature', against a Mohammedan by name Daudji, who had been convicted of murder by a Jury and sentenced to death by Dr. St. John.§ Child took exception to this in a private

Doctor of Laws from the University of Leyden and Archbishop Sancroft. He was a protégé of Lord Rochester, the brother-in-law of the Duke of York, and was recommended for the post by Sir Leoline Jenkins, the Secretary of State, 1680–4 (Court Book, vol. 33, p. 187*b*). For further details about his previous career see Mr. Harihar Das's article 'The Affairs of India and Siam' in the *Calcutta Review* for January–March 1927, vol. 22, pp. 72–4.

* He had been commissioned by John Child to recover Bombay, O.C. 5236; cf. *K.R.*, p. 139. † See p. 113 *ante*.

‡ F.R. Surat, vol. 109, p. 51. He was similarly described in the endorsement about his approval of the Consultation with Sir Thomas Grantham on 17 Dec. 1684 (F.R. Bom., vol. 3, p. 4).

§ Surat letter of 12 Feb. 1685 (F.R. Surat, vol. 92, pp. 35, 36). The trial took place before Zinzan's arrival in Bombay (see Bom. letter of 12 Feb. 1685, F.R. Surat, vol. 109, p. 109).

letter of 12th February 1685, to Zinzan,[9] on the ground that the Company's order 'positively excludes him [Dr. St. John] from being Judge of the Court of Judicature at Bombay', until at any rate he had been commissioned by the President to preside over that Court. Zinzan was also asked his opinion 'whether it be necessary and most convenient at this juncture of time to deviate from the Rt. Hon. Company's orders by giveing him a commission as Judge of the said Court, or in obedience to them, put another in the place, if any you can advise us to be fitt'. Zinzan hedged; he advised deferring action till the President came to Bombay, and suggested that it might be impolitic, in view of the interest St. John had at Court and his great relations, to appoint 'a competitor' and 'soe lessen his esteeme' that he might retire in disgust.[10] On the whole he evidently favoured the Doctor's appointment to the Court of Judicature, although he had 'sometimes been more inclinable to precipitation than mature deliberation'.* Child was not impressed by the reference to Dr. St. John's influence at home.

'Those are no motives to us,' he wrote,[11] 'for the Rt. Hon. Company we may reasonably conclude well knowe his relations and if were afraide of them, or thought the Doctor might have been able to have harmed them, if not pleased in everything, would themselves have directed that the Court of Judicature should have been in his charge and not positively have ordered the contrary, till they had from us an account of his behaviour, which you as well as we knowe hath not been such as we could wish.'

He goes on to say,[12]

'Yett we were inclinable to deviate from the Rt. Hon. Company's orders as well as you to holde him contented; but that paper of depositions taken against the President wholly diverted us, whereby he appears to conceit much higher of himself than he ought and makes us thinke that the extraordinary respect we have shewed him makes him forgitt himself, or he doth not understand well his owne power and ours.'

He refers to this paper in another letter,[13] as one 'of such a nature, passing by many other things, that we should appeare very weake and unfitt for the charge we have, should we take noe notice of it, much lesse deviate from the Rt. Hon. Company's owne orders'.

* Zinzan's letter to Child of 21 Feb. 1685 (F.R. Surat, vol. 109, pp. 110, 111). Child tersely summed up Zinzan's opinion as 'you thinke him not worthy of a Commission of a Court of Judicature, but however seeme willing he should have it out of some consideration' (F.R. Surat, vol. 92, p. 54).

St. John had allowed himself to be a vehicle for attacks on the President, and the latter swiftly retaliated. The details of the disquieting document are not now forthcoming, though Zinzan records[14] that he had tried hard to dissuade St. John from this 'act of precipitation', but the Doctor refused on the ground that 'he was under 6 severall oaths, [so] he could conceale no information that came before him against any, much less those that were in power in India'. Zinzan adds the information that Sir Thomas Grantham and Keigwin 'were the parties he had it from,* but out of respect to the President (St. John) would not take it upon oath'. This would only add fuel to the flames, for Child was furious with Keigwin's escape from the halter and his going about 'impudent as Hell, gloring in his Rougery'.[15] A parting shot of this kind would naturally increase his vexation.

It is clear, therefore, that what really influenced Child in deciding that Dr. St. John should not be given the Chief Justiceship of Bombay was the latter's taking cognizance of accusations against Child himself. This was regarded as insolence and a presumptuous challenge to the authority of the 'General' by one who, under his Commission from the Company, was to be subordinate to the President and the Deputy Governor of Bombay.† This attitude was very different to that of Gerald Aungier, who had urged Wilcox to deal impartial Justice to all without fear, favour, or respect of persons, even if the Governor himself were concerned.‡ But there is something to be said for Child's objection to St. John's conduct. While the Doctor no doubt showed courage and independence in pursuing the course he did, he appears to have gone out of his way to try to extend his jurisdiction beyond the limits contemplated by the Charter of 1683. It is true this gave him jurisdiction, not only over cases of 'interloping' proper, but also over 'all mercantile or maritime Cases whatsoever' concerning residents in or visitors to Bombay, and 'all Cases of Trespasses, Injuries and Wrongs, done or committed upon the High Sea' or in Bombay or its adjacent territory; but it did not confer a full civil

* This must have been before they sailed for England on Grantham's ship, *The Charles the Second*, in December 1684 (cf. Strachey, *K.R.*, p. 153).

† Cf. Zinzan's argument in his letter of 21 Feb. 1685 (F.R. Surat, vol. 109, p. 110), and Child's remarks as to St. John's not understanding 'his owne powers and ours', cited p 123 *ante*. The Company's Commission did not, however, mention any subordination, apart from the Judge having to give an account of his proceedings to the President at Surat and the Deputy Governor and Council at Bombay (L.B., vol. 7, pp. 315, 316).

‡ See p. 54 *ante*.

jurisdiction,* nor did it make any clear reference to *offences* other than those connected with interloping. There was reasonable basis, therefore, for the contention that, apart from dealing with interlopers, the Court's jurisdiction was intended to be limited to what may be called Admiralty cases.†

It is clear, anyhow, that Anderson is wrong in stating that the reason for St. John's supersession in the post of Chief Justice was his 'not having been sufficiently tractable and forward in persecuting private traders'.[16] The records do not reveal any complaints under this head prior to Child's adverse decision, and the Doctor, while at Surat in October 1684, had been very active in initiating a campaign against Interlopers.[17] Nor is it clear that even his dismissal in September 1687 was due to any such reason.‡ The initial motive for it appears to have been the irritation of the Company at his writing home to various high personages about his grievances,[18] and also some complaints of 'high misdemeanours' that were made against him.[19] On account of this, in March 1686 they authorized Child to dismiss him; but in August 1687, on Child's report of his better behaviour, they ordered his reinstatement, provided he agreed to accept a reduced salary of £100.[20] Child, however, had dismissed him before the receipt of these orders.

To return to the time of the commencement of St. John's career as Judge Advocate, the case of Daudji, who had been convicted of murder,§ gave rise to considerable discussion. The evidence against him was held by the Councils both of Bombay and of Surat to justify his conviction,[21] but there was a difference of opinion as to its legality.

* Thus under the Charter the Court would have had no jurisdiction to entertain suits relating to lands or houses, or any interest in them (cf. *Jebb* v. *Lefevre* referred to by Sir Michael Westropp in *Naoroji Byramji* v. *Rogers*, 4 Bom. High Court Reports, p. 53, cited by Malabari, p. 166).

† This at any rate was the Company's view from the first, as Dr. St. John must have been well aware. He insisted that he had been promised the Chief Justiceship of the Court of Judicature, in addition to the other appointment. The Committee of the Court of Directors, to whom this request was referred, reported that it should be refused, 'apprehending that if any other powers shall be granted to the Dr. then [than] what singly relates to Admiralty Causes, instead of the Co. reaping any advantage by such grant, their affairs may suffer great prejudice'. This report was approved, and it was ordered that a Commission should issue appointing him Judge of the Admiralty Court *only* (Court Book, vol. 33, progs. of 2 April 1684, p. 253*a*).

‡ There is a gap in the Records covering the year 1687. The exact reasons for the dismissal do not appear to be now on record, but see p. 139 *post* as to St. John's explanation.

§ See p. 122 *ante*.

Zinzan and his colleagues were of opinion that, as the Doctor had no commission authorizing him to sit upon life and death, the conviction was vitiated; and that the accused could not be tried *de novo*, as 'all commissions &c. have noe respect to past transactions, but only warrant things present and to come'.[22] They proposed to send Daudji to St. Helena, where he might be 'serviceable, being a smith by trade'.[23] Child, however, overruled this technical and inconclusive view. He wrote:[24]

'Now you must understand that Dr. John St. John was put into the Chaire and possession of that Court by Sir Thomas Grantham,* who then acted as Governor and was invested with President and Councill's power; out of respect to Sir Thomas Grantham and Dr. John St. John's creditt, &c, wee doe by these allow, approve, confirme and ratifie, all the legall Proceedings in that Court, whilst the Doctor acted in it as Judge, put in by Sir Thomas Grantham.'

Child also confirmed the sentence of death, but empowered Zinzan to spare the convict's life, if he desired to do so.†

Dr. St. John was thus recognized as officiating Chief Justice up to the 27th March 1685, when Child's orders for his supersession were given effect to.[25] John Vaux, a factor who was then 'second' in Bombay, was selected by Child for the post of Chief Justice, the duties of which he was to perform in addition to those of a member of Council,‡ like his predecessor Wilcox. He had little, if any, previous legal experience, but was a protégé of Sir Josiah Child; and this no doubt contributed to his appointment.[26] Two other factors, John Jessop and James Butler, whom Child had designated as Vaux's Assistants,§ were made Justices of the Peace for Bombay; and, following past precedents, another member of Council, Richard Stanley, was appointed J.P. for 'the Province of Mahim'.[27] Vaux, however, was not satisfied with this assistance, and pleaded 'his insufficiency to undertake such a great employment', unless Capt. Niccolls was associated with him in the office. Child had already

* Grantham had, in fact, been a member of the Court at the trial of Daudji, sitting as Assistant to Dr. St. John (Surat letter of 9 March 1686, F.R. Bom., vol. 3, p. 169).

† Ibid., p. 171. The man had then been under sentence of death for over a year.

‡ Surat letter of 14 March 1685 (F.R. Surat, vol. 92, p. 51). Malabari is wrong in saying (p. 167) that Child had appointed Vaux to be Judge in Bombay *before the arrival of Dr. St. John.*

§ They also sat as Assistants to Dr. St. John (cf. F.R. Surat, vol. 109, pp. 118, 219), and so had a double duty.

turned down Zinzan's suggestion that Niccolls should be appointed Chief Justice, on the ground that 'he hath imployment that suits best with his temper, and which we thinke he would be unwilling to laye downe'.[28] This refers to Niccolls having been reappointed Capt.-Lieutenant of the Elder Company on the 17th December 1684,[29] in spite of his peremptory dismissal by the Company in 1682.* This was mainly due to the useful assistance he had rendered in securing the surrender of the Island to Sir Thomas Grantham,[30] and the orders for his appointment speak of his having been 'banished the Island for not complying with them [the Mutineers], a great sufferer and ever industrious in suppressing and endeavouring all means to bring them to their pristine obedience'.[31] Zinzan and his Council were therefore favourably disposed towards granting Vaux's request, 'being fully satisfyed of the abilities and integrity of Capt. Thomas Niccolls, there being none on the Island so versed in the law'; and they resolved that 'for the better administration of Justice' the Deputy Governor should grant Niccolls a Commission, empowering him to assist Vaux in the Court of Judicature, whenever he might be called upon to do this.[32] Child, who had quarrelled with Niccolls in 1677 and had had subsequent cause to regard him as insubordinate,† was naturally displeased with this step. He wrote to Bombay:[33]

'We are wholly dissatisfied with Capt. Niccolls being made his [Vaux's] assistant in the Court of Judicature. . . . You knowe what he hath been, therefore must desire you to be carefull he wrongs not the Rt. Hon. Company, and we could wish Mr. Vaux would be contented with some other assistant.'

He did not, however, veto the appointment, and Niccolls remained attached to the Court at any rate during 1685, and probably till his death in 1686.[34]

Child had directed Zinzan to have 'officers appointed and the Court of Judicature settled in the same manner as formerly, with all due respect and cerymonies'.[35] The President also gave strict injunctions that 'the fees of the Court shall not exceed the old institution before the revolutions'.[36] Zinzan suggested a proviso that these orders should be carried out so far as this 'can be done to advantage and not occasion a great inconveniency, for in generall all things are quite different by the late revolution to what they were formerly'.[37] Child, however,

* See Chap. VIII, n. 85.

† See pp. 94–6 *ante*.

replied that 'we are positive to have the fees of the Court settled in the same manner as before the revolutions, and we cannot see any harme in it, but reither [*sic*, rather] may create ill Blood to be otherwise, and is clearly an oppression that the way to justice should be made uneasy by large fees that might frighten people from the Court, their onlyest remedy against naughty and wicked men that would deceave and wrong'.[38] He was probably strengthened in this view by St. John's offer[39] to be 'content with the old fees of the place as Niccolls, Adams and Willcox had', though the Company had (he said) promised him an increase.

Details as to the steps taken to start the Court of Judicature again are not forthcoming; but it may be assumed that, in view of Child's orders and with the help of Niccolls, it was set up on much the same footing as before. We learn that Vaux 'was introduced in the Court of Judicature with all the usuall ceremonies',[40] and the big room in the Court-house built by Aungier no doubt reverted to its former use as 'Justice Hall'. This may have led to some friction with Dr. St. John, whose Admiralty Court had probably been located there, prior to Vaux's appointment. In a letter to Child in April 1685,[41] St. John complains that since he had been 'put by', he had received 'increase of affronts, slights, indignities, &c., particularly by Judge Niccolls'.

Following the previous practice, an Attorney-General was appointed, and the post was conferred on John Jessop,[42] one of Vaux's Assistants. This followed the precedent of Adams's appointment as Attorney-General, while he was a J.P. for Mahim. This combination of offices infringed the ordinary rule of keeping the Bench and Bar separate; but the want of lawyers came in the way. In any case the defect was probably immaterial, for Niccolls overshadowed the other Justices; and Vaux, who was diffident about his legal attainments, would naturally be swayed by his dominating personality. That this was at any rate believed to be the case is shown by the following petition,[43] which was submitted to Child and his Council:

'May it please your Excellencies and Councill,

By direction of Capt. Niccolls there was an action brought in the Court of Judicature against Mr. Theophilus Gary by Michaell Jehondah, administrator to Lewis Jehondah, deceased, who having employed Mr. Broxoline and myselfe to defend the same, wee did on perusall of the declaration, finding that he had herein made to himselfe noe title to the goods in question, demurr thereto. But Capt. Niccolls and Mr. Chiefe Justice

Vauxe (through his perswasions) overuled the same; then wee pleaded the Statute of Limitations, which by his like perswasions was also overuled, although with submission to your Excellencies and Councill, the Statute is very plaine in the case for the advantage of the debtor, upon which wee gave in a plea, whereon issue being joined, the plaintiff on the tryall, by illegall practises, obtained a verdict whereupon Mr. Gary presented a petition to his Worship (the Deputy Governor) to pray him to graunt an injunction to stop the Plaintiffes further proceedings thereon; and in the meantime that he (the Deputy Governor) would examine the proceedings of the Court of Judicature, touching the matters in the said petition complained of; soon after the delivery whereof, Capt. Gary on the behalfe of his son and myselfe, earnestly desired his Worship that he would be pleased to order all persons therein concerned to be summoned before him and his Councell, and hear what could be alledged on either side, face to face; but his Worship for reasons unknowne, not only refused soe to doe, but on the contrary sent for and examined all such persons (but not on oath) as were thought could or would say anything in prejudice to the debtor or in vindication of their proceedings (the Jury excepted) without calling for the debtor or admitting his witnesses to be examined, or any questions to be asked those that were examined on their behalfes for the advantage o f the Debtor, which if permitted (as is usual in such cases) might perhaps have altered the sense of their severall informations given to his Worship and his Councell on the part of the plaintiff but likewise to this day (contrary to the practise of all Courts in England) hath denied to lett the debtor, Capt. Gary and myselfe have a coppy of Capt. Niccolls and Mr. Justice Vauxe's answer to the said petition in vindication of themselves and their proceedings, though the same as I now understand, having by chance had a short sight thereof, is full of aspersions and ill reflections both against Capt. Gary and myselfe, but as to the matter relating to the cause, very insufficient and easily to be answered and confuted. Excellent Sir, Capt. Gary, his son and myselfe, hath been lately informed that his Worship hath sent an account of the whole proceedings in this matter to your Excellency and Councell, upon which they have desired mee to doe the like that soe your Excellencies may be as well informed in the Debtor's case as in the Petitioners, and the other persons complained of in the petition, not in the least doubting but that your Excellencies, as impartiall Judges without respect of persons, after perusal of the whole proceedings and due consideration thereof had, will take such course for the Debtor's reliefe as shall be agreeable to equity and justice. The Coppies of the Court proceedings and the petition are truly examined, and the matter contained in the petition for the most part I know to be true. The case (as stated) I believe to be true; and as to the proofs, whenever this cause comes to be

heard, I question not but they will be made good, with all the circumstances therein alledged; and all the Statutes are truly quoted and exprest according to the true meaning of the same, as your Excellencies will find upon your examination of them with the Statutes at large, which I question not but you have by you. Upon my being admitted an Attorney of the Court, I was sworne to doe my clients justice to the best of my power, which I am bound to performe, and for that reason cannot, without palpable breach of my said oath, injustice to my Client and discreditt to myselfe, suffer the proceedings in this cause to passe over in silence, there having been soe much partiality in the same, without endeavouring to doe him right. I am heartily sorry I have occasion to trouble your Excellencies with matter of this subject, especially where so considerable persons are concerned, but fiat justitia, for which I shall wholly rely on your most serene judgements. I feare I have trespassed too far on your patiences by disturbing your Excellencies from your more weighty affaires, which I should not have presumed to have done, had not I been satisfied in my own judgement that the justice of my client's cause required it; for which reason your Excellencies I hope will hold me excused and give me leave to subscribe myselfe

Most excellent sirs,

Bombay, 1st Aug 1685. Your Excellencies

Most faithfull, obedient and humble servant

Samuell Hayes.

The Bombay Council had sent the papers to Child, because the defendant's application to them 'does chiefly accuse both Mr. Vauxe and Capt. Niccolls', and they hesitated to proceed without first learning the views of the Surat Council.[44] This dependence was rightly deprecated by Child,[45] who also gave them a rap over the knuckles for admitting 'that scurrilous sausy paper', in which Theophilus Gary moved for an injunction.[46] He continued:

'We have seriously read the paper that you call a petition over, together with the proceedings in Court of the 12 June, signed by the Worshipful John Vaux, Cheife Justice and the examination before you under the 23rd ditto. The petition is penned in that unhandsome manner as that we thinke it ought not to have been admitted and the drawer of it up ought to be made senceable of his fault either by fine or other punishment. For although we would not at any time have refused to any the appealing to the Deputy Governor and Councell, soe wee would not have such scurrilouse papers admitted, but those that have minde to appeale to Court of Chancery to put in a becoming petition without reflecting; and we should have ordered his petition to have been hove out but that out of respect to you because you have not only admitted of it, but concerned yourselves soe farre as to take

some examinations thereon. The Cheife Justice did not well in goeing into the Jury himselfe. It had been much better that he had sent an officer of the Court with the 2 atturneys on their requests; we finde the Petitioner out in one thing, for its reason to believe that part of the statute was read from what the Jurors deposit on oath and why the Cheife Justice and Capt. Niccolls should not be credited before Mr. Samuell Hays, atturney, we cannot see. Gentlemen it's a very serious businesse and what disturbs us. We desire you to be very serious in this matter, thoroughly examine all things with deliberation and tender care to the reputation of the Court and due justice to all. We need not tell you that Justices especially and all in authority want not for those that will indeavour to abuse them; to prevent which we begg you will have especiall care and soe consent to the petitions being graunted. Thus you proceed to a final determination of the cause removed and a thorough examination of those reflections in the petition and proceed theron as may appeare just and warrantable.'

The decision of the Deputy Governor and Council is not forthcoming, and this is about the only glimpse that the records afford of the work of the Court in Vaux's time.

Incidentally it shows that the statute law of England was cited in argument and could in fact be determinative of a cause, as it had been according to the previous practice of the Court.[47] The Company's Laws were so restricted in their scope that resort to English law was almost essential in cases not covered by their provisions, unless the Judge was to be governed merely by the sense of justice and equity that Nature happened to have conferred on him. Thorburn, who despised 'the Law',[48] may have destroyed the Court library, for in January 1686 Zinzan informed the Company that there were no law-books belonging to the Court of Judicature and desired them to send some, 'particularly a Statute book, containing all the Acts of Parliament'.[49] This request was not favourably received. Before the receipt of Zinzan's letter, Sir Josiah Child and his colleagues had impressed on the Surat Council the 'most indespensible necessity, if ever you think to make the English Nation in India look like a political Governing State in India . . . and doe our duties to his Majesty and our Country in preserving the English footing and encreasing his Majesty's Dominions in India' of enforcing strict obedience among the English in India to superior authority.[50]

'This,' they added, 'can never be done or brought to effect by the good nature of mankind, but must be compelled by coercive laws and power to put those Laws in execution, which latter you don't now want; and if we

have not made Laws sufficient by our letters or otherwise, which to you and all under you ought to have the nature and force of Laws, you may by temporary ByLaws of your own making provide against any emergent evil that thro' forgetfullness or want of foresight we may have omitted, which byLaws made by yourselves in Council shall be binding to all English in India, and all Natives inhabiting any of our Colonies, until his Majesty or ourselves shall annul or alter them.'

A preference for direct legislation of this kind was natural and had much in its favour; but the inclusion of orders contained in mere 'letters' among the 'Laws' to be obeyed by all English and Natives in Bombay was an unauthorized departure from the provisions of the Charter of 1668, which laid down a special procedure for the making of 'Laws, Orders, Ordinances, and Constitutions' for the 'good Government' of the Island.* No surprise need, therefore, be felt at the Company's attitude about English Acts of Parliament. The possibility of these being used in favour of 'the liberty of the subject' was evidently distasteful to the autocratic disposition of Sir Josiah Child. On 28th July 1886 the Company wrote to Bombay:[51]

'We understand you have an antient Statute booke at Bombay,† but you are under a great mistake, if you think our Statute booke be law in Bombay, none of our Statutes or Acts of Parliament as we have formerly told you, extending further then the Kingdome of England, the Dominion of Wales, and the Town of Barwick upon Tweed. Your law there is, what his Majesty is pleased to constitute by himself, or his East India Company, and such temporary by lawes as our Generall and Councill shall find cause to make for the good Government of the people untill his Majesty or ourselves shall disapprove thereof. And by his present Majesty's Charter,‡ and the last Charter of our late Sovereign,§ you are to govern our people there, being subject to us under his Majesty by the Law Martiall and the Civill Law,|| which is only proper to India, concerning which we have sent him

* See p. 13 *ante*.

† Though Zinzan reported that there were no law-books, there was evidently a Statute Book available, as Mr. Hayes was able to cite the Statute of Limitations, and part of the Statute appears to have been read to the Jury (F.R. Surat, vol. 109, p. 217, and vol. 92, p. 155).

‡ This was the Charter of 1686 granted by James II, under which Sir Josiah Child claimed that the Company became 'a Sovereign State in India' (L.B., vol. 8, p. 419), cited by Hunter, *History of India*, vol. ii, p. 304.

§ That is the Charter of 1683 granted by Charles II, creating the Admiralty Court, &c.

|| By this expression is meant Roman Law, as opposed to the English common law (cf. Malabari, *Bombay in the Making*, pp. 160, 161, n. §, and *Encyclopaedia Britannica*, 14th ed., vol. 19, p. 447, n.).

[Sir John Child] a book which treats the fullest of any we know extant of the civill lawes now in use, and the Custom of Merchants, and in divers bookes you have the law Martiall.'

On 3rd February 1687 the Company gave similar instructions to the President and Council at Surat,[52] who were enjoined to make such By-Laws 'for the good Government' of Bombay as they should find necessary,

'which we hereby declare shalbe binding to all the Kings subjects in that Island, until they shall be contradicted by his Majesty or ourselves, whom he has intrusted with the exercise of Sovereign Power in all his Majesty's Dominions beyond the Cape of Good Hope, and we doe enjoyne you according to his Majesty's last Charter to govern the soldiers and people of that Island, as well English as others, by Martial Law, and that jurisdiction, lately established, of the Admiralty, for trying Controversies between Party and Party, in a summary way, and according to the usage of the Civill Law,* which only is proper for India, The Common Law of England† being peculiar to this Kingdome, and not adapted in any kind to the Government of India, and the nature of these people, as we have formerly writt you, and have found by long and useful experience.'

The view that the Charter of 1683 imposed 'Civil Law' as the only law (apart from martial law) to be followed in Bombay overlooked the facts that the civil and criminal jurisdiction conferred on the Court of Admiralty was essentially limited,‡ and that the Court of Judicature was a separate one, the jurisdiction of which rested on an entirely different foundation. Under the Charter of 1668, it was primarily governed by the Company's Laws, which had been duly made and sent out in 1669. If the Company wanted to substitute 'Civil Law', as modified by the 'Custom of Merchants', as the basis for deciding civil litigation, then the legal mode of carrying this out was to amend the Laws accordingly under the procedure laid down by the Charter. Sir Josiah Child, who became a Director in 1677,[53] may never have heard of these Laws; and at any rate appears to have forgotten any previous knowledge he may have had of them. But even this is not

* This is scarcely a correct quotation from the Charter of 1683, which laid down that cases should be adjudged 'according to Equity and good Conscience and according to the Laws and Customs of Merchants'. Nor were they always to be tried in a summary way, but 'upon due Examination and Proof', and 'whether by summary way or otherwise', as the Court in its discretion might determine.

† In view of the reference to previous instructions of the same kind, 'the Common Law of England' is probably here meant to include the Statute Law of that country.

‡ See pp. 124, 125 *ante*.

a safe assumption: Child was so autocratic that he would probably brush aside any legal obstacle of this kind without the slightest compunction. On the other hand, it should in justice to him be pointed out that his denunciation of English Statutes and Common Law seems to have been partly actuated by a desire to avoid the delay and expense which ordinarily attended the trial of cases in England at that time. Thus the dispatch to Bombay on 28th July 1687 contains the following paragraph:[54]

'We approve of Mr. Vaux his continuance in the exercise of the Judicature he now manages, not doubting that he will continue to do it sincerely and discreetly according to common equity and good Conscience, which is the generall rule of the Civill law, and [as] honest and wise Arbitrators would determine between man and man in a summary way without delay or charge to the Inhabitants.'

The above correspondence supports Hamilton's story about Sir Josiah Child's private letters to Vaux, who had written to him that 'the laws of his country should be the rule he designed to walk by'.

'In answer to that letter,' Hamilton says, 'Sir Josiah seemed to be angry, and wrote roundly to Mr. Vaux that he expected his orders to be his rule, and not the laws of England, which were an heap of nonsence, compiled by a few ignorant country gentlemen, who hardly knew how to make laws for the good government of their own private families much less for the regulating of companies and foreign commerce.'[55]

Hamilton states that he saw and copied the letters in 1696, when he and Vaux were prisoners at Surat together. This is borne out by Vaux's diary, now in the British Museum,[56] for it mentions as among his papers 'what Generall letters have been sent to me by Sir Josiah Child for my owne regulation and Government'.* The diary also contains some declarations by Hamilton in 1696, which are apparently in the latter's handwriting.†

It does not, however, follow that Vaux gave way entirely to these admonitions; and certain considerations point the other way. Sir Josiah would not know of Vaux's appointment till towards the end of 1685, and any letter of Child about his conduct as Chief Justice would not reach Vaux much before the middle of 1686. He had then

* Under date 15 Sept. 1693, p. 9.

† Under dates 6 and 15 June 1696, pp. 59, 60. They alleged brutality by Capt. Thomas Newnam, the Commander of the *Armenian Merchant*, while at Malacca in July 1694, in his treatment of the crew, &c.

been over a year in office, and the practice and procedure of the Court would have been well established. The association of Niccolls, a former Judge, in the work of the Court would obviously conduce to a continuance of its previous practice. Moreover John Child did not, like his namesake, forget or ignore the Company's Laws of 1669. In August 1685 he expressly called Vaux's attention to them and enjoined him 'to walke as neere them as may be'.[57] There is every likelihood that the latter would obey this instruction, at any rate to the same extent as his predecessors. The Jury system undoubtedly continued for the trial of civil,* as well as criminal, cases. This, and the existence of Attorneys, who knew English laws and practice, would tend to prevent any lapse into the 'summary way' favoured by Sir Josiah Child. Samuel Hayes's petition shows that there were at least two practising English Attorneys in 1685, and there must have been some Indian or Portuguese Pleaders as well. Thus one Antonio Pinto was employed in 'solliciteing' a cause, as is shown by a Consultation entry of 9th July 1685,[58] which is of sufficient interest to be worth reproduction.

'This day, Capt. Thomas Niccolls makeing complaint to the Deputy Governor &c. that Mr. Richard Stanley and Mr. John Jessop had slandered his reputation in thinkeing him guilty of bribery, therefore desired the favor of the Deputy Governor that the parties on both sides might be examined for his vindication: which was accordingly granted. Mr. Stanley and Mr. Jessop going to Mahim the 7th. inst. did upon their arrivall send for one Mathias Queng, who had lately obtained in the Court of Judicature of this Island the better of a suite, whereby he gott about 130 odd coconutt trees and 500 Xs. damages, part of which Mr. Stanley and Mr. Jessop had suspition that the said Mathias had given to Capt. Niccolls as a bribe, he having lately bought an Orta,† which was parte of the 130 trees above mentioned; upon which account they strictly examined him what had done with the 500 Xs. received in Court, and the produce of 71 trees which he had since the recovery of this suite sold; to all which he gave little or noe answer. But at last through their pressing him divers times to tell the truth, gave the following depositions upon oath, which were confirmed by his mother that the said Mathias had promised to Antonio Pinto for solliciteing his cause 1000 Xs. and that he had already paid the said Pinto 932 Xs., and did still acknowledge himselfe indebted 68 Xs. for compleating

* This is for instance shown by the case which is the subject of Hayes's petition; see pp. 128–30 *ante*.

† This is the Portuguese word from which comes the more usual term, *oart*, a coco-nut garden.

the said summe of 1000 Xs. But the prementioned gentlemen not being thoroughly sattisfied with the accounte he had given, beleiveing some other person to be concerned in the 1000 Xs., besides Antonio Pinto, they ordered said fellow should be tyed and threatened, sayeing he had not told the truth, and that if he would not tell the other parties name he should be severely whipped. There being nothing further to be gott out of him after some small time, they released him. The prementioned Mathias being thoroughly examined, declared that he promised Antonio Pinto 500 Xs. for gratuity in solliciteing his cause in the Court, and that the other 500 Xs., of which he wanted 68 Xs. to compleate he intended* in the said Pinto's hands on interest. To the truth of which Antonio Pinto was examined upon oath, who declared by the oath that he had taken that the said Mathias had for severall years been desirous for him to sollicit this cause, whereby might have right done him, which he, this year haveing little to doe, did undertake; for which he promised him 500 Xs. as a gratuity and that the other 500 Xs. was intended by the said party on interest,† and that Capt. Niccolls was not directly or indirectly the least concerned in the said 500 Xs. paid him as a gratuity. Capt. Niccolls also declared upon oath that he never received or had anything promised, directly or indirectly, any parte of the aforesaid 500 Xs., or was the least concerned with the said fellow. There were several other argumentes and reflecting words on both sides, which are not materiall to be inserted here.'

The charge of bribery against Niccolls was consequently not substantiated; but the suspicion raised by his purchase of property belonging to a litigant shows the soundness of the rule against judicial officers entering into such transactions or bidding at Court sales. The case further points to there being considerable friction between Niccolls and the other Assistants in the Court, which must have had a prejudicial effect on its efficiency.

Owing to an unfortunate gap in the records both in Bombay and the India Office, there is almost nothing that throws light on the working of the Court during the years 1687 to February 1689, when the Siddi's invasion must have put a stop to its regular sittings. But the judicial work probably continued to be carried on in much the same way as before, in spite of Sir Josiah Child's injunctions. The only Court case of which there is any mention during this period supports this view. This was a charge of high treason brought against

* i.e. placed.

† It seems not unlikely that the variation from the original story as to 500 Xs. being a loan on interest was due to Pinto's fear that the sum of 1000 Xs. might be considered too high a fee.

a Portuguese priest for having converted one Nathaniel Thorpe to the Roman Catholic Church. In a letter signed by Vaux, as well as the other members of the Bombay Council, various Acts of Parliament passed in the reigns of Elizabeth and James I are cited, as showing that it was high treason for any one 'to perswade or withdraw any subject from their obedience to the King, or to reconcile them to the Pope, or to draw them to the Romish religion for that intent'.[59] It also mentions that the priest had been committed prisoner to the jail in the Bazaar by Judge Vaux, who would surely not have done so, if he had strictly followed Sir Josiah Child's *ex cathedra* opinion that Acts of Parliament were entirely inapplicable in India.

On the assumption that Vaux meekly followed Sir Josiah's instructions, he has been called a puppet and a cringer, without a vestige of self-respect.[60] This is, however, opposed not only to the above considerations, but also to Vaux's subsequent behaviour, which shows him to have been the reverse of subservient to authority, when it suited him. His 'unworthy' letters to his brother, which were read in Parliament and caused the Company 'much undeserved clamour and trouble', drew upon him the wrath of Sir Josiah Child and his co-Directors, who forthwith (in 1692) ordered his suspension.* And after his dismissal, he was a regular thorn-in-the-flesh to Annesley,[61] when the latter was in control at Surat, and wrote him scurrilous and offensive letters, which are reproduced in his Diary. Vaux was certainly not a docile creature of Sir Josiah Child after 1690; and though doubtless he would not go out of his way to offend him in the preceding five years, there was no need for implicit obedience. His work as Chief Justice would not come directly under the eye of the Company;† and the useful guidance of an Act of Parliament, or English common law, had so much to commend it that it would naturally be resorted to occasionally, as we have seen was done in 1687.

There was in fact no real substitute available. The By-laws of the Bombay Council were scanty and mainly regulated public houses,‡

* Dispatch of 29 Feb. 1692 (L.B., vol. 9, p. 210), and the Company's Instructions to Sir John Gayer, dated 26 May 1693 (ibid., p. 271). Sir Josiah Child was no longer the Governor, but was still a ruling power in the Committee of Twenty-four (cf. Hunter, vol. 2, p. 228, n. 3).

† It is doubtful if copies of the Court Registers continued to be sent home annually, and in any case they were probably not subject to a close scrutiny.

‡ See p. 79 *ante*.

gaming,* and minor matters of that kind. The Company's Laws went further, but were too restricted in their scope; while the Company's letters contained little more than general directions about punishing offenders and giving impartial and speedy justice.† Instructions were issued for drawing up and publishing a Schedule of Laws and Orders received from the Company, as well as of local By-laws and Orders, and for providing the Courts of Justice with copies;[62] but even if this was done, it would not go far towards covering the wide field of civil and criminal litigation. If Dr. St. John had remained in charge of the Court of Judicature, the recommendation of the Company to apply the 'Civil (or Roman) Law' would no doubt have been followed, for as a 'Doctor of Laws' he would have been in a position to do so; but the suggestion is scarcely likely to have appealed to Vaux, who had had no legal training.

He was, however, in this respect on much the same footing as his predecessors; and though Dr. St. John may have described him as a man ignorant of the law and utterly unqualified for the duties of his post,‡ there is no definite ground for saying that he 'disgraced the Bench by dealing out unequal justice', as has been stated by Malabari.[63] Hamilton does not say this, and on the contrary makes favourable mention of Vaux's intervention in the case of the *Bristol*, as having led to the revision of an oppressive sentence.[64] Vaux subsequently became Judge of the Court of Admiralty, and the allegation of Anderson that he disappointed the two Childs by not proving the unscrupulous agent they had hoped to have[65] also goes against the suggestion that he was a disgracefully submissive and unprincipled Judge. On the other hand, as he retained his post till 1690 under John Child's rather bullying[66] administration, it is likely that he was not entirely independent of executive influence. Unlike Niccolls and Gary, he was a member of the Bombay Council. This would not necessarily prevent him giving impartial decisions, even in cases in

* Thus in 1685 all gaming with dice or cards for more than 20 Xs. was forbidden, subject to forfeiture of the amount so staked (Bom. Consltn. of 8 April 1685, F.R. Bom., vol. 3, p. 56).

† Cf. dispatch of 26 March 1686 as to punishing disobedient Commanders; dispatch of 25 Aug. 1686 as to fining misdemeanants; and dispatch of 6 June 1687 as to suing factors who dishonestly or negligently injured the Company's interests.

‡ Anderson, *The English in Western India*, p. 256. The authority for the assertion is not, however, given, and I have not traced anything more than a statement that Vaux was 'altogether incapable, having never studied any law or learning' (St. John's letter to Sir Leoline Jenkins, dated 10 May 1685, Home Series Misc., vol. 53, p. 16).

which the authorities were concerned, just as Wilcox appears to have done, with the approval of Gerald Aungier. But conditions had sadly deteriorated since then. As already mentioned, John Child had a very different outlook from that of Aungier, who urged Wilcox to do justice to 'the meanest person of the Island . . . even against myself and those who are in office under me'.[67] Child evidently considered that the Courts should be subservient to him, and Dr. St. John's complaint in the following extract from his letter of 18th July 1688 to Pepys[68] is probably well founded:

'Since General Child was invested with this dispoticall Soveraigne power (as they call it) it was impossible for me to execute that Commission, unless I yielded to have him and his Council first to determine all matters in Councill, then receave their directions how to proceed and determine all matters in Court against my owne judgement and conscience without and against all Lawes, which refusing to doe, the General superseded my Commission for his Majestie, and gave me my discharge in writing the 9th September last.'

It is probable that Vaux was more compliant than St. John and may have referred cases which in any way concerned the executive to Child before deciding them, as was done in the case of Nathaniel Thorpe's conversion to the Roman Catholic faith in 1687.*

It should not, however, be assumed that Child intervened vexatiously in ordinary judicial cases, though he ordered copies of the proceedings of both Courts to be sent to him monthly.[69] It is only in *Interloping* cases that the records reveal a disposition on his part to dictate to the Court or quarrel with the Judge. Thus, besides Dr. St. John, Sir John Wyborne also had reason to complain of Child's treatment of him. In a private letter to the Company (written by a coincidence on the same day that they sent out orders for his and Zinzan's removal)[70] Wyborne mentions that he and his two Assistants had condemned a ship called the *Satisfaction* as an Interloper belonging to a Mr. White, in accordance with 'papers brought to Court and mens oaths in Court'; but 'that condemnation did not

* See p. 137 *ante*. It should, however, be added that, as the case was one of alleged 'high treason', and was likely to excite religious feeling, the Bombay Council were justified in referring the question whether the prosecution should be continued or dropped. Under the Criminal Procedure Code a charge of an offence 'against the State' cannot even be instituted without the previous sanction of the Government.

please our Generall who would have had her condemned as one of the King of Siam's ships'.*

Child does not appear to have interested himself in the work of the Court of Judicature, except in regard to sentences of death that were referred to him in accordance with his orders of 1682. The case of the convict Daudji has already been mentioned.[71] Those of four other men were sent up to him with a copy of the proceedings of a General Sessions held in September 1685.[72] Child's reply shows that he did not hesitate to interfere with the Jury's verdict, if he considered that the evidence was insufficient to establish the charge, though he was not too scrupulous about trying to obtain an extra-judicial confession of guilt. It also shows that cases were not properly investigated in those days, when there was no organized police force. He wrote:[73]

'We have discoursed [with] Capt. Tyrell† about the condemned person, Cosna Naique, that killed his wife, which you advised us he [Capt. Tyrell] desired might be pardoned. He hath considered the hainousnesse of the fact [offence] and is wholly of[f] from desireing any mercy for him. And the murther is such that we dare not thinke of his escapeing the sentence passed on him, and therefore its our opinions that justice take place. For the other two condemned persons Ramjee and Comjee, the circumstances against them are very greate and indeed such as the Jury might well bring them in Guilty. But no proofe of matter of fact being against them, makes us under feare to consent to their execution and we cannot be too cautious in an affaire of soe greate a concerne. We therefore direct that you let not anyone know to the contrary but that these two are to suffer with the other, and let them both be carried with him [i.e. the man who was to be executed] in the same manner in all respects as if [they] went to execution; its possible when they see the other suffer and themselves ready to be turned of[f], that they may confess in fact or declare somewhat that may have some more light; or use any other way that you may see fitt, that we may have some more light then at present we have of theire being Guilty. We have but little or nothing laid downe to us of what defence they made and nothing mentioned of what examination might be made of a Moreman, that one of them declared to the nurse, told him in Colley Rowe that the murthured

* O.C. 5645, p. 5. He also complains of Child's slighting him and being 'very unkind to me in lessning of me in my Commands'.

† Capt. Tyrell was the Commander of H.M.S. *Phoenix*, who had been commissioned to seize Interloping vessels. He had probably been on the Jury, and the Bombay Council reported that he 'did beg one of their lives' (F.R. Surat, vol. 109, p. 233).

person was killed, or whither the prisoner denyed that he said any such thing to the nurse, or could produce the Moreman or not, which was a materiall thing to be thoroughly examined into; and we thinke it would not have been amisse if both the prisoners' houses had been strictly serched to see if any of those things that Pedro de Silva pretended to have lost, might be founde in either of theire houses. And untill we can have some proofe of matter of fact we thinke it best that they be secured in prison. For as we would not have murther goe unpunished, soe it heighly becomes you and us to thoroughly sattisfie our consciencyes, before we consent to the execution of any. And its certainly better that two naughty persons escape then one innocent person should suffer; and in this we are well assured that you will agree with us, and use your utmost in what we desire for the sattisfaction of all our consciencies; and soe God of his Mercy direct you in this. For the first condemned person, that notorious naughty theife, we directed in our last that he should be secured to be sent to St. Hellena.'*

Again, on the recommendation of Zinzan and his Council, Child pardoned† one Vindea Chittea, 'chiefe servant in the tobacco rent', who had been sentenced to death for murder, 'there being only circumstantial evidence against him' and the offence being one committed during Keigwin's Rebellion; but he took occasion to desire the Deputy Governor and Council 'to be tender of the Court of Judicature and suffer no reflections thereon', adding: 'If any of the officers in the Court behaves themselves not well, lett them be displaced, but faile not to keepe up the reputation of the Court'.[74] He evidently remembered Aungier's similar requests to the Bombay Council,‡ and was equally insistent that 'all tender care' should be used to preserve Dr. St. John's reputation 'with a due respect to justice'.[75]

There is little further information about the Court of Judicature during this period, except that its aid was sought to prevent Christians being carried off the Island as slaves. This is mentioned in correspondence about a complaint by a high Mohammedan official at Surat that his servant had bought three female children for him from the Siddi at Bombay, but they had been forcibly removed from his possession.[76] The Bombay Council explained that, owing to famine in neighbouring parts, children were being sold as slaves: they had

* This disregarded the Company's orders of 1678 that convicted thieves should not be sent to St. Helena (see p. 71, n. *).

† The accused appears, however, to have suffered corporal punishment, imprisonment, and fine for this or some other offence (Bom. Consltn. of 24 Dec. 1685, F.R. Bom. vol. 3, p. 132).

‡ See pp. 55, 81 *ante*.

accordingly ordered the 'Justices of the Peace and officers at the passages not to suffer any Christians to be carried off the Island to be made slaves of': and the children in question had been kept on the Island by order of the Court of Judicature.[77] The distinction that was made about Christians clearly shows that this interference with freedom of contract was due to religious objections to their serving infidels, and not to any abhorrence of slavery itself. This was in accordance with the customary ideas of that time; and Child ordered slaves to be sent up from the Malabar coast in 1685,[78] just as Aungier had done in 1675.[79]

The question whether ordinary civil disputes should be tried in the Court of Judicature or in the Admiralty Court was raised even after Vaux had been appointed Chief Justice. John Thorburn had been pardoned for his participation in the Rebellion, but his indebtedness brought him into serious trouble. The main facts are given in the following report of the Deputy Governor and Council:[80]

'Mr. John Thorburne, being upon a bond under his own hand writing upwards of these five years for Surat Rupees 2142, payable unto Mr. James King, who hath soe long time been putt off with severall pretences, is now on the said action cast into prison, though the attorney of the said Mr. King kindly proposed severall faire means before he would use the rigour of the law [in spite of] his absurd carriages therewith; his peremptory paper sent the Deputy Governor wee now enclose.'*

A Jury had brought in a verdict against Thorburn, and judgement had been pronounced against him accordingly by the Court of Judicature;[81] but he appealed to Dr. St. John. The latter and his two Assistants appear to have held that the case should have been tried in his Court, and that the Court of Judicature had no jurisdiction.[82] The Bombay Council thought that it was not in Dr. St. John's power 'to examine matters pending in the Kings Bench of Common Please', but the question was referred to Surat.[83] Child was inclined to concur, but asked that copies of St. John's two Commissions should be sent up, so that the point might be further considered, saying:[84]

'Now if his Court be onely a Court of Admiralty, certainly you are in the right, and wee consequently not out in concurring with you, and wee

* This disposes of Hamilton's malicious statement that Child 'had managed to get Thorburn Imprisoned for debt' (vol. 1, p. 192); though his story about Child's harshness in refusing the entreaties of Thorburn's wife that a doctor might be called in to see him, when he was dying in jail, may be true.

have noe reason to thinke otherwise of his Court, if wee consider the Rt. Hon. Company's orders, who certainely understood what they writt, and are positive that the same Courts be continued to be kept on the Island as was before his arrivall, which the Rt. Hon. Company knew to be that Court managed by the Chiefe Justice, and that of Chancery by the Deputy Governor and Councill; but if his Commissions appeare to be larger then wee apprehend, then the case may be altered, and wee doe desire that you be not wanting in all due respect to the Doctor and his Court suitable to his Commissions and the Rt. Hon. Company's orders concerneing him, and wee will hope that Dr. John St. John will not be concerned at us that wee yeild not to what wee cannot, since wee are ready to comply with him in what wee may with a due respect to our dutyes, and he may consider that it is all one to us, whether actions be brought into his Court, the other Court or Chancery: all that wee desire is that his Majestyes subjectes may have justice on the Island, and no oppression or wrong suffered to be done to any. . . .'

St. John, on Vaux's appointment in March 1685, had refused to produce his Commission from the King, to support his remonstrance, saying 'he would apply himself to his most sacred Majestie' for redress of his grievances;*[85] and whether he produced it on this occasion is not clear.† But in any case it merely authorized St. John to determine the causes, &c., mentioned in the Charter of 1683; and while this gave some countenance to the contention that 'mercantile cases' could be brought in his Court,‡ it certainly did not oust the jurisdiction of the Court of Judicature, which was based on the Charter of 1668 and the Company's laws that were made under it. Presumably§ Child decided against Dr. St. John's attempt to intervene, as Thorburn remained in prison until his death.[86]

There was, however, one mercantile case (that of *Day* v. *King*) which was tried in the Admiralty Court, but this was due to its being instituted during the time that Dr. St. John was the sole Judge for Bombay. In fact it started on the 19th September 1684 within four days of the Doctor's arrival at Swally Marine, and after several hearings was adjourned to the 1st January at Bombay.[87] The

* Dr. St. John's Assistants objected to the appeal to Charles II being registered in the Court Book (Bom. letter of 29 April 1685, F.R. Surat, vol. 109, p. 166).

† Surat letter of 11 June 1685 says: 'We hope he [Dr. St. John] is now of a better humour than he was when he denyed the sight of them [his Commissions]. If you have not seen them, demand them, and if he denys you the sight of them, advize us.' (F.R. Surat, vol. 92, p. 104.)

‡ See pp. 124, 125 *ante*.

§ I have not traced any further record relating to this question.

defendant, James King, was the Secretary and Registrar of the Admiralty Court,[88] and a member of the Surat Council. The plaintiffs were Francis Day* and Bartholomew Harris, both then members of the Surat Council. This explains why the suit was lodged at Swally Marine. It arose out of a long-standing dispute about some trading 'adventures' at Bantam in 1680,[89] which according to the plaintiffs resulted in the defendant owing them money. It was still unsettled in September 1685, when St. John paid a visit to Surat.[90] He was then on more friendly terms with Child, who had 'forgiven' him in June of that year.[91] Whilst he was there, it was agreed by the parties to refer the suit to the arbitration of Child and St. John, sitting together.[92] The latter were both agreeable to this course;[93] but the proposal was upset by that stormy petrel, Nicholas Waite,† through his attorney, John Shaxton,‡ who pointed out that Waite had filed a suit in the Admiralty Court in October 1684 and that he was one of the creditors in regard to the Bantam 'adventures'.[94] St. John held that Waite must be treated as a party to the suit and that the reference to arbitration accordingly fell through.[95] The Doctor eventually passed 'his single decree' in favour of the plaintiffs, alleging that his two assistants 'durst not joyne with him, for fear of Mr. Zinzan',[96] who was a surety for the defendant.[97] St. John asked the Company to consult the Attorney-General whether his decree could not be executed, though the two merchants who assisted him both dissented from it. The Company refused to believe the accusation made by St. John against his assistants, and observed that any schoolboy, who could read the Doctor's Commission, could determine his question as well as the wisest counsellor.[98] They had already authorized Child to dismiss St. John,[99] and Sir Josiah took the opportunity to emphasize the Company's view as to the subordination of the Judiciary:

'Let whoever you appoint to succeed the Doctor know that whatever friends any man may pretend to have in England, it is the King's pleasure

* On his death in June 1685 (F.R. Surat, vol. 92, p. 108) his widow succeeded him as co-plaintiff.

† He was a servant of the Company, who became 'Chief' at Bantam. Afterwards he joined the New Company, and under the United Company was Governor of Bombay, 1704–8. For an account of him, see *Annesley of Surat*, pp. 250–90.

‡ He was a son of Capt. Shaxton, and so a brother-in-law of John Child. He was employed in the Garrison. In 1678 the Company appointed him Captain of 50 Grenadiers, who acted as 'Lifeguards' for John Child (L.B., vol. 8, p. 330); and in 1688 he became a member of Council (F.R. Misc., vol. 4, p. 157*a*). He died in 1689 (L.B., vol. 9, p. 65).

and our Resolution that they shall obey our Generall and Councill as it becomes all under command, and where obedience fails in any Officer of title or note, the crime is much the worse, by the ill example that it gives to inferiours.'[100]

They implemented this by authorizing Child to 'remove from our service any [such] Judge or Judges hereafter that shall not behave themselves to the satisfaction of our Generall and Council, and to place such other in his stead as you shall thinke fitter and more devoted to our service'.[101]

The defendant, James King, did not comply with Dr. St. John's decree, disputing its validity,* and the plaintiffs consequently petitioned the Company, who sent the papers to Child and his Council for consideration and 'for having justice impartially administered according to equity and good conscience'.[102] The dispute, however, appears to have been still unsettled in January 1689, when Child reported to the Company that it had been 'left to the law'.[103]

Incidentally the case raised the question whether an appeal lay from the Admiralty Court to the Court of the Deputy Governor and Council, as it did from the Court of Judicature. This arose out of an application by the defendant to the Deputy Governor and Council to remove the suit 'into Chancery',[104] as the latter's Court was often termed. Zinzan and his colleagues argued that an appeal lay, as the appellate power conferred by the Charter of 1668 was not affected by the Charter of 1683;† but Zinzan asked to be excused having the suit debated before him and his Council, as it might be suggested that he was a party concerned in it, on account of his having given security for Mr. King. Child and his colleagues concurred in thinking that an appeal lay;[105] but (probably owing to Zinzan's disinclination to sit on the Bench) no further steps appear to have been taken in that direction.

Dr. St. John could not of course have advanced his interests by contending, as he did, that no appeal lay from his Court and that he

* It certainly appears opposed to the provision in the Charter of 1683 that a determination by the Court should be that of the 'Person learned in the Civil Law and two Merchants, or the major part of them, whereof the said Person learned in the Law to be one'. St. John admitted that his decree would not be effectual till it had been certified to the King and received back with his confirmation (F.R. Surat, vol. 109, pp. 176 and 281).

† F.R. Surat, vol. 109, p. 176. On the other hand, the Charter of 1668 only gave a right of appeal from *the Court of Judicature*.

had power to pass an executable decree, though dissented from by the other members of the Court. His appeal to the King about Vaux's appointment as Chief Justice, his letters to 'great and worthy men' in England,[106] and his attempted intervention in Thorburn's case, were other instances of 'insubordination' that were distasteful to the two Childs. It seems clearly to have been this, and not any lack of zeal in dealing with Interlopers, that led to his disfavour and ultimate dismissal. Correspondence with the Interlopers Bowcher and Minchin was no doubt charged against the Doctor, but nothing 'mutinous' was discovered,[107] and St. John stoutly maintained it was innocent of any evil designs. All that he had done was to request Bowcher to forward two letters to England, one of them addressed to the King and the other to the Archbishop of Canterbury.[108] They were probably letters about his grievances, which the Doctor thought he could not safely dispatch by the Company's ships, but Child regarded this as 'private encouragement to Bowcher'.[109]

St. John has been called a 'nauseating person' owing to his sycophantic praise of John Child, when he first came to India, and his subsequent acrimony in referring to him, after they had quarrelled.[110] But there is another side to the picture, which should in fairness be presented. He appears to have been a conscientious lawyer, hoping to administer justice impartially as the sole Judge in Bombay, and proud of being entrusted with a Commission to do so by the King. Such an aspiration came up at once against opposition from the Company and its servants, and he suffered in consequence. Roughly speaking they held that the jurisdiction conferred by the Charter of 1683 was restricted to purely 'interloping' and Admiralty cases, that he was not to be made Chief Justice of the Court of Judicature without his first satisfying them as to his 'good deportment',[111] and that the interests of the Company and the authority of the Company's representatives at Surat and Bombay should be predominant, at the expense, if necessary, of pure justice. The antagonism that later on developed between the 'King's Courts' in India and the Company's agents at Calcutta and Bombay,* had its prototype in this clash of conflicting ideas. There is a good deal to be said for the Company's

* i.e. the well-known quarrel between Hastings and the Supreme Court at Calcutta, which lasted till 1780; and the similar conflict between Sir John Malcolm and the Supreme Court at Bombay in 1828–9 (Drewitt, *Bombay in the Days of George IV*, pp. 323–9).

view. At this early stage of development of its sovereign power in India, with the ever-present danger of mutiny in the garrison, as shown by the one in Aungier's time and the recent Keigwin's Rebellion, and the serious threat to its trade caused by 'interloping', it could scarcely afford to countenance any *imperium in imperio*, even of a judicial kind, such as Dr. St. John aspired to, unless the Judge was an officer on whom they could safely rely as a supporter of the Company's interests. It has been seen that the Doctor's claims were far-reaching, for he insisted that he could overrule his two assistants, that no appeal lay from his Court to any other Court in India, thereby ousting the supervision of the Court of the Deputy Governor and Council, and that his jurisdiction embraced not only all civil disputes, but even military offences.* The case of *Day* v. *King* also seems to show that he dispensed with a Jury in civil cases.† No rules of procedure had been drawn up for his Court; and under the Charter of 1683 he had, until this was done, absolute discretion as to the Court's method of trying cases. Besides all this he claimed that the Company had agreed to give him the Court of Judicature and that he should have been the sole Judge of Bombay. Truly, therefore, if he had had his way, the whole administration of Justice on the Island would have been 'in his own breast', as Zinzan aptly put it.[112] This might have led to undesirable results, for on one occasion he certainly seems to have acted in an arbitrary way, even according to the notions of the seventeenth century. The tale can best be told in his own words, as contained in a letter to Child and his Council at Surat:[113]

'These are to attend your Honours with my most entire respects and also to acquaint your Honours with my misfortunes about my 2 English servants, who presently, after Sir Thomas Grantham's departure from this place to Surat, animated and seduced by others, voluntarily deserted mee and publickly to my face told mee that they would serve no Englishman in India; at their arrivall I told them what I would doe for them, provided them all necessaries, taking all necessary care of them, and they wanting nothing. The 4th January last I mett John Bigs on the Fort staires, as I was going out, and asking him the reasons why he absented himselfe 10 days from mee, never coming neare the Fort, his answer was he was about the

* See p. 113.

† On 1 Dec. 1685 St. John wrote to Child that 'in a day or two my judgement on the whole shall attend your Excellency' (F.R. Surat, vol. 109, p. 285), and his decree was obviously not based on a Jury's verdict. The Charter, in fact, did not contemplate trial by Jury (see pp. 212, 213 *post*).

business he came about, and had nothing to doe with mee, coming out as a free merchant, and not a servant to any; upon which I told him I would see him secured, and he upon that drew his sword on mee though naked, which I passed by and next day committed him to prison, where I kept him ever since.'

Zinzan was inclined to support St. John, on the ground that 'it hath been practable in England for Judges to comitt their meniall servants and take depositions against [them] themselves, instance the late Chief Justice Scrogs'.* But Child thought the Judge should not have sent the man to prison himself, citing 'the old and common saying—I will not be judge in my owne case'.† On the other hand he was concerned at the misconduct of the Doctor's two servants, and ordered the Bombay Council to inquire into the matter, as well as a cross-complaint by Biggs that the Doctor owed his father in England a sum of money, which he was authorized to recover.[114] This action was taken, and Child finally urged them to try to settle the dispute 'with as little noyse as may be'; the two servants were to be given 'full satisfaction' but 'obliged to pay due respect to the Doctor as their Master', and if they failed to do this, were to be shipped home.[115] In this case Child showed commendable consideration for St. John's position and feelings, though he was at the time annoyed with St. John about 'that paper of depositions taken against the President'‡ and his intercepted communication to Bowcher. When St. John was about to leave Surat for Bombay in December 1685, he sent Child his hearty thanks 'not only for the kind and respectfull entertainment you receive me with, but [also] for the freedom and patronage you are pleased to allow me in discharging my duty, judgement and conscience, a happiness I never enjoyed [away] from your absence [*sic*,? presence] and elbow'.[116] But in the same letter he makes bitter com-

* Bom. letter of 2 April 1685 (F.R. Surat, vol. 109, p. 142). Sir William Scroggs was Chief Justice from 1678 to 1681, and (according to the *Encyclopaedia Britannica*) 'was perhaps the worst of the judges who disgraced the English bench at a period when it had sunk to the lowest degradation'. I have not been able to trace the particular incident to which reference is here made; but he had apparently no scruple about presiding at cases in which he was personally interested. Thus, when he was libelled by ballads sung in the streets, &c., he bound over some of the worst offenders and ordered further proceedings against one Radley, who was charged with speaking scandalous words against him (Campbell's *Lives of the Chief Justices*, vol. 2, p. 13; *State Trials*, vol. 7, pp. 702–6).

† Surat letter of 18 March 1685 (F.R. Surat, vol. 92, p. 56). This may have been the basis of one of the 'high misdemeanours' charged against St. John (see p. 125 *ante*).

‡ See p. 123 *ante*.

plaints that he did not get the like consideration from others, saying: 'for my just and upright management of the same [i.e. the case of *Day* v. *King*], I suffer not only the ill-will but the severe persecution of some.' In this he probably meant to include Zinzan, about whom he had sarcastically written to Child—'As to the Deputy Governor, I have not what to say of his kindnesse to mee, neither can I expect any such suitable return from any when soe open a declination is in yourselfe'.[117] Upon this the Surat Council wrote to Bombay, expressing their desire that 'Dr. St. John should have all due respect suitable to his quallity',[118] but this probably did little to diminish the atmosphere of hostility that surrounded the Judge Advocate. He describes it as 'daily vexatious and all endeavours to discourage, abuse and discontente mee. I am where I need an Ostriches stomach, who swalloweth even Iron itselfe'.[119] He suffered even at the hands of his Assistant, James Butler, about whom he says: 'I cannot find law suitable to his humour and never yett wronged him in Law or equity, though once in open Court he reflected on myselfe and the Jury. . . . Judges doe not use to receive such disturbances, but I desire he may not be punished on this account, the Deputy Governor having checked him already.'[120] Again he complains that 'at the sitting of His Majesties Court a disturbance was offered to myselfe and the Moody* who intended to be the purchaser. The Moody last Court day relinquishing all thoughts of bidding for the shipp and cargo, sent his servant to resent the affront he received, telling mee in open Court how far such behaviour before the Countrey Justice† was punishable, to which I replyed little, but thought it my indispensible duty to signifie the same to your Excellencies, under whose protection I am to execute my respective commissions, and discharge my duty without disturbance'.[121] Another person to affront him was Capt. John Tyrell,[122] who also had a Commission from the King. He appeared before St. John in his chamber with the proceeds of the confiscated ship *Bristol*, but when the Doctor questioned him about some items in his accounts, the interview became stormy. 'The Captain's best language to me', he writes, 'was God damne and Sinke you, because I opposed some particulars of his demands, which I bore patiently'.[123] The Doctor was handicapped in his inquiries by an order from Child that Tyrell 'was to bee allowed all his accounts,

* i.e. *modi* (house-steward).

† This of course means the native Judge in the Mughal or Maratha territories.

to which hee refused to swear, and scrupled setting his hand to the same'.[124] The Captain further annoyed St. John by telling him he had Child's 'positive orders' not to pay the Judge's fees.[125] It is clear, therefore, that Dr. St. John had a trying time of it, and his patience must at times have been sorely taxed. As to his fees, St. John intimated that he intended taking them till he was 'plainly denied'.[126] Child, on the other hand, was not satisfied about the Admiralty fees fixed by St. John, the levy of which he had sanctioned 'for want of better experience in such affaires', and was inclined to think they were too high.[127] Complaints were later on made to the Company that the Admiralty fees were exorbitant, and in 1688 they gave orders for their immediate reduction, as well as for the prevention of the delays in the Court, which were reported to have become 'extreme'.[128] Child replied in June 1689 that the fees of the Admiralty Court were the same that Dr. St. John had made, 'and indeed [there were] strange delays whilst he acted as Judge of that Court, but now is quite otherwise. . . . John Vaux being now Judge of that Court . . . and the Fees no more than what was taken in the other Court [i.e. the Court of Judicature] formerly'.[129]

This digression about Dr. St. John and the Admiralty Court ends in bringing us back to Vaux, whom Child at any rate thought was the better of the two. This might well be because Vaux was not so independent as St. John, so the comparison does not tell much in favour of the former. There may be some exaggeration in St. John's statement as to the cause of his dismissal in September 1687, but it is probably true that the main reason was his refusal to subordinate his own judgement and conscience to the wishes and directions of John Child and his Council;[130] and, if so, this is decidedly to his credit. If he used hard language about Child, whom he at first lauded to the skies, there was evidently a good deal to justify it; and his character and work in India deserve more appreciation than has hitherto been accorded them. Not only did he suffer in India, but he also must have done so on his return to England from the disfavour of the powerful East India Company. Josiah Child wrote in August 1688 to Bombay:*

* Dispatch of 27 Aug. 1688 (L.B., vol. 8, p. 546). Dr. St. John petitioned His Majesty in Council, and on 26 Aug. 1688 a copy of the petition was ordered to be sent to the Company. Their answer was ordered on 5 Oct. 1688 to be sent to Dr. St. John for a reply; but no further proceedings are traceable in the Privy Council Register of that time, which is in the Record Office. Nor have I found

'We have not seen Dr. St. John nor [do we] trouble ourselves about him. He is a poor inconsiderate and weak man, and signifies no more than a cypher here, as usually all such kind of people do which make the greatest bluster with you in India.'

As already stated, Vaux was deprived of Niccolls's assistance by his death in February 1686. The latter's last months were clouded by a controversy over a bid he had made at the auction of a ship called the *Prosperous*, which had been condemned by the Admiralty Court. It was knocked down to him for Xs. 16,000, but Niccolls asserted inability to pay and pleaded that he had only bid 'on the Rt. Hon. Company's account to raise the price'.[131] This contention was rejected by Child, who pointed out that the Bombay Council reported the ship was worth Xs. 20,000, in which case Niccolls had got a good bargain, and that anyhow Niccolls had no authority to bid for the Company.[132] Niccolls had to fall back on a plea that the proceedings about the condemnation of the ship were illegal, and that the sale did not pass him a good title.[133] This was also overruled, after obtaining St. John's answer; but Child allowed the Court title to be supplemented by a promise that the Company would secure his purchase from all demands.[134] As Niccolls was still dissatisfied, the Bombay Council proposed putting the *Prosperous* up to auction again, and Niccolls bearing any resultant loss,[135] but this was vetoed by Child on the ground that such a re-sale would not be safe, as the ship did not belong to the Company.[136] The Bombay Council rightly pointed out that their proposal was 'agreeable to the common practise in England in such cases', but went on to say that, as Niccolls was dead, ''tis needless to argue it now, and there being none to plead for him but his widdow* and fatherless children' they had, with Mrs. Niccolls's consent, arranged a sale of the ship to an Arab merchant for Xs. 15,000.[137] They ended with a strong plea for the widow and children:

'Wee are obliged to interseed with yor Excellencies in their behalf. . . . He and her Relations have spent their lives in the Rt. Hon. Company's service and [they were] greate sufferers by the late Rebellion, to which this precipitate act of his will be a great addition . . . therefore they thro' themselves wholly upon your Excellencies for the 1000 Xs. or what may remaine

anything about the petition in the Court Minutes of that period. St. John probably realized that it was hopeless to go on with his petition (cf. Mr. Harihar Das's remarks on this point in the *Calcutta Review*, vol. 22, pp. 79, 80).

* She was a daughter of Capt. Henry Young, the former Deputy Governor of Bombay (see O.C. 5001, para. 53).

in dispute. Wee declare that in his lifetime hee discharged his trust with all faithfulness and diligence, and if it had pleased God to have spared him, hee would have proved very loyall and serviceable, being an experienced souldier and seaman, and withall understood the affaires of this Island in Generall the most of any, and since hee never received any augmentation of salary as being Capt. Lieutenant, nor consideration for disiplining the Millitia (which hath been a customary and considerable charge to him) and little compensation for their losses and past services, wee hope your Excellencies will the more compassionate their condition.'

But this intercession fell on deaf ears. Child refused to accede to the suggestion that the widow should be let off the loss of Xs. 1,000, and sarcastically remarked: 'when wee are charitable, it will become us to be so without noise out of our owne pockets: what kindness wee can or may do the Widow and fatherless, wee are very free too'.[138] This case probably increased Child's dissatisfaction with Zinzan, whom he regarded as too soft-hearted for his post.[139] Zinzan was dismissed for contumacy, but his honesty and sincerity are bright spots in the history of this period of Bombay history. He evidently had a strong admiration for Niccolls and commends him more than once as very faithful, active and zealous for the Company's interests.[140] Niccolls's statement that he only bid for the *Prosperous* in order to try to raise its price is probably true; but he could expect no mercy at the hands of Child, who had not only shown animosity towards him in the past,* but was also a stern guardian of the Company's purse.

Niccolls's services as 'an experienced souldier and seaman, and [one who] withall understood the affaires' of Bombay better than any one else were (as we have seen) testified to by Zinzan and his Council;[141] and we may take it that his work in the Court of Judicature is included in this commendation. As a courageous and bluff soldier, sailor, 'free-man' and Judge, his name should stand high in the early annals of Bombay, in spite of defects of temper, which led to his dismissal from the post of Judge and other chastening.

Vaux must have abandoned his normal judicial work, when the Siddi's invasion took place in 1689, for the 'Sessions House' became the scene of frequent fighting and bombing,[142] and he was called upon to do military duty.† The Company in 1693 complained that

* See p. 96 *ante*.

† Thus we read under date 17 Feb. 1689, 'Capt. Vauxe went out with a party to lye out all night' (*Siege Diary*, p. 3). Like Gary and Niccolls, he was already 'Capt.' by courtesy, as the commander of one of the two Garrison companies.

'he had in the time of the War two or three sallaryes, one as a Captain, one as a Judge, and a 3rd as one of our Councill',[143] so he evidently continued to draw his pay as Judge, in spite of the interruption to his judicial work. As already mentioned,* he took over the Court of Admiralty on Sir John Wyborne's removal from the post of Judge-Advocate at the beginning of 1688; and his annual salary then became £100 a year, the amount to which the Company reduced the pay of the Judge of the Admiralty Court after Dr. St. John's dismissal.[144] Previously his salary as Chief Justice had been the £90 a year, which was settled in Gary's time and which Child had sanctioned as the *maximum* allowance for the post.[145] He all along remained in charge of the accounts† and appears to have taken full advantage of the opportunities this gave him. Sir John Gayer and his Council undoubtedly suspected that he had misappropriated the Company's books and money, as is shown by the following passage in a letter to the Company:‡

'Mr. Walsh says . . . there is very few of any bookes of one sort or other, and not one of any proceedings in Court, which were probably carried away by Mr. Vauxe, as we fear some of your bookes of accounts were to conceale probably unjust actions, after the death of Sir John Child, or else we know not how his widow should be reputed to be worth 130000 rupees, for that none ever believed her to be worth 5000 ere the Warr began, but rather nothing at all considering at what expensive rate he lived.'

The widow's wealth§ might, however, have been mainly or partly due to Vaux's trading in Surat after his dismissal in February 1693.‖ According to his Diary, he denied having taken away any books or papers belonging to the Secretary or the Accountant, except some 'Banian books of Account, which he refused to give up unless they would get his discharge from the Mogoll'.** In a copy of a letter to

* See p. 115 *ante*.

† He expressed his willingness to do this, when appointed Chief Justice (Bom. letter of 2 April 1685, F.R. Surat, vol. 109, p. 141).

‡ Bom. letter of 13 Dec. 1698, para. 39 (F.R. Bom., vol. 14, p. 17). The Company agreed that the 'disappearance of the books and Mrs. Vaux's appearing so very rich of a sudden' was 'suspicious enough that he might show us foul play in concealing or destroying the Books he had charge of to our late Generall's death' (Company's dispatch of 28 July 1699, L.B., vol. 10, p. 190).

§ She had to pay a bribe of Rs. 10,000 to the Governor of Surat for leave to sail from Surat (Bom. letter of 31 March 1699, F.R. Misc., vol. 5, p. 79).

‖ The dismissal was given effect to about 11 Feb. 1693 (see Bom. letter of that date, F.R. Surat, vol. 93, p. 29).

** Entry of 15 Sept. 1693 on back of p. 7 in his Diary. Vaux maintained that he

'Countryman Annesley' about it, he makes a less categorical denial, saying: 'As to the Papers and Accounts of Bombay or Surat, I have none except what is amongst my things at the Island and that very uncertaine to find any unless I go there to overlook them.'* There is no specific mention of the Court Books that he is alleged to have carried away.

In the absence of proper material for forming an opinion as to his judicial work, it is difficult to say what sort of a Judge he was. There is no record of his work being either praised or blamed by the Bombay Council, as there was in the case of Wilcox, Gary, and Niccolls; but as he continued in the post till his appointment as Deputy Governor of Bombay on Child's death in February 1690, it is a fair presumption that he discharged his duties without at any rate causing any serious dissatisfaction. Probably he did his work satisfactorily, and it must be remembered that the decision of cases rested mainly with Juries. But it is difficult not to feel some hesitation about his probity and fitness for a judicial post in view of the suspicion as to his honesty that his contemporaries express, and the fondness for excessive vituperation, which his letters and Diary reveal. His 'railing Billingsgate faculty' is what the Bombay Council call this latter characteristic[146]—a mild specimen of it is his telling Annesley that 'hee that knowes you so well as I do will hang you before he will trust you';[147] and he writes of the President in his Diary as 'ould Blind Booby Fellow Harris'.[148] The quarrels of the Surat Council, when he was on it in 1690–3 and his subsequent sufferings there with the other Englishmen, who were incarcerated on account of the European pirates, lie outside the scope of these pages. But it may be mentioned as an addition to the information contained in Arnold Wright's *Annesley of Surat and His Times* that on the 13th April 1698 he took into his service the Parsi broker Rustomji,† who was also employed by the Portuguese and Dutch factories, and who subsequently acted as broker for the 'New Company'.[149] A few months later Vaux met his death from drowning in the River Tapti, while returning from a visit to the *Blessing*;[150] and his memory survives, not from his work as Judge, Factor, or Trader, but from the prominent position of his

was being detained at Surat through the intrigues of his colleagues, hence his request that his 'discharge' should be procured.

* Same entry, p. 9.

† A full account of him is given by Sir Jivanji J. Modi in *JBBRAS*, vol. 6, nos. 1 and 2 (Dec. 1930).

tomb, which serves as a landmark to vessels approaching the river's mouth on their way to Surat.[151]

Before concluding this chapter, mention may be made of two matters, not directly affecting the administration of justice, but of interest in that connexion. The office of Coroner of Bombay was instituted in 1672* and has survived the numerous changes that have affected Courts and the investigation of crime since that date. It is probably, therefore, the oldest office still existing under its original name in Bombay. The records of this period give some references to his work and pay. He had a salary of Xs. 12 a month,† and in addition was allowed a fee for each inquest held. This varied from Re. 1 to Xs. 3 according to the part of the Island in which it took place.[152] In 1685, owing to complaints

'of the greate charge the severall casts, inhabitants of this Island, were at about the Coroners setting upon the poor people who dye in the streets and other places; upon serious consideration whereof had, it was agreed that after search and enquirey that the death of such people who were found was onely a naturall death, and noe matter of suspition of murder or the like, that then they should be buryed without payeing the usuall fees to the Coroner, onely allowing the small charge that he, or whome else shall be at; which shall be left to the discretion of the Justices of the Peace. But in case of murder, felo de se, drowning, or any other accidentall death that then the Coroner is to have the fees formerly settled on him, levying the said fees according to the directions of the Justices of Peace, and for the time past the Coroner should have his due fees.'[153]

The Coroner is also mentioned in connexion with the drowning of Englishmen by falling accidentally into wells. John Child in August 1683 ordered that steps should be taken to see that all wells were fenced;[154] but there were probably difficulties about this, as a Dr. Elliot lost his life in a similar way in 1690, and the Surat Council drew attention to the previous orders.[155]

Under Aungier's Instructions,‡ the different *Panchayats* had, among other duties, to look after the estates of orphans belonging to their respective caste or community.[156] It is interesting to find that these were still in existence in 1685, and that the welfare of orphans

* See p. 51 *ante*.

† This is the salary shown as drawn by Michael Mareene, Coroner, in 1683 (Surat, vol. 109, p. 49), and in 1680 the Coroner's salary is similarly shown as Xs. 144 a year (Bom., vol. 9, p. 29).

‡ See p. 82 *ante*.

was not lost sight of. The following orders on the subject were issued by the Deputy Governor in a Proclamation:[157]

'Whereas there have been many complaints made by the Chamber of the Portuguese that there is not due care taken of the Orphans or their estates, as there ought to bee, for the prevention therefore of any fraud for the future, and that the Orphans may have better care taken of them I . . . enorder that for the future all Orphans together with an account of their estates be presented to the Chamber of the Portuguese there to choose their Guardians such as shall for their fidelity be approved of by the said Chamber, and that the Guardians so chosen shall give in sufficient security that the Orphans Estates bee not embezzled and that the said Orphans have a suitable breeding according to their birth and quality . . . [also all Orphans shall appear before the Chamber on Thursday in Easter week] yearely for ever, where if they have any just complaints against their Guardians they may be heard, and as occasion offers others may be chosen in their stead.'

This was a step in the right direction, but of doubtful efficacy without proper means of full inquiry and power to enforce orders, such as the Court of Chancery exercised from early days and as are conferred on Courts by the legislation in favour of minors, with which we are familiar.

But Courts of Law (other than that of the Deputy Governor and Council) were now to vanish from Bombay for many years, as is related in the next chapter.

CHAPTER X

THE ADMINISTRATION OF JUSTICE, 1690–1718

IN February 1690 Bombay had been reduced to a weak condition by the Siddi's attack on it; the Judge of the Courts of Judicature and Admiralty had left on his mission to obtain Aurangzebe's humiliating 'firman'* and was fated never to return; and the 'Sessions House' had been seriously damaged in the fighting.† Niccolls was dead and Gary had fled from Bombay. There were, therefore, difficulties in the way of continuing the two Courts. These, however, would probably have been surmounted, had John Child survived the Siddi's departure from Bombay in June 1690. He knew the history of the Court of Judicature, had re-established it in 1685, and would almost certainly have seen to its due continuance, if possible. But his successor, Bartholomew Harris,‡ was a very different kind of Governor. He was a weak man, as the Company described him in 1698;[1] and his general policy was to put off making decisions on any questions of importance relating to Bombay till he came there from Surat, a project which never eventuated. There was special urgency for the appointment of a Judge, in order to adjudicate on the claims to restoration of the lands that had been attached for alleged disloyalty§ by their holders during the Siddi's invasion. This was recognized by Harris in the following passage in a letter of 16th October 1690 to Bombay:[2]

'And as touching the role of the Melitia you sent us that were owners of lands and oartas on the island wee doe direct as followeth; it was the same reason that you alledge, the want of a judge or some other fitting person to sitt upon that so important affaire that hath made us not goe upon it ere now; but seeing wee are so unhappy hitherto wee would have you sett out an other proclimation in our and your name and in behalf of the Rt. Hon. Company, remonstrateing our great willingness and readiness to doe justice to all sorts [of] people under our care and jurisdiction to the

* Cf. *Annesley of Surat*, &c., p. 141. 'Firman' is the Persian *farman*, order or letters patent. † See n. * on p. 170 post.

‡ He had been appointed 'Chief at Surat' in 1688 (Company's dispatch of 27 Aug. 1688, L.B., vol. 8, p. 551). He was only allowed the title of Agent on his succeeding Child and died at Surat in 1694 without ever visiting Bombay.

§ i.e. desertion, aiding the enemy, or failing to give assistance to the garrison personally or otherwise as good subjects ought to do, cf. Consltn. of 16 Aug. 1694 (F.R. Bom., vol. 4, p. 16).

utmost of our abillities and power, laying down our reasons for not goeing on that grand business for want of a judge &c; but so soon as possible the Governor and Deputy John Vaux can dispatch these weighty affaires wee are about, wee will both repair to the Island, for besides our dutys wee see the necessary affaires of the Island doe inforce us to it and then wee will seriously sett to that work with the rest of our Councell and decide all in the best judiciall way wee can, according to Law and Equity.'

It was mainly in connexion with this question that the correspondence between Bombay and Surat refers to the necessity of a Judge and to there being no Court of Judicature; but owing to the procrastinating attitude of Harris and his Council, the inquiry about the forfeited lands hung fire until the Company in May 1693 ordered Sir John Gayer to take up the matter,[3] and the adjudication was accordingly made by him and his Council in 1694.* Meanwhile the judicial work must have suffered, though some was no doubt done by the Deputy Governor and Council. Thus in June 1691 they were ordered to keep one Capt. Paxton 'secure till he can come to the legall tryall of a Judge and 12 men'.[4] The result seems, however, to have been that three months later Paxton was released on bail[5] and never tried. In August 1691 a Mohammedan merchant, who had been imprisoned for debt, was ordered to be released on the ground that under the Company's Laws 'noe private person shall arrest or imprison any for debt unless he prosecutes his action in two Court days after the Arrest, which if not [done] the prisoner may sue for his relcasement'.[6] The unfortunate creditors were asked to 'have patience till a Court of Judicature be established or they are able to pay [*sic*, ? recover payment] without goeing to Law'. The ground of this order was that, until a Judge was appointed, 'wee would have none of the Inhabitants discouraged, but have all kindness shown them to bring trade to the Island'.[7] This was an excellent precept, but it is questionable whether trade would be encouraged by this abeyance of the usual legal facilities for the recovery of debts. Some offenders were, however, punished by the Deputy Governor and Council. Thus in June 1691 their sentences on a William Magregory and two 'runaways' were approved by the Surat Council.[8] In August 1691 they were instructed to see that a quarter of the proceeds of a *grab*,† which had been condemned by the Court of Admiralty in John Child's time, should be paid to the persons who had seized it, and the balance

* See pp. 161–3 *post.*

† A big two-masted vessel.

placed 'to the account of the Admiralty Court which must be settled by John Vaux, when he can gitt leave* to come to his station'.[9] The Company on 29th February 1692[10] also sent out orders that this Court should always be 'kept on foot' in Bombay, and referred to the Commission given in 1686 to the General and Council to appoint a Judge and Assistants in it.† But Harris had to admit failure. Vaux was not able to leave Surat and in any case ceased to be available in February 1693,[11] when he was suspended under the Company's orders. Nor was there any one else that could be appointed, and on 11th February 1693 Harris reported to the Company: 'We have been in such a miserable condition upon Bombay that we have not been able to create any Court of Judicature or Admiralty.'[12]

The plight of Bombay at this time was pitiable. The Siddi's invasion had necessarily interfered with trade, cultivation, and the supply of provisions. A large number of the native inhabitants had left the Island. In addition plague, or the 'annual contagion' as it was styled, made ravages among them between 1686 and 1698.[13] Even after the departure of the Siddi in 1690, cultivation remained at a low ebb, both on account of the devastations during the fighting and owing to the attachment of most of the lands. This necessarily reduced the revenues of the Island, so that Sir John Gayer reported they had fallen from Xs. 62,500 to Xs. 17,000 in 1694.[14] Not only were the native inhabitants affected, but also the adverse conditions had resulted in a great scarcity of Europeans. According to a letter of the Bombay Council dated 27th October 1691,[15] the number of Englishmen on the Island had then been reduced to about 80; and since they last wrote to the Company in February 1691 three of the eight servants of the Company had died and most of the remainder were ill. In February 1692[16] the Surat Council described its condition as 'most deplorable', and the Deputy Governor (Weldon) had only one Councillor (Whitcombe), who was discharged from the Company's service in July 1692.[17] There was then no one to take the place of Weldon‡ as Deputy Governor, if he died or suddenly left the Company's service, as he did in 1695.§ In May 1692[18] it was reported

* i.e. leave from the Governor of Surat. Both Harris and Vaux were prevented from leaving Surat on account of European piracies in the Indian Ocean.

† See pp. 144, 145 *ante*.

‡ On 28 Jan. 1692 Weldon had married the widow of Sir John Child, whose 'grand enemy' he was, according to Vaux (O.C. 5784).

§ The last letter to the Company that he signed was dated 5 June 1695 (O.C. 6042).

that they could only muster about 25 'well men' in the garrison, and as many more in the frigates. It seems true, therefore, that there were not enough Englishmen available in 1692 or 1693 to enable a Court of Judicature to be established on the lines on which it had previously been run. It must be remembered that not only were they required for the Judge's post and subordinate offices, such as those of the Clerk of the Peace, the Constable and the Jailor, but also for the Juries to try both civil and criminal cases.

Possibly a Court might have been started on the lines of the Mayor's Court that was established in Madras (Fort St. George) in 1688. This was intended to be mostly composed of Aldermen, who were native headmen, mixed with some English 'freemen',[19] though three English Aldermen were to be Company's servants.[20] It was given wide powers, subject to a right of appeal to the Court of Admiralty;[21] and with some modifications a court of this kind might have got over the difficulty due to the paucity of Englishmen.* In January 1688 the Company sent a copy of the Charter establishing the Mayor's Court at Fort St. George to John Child, saying 'if you find such an establishment would be for our service at Bombay, you may cause a transcript to be made thereof and filled with such you can think fittest to be Aldermen and Burgesses there', and this they would return under their seal.[22] Child's reply is not traceable on the records in the India Office, but it was probably a decided negative, as such a Court would hardly appeal to his autocratic temperament; and in any case the Company does not appear to have made any further reference to the suggestion. And when the Court of Judicature ceased to exist, the possibility of establishing such a Court does not appear to have occurred to any one.† It would in any case have been unsuitable for dealing with the question of the attached lands, which involved a decision as to the guilt or innocence of their holders on the charge of helping the Siddi.

The lands had been seized by George Cooke,[23] after Vaux had handed over to him the Deputy Governorship in February 1690. There were naturally many petitions for their restoration, but their consideration had been deferred, as already related. A fortunate

* There would, however, have had to be more Indians in it than there were at Madras, where the majority were English (cf. J. Talboys Wheeler, *India under British Rule*, p. 17, and p. 204 *post*).

† At any rate not until 1717 (see p. 171 *post*).

exception seems to have been Christopher de Souza de Tavora, the Mazagaon estate holder, all of whose lands and houses were ordered to be restored to him in March 1691 by President Harris.[24] This was on the ground that there was reliable testimony that he had obtained John Child's permission to leave the Island. An attempt was made to arrange through his mediation that the various claimants should have their lands restored, subject to an obligation to abide by the award of a Judge, when he came out from England or the Court of Judicature was otherwise re-established; but they refused to agree to this.[25] The Company were, however, also anxious to get the matter settled, for they hoped to have a 'formal condemnation' of most of the lands and so increase their revenues, as some recompense for the expenditure they had been put to by the 'late War' with the Mughal Emperor.[26] Accordingly in May 1693 they ordered the Governor and Council 'to proceed according to Law to their condemnation as President Aungier did formerly against Don Alvaro Pirez de Tavora'.[27] On the other hand they gave more merciful directions 'as to the meaner sort of Portugueez', saying:

'we would use some commiseration [towards them] to restock the Island again with working Inhabitants, so you may admitt such to their own Residencyes and Estates after condemnation, they paying us for the future annually half the fruits of their Ortas or grounds, whereas at our first receiving that Island of the Crowne they ought to have paid us only the fourth part of their fruites, and that fourth for bribes to the then English Deputy Governor was commuted into a Money rent at a great undervaluation to the Company's loss ever since. . . .'

Harris died not long after the receipt of these instructions[28] and was succeeded by Samuel Annesley,* who like his predecessor was confined at Surat by the Mughal Governor of that town. But fortunately Bombay now had Sir John Gayer, who had been appointed by the Company to be Governor of Bombay in April 1693,[29] and who succeeded Sir John Goldsborough as Commissary-General on the latter's death in January 1694.† Gayer was a conscientious man, and his independence does not appear to have been unduly affected by the Company's instructions. In August 1694 he and his Council took the question into serious consideration. The legal proceedings against

* For an account of his life see Arnold Wright, *Annesley of Surat and his Times*.

† He was a Captain in the Company's service, who was appointed in 1692 to supervise all the Company's affairs in India (cf. Anderson, p. 264).

Alvaro Perez in Aungier's time, to which the Company had referred, could not be traced. This was lucky, for the complicated and lengthy processes of 'outlawry' were entirely unsuitable for a speedy determination such as was essential, both in the interests of the Company's revenues and for the relief of the poorer inhabitants, who had been deprived of their lands, so that (as Sir John put it) 'they might not perish togeather'.[30] In the absence of a person duly qualified to officiate as a Judge Advocate,* the Council sensibly decided to hear all the petitions and proceed to decide them 'in the best manner [they] could'.[31] The general result is given in the following extract from a letter to the Company:[32]

'Upon strict enquiry after those that had had forfeited their estates we found many had been kept from what was their just right through the neglect of President Harris as we have advised your Honours in our [letter] of the 31 October. These we immediately restored to the possession of their estates. Others as wee allso advised did assist in the Militia several months, but afterwards through want of sustenance and being tiered with the length of the Warr did desert the Island but never assisted the enemy, but on all occasions they could were assisting to the Generall by sending provisions hither and advices concerning the proceedings of the Enemy. These we could not esteeme to have forfeited their estates, altho' they were guilty of great neglect in the Defence of them, these allso falling under the denomination of the meaner sort of inhabitants that your Honours order us to use Comiseration to, we have restored to their estates after they had signed a paper acknowledging the forfeiture of them and petitioned us for mercy owning that whatsoever was granted them was the bounty of your Honours, but as a fine for their neglect we have ordered them to pay into your Honours' Treasury ¼ part of the value of their estates at the expiration of 4: 6 and 8 months; they allso paying their proportion of the Pension formerly setled yearly as before, which with the other quarter is ½ of their estates, but by reason of their miserable poverty we must of necessity forbear them a longer time then we have allowed them for that they can't pay it so soone there being a necessity for them to straine their Credits to the utmost for the present, buxsing† their allmost ruin'd Ortas, making wheels for their wells and rebuilding their Cottages and supplying themselves with utensells. The value we have set on Ortas is 5 Xs. a tree, which is the common valuation between buyer and seller, they esteeming a Tree to be worth ½ X. a year, which at ten years purchase the constant

* Gayer was authorized by the Company in Jan. 1694 to appoint 'some discreet person' to that post (L.B., vol. 9, p. 341); but this would have reached him too late.

† i.e. manuring.

valuation of land here (by reason the money being at 12 p.c. intrest per annum) is Xs. 5, and all Batty ground we have valued at 200 Xs. per mora, which is 20 Xs. per annum. There is a few whose neglect proving farr less than others we have fined $\frac{1}{8}$ part of their estates, but all are to pay their proportion of the Pention as afore for what trees are standing. Alltho we have not proceeded to actuall condemnation of the Jesuits lands for want of a Judge, yet your Honours will perceive by what certificates we have sent you that their lands are forfeited. These and the estates of some Moors &c that we cant yet determine concerning their forfiture, but speedily shall after dispatch of these ships, we have farmed out to preserve them from utter ruine.'

The Company approved of these proceedings in July 1696, and asked the General to 'root the Jesuits out of the Island, if possible'.[33] They had always been regarded as treacherous and disloyal subjects, and there were good grounds for the assertion that they had assisted Siddi Yakub in his attack on Bombay.[34] Their lands at Parel, Vadala, and Sion were never restored;[35] but needless to say, the Jesuits were never eradicated from Bombay.

It was probably a desire to have a formal 'condemnation' of their lands by a Judge, as suggested in the letter just quoted, that prompted the Company to 'have thoughts of sending (to Bombay) a Judge Advocate' towards the end of 1695;[36] but they added: 'It is not easy to get an honest man that is proper for that Imployment on a sudden'.[37] Evidently they were inclined to be cautious in their choice of a Judge, after the 'trouble' caused by Dr. St. John. And it was probably the difficulty of getting the right sort of man (from the Company's standpoint) that resulted in no Judge being sent out. There is no further reference to this intention in the Company's dispatches to Bombay or Surat, and the idea seems to have been dropped. But Sir John Gayer may have had later private advices from England of the possibility of a Judge being appointed, for on the 9th October 1696 he and Weldon wrote to Surat that they were 'hourely in expectation of our Masters' ships, which wee hope will bring out some person learned in the laws, quallified for a Judge, whereby we may erect a Court of Judicature'.[38] Unfortunately this expectation was doomed to disappointment.* The Bombay Council, however, kept the matter

* Sir Michael Westropp in his judgement in *Naoroji* v. *Rogers* (4 Bom. High Court Reports, p. 51), says 'there is some evidence in the correspondence of the Bombay and Surat Governments that the office of Admiralty Judge was, subsequently to the retirement of Dr. St. John, held for a short time by Dr. Davenant.'

before the Company for some time. In February 1697 they reported they could not erect a Court of Judicature for want of a qualified Judge;[39] and on 25th January 1698 they wrote: 'A good Judge would be very welcome, for that business which should be done by him takes up considerable of our time.'[40]

This shows that the judicial work was then performed by the Governor and Council. This is corroborated by some references to it in the consultations and correspondence. Thus it is recorded that on the 22nd October 1694[41] 'the creditors of George Gonsalves deceased requesting of us, the Generall and Councell, that his estate might be sold to sattisfy his Creditors, declaring withall that the Heir at law was wiling to relinquish all his Right and title in the said estate, upon which it was agreed that upon the said creditors presenting a resignation under the heir at law's hand, there request should be granted, which the said creditors procuring it was ORDERED that the said estate be valued and disposed of the 24th inst at a publick sale by inch of candle'.* Similarly on the 30th August 1695[42] 'Nursingee Purvoe, having been committed prisoner for the non payment of his debts, was this day releast of his imprisonment upon condition that he pay 100 Xs. 10 days hence, and find good security to pay the ballance of his 4 years account in 5 months following'. Harris's instructions of August 1691† were properly departed from in this instance, in view of the dim prospect of the Court of Judicature being re-established. Nursingee Purvoe seems to have prospered after his release from jail, for in August 1700 he sued Boogy Patell for an account of the transactions between them. The Vereadors at Mahim

This, however, is a misapprehension. Charles Davenant (1656–1714) was not a lawyer, but a leading economist and a member of parliament, whom the 'old' Company thought of sending out to India as a counterpoise to Sir William Norris, the Ambassador to the Great Mughal for the 'new' Company. Davenant was to give advice to the General and Presidents of the conduct they ought to adopt in preserving their rights from injury (Bruce, *Annals*, &c., vol. 3, p. 261). It was no doubt also proposed in 1700 that he should 'settle a Court of Admiralty in India, before which the pirates were to be tried and brought to justice' (Bruce, ibid., p. 352); but the proposal to send him to India was subsequently dropped. As to Davenant's aid to the Company by pamphlets, &c., see Khan, *The East India Trade in the Seventeenth Century, passim.*

* This sort of auction, whereby the last bidder, when the flame of the candle had burnt out, became the purchaser, was evidently frequent at Bombay and Surat. It appears to have been ordinarily adopted in London during the previous century, and an Act of George III directed that herbage should be sold by this method.

† See p. 158 *ante*.

were ordered to examine the accounts, and upon their report, which was 'examined and passed', Boogy was held to be indebted to the plaintiff and ordered to pay the amount due into the Company's cash.[43] There are several entries as to orders for the administration of a deceased's estate.[44] There are also a few criminal cases referred to. On the 5th August 1700 we read:[45]

'The Mahim goldsmiths have now laye[n] a long time in prison for their noncomplyance with our order in paying 500 Xs. fine for a riott they had committed, have requested that wee would abate somewhat thereof, alleadging that they were not able to raise the summe, which wee being lately convinced of, agreed to reduce their fine to 350 Xs.'

On 26th August 1702 the Bombay Council wrote to Surat:[46]

'The relations of the two Mazagon coolyes, that have been so long in prison for murder of one of their brethren, have petitioned us concerning them, that your Excellency would be pleased to order their punishment or release for that they have wifes and chilldren, who are very miserable for want of maintenance.'

On the 1st October following they say:[47]

'We have released the two coolyes, whipping them at the cart's tail, both here and at Mazagon, according to your orders. The murdered [man] neither left wife nor children behind him.'

This makes it very doubtful whether regular trials were held, even in cases of murder. Offences were probably dealt with in a very summary manner. But the accused may often have admitted their guilt, as was perhaps done in the following case that was dealt with on the 28th February 1704:

'Litten Boroughs, lately seaman on board ship Adventure, having been guilty of striking his commander, we ordered him on shore prisoner in the Fort, and taking his crime into consideration DO ORDER that he receive the punishment of 30 lashes on board the Bombay Merchant and said ship —15 at each; when he is to be put on board the former to serve the Rt. Hon. Company til we think fit to order otherwise.'[48]

Again Burnell's account of Bombay in 1710 contains the following story[49] of some wizards, who were summarily punished on a confession of their guilt:

'These Jogues [Yogis] as well as most of the Gentiles [Hindus] are much given to diabolical invocation, so that there are orders issued out by the

General and Council to seize and imprison those that are taken in the act; it happened one night whilst I was commander in Dungarey fort, that my serjeant going the rounds as usual, he brought with him at his return an old woman and two men, whom he had taken in the act, with the rest of the appurtenances being bundled up in a cloth; it consisted of a live cock, rice, butter, salt, flowers &c. with a drum, and two small brass musical instruments; they could none of them stand but were brought in upon mens backs, and laid upon the floor in the guard room, having the strangest commotions in their body as is impossible to be described . . . they had not lain a quarter of an hour, but the woman rose in the greatest agony imaginable, flinging and tearing like a fury, that it was as much as ten men could do to hold her down and tie her . . . next morning I examined them, when they seriously confessed that all that time the devil did inhabit them and that they were set to work by a Moor woman to know whether she should poison her husband; I reported them to the General who caused them to be whipp'd off the Island.'

Burnell also mentions that Dongri Fort* was 'the only prison for debt on the Island'.[50] He adds:

'Others are likewise committed for theft, murder, riots or the like; the Serjeant of the rounds likewise hath orders, who walk constantly at nine to bring in all abuseful, lewd and suspected persons who must there give an account of themselves; those for debt are generally committed or cleared by the General and Councils orders and when discharged have free liberty to depart paying the customs of the guard which is a Xerophen to the commander and a half to the men on duty and is one of the principal perquisites the commander hath belonging to him.'

The Mahim 'Customer', or Customs officer, seems to have continued the jurisdiction as a Justice of the Peace that was conferred on him in Aungier's days. Burnell says:[51]

(At Mahim) 'is the English Custom-house, where is always resident a factor of the Company's, who is commonly one of the Council; his duty is to take care and see what goods are imported and exported, and enter them in the Journal and Ledger. He acts likewise as Governor of the place; all differences being brought before him which he makes up or imprisons the offender according to the nature of the complaint.'

The lack of judicial records for the end of the seventeenth and beginning of the eighteenth century makes it difficult to attain accur-

* This was the fort on Dongri Hill, which was blown up and demolished in 1769, as the Siddi's invasion had shown it to be a source of danger to the Fort.

acy, but it seems clear that the administration of justice must have dropped to a low ebb. In a letter of 20th February 1702 to the Company,[52] Sir John Gayer not only mentioned that there had been no Court of Judicature in Bombay for eleven years, but also complained of want of authority to punish the frequent murders committed there. Presumably this view was based on the fact that the Company's Laws of 1669 only authorized a death-sentence when passed by the Court of Judicature after a trial by Jury, or was due to the Charter of 1668 and the Laws having passed into oblivion. When the Old Company received this letter, it had joined up with the New Company, and its attention was mainly fixed on the questions that arose out of the Union; at any rate its dispatch of 8th June 1703[53] to Sir John Gayer, though acknowledging receipt of his letter, makes no reference to this subject. Gayer could of course do nothing to better things at Bombay after January 1702, when his long confinement at Surat began.* He was succeeded in November 1704 by Sir Nicholas Waite,† the chief representative of the New Company at Surat, who is said to have encouraged, if not instigated Gayer's captivity by bribes and misrepresentation.‡ One would scarcely expect his violent and autocratic temper to lend itself to any improvement of the judicial arrangements. But Bombay records in the India Office, which recommence with Waite's assumption of the office of the Company's 'General in India' and Governor of Bombay,[54] show that he did not overlook the administration of justice. Owing to the reduced number of Europeans in Bombay§ he was not in a position to re-establish the Court of Judicature, and he was no doubt disinclined to burden himself with the work. It was accordingly entrusted to Aislabie, the Deputy Governor of Bombay, as 'Justice of the Peace in all parts of the Island out of the severall Fortifications'.[55] This seems to show

* It lasted till the end of 1710. He left Bombay for England at the beginning of 1711, and died of wounds received in an encounter with the French on the voyage home, cf. Arnold Wright, *Annesley*, &c., p. 297.

† He had served the old Company as chief at Bantam in Java.

‡ Cf. Anderson, pp. 359–61, and Arnold Wright, pp. 251, 260, 278, and 279. Waite, on the other hand, strenuously denied the allegation; see for instance his letter of 3 March 1707 to the Company, cited in Yule, *Hedges' Diary*, vol. 2, p. 146, and Bom. Consltn. of 29 Dec. 1706, Bombay Public Proceedings (henceforth cited as B.P.P.), vol. 2, pp. 71–4.

§ Thus Waite complained in 1706 that the number of the Company's covenanted servants was only 6, including two members of Council (Bom. Consltns. of 21 May and 19 Nov. 1706, B.P.P., vol. 2, pp. 245 and 34).

that Waite, who styled himself 'Chief Judge of Appeales from law or Equity',[56] reserved jurisdiction in cases arising in the Fort. There are a few instances recorded of Waite and his Council trying civil disputes[57] and sentencing offenders;[58] and Waite himself granted letters of administration to the widow of an officer on the Island, with a lengthy flow of legal language and a knowledge of English law that suggests his having had some training in an Attorney's office.[59] But Aislabie evidently did most of the work, except in the case of crimes resulting in death, which seem to have been mainly disposed of by a Coroner's Inquest. Thus Dominga, a 'single woman', was found guilty of murdering her infant child by a Jury composed of five Englishmen and seven Portuguese; and the Coroner submitted the proceedings to the Governor and Council, who sentenced her to seven years' transportation to St. Helena.[60] A Mohammedan woman, who was similarly convicted of infanticide, was sentenced to imprisonment in Dongri Fort pending further orders;[61] but she was afterwards pardoned and set at liberty on an undertaking given by leading Mohammedans that they would find her a husband, 'which mercy', it was rather fatuously hoped, would tend to prevent 'the like unnaturall Murthers' more than a death sentence under English law.[62]

On Waite's deposition by his Council in November 1708 and subsequent deportation to England,[63] he was succeeded by Aislabie, who seems to have followed Waite's example in delegating practically all the judicial work to a member of the Council. This continued till 7th July 1712, when the following Resolution was passed:[64]

'Takeing into Consideration the Usuall Methods of administring Justice on this Island, wee do think it more proper for the future, and do hereby Agree that all the Councill sit for the better dispatch, and that there be two days in week set apart for the same, and that they keep a Diary of their proceedings in English and Portugueze.'

The judicial authority, which had been vested mostly in a single person for some ten years, was thus restored to the Governor and Council. The Company welcomed the change with the following remarks, contained in the Instructions that it issued on 5th April 1715 to Boone, as Governor-designate of Bombay:[65]

'In the Consultation of the 7th July 1712, we find a very good Order that all the Council do sit two days in the Week for the better administring

Justice, as you will find there more at large. On discourse with Mr. Moore* he says the reason of it was because of the People's many and great complaints against Mr. Phipps,† when he had the power of administring it, and that it was agreed nothing should be taken from the People for the same. This continued for some time, but when Mr. Wyche‡ came from Suratt, he took upon him the sole power, without taking any notice of or to the Council, and obliged the People to pay the same Fees to him as they did to Mr. Phipps, at which the Inhabitants were greatly grieved; and though, as was presumed, he had the then General's Order, yet there was no Order of Consultation for it. This is a crying Mischief which must be speedily and effectually remedyed. It is impossible any Place can ever thrive where the People are not secured in their Liberty and Property, where Justice must be bought or the poor Inhabitants opprest. We hope our now President and Council will act upon more generous and just principles themselves and not suffer any among themselves or under them secretly or openly to oppress the meanest Inhabitants, but will have their Ears open to every just complaint and take to remedy it. Remembering what wise Solomon says of the Throne, which is equally true of all Subordinate Government, that it is establist by righteousness. Take care also to preserve the Natives in all other their Civil Rights such as the antient power of their Mattraes§ and Vereadores,‖ but with liberty for any to appeal to you if they think themselves aggrieved. The particulars of this Para. are of so great importance to the well being of the whole Island that we earnestly recommend the serious consideration of it to everyone of you, and do expect you to let us know what you shall direct therein, what evils have been found out and remedyed, what Rules have been laid down to prevent their ever springing up again and whatever else you think further proper to promote the flourishing Estate of the Island.'

It is to be observed that the main complaint in the above passage is as to the levy of unauthorized and excessive fees by Phipps and Wyche, whereby justice was denied to poor people who could not

* He was in Bombay from 11 Sept. 1709 (Consltn. of that date, B.P.P., vol. 4), and was a member of Council from 8 Aug. 1711 to about 3 Nov. 1713 (Consltns. of those dates in B.P.P., vol. 4).

† He was Deputy Governor of Bombay in 1711–12 and succeeded Boone in Jan. 1722.

‡ He was Deputy Governor from 1 Jan. 1713 to 20 Sept. 1714. His appointment to exercise judicial authority does not appear in the India Office records, but he probably assumed the jurisdiction *ex officio* as Deputy Governor of Bombay. Thus a reference to his judicial power mentions that he was then Deputy Governor (Consltn. of 19 Feb. 1717, B.P.P., vol. 4, p. 35).

§ This represents the Marathi word *mhatārē*, i.e. elders of the community.

‖ See Chap. XI, pp. 183, 184 *post*, as to these officers.

afford them, and not as to any defect in the quality of the justice they dispensed. There is no other source of information as to their methods, but undoubtedly they must have sat, like Aislabie, without Juries. It was obviously intended that the former practice should cease after the 7th July 1712, and when Aislabie left on a visit to Surat in October 1712 he instructed the Council to 'observe the usual Consultation days and days of administering Justice'.[66] The Company's remarks of 1715 that have been cited show, however, that this did not continue long, and that when Wyche became Deputy Governor in January 1713,[67] he 'took upon himself the sole power without taking any notice of or to the Council'. This apparently lasted until 20th September 1714, when he ceased to be Deputy Governor;[68] but his successor probably continued the same practice with Aislabie's consent. It was not till after Boone's arrival on 26th December 1715 that steps were taken to put the administration of justice on a better basis in accordance with the Company's Instructions. On 9th January 1716 it was agreed—[69]

'that Messrs. Parker, Strutt and Clapham or any two of them be appointed a Court to execute Justice to determine all causes and complaints in a judiciall process, to impose fines and punish delinquents, and that no appeal shall be made from their Court to the President and Councill for a less sume than fifty rupees, and that they sit in the Long room in the Castle* Tuesdays and Fridays in every week to receive Petitions determine causes and inflict Punishments.'

Parker was Deputy Governor and the other two were members of the Council, of which the Court was in effect a sub-committee. But this did not prevent the whole Council sitting as a Court, at any rate in one case. This was to decide a dispute between Trimbuck Sinay (Shenvi) and the former Deputy Governor, Bernard Wyche. The latter was sued on an alleged undertaking to pay the balance due to Trimbuck on an account between him and Douglas Burniston, a deceased Member of Council. Wyche denied the alleged promise, and evidence was taken on this issue.[70] The majority of the Council decided against Wyche, who was ordered to give security for payment of the balance due on the account. Wyche, however, then dis-

* The old Sessions House was not available, owing to the damage it suffered during the Siddi's invasion. A Consltn. of 10 June 1713 (B.P.P., vol. 4) mentioned that 'the greater part of it was broken down' and sanctioned its sale for Rs. 300 to Trimbuck Sinay (Shenvi).

puted the correctness of the account, and it was not till about two years after the institution of the suit that the matter was finally adjusted, mainly through the personal interposition of Boone.[71] But, long before that, Boone had decided to set up a Court of Judicature that would relieve the Council of such disputes and would include Justices, who were not members of the Council. His first idea was to have a Mayor's Court on the lines of the one in Madras, as is shown by the following Consultation entry of 13th July 1717:[72]

'The President shows to the Board some Memorandums he had made for erecting a Court of Judicature to consist of a Mayor and twelve Aldermen for the Tryall and Decision of all causes, that this Board may not be incumbred with them and for three of the Aldermen to be appointed Justices for the Tryall of Criminalls. RESOLVED that the said Court be established and the persons nominated for that purpose chosen accordingly. (Then follow the names of the proposed Mayor and Aldermen, &c.)

This decision was, however, altered on 31st August 1717, as follows:[73]

'Wee haveing on the 13th of July Agreed to establish a Court of Judicature, the President proposes that it now be concluded of and settled, as will be a great Ease to him and enable him the better to manage the more Publick affairs, the very Dispute twixt Mr. Wyche and Trimbuck haveing taken up a great deal of his Time, which to his Affliction is not so much as he could wish, occasioned by his frequent Indispositions. Takeing the same into consideration and after some Debate, It is thought Propper the Title of Mayor be Laid Aside, as all Causes whether criminall or other are to be decided by this Court, and that of Cheife Justice which comprehends a fuller Power instituted in its stead. Mr. Strutt haveing Declined on our first Proposall of erecting this Court the Office then appointed him* on account of his Health wee Proceeded to Debate on what Modell it should now be founded and the Persons it should consist off, when the following Gentlemen by their Consent were chosen, vizt.

1. The Worshipfull Lau. Parker Esq. Cheife Justice.
2. Messrs. Stephen Strutt.
3. John Clapham.
4. Bernard Wyche.
5. Thomas Wiltshere.
6. Richard Acton.
7. Rama Comattee.
8. Pasqual Barrett.
9. Jeejee Jamset Moody.
10. Tuckee Alodin Codjee [Kazi.]

} Justices.

George Brazier English Register and Attorney; George Yeomans Attorney; Antonio D'Silva Portugueze Register.

* That is the office of Mayor.

Our time not permitting us to bring things to a due regulation DIRECTED that each Member of this board appointed of that Court collect and draw out such notes and remarks as he thinks proper for Modelling thereof against our next meeting.'

This was a distinct advance on the previous proposals, in that instead of the criminal jurisdiction being confined to three Aldermen (all English)* it was to be exercised by the whole Court, which was to include four representatives of the principal Indian communities in Bombay, viz. Hindu, Mohammedan, Portuguese Christian, and Parsi. On the 5th September 1717 the memoranda of detailed proposals prepared by Boone and four of his Council were read and the Secretary instructed 'to compile the whole into one Scheme'.[74] His draft was approved on 18th November, and he was directed to frame 'Instructions' to the Court accordingly.[75] On the 4th February 1718 the Commissions to the Justices and the Instructions to them were signed, and it was agreed that 'as the Chief Justices business will take up abundance of time and be very fatiguing, he be allowed a sallary of one hundred pounds per annum'.[76] It was also ordered 'that the Secretary with such ceremony as is requisite to gain a due Respect from the Inhabitants thereto publish' a 'Proclamation giving notice to all Persons of the Establishment of said Court, and that he affix it at the new Bunder and in the Buzzar'.[77] This was done the next morning in the company of 'the two Registers of the Court, two other Factors on Horseback, a Detachment of Twenty of the Troop, headed by the Lieut. with Trumpets, the Marshall, six files of Musquteers and two Drums, lead by two Serjeants, and sixteen Sepoys, being assembled at the Castle gate', who went from there to the principal places in the town in an imposing procession.[78] The Proclamation and the Deed constituting the Court are recorded at length.[79] The latter, after reciting the desire to establish a Court for 'the due and impartial administration of Justice' and the powers derived from the United Company's Charters, nominated Laurence Parker as Chief Justice and the other nine mentioned in the Consultation of 31st August 1717 as Justices, except that John Courtney took the place of Richard Acton. They were given 'full Power and authority to execute the said Office of Justices, in holding pleas, hearing and determining all causes, suits, actions and trespasses, as well Civill as Criminall

* Messrs. Clapham, Wilshire, and Crommelin had been proposed for this duty in the Consltn. of 13 July 1717.

whatsoever, within this Island Bombay . . . according to Law, Equity and Good Conscience, and the Rules, Ordinances and Powers, annexed unto these Presents, for the more certain guidance and dispatch of Affairs depending therein'. It was further directed that all deeds relating to lands, houses, and tenements should be registered in the Court, and that the Governor's prior consent was required to give validity to any sales thereof.* The Court was also given Probate and Administration jurisdiction. Its consequential powers as to execution were very widely expressed, but the Justices were required to pay due regard to caste customs, 'the principles of common right, the Orders of the Rt. Hon. Company, the policy and known and established Law of the Realm of Great Brittain, provided the same be conformable to the Instructions' given to the Court. The Proclamation established the Court from the 25th March 1718,† subject to a right of appeal to the Governor and Council, provided it was notified to the Chief Justice within forty-eight hours of the judgement and a fee of Rs. 50 was paid to the Secretary. Other provisions in it were:

1. 'Any Person imprisoned in case the suit be not prosecuted within two Court days next after his confinement, may sue out his discharge, which shall be granted without bail.'
2. 'The Chugulass's‡ and Veridores of the severall Tribes of the Inhabitants' of the Island, who had hitherto been empowered to decide caste or communal disputes, were to be 'accounted an Inferiour Court', from which an aggrieved party could appeal to the Court of Judicature.§ The latter also had general supervisory powers over their proceedings.
3. All persons were to aid any Messenger or Serjeant of the Court in apprehending persons in case of difficulty.

* This revived the practice introduced by Oxenden in 1669 and enforced by Aungier, when the Court of Judicature was established in 1672 (see pp. 11, 51, and 68 *ante*).

† There was a ceremonial sitting of the Court accordingly on this date, when 'their Commission was read audibly by the Secretary and delivered to the Chief Justice before most of the Rt. Hon. Company's servants and principal Inhabitants of the Island assembled in the Castle Hall' (B.P.P., vol. 4, p. 53).

‡ This represents the plural of the Marathi word *Chowghula*, which ordinarily designates an Assistant to the Patil or village headman. Here it means more than this, as the headmen of the Bhandaris were, for instance, known as 'Choggulas or Pattels': Mayor's Court Register of 1729, vol. 101, p. 102.

§ Another inferior Court was that of the Chief of Mahim, who (as Justice of the Peace for that district) had authority 'to decide all Causes between the Inhabitants thereof', subject to an appeal to the Court of Judicature (B.P.P., vol. 4, p. 88).

4. As to the registration deeds of sale, conveyances, mortgages, and wills.

Unfortunately the Instructions to the Court were not entered in the Consultation Diary, an omission which was censured by the Company.[80] The following extract[81] is the only entry that reveals some of the contents:

'Whereas in the Instructions to the Court of Judicature 'tis directed in the first Article that three English Justices shall be a Court for deciding all Causes whatsoever, and in the 21st Article thereof, that when the Cause shall happen to be between English and English there shall be five English Justices* on the Bench, which wee finding to be very inconvenient and not to be complyd with should any of the Members be hindred attendance by sickness when the Cause happens to be between any of them, RESOLVED therefore that wee give additionall Instructions to the said Justices, directing that three English Justices being mett shall make a Court, as well for determining and giving sentence in all Causes between English and English as between all other Persons whatsoever.†

'And whereas in said Instructions there is no time limited for the Persons appearing to plead, between whom the Suit is depending, whereby by the non appearance and delays of one Party much time may be spent in bringing the Affair to a conclusion, RESOLVED that wee insert in these additionall Instructions an Article directing that all Persons who shall not appear to plead on or before the third Sitting Court day next after their Cause is brought into Court shall be non-suited.'

We gain, however, some information about other contents of the Instructions from the following remarks of the Company in their dispatch of 4th November 1719:[82]

'We have perused the Instructions for the Court of Judicature received in the Morice's Packet and find them judiciously composed and such as we hope will answer the purposes designed, that the Vereadores Courts are continued, you allow an appeal from thence to this. We sent you last year copy of the Bombay Charter. You will see by the Powers therein given and which are made over to this Company eno' to answer the foolish cavils of pragmatical or ill designing Persons, who would pretend to question your Authority. At Madrass where you know we have a large number of Inhabitants, the Mayor who is Judge of the Civil Court called the

* Under the deed of Constitution six of the Justices were English.

† This seems to show that the presence of any of the Indian Justices was not essential to constitute a quorum for a trial, and they may have sat only on special occasions. In the Commission of 1727, cited by Malabari, p. 494, they are called *Assistants*.

Mayors Court and with the Aldermen compose it, we never allow any sallary to that office, nor to the President and Council in case of Appeals, and in the Bay, where we have the thing without the name, the members of the Council in their turns as Justices, decide all the Inhabitants differences usually in the Buzars and have no allowance from us, We find in Para. 62 of the Letter of the 30th October and in your Consultation Book that you have settled the Chief Justices sallary at one hundred Pounds a year, and give the reason for so doing. We are very unwilling to make precedents in one place, fearing they may be one time or other used as an Argument to do the same in another. However for the reasons you give we do agree to allow the Chief Justice five hundred Rupees a year Sallary, considering it a new Office and as you say will create a great deal of trouble, and by taking up so much time be a hindrance to private affairs, but this allowance to be only during pleasure and till we see how it is executed, when we shall be able to judge better whether to continue it or not for the future.

'We hope this Court will answer your expectations and please the People. Let it be your care to see the Authority of it kept up, and if there should be any apparent partiality or injustice in any their Proceedings (which we are not willing to suppose and hope there never will) do your utmost endeavours to check it in its first beginnings and prevent a second Example. Remember them always to try the Cause and never the Person, neither regarding the face of the Poor or Rich in judgment. But for fear of what may one time or other happen, we think it best and do therefore direct that according to the practice of Madrass you admit appeals from that Court to the President and Council on any account whatsoever, limitting them to a short day after sentence. If ever you find the appeal purely vexatious, you will know how to check the like for the future. This will be a good method to keep that Court upright in their adjudications. Settle what you shall judge a proper reasonable Penalty to be paid by those whose appeals appear on rehearing to be illgrounded. We observe the Fees at the end of the Instructions appear generally pretty moderate, but we fear they are too heavy for the very poor. Five Xeraphins for an Attachment, Two and a half for a Release, a Rupee for registring a Petition, as much for an Arrest or a Subpoena, tho' but a small matter reckoned here, may be very grievous to the Inhabitants. In our Court of Conscience a Summons is but four pence, be the Person never so rich. Reconsider this and make all as easy as you see fit according to the circumstances of the Persons. The great charges in prosecuting any suit of Law here, where People mostly are well to pass, is accounted a general grievance of the Nation. But surely there is a mistake in the Presidents Proclamation entered in the Consultation Book dated the 5th February, which says that each Person appealing to the President

and Council shall for every such Appeal pay the Secretary Fifty Rupees. Certainly it should have been but five, and indeed that is too much, for in the Instructions Para the 3rd there is a liberty given for any person to appeal if the Suit depending be not under one hundred Rupees, which as aforesaid shall be for any less sum. We must not omit remarking these Instructions tho' of such Importance are omitted to be registered in Consultation, which is a fault the Secretary should be severely censured for.

'In your Consultation of the 13th August we find a proposal made and agreed to that the Fines laid on any Person by the Court shall be applyed towards building a Town Hall* for sitting of the Court and other Publick Occasions, but that the work be left to further consideration. Tho' this is indeed taking so much money out of our Pocket, for we are Lords Proprietors, yet we are not against it, with this Proviso, that the proposal don't influence the Court to lay unreasonable Fines upon any, as thinking they may rather exceed because the sum is to be applyed for the publick benefit. Remember in our Magna Carta there is a Provision or Rule laid down for moderating Fines, viz. A Salvo contenemento,† and yet in cases of very notorious Offences and incorrigible Persons the Fine or Punishment ought to bear some proportion to the Offence, as our Courts observe here.'

The Company thus did their best to ensure cheap, speedy, and impartial justice in Bombay, and as has been pointed out the establishment of the Court was prompted by their Instructions to Boone in 1715. There had been such an interference with the regular administration of justice that doubts had even been raised about there being jurisdiction to decide cases of 'Meum and Tuum', as civil disputes were then styled; and when Boone and his Council reported the erection of the new Court to the Company, they added a request that the Council should be given a Commission to try pirates and murderers.‡ King Charles's Charter of 1668 and the Company's laws of 1669 had apparently then become lost to memory. The Company came to the rescue by sending out a copy of the Charter in February 1719,[83] saying

* This intention was not, however, carried out, except that the fines contributed towards the cost of purchasing the warehouse of Rama Kamati, that was used as a Court-house and Town Hall from 1720 till 1786, cf. Campbell, *Materials*, &c., vol. 3, p. 587, and Edwardes, *Gazetteer*, &c., vol. 3, p. 373.

† This is a reference to the twentieth clause of Magna Carta, providing that a fine for even a grave offence should be fixed with due regard to the offender's means. *Contenementum* literally meant the amount of property necessary for a man to maintain his position as Knight or Baron (Stubbs's *Select Charters*, p. 537).

‡ F.R. Misc., vol. 7A, p. 15. A commission to try pirates was contemplated in 1697 (L.B., vol. 9, p. 570), and another one was prepared in 1721 (L.B., vol. 17, p. 469).

that it 'will sufficiently support your authority in administring Justice', and adding:

'If there be any that will not submit to the authority of the Laws, let them know that they have no reason to expect Protection from them and that they would do well to remove from the Island, for if they continue of that mind you will not permit their stay.'

No reference was, however, made to the Company's Laws of 1669, which had presumably been forgotten; nor was any suggestion made in favour of trial by Jury. Nearly thirty years had elapsed from its ending in Bombay; and even if its prior existence was remembered, there was evidently a preference for a system like that of the Mayor's Court in Madras, by which justice was dispensed by a Bench, subject to an appeal to the Governor and Council. This constitutes the main difference between the former Court of Judicature and the new one of 1718. Other alterations are indicated in the next chapter.

CHAPTER XI

THE COURT OF JUDICATURE, 1718–28

AS already mentioned, the Court of Judicature was restarted on the 25th March 1718 under Laurence Parker, the Deputy Governor, who (as Chief Justice) drew an addition to his pay, which the Council fixed at £100 a year, presumably on the precedent of the salary that had been allowed Vaux,* but which the Company reduced to £62 10*s*. Though the reconstitution of the Court was little more than giving that name to the Bench of Justices that had been sitting from 1716, the Inhabitants of the Island were no doubt 'pleased', as Boone reported they were.[1] Many of them would be able to remember the former Court; and the impartial, speedy, and inexpensive justice aimed at by Aungier had perhaps become a tradition. In any case the institution of regular sittings and the formulation of rules for the Court's government would tend to put the administration of justice on a better basis than it had been for over a quarter of a century.

It was natural that Parker and two other members of the Council, Strutt and Clapham, who had formed the Bench of 1716, should become the nucleus of the new Court. The other English Justices were John Courtney, a Member of Council; Bernard Wyche, who had already had magisterial experience, and Thomas Wilshire, a Free Merchant and Churchwarden.† Parker continued to be Chief Justice until his suspension by the Council on 6th May 1720. His downfall was due to charges of improper conduct that were brought against him by Boone and were held to be proved at his trial by the rest of the Council.‡ The alleged improprieties mainly concerned the performance of his duties as a Member of Council, but one or two also bore on his judicial work. Thus Boone objected to his employing soldiers on Court duties, such as taking debtors to Dongri Fort for confinement and escorting prisoners to and from work, on the ground that he had 'sepoys or peons sufficient for such occasions'.[2] Parker pleaded that

* See p. 153 *ante*.

† He had been a member of Council at Surat, but resigned the Company's service in 1715 (Consltn. of 20 July 1715 in B.P.P., vol. 4). As to his being a Churchwarden, see Consltn. of 27 May 1718 (B.P.P., p. 88).

‡ A full account of the trial will be found in Malabari's *Bombay in the Making*, pp. 291–327.

it had been customary for 'the Second', i.e. the Company's servant next in rank to the Governor, to have the power of ordering a guard and otherwise using soldiers for such duties, and that he had complied with the Governor's order not to 'meddle with the soldiers' ever since he had received it in 1717 or 1718.[3] Quite apart from usage, there was probably considerable excuse for this employment of soldiers, as the staff of the Court, the whole expense of which had to be borne by Court fees and other receipts,* must have been on the slender side. Another complaint against Parker was that he flouted the Governor's authority by insisting on exercising jurisdiction over one of the garrison soldiers, in spite of the Governor's direction that the case should be dealt with by his superior officer.[4] The charge was one of 'cutting a cow' of Rama Kamati, who was then a 'power in the land',† and it may be that this influenced Parker in taking steps to satisfy himself as to the evidence against the man, so that if it established his guilt there would be more assurance of his being duly punished than there might be if he was at once handed over to his commanding officer. The latter further complained that Parker remanded the soldier to jail, after the evidence had failed to substantiate the charge against him. Parker said he did this on Rama's assertion that 'he could get some further proof against him on a second or third examination'.[5] He no doubt acted harshly in remanding the accused to jail on the mere possibility that some evidence against him might be forthcoming later; but this was a common procedure in those days,‡ and he at any rate showed his impartiality by a final order of acquittal. What, however, affords stronger evidence of judicial qualities is the strenuous protest that he made against Boone's use of thumbscrews to torture a witness in the trial of Rama Kamati for treason. 'It was', he said, 'against the laws of our country to extort a confession from any man; and this having been done with a servant of Rama Comatee on the said trial, he could not set [sit] there with a safe conscience.'[6] He absented himself accordingly during the rest of the trial, though he generally put his absence down

* This is clear from there being no debit of such charges in the Bombay Accounts that are in the India Office, as there would be, if the Company bore them; and their orders were that such expenses should be defrayed out of the fees and fines, cf. p. 92 *ante*.

† Cf. Douglas, *Bombay and Western India*, vol. 1, pp. 94, 95. He then held numerous offices, was wealthy, and enjoyed the confidence of Boone and his Council (see my article on him in *JBBRAS* for Dec. 1933, vol. 9, nos. 1 and 2, pp. 1–25).

‡ The Court Registers of 1723–4 and 1726 contain several similar instances.

to indisposition; and this was the basis of one of the charges of improper conduct brought against him.[7] In fact it was probably the main reason for the attack made by Boone on Parker in the Memorandum drawn up by the Governor and placed before the Council on 13th April 1720, two days after Rama Kamati's trial had ended.[8]

John Braddyll, who succeeded Parker as Deputy Governor, was also appointed Chief Justice in his place.[9] He had supported Parker's case and voted against his suspension, so that his promotion was not due to any interested conduct on his part. In July 1720 he represented that he could not do work as 'Manager of stopping the Great Breach' as well as that of Chief Justice and Accountant, and was relieved of the former post.[10] His tenure of the Chief Justiceship came, however, to an end in much the same manner as had befallen Parker. In February 1721 he was in open conflict with Boone and the rest of the Council. It started over a naval officer, Lieut. Joshua Wise, who had been committed to jail pending his trial on a charge of incitement to mutiny during an expedition against the Angria.[11] Braddyll considered the confinement illegal without a warrant from the Council, and refused to sign it on the ground that the depositions against Wise did not justify his imprisonment.[12] He also presented to the Council a formal complaint, signed by himself, Parker, who was still in Bombay giving trouble to Boone, and seven other Englishmen, accusing Major Vane, the Company's Engineer at Bombay, of murder and other crimes of violence.[13] The charge of murder arose out of events that had occurred over two years previously. The prosecution story was that Vane, having had some money stolen and suspecting his Mohammedan slave as the thief and a Bhandari as an accomplice, who had received the money, had them both arrested and tied to a post, whereupon he proceeded to whip them severely with a view to induce them to confess. Failing in this, he had 'matches' (i.e. wicks or cords of combustible material) lit between their fingers and on other parts of their bodies, with the result that they were badly burnt and died a week or so later. In the inquiry before the Council, the main allegations against him do not appear to have been denied and were clearly proved; but the Doctors, who attended the victims of this torture, were not prepared to swear to their injuries being the cause of death, and Boone in his summing-up said he thought Vane's intention was merely to discover the stolen money, and not to kill them. The majority of the Council concurred, and Vane was released on a bond to embark for England

and abide his trial there, if prosecuted.* There can be no doubt that a crime had been committed and would have met with deserved punishment under the Indian Penal Code in later days; but the delay in making the complaint was naturally commented on by Boone, especially as Parker was Chief Justice at the time of the occurrence and was empowered to take action upon the information that he admittedly received from the father of the deceased slave.† It is certainly detrimental to Parker's and Braddyll's good faith that they made their formal accusation so long after the event; and the fact lends support to Boone's allegation that there was a plot to disparage and supplant him in the government of Bombay.‡

However that may be, Boone lost no time in a counter-attack on Braddyll. On the 28th March 1721 he denounced him in Council, the main charge being that, under the pretext of seeking justice, he had attempted to disturb the public peace and welfare.[14] Braddyll, in denying the charge, said he had been 'endeavouring by honest and laudable means to bring the greatest offender that perhaps was ever heard of in these Parts to publick Justice: sorry I am to see he has such Friends'.§ The Council's inquiry resulted in a unanimous finding that the charges were made good, and Braddyll was (like Parker) dismissed the Company's service.‖ The post of Chief Justice was then held for

* Consltn. of 24 April 1721 (B.P.P., vol. 5). The proceedings against Vane are recorded at length between entries of 29 and 30 Dec. 1721. There were other charges of violence against him of a less serious nature and not so substantiated. He was subsequently released from the obligation to go to England and was reinstated (Consltn. of 24 Nov. 1721), but died a few months later (Consltn. of 4 May 1722, B.P.P., vol. 5).

† Proceedings of 25 Feb. 1721. Parker and Braddyll alleged they had spoken to the Governor about it in 1720 (i.e. after the quarrel between them and Boone had started), but Parker admitted they had made no regular accusation prior to the one of 1721 (Progs. of 25 Feb., 1 March, and 30 March 1721).

‡ Lieut. Wise was supposed to be the ringleader in this plot, and in Nov. 1721 he confessed to it and said his chief object in accusing Vane was 'to get him displaced that he himself might more easily effect the intention . . . of his seizing the person of the Governor, which it was thought would be impracticable when Vane had any command: the reason given was that the soldiers feared Vane more than the Devil' (Consltns. of 5 and 14 Nov. 1721, B.P.P., vol. 5).

§ Consltn. of 4 April 1721 (B.P.P., vol. 5). Braddyll alleged that Vane was a favourite of the Governor; and Lieut. Wise in a letter of 3 April 1721 said he was informed that Vane was a powerful enemy whom the Governor dared not disoblige, not having any one 'so bloody as to execute his [Boone's] commands as he [Vane] was, for he was a person that would stick at nothing'.

‖ Consltn. of 4 April 1721 (ibid.). The Company, however, reinstated him (dispatch of 24 March 1722, L.B., vol. 18, p. 244), and he took his seat as Member of Council again on 23 Dec. 1723.

short periods by no less than four Members of Council, generally the one who was acting as 'third' in Council.[15] In February 1722 John Courtney, an original member of the Court, who was then Deputy Governor, became Chief Justice and held the post till 16th October 1723.[16] He was succeeded by Robert Newlin, the fifth Member of Council, who only held the post for two months. Then came John Hope, the second in Council, who kept the appointment for three years from 1st January 1724 to 20th January 1727.[17] John Braddyll, who had been a member of the Court for the same period, then again became Chief Justice, but resigned towards the end of 1727.[18] He was succeeded by Robert Cowan, the second in Council, who was still in office when the Court was abolished in 1728.[19]

Meanwhile the composition of the Court did not vary much, except that the number of English Justices was reduced from six to five.* These generally consisted of four Company's servants and one 'free merchant'. Mr. Thomas Wilshire, who held the latter position, was in August 1720, on his intended departure to Europe, succeeded by Mr. Ephraim Bendall,† who remained a member of the Court for nearly seven years up to 1st March 1727, when his place was taken by Mr. Hezekiah King,[20] a Member of Council. The other members of the Court during the period 1723–7 were Messrs. Braddyll and Percival, Members of Council, and Thomas Yeomans, Assay-Master in the Mint, till his death in November 1725,‡ when his place was taken by Henry Lowther, a Factor, who became a Member of Council in 1727.§

The Court was thus mainly formed of Members of the Governor's Council; but this does not appear to have unduly affected its independence, as is shown by the conduct of Parker and Braddyll, and some other instances that will be mentioned later. An important addition

* Thus there were five in May 1726, cf. Malabari, p. 434. One of these, however, being 'Chief at Mahim', was frequently absent from the sittings.

† Bom. Diary 1A, p. 211. He was a free merchant, who had been previously in the Company's service at Surat. He was also one of the Trustees for building the Cathedral, see Cobbe's *Bombay Church*, pp. 29–31.

‡ Bom. Journal of 1725–6, p. 65. He had been appointed in March 1721 (Consltn. of 11 March, B.P.P., vol. 5), and he left a legacy of Rs. 2,000 to the Bombay Hospital (Consltn. of 15 Dec. 1727, B.P.P., vol. 6).

§ Cf. Register of the Court for 1725–6, p. 1. Philip Anderson in an article in the *Bombay Quarterly Review*, vol. 3, p. 351, describes Lowther as one 'whose restless and unscrupulous mind made him the most conspicuous man of his generation in Bombay and Surat'. For further information about him, see n. † on p. 221 *post* and Arnold Wright, *Annesley*, &c., pp. 338–42.

to the non-official element of the Court was its inclusion of four Indians, who are referred to in the Registers as the 'Black Justices'. In 1718, as already mentioned, they each represented one of the principal communities in Bombay; and entries in the Court Registers of 1726 and 1727 show that this practice continued.[21] They appear to have attended at sittings, although their names are not usually mentioned in the headings giving the names of the Justices present, for the 'black justices' are mentioned as taking part in the proceedings of the 7th September 1726, without any reference to them in the heading for that date.

This inclusion must have strengthened the Court's efficiency in dealing with crime committed by the native inhabitants and their disputes. In addition the Court frequently availed itself of the services of the *Vereadores*, a term primarily applied to an alderman or municipal officer.[22] They were a survival from the Portuguese régime: thus the Vereadores of the city of Bassein were among the signatories to the Deed, under which Humphrey Cooke obtained possession of the Island.[23] The Court of Directors had directed in 1715 that in improving the arrangements for justice the Governor and Council should take care to preserve their 'antient power';[24] and their judicial powers were accordingly continued, subject to an appeal to the new Court. Their main functions, however, seem to have been more like those of Commissioners to take accounts, or to inquire into a particular matter and report to the Court. Instances of this will be found among the cases cited in the last chapter of Malabari's *Bombay in the Making*;[25] and similar references to the Vereadores are contained in the Register of 1723–4.[26] They also gave 'certificates' to claimants, who produced them in Court and relied on them; but they were sometimes overruled.* The Vereadores, who were elected by the landholders,† had other duties such as the mustering of the militia and the collection of

* For such certificates see Malabari, pp. 467, 468. A similar case appears in the Court Register progs. for 18 June and 24 June 1724. An instance of the certificate being overruled is the case cited by Malabari at p. 467.

† Thus the Vereadores described themselves as representatives of the Inhabitants of the Island and agreed to the proposal for the imposition of a militia tax 'in behalf of themselves and other possessors of estates' (Consltn. of 28 May 1711, B.P.P., vol. 4, pp. 54, 55). The deed about it shows that there were then 5 Vereadores for Bombay, one of whom was Rama Kamati, and the same number of Mahim (Consltn. of 22 Nov. 1711, B.P.P., vol. 4, p. 122). A Consltn. of 25 Feb. 1726 (B.P.P., vol. 6), fixes a date for the election of new Vereadores, in view of the time expiring for the old ones.

taxes.[27] They also appointed guardians of minors, when authorized by the Court to do so.[28] In this respect they appear to have superseded the *Panchayats* or Chambers established by Aungier, which had probably ceased to function actively. Caste or community 'headmen' are, however, mentioned in the Registers. Cases concerning Mohammedans (or Moormen, as they were then generally called) were often referred to the 'Codgi' (Kazi) and 'Chugulars' (Chowghulas)* for inquiry and report. This was done in criminal, as well as civil, matters.[29] The following extract from the Register of 1724[30] seems to show that the Kazi also had original jurisdiction, subject to an appeal to the Court of Judicature:

'Isupjee's Petition being taken into Consideration, the Court reverse the act of the Cadjee's whereby he had made over his Oart and Batty Grounds to his former wife Sick and Order him to allow her a maintenance according to Custom, being a Parah of Batty and one Padoe† monthly and one pair of Shoes, two Cloats and two Gogoras‡ yearly, which is given in by the Cadjee [as] a reasonable and just allowance; upon the petition of severall Creditors of Isupjee's the Court Order his Oarts and Batty Grounds to be sold for payment of his Debts, which the Creditors are ordered to prove and bring their Witnesses and Vouchers to the Register [Registrar] to be examined Immediately.'

This accords with the Commission given by Sir John Gayer to one Kazi Ibrahim on 30th May 1694 'to be Chief Judge and decider of all difference that may happen in your caste—the Moors—on the island of Bombay'.[31] But their jurisdiction was probably confined to disputes about inheritance and similar matters; and there is no evidence of any other native tribunal of this kind. Even the Hindu Pandit, who was an officer of the Recorder's Court,[32] does not seem to have existed in these days. Thus in 1724 points of Hindu law were referred in one case to 'severall Merchants', and in another to the 'casts', that is presumably to the headmen of the caste concerned.[33]

The Court, however, generally had simple cases to decide, and usually sat only once a week on Wednesdays,§ and sometimes at longer intervals; but, if necessary, they sat on other days and did so consecutively in a long trial. It administered justice in a rough and ready but

* See n. ‡ on p. 173 *ante*.

† The *pardao* was the same as the *zerafin*.

‡ This represents the Hindustani word *ghaghrā*, a petticoat.

§ Thus Wednesday is referred to as the usual Court day in the progs. of the trial of Capt. Bates, as reported to the Governor and Council, Nov. 1723, p. 3.

common-sense way, which at any rate ensured cheap and speedy decisions. It was untrammelled by Codes or legal precedents of a binding nature, and there were no lawyers to argue cases. The existence of the Company's Laws seems to have been completely forgotten, and no reference is made to them in the Registers.* Only a faint trace of them persisted in the punishments awarded. Thus thieves were required to make restitution for the property stolen, if their means enabled them to do so;† and similarly the usual punishment for unlawful wounding included (as in the Company's Laws) the payment of damages to the victim.‡ Imprisonment with hard labour by condemning convicts 'to work at the Breach', either 'during pleasure' or for a definite period, also continued. Banishment from the Island was, as in Aungier's time, resorted to in cases where this was thought desirable; but the Governor's consent was required to this sentence.§ Fines were seldom imposed,‖ and whipping was the main punishment, for women as well as men. The maximum sentence was ordinarily thirty-nine lashes; but the whipping was often directed to be repeated twice or three times, and in the case of one woman was ordered 'during pleasure to be continued till she reveals where the [stolen] jewels are'.[34] This was brutal according to our notions, but was customary at that time[35] and for many years later. On the other hand theft of property worth forty shillings or more was not treated as a capital offence, as it then was in England.

At the same time, the Court had regard to the Law of England in cases where it could properly be applied; and the trial of offences seems to have been conducted with fairness to the accused. We get a clear insight into the Court's conduct of important criminal trials by the full report of a case of infanticide that is contained in the Register of

* Edwardes, *Bom. City Gazetteer*, vol. 2, p. 211, says 'there were no codes except the two rough compilations framed in Aungier's time'. He refers apparently to the 'rough code' of Wilcox mentioned in n. 2 at p. 207 of the same volume; but this was not a code and had been forgotten long ago.

† Cf. the case of Narran Goldsmith cited by Malabari, p. 442.

‡ Cf. the statement of the Court as to the usual punishment for unlawful wounding being 'damages, a severe fine and imprisonment' (Malabari, p. 460).

§ Thus in the progs. of 11 March 1726 the Court directed the prisoner (suspected of being privy to her husband's murder) to 'be banisht off this Island, the Governor being pursuant to the Instructions given to this Court first made acquainted with it'. Malabari, p. 449, cites another case, which mentions that leave of the Governor should be 'first obtained'.

‖ Generally these were only substituted for corporal punishment as an act of clemency at the special request of relatives, cf. Malabari, pp. 448, 451.

1726.[36] The accused were Raghoosett Muckonsett, an influential goldsmith employed in the Mint,[37] his sister Baccaboy, and another goldsmith, Savajee Daramsett. The mother of the child said to have been murdered was Gozay, the widowed sister-in-law of Raghoosett, and Savajee was said to be its father. The informant was another goldsmith called Narranjee Ballajee. An Indictment was drawn up by the Registrar, alleging that Baccaboy, 'not having the fear of God before her Eyes but being moved and seduced by the Instigation of the Devil' killed the child at its birth, and that the other two (as well as Gozay, who had gone out of the jurisdiction of the Court) abetted her in this crime. The Court, after consulting precedents, allowed the two men out on substantial bail. The accused were furnished with a copy of the Indictment, and allowed to conduct their defence through Savajee, who understood English; while the Prosecutor was 'directed to apply to the Register for what Assistance he wanted for Carrying on his Prosecution'. An Interpreter, who understood English, Portuguese, and the 'Jentue' language, was 'solemnly sworn after the manner of the Jentues to act justly and faithfully in said office, and Sharma Chara Principal Bramine was ordered to attend to swear all the Parties concerned', which was done 'on the head of a Cow, being the most Solemn Manner among the Jentues'. The Prosecution evidence having been taken, 'the Prisoners were acquainted this was the proper time if they had any Questions to ask the Witnesses and were directed to state the same to the Court who were the proper Judges' whether they should be allowed. Savajee thereupon cross-examined the Prosecutor very effectively, to show that his evidence was all hearsay—Narrun alleged that his informant was a 'slave-wench' of Savajee's, who had since died —and that there were serious discrepancies as to the identity of the slave-girl and the alleged time of her death. The evidence of the other witnesses did not connect the accused in any way with the alleged crime and they were not cross-examined. One of them, by name Apsett, who denied knowing anything about the matter, but who was shown to have actually petitioned the Governor regarding it two years previously, was 'remanded in Custody . . . for so Notorious a Crime' as perjury.

'The Prisoners at the Barr were then told the Court would hear what they had to say for themselves.' They all denied their guilt, and the two men said it was a plot of their enemies, who had engaged the Prosecutor, 'a Person of a very bad Character guilty of many ill

Practices, very Poor, of a very ill Disposition and thereby might be induced to make this attempt' to ruin them. Savajee supported this plea by producing a signed and witnessed statement of Narrun, dated 4th January 1724, in which the latter asserted that one Sirpat and two other goldsmiths had offered him a bribe of Rs. 200 to accuse Savajee and another goldsmith called Cundajee of the crime, though he personally knew nothing about it. Narrun admitted that he had signed the statement, and that he had 'told Savajee there was a design to accuse him before the Governor, but [he] does not Remember the other contents in the said Paper which the Bramine wrote as he pleased'. This was contradicted by the latter and the other two witnesses to the statement, who deposed that it was a purely voluntary act of Narrun's and was read to him, before he signed the document. Sirpat also lent corroboration to the genuineness of the statement by his admission that he had asked Narrun what he knew about the matter, though he denied that he ever told Narrun that Savajee was to be ruined. Savajee also successfully attacked Narrun's allegation that he had paid him Rs. 60 as a bribe not to accuse him to the Governor and had promised him a further sum of Rs. 100, for the repayment of which Savajee had taken his bond. At his instance Narrun gave details as to this, which were denied on oath by three witnesses whom he had named. In conclusion Savajee asked the Court to allow him 'to Prove that the said Narrun was of a very Scandalous Character guilty of a great many foul actions', including fraudulent crimes for which he had been sentenced, and of which he gave instances, 'and therefore he hoped his [Narrun's] Information would have no weight Especially since he had disproved so much of it'. He further pointed out that the remaining evidence did not affect him.

The entry of the Proceedings on the 23rd February 1726 gives a full report of the summing-up by the Chief Justice, John Hope, which may be quoted in full as showing his impartiality in the case, though it had been referred by the Governor to the Bench for inquiry. It runs:

'Proclamation being made . . . the Prisoners now standing upon their Deliverance.

'The Chief Justice then observed to the Court that this was a matter of the greatest weight that could come before them, wherein not only the lives and liberties of the subject were concerned, but what is much dearer especially in a place of Trade where all were more or less Merchants their Creditt and Reputation, as he doubted not they were as equally tender in

these cases as himself, so he was fully perswaded they would agree with him in opinion [that] this Court had proceeded in the best manner that was in their Power, whether the Cognizance of the matter was left as a Commission of Oyer and Terminer or only as a grand Inquest (so far as to them should appear) that therein they had acted as strictly and justly as they ought or could, whatever errors there might be in the forms, which however had been to the best of their knowledge and Discretion and as the Nature of the place and Constitution would bear, all which he would endeavour to recapitulate and sume up in the shortest manner he could, when they might proceed to judgment;

'and in the first place he would take leave to remark that the greatest inducement besides the several precedents Produced for his granting Bail to the two Prisoners Ragoosett and Savajee was the known bad Character of the Prosecutor and the foundation of what he went upon, vizt. hearsay and that too from a Slave wench of the Prisoners and she dead, which Circumstances ought and would have quashed the Prosecution, had it not been backt and strengthened by the letter from the Hon. the Governor to whom upon the Examination of several of the Cast there appeared a great deal of truth, at least sufficient matter for enquiry upon which as they very well knew this Court had Proceeded to a Tryall.

'This being premised he would go on in order and first begin with Narrun the Prosecutor and his Information; this the Court having before them and being well acquainted therewith, he told them he need not repeat. That the Prosecutor says he knows nothing personally but what relates to himself and must call the other witnesses to prove what he has alledged, so that he cannot properly be said to be an evidence but an Informer and that too of the worst sort, being almost, if not altogether, under a legal Incapacity having been Convicted and standing on record for several notorious frauds and Practices, of a Desperate fortune and manifestly under the Temptation of want, and consequently there ought to be a strong Presumption [that] Duty or Honesty were not the motives that induced him to inform, besides the Paper signed by him, his Declaration in Court and to Sirput that he knew nothing nor does now of the matter but by hearsay, has made him as Obnoxious to the law as the Prisoner at the Barr, tho perhaps in a lesser degree, it being expressly the Law of England that if a Person know not what he swears, it is a false oath in him, tho he may swear the Truth and yet be Perjured, and consequently Prosecuted for the same, which he was concerned to say was the case here, he having unadvisedly and ignorantly convicted himself; this being so obvious need not be enlarged upon, were it not that the Court being of Councill for the Prisoners as well as their Judges, what made for them as well as what made against them, ought to be put in a true light;

'but to proceed to the witnesses, the only two that say anything to the purpose are Cundsett and Madosett; the last who is brother to said Gozay and to whose house at Mazagon she went from Ragoosett, says that his sister Gozay was then Eight months gone with Child, and that after staying there five days she was fetcht away by Cundsett and Sirput; they both acknowledge they fetcht her from Madosetts house and brought her to Cundsett's; Sirput (who by the way refused to be sworn) says he did not perceive she was with Child, but Cundsett upon Oath affirms she was with Child and agrees with Madosett that she was Eight months gone or thereabouts, that she stayed in his house about a month and then went away in the night by herself, and what became of her afterwards he says he does not know, till about a month afterwards when she returned without her bigg belly and was Carried off the Island by Rama Gunba to Gorebunder. This is all the material evidence that had been given, for what Apsett said the second day when plainly convicted of falsity the first (day) was only hearsay from Madosetts family, and Chillon says the very same;

'the whole therefore that is given in Evidence is Gozay was with Child, went when eight months with Child or thereabouts to Mazagon to her Brother Madosetts house, staid there five days and then was conducted by Sirput and Cundsett to the said Cundsetts house in Bombay, continued there about a month and then went away in the night by herself, returned about month after to the said Cundsetts house without her bigg belly, and was then carried off the Island by one Rama Gunba to Gorebunder; how this effected [affected] the Prisoners at the Barr he could not see. Baccaboy and Savajee were not so much as mentioned but in the Information, and what weight that bore they were all sensible; that Ragoosett is no further concerned in the Evidence given but that said Gozay is his sister in Law [and] staid in his house till she was Eight months gone with Child or thereabouts, which is all that is said relating to him. He observes there is the Evidence of two Persons that Gozay was with Child and a strong Presumption she was delivered and the said Child put out of the way by some means or other, but when or where or that said Child was murdered does not appear, that had this Information been given in at or near the time when she was supposed to have been delivered and before the woman was gone off the Island (which was the duty of her Brother or such as knew it to have done) the truth might Probably have been found out, but as matters now stood it was rendered very difficult, if not Impossible, and that it was a very hard case upon the Prisoners at the Barr if found not Guilty and acquitted to suffer thus much for the Malice of some of their Enemies of the Cast when no better proofs could be brought against them. He further adds that the Conspiracy entred into by Sirput Pragjee and the rest to carry on this affair was very notorious and if it could be proved would fall

very heavy on them, for if convicted of the Conspiracy the judgment, to speak in the terms of the Law, is Terrible, being called a villanous judgment and the Punishment very severe; and [he] then concluded with telling the Court this being the Case [it] required no further Explanation, therefore he would put the Question, beginning with the [? junior] Puisne Justice—

'Are the Prisoners at the Barr by the Evidence you have heard jointly or severally Guilty of the Charge in the Indictment—

'To which they severally answered, the Chief Justice giving his Opinion Last—

NOT GUILTY

'Apsett being then brought to the Barr, The Chief Justice acquainted the Court that he being convicted of Perjury the Punishment for said offence was the Pillory fine and Imprisonment, but that he being very poor and very old he recommended it to them to remitt Part of the Punishment and only sentence him to stand next Fryday the space of one hour in the Pillory, a Paper of his crime being thereto affixed and then to be discharged paying his fees.'

The Proceedings in the case were then submitted to the Governor and Council, who imposed a fine of Rs. 2000 on the Caste,[38] on a principle of collective responsibility, to which effect is still given in certain cases in India.

It will be seen that Hope had an accurate knowledge of the English law of perjury; probably he had a text-book, such as Coke's *Institutes* to refer to. At any rate there was an 'Abridgment of the [English] Statutes' available, as is shown by the following entry relating to a gaming-debt:[39]

'Mr. John Lambton, the Secretary, being appointed by the Hon. the Governor and Councill to take care of the effects of Mr. Lee Harcourt Factor deceased Intestate having a demand made upon him by Capt. Gibson of Thirteen Hundred and ten Ruppees, being a Note under his hand mentioned to be for Value received, but it appearing by Capt. Gibson's acknowledgment that it was an Account of Play, the said Mr. Harcourt being indebted to several Persons on the Island who have made their claims on the Secretary which he could not satisfy till this affair was decided, The Court examining the Abridgment of the Statutes find an Act of the Ninth of Queen Ann That all securities for excessive Gaming are entirely void, Decree accordingly and Dissannull said Note, and Whereas said Capt. Gibson did receive on account of said note from said Lee Harcourt before his Decease twenty seven Ounces of silver Thread,

the Court agree that he keep the same and that he dont stand charged therewith.'

A knowledge of International Law was also shown in the case of the captured *shibar* that is reproduced by Malabari at pp. 462, 463.* The original claim to possession was dealt with by Hope and his colleagues on 9th February 1726, and they had a similar case before them on 11th March 1726, in which they very properly ordered reasonable salvage expenses to be defrayed by the claimant.

The Bench, therefore, had due regard to English or other law, so far as it was known to them, in appropriate cases in spite of their having no Bar to help them.† They also seem to have given a fair hearing to the parties, though they sometimes acted on suspicion, as opposed to proof, of a crime in a way that would not be done nowadays. Thus we have the following entry in the proceedings of 12th January 1726:

'Keigth Thackau and Queroo Two Brothers Committed on suspicion of robbing Bendoo Bandarees House were brought to the Barr and Circumstances appearing against them, though not sufficient to Convict them, they having an Ill Character, The Court order them Fifteen Lashes each and Discharged Paying their fees.'

They even sanctioned what would now be looked upon as an improper attempt to obtain a confession, as shown by an entry of 24th August 1726:

'Pasqual D'Souza receiver of the Hon. Company's Pention at Mahim informs the Court that about June last past he was robbed of sixty-two Rupees or thereabouts with which he charges his Cofferee Bernardo, who Confessed he stole the money and deliver'd it to one Lucas D'Mell who being a Prisoner on this Accusation is now Confronted with him, but

* Governor Phipps had a long and acrimonious correspondence about this case with the Viceroy of Goa, in the course of which the Viceroy complained that Phipps had preferred 'a black fellow owner of the shybar' to the Viceroy, to which Phipps replied the English law was no respecter of persons. It ended, however, in the Viceroy admitting the justice of the decision, though he regarded this as a side-issue (B.P.P., vol. 6, under dates 15 April, 13 May, 17 June, 16 and 23 Sept., 14 Oct., 4 and 11 Nov. 1726, 10 Feb. 1727 and 28 July 1727).

† In only a few cases is there any mention of Attorneys (e.g. the one cited by Malabari at pp. 474–6), and it is doubtful whether they were professional lawyers: they would rather seem to have been merely agents for appearing and making applications. Thus Antonio D'Silva, mentioned at p. 474, was the Portuguese Registrar of the Court, when it started (B.P.P., vol. 4, p. 149). This, however, is not conclusive as to D'Silva not practising, in view of the close connexion that existed at that time between Attorneys and members of the clerical staff of the Courts, cf. Holdsworth's *History of the Law of England*, vol. 6, p. 435.

denyes the fact, but having made overtures to satisfie the Plaintiff, and the Cofferee being positive he delivered the money to him, discribing the Circumstances, when, where and how, The Court being willing if possible to find the Money continue them in Prison till the next Court day and in the meantime order the Marshall to endeavour to make them confess by fair promise of remitting their punishment and the like.'

The sequel on the 7th September 1726 shows, however, that the Justices did not allow themselves to be unduly prejudiced by the failure of the Marshall's efforts:

'Barnardo Cofferee being at the Barr but varying in his Story and there being no other Evidence against Lucus D'Mell and he offering his Oath that he never saw or received the money or had any Communication with said Cofferee the Court accept of it and release him, ordering the Cofferee 39 Lashes in the Publick Bazar and then to be sent to the Breach during Pleasure.'

Another departure from present-day ideas was that members of the Bench often took part in the hearing of cases in which they were concerned;[40] but it must be remembered that this was the only original Court of Justice in Bombay, and it does not follow that the other members of the Court were unduly influenced in such cases. As remarked by Kaye,[41] such proceedings 'are to be judged, not by reference to the state of our judicial administration, either in England or India at the present time, but to what it was, even in Great Britain, at the close of the 17th and the commencement of the 18th century'.

The infanticide case, of which an account has been given, serves to show how the investigation and punishment of crime were hampered by the absence of any regular Police,* as well as by the ease with which an accused could put himself outside the jurisdiction of the Court. The hostility of the Portuguese and the Angria, Bombay's near neighbours, prevented any pursuit, or other counter-measures.

Perjury was an exception, in so far as, if detected by the Court, it was dealt with in a very summary fashion. An instance of this occurred in the infanticide case. Similar steps were taken to punish complaints

* Boone and his Council had a Company of 30 Sepoys raised in 1721 'to patrole within the Town Walls and Buzar at nights', the expense to be defrayed by a tax on the inhabitants according to a list that was prepared (Consltn. of 11 Sept. 1721, B.P.P., vol. 5); but difficulties were experienced in collecting the tax, and the Sepoys were disbanded in 1723 (Consltn. of 8 Feb. 1723, B.P.P., vol. 5). In a case of suspected murder, one of the Justices himself investigated the matter on the spot: see Judges' Report in Consltn. of 7 June 1723 (B.P.P., vol. 5, p. 117).

that were considered frivolous or malicious. Thus a Mohammedan woman, who charged her husband with a grave offence, was reported by the Kazi to be actuated by a desire to obtain a divorce, and was ordered fifteen lashes 'for troubling the Court'.[42] This sounds harsh, but corresponds to the summary punishment that criminal Courts in India can still inflict upon a complainant, whose information is held to be false or vexatious, though in accordance with the modern disparagement of whipping a fine is substituted as the prescribed penalty.

There was a marked departure from the previous practice of the Court in the disposal of cases in which a capital sentence could be imposed, such as those of rape and murder. The Court, instead of itself passing judgement and (in case of conviction) sentence, referred all such cases to the Governor and Council, with a full account of their proceedings.[43] They did this even in cases where the accused's guilt was 'very plain' or was admitted;[44] and this procedure was probably enjoined in the 'Instructions' to the Court, on the ground that it could not lawfully be empowered to pass capital sentences, or that it was desirable to reserve this power to the Governor and Council.* A case in which a ship commander, Capt. Bates, was accused of rape and murder,† has some points of interest. The informer, a seaman called Elliot, avowedly proceeded on mere hearsay, and relied on two witnesses, whom he asked the Court to subpoena and examine. These were Mrs. King, wife of a Member of Council, and the Rev. Dr. Sawbridge, the Chaplain at Bombay. The Court decided that 'notwithstanding it was not Customary or Methodical upon so General an Accusation, and no Circumstances of Guilt sworn to, to commit any person, yet to obviate all Clamour that might arise, and to show their readiness to do Justice, they would take proper care that Bates should be forthcoming and a Declaration of what they had to say in the Affair

* Cf. the similar view taken by Sir John Gayer in 1702, as mentioned on p. 167 *ante*.

† Court Register of 1723–4, pp. 3–8. The case started on 27 Nov. 1723 and was disposed of on 10 Dec. Elliot was a brother of the woman alleged to have been violated, and belonged to H.M.S. *Lyon*, one of the vessels sent out under Commodore Thomas Matthews to suppress piracy. The latter (who supported Elliot's complaint) was for his 'brutal manners' nicknamed 'Il Furibondo', and he gave Phipps and his Council a lot of trouble by befriending persons with whom they or the Company had a quarrel and writing 'scurrilous' letters, which they eventually agreed to ignore (Consltns. of 21 and 26 Nov. 1723, B.P.P., vol. 5). For further information as to Matthews, see Col. John Biddulph, *The Pirates of Malabar*, p. 169 seq., and *JBBRAS* for Dec. 1930, pp. 168–70.

Demanded of Mrs. King and Dr. Sawbridge'. Both of them said their knowledge was confined to statements made by the deceased, Mrs. Mears, before her death; and only the statements to Mrs. King tended to incriminate Bates, so far as the charge of rape was concerned. At the next hearing the Court resolved that the Prosecutor should enter into a Recognizance of £200 'to make good his charge against Bates', as a condition of their proceeding further in the matter. He and his friends agreed to give this, but asked that Mrs. King and Dr. Sawbridge should be examined *viva voce* in Court. It was decided that the latter should attend 'to answer such questions as shall be thought proper and necessary', but Mrs. King's personal appearance in Court was dispensed with in view of her 'Sex and Character'. Elliot was told that, 'if he had any material questions to ask they should be answered in writing upon Oath before a Justice &c of the Court'. He thereupon filed a paper of Interrogatories to be put to the two witnesses. Those for Dr. Sawbridge included a question whether he had 'heard that Bates sent a present to the Governor some time after the report of this Villianous Act'. Elliot also desired that the Governor might be sworn, and asked whether the deceased's husband did not make a complaint to him, and what answer he gave him.* This drew from the Governor the following letter to the Court:

'To the Worshipfull the Bench of Justices of the Court of Judicature in Bombay.

Gentlemen,

It is not that I would be thought to Influence you in behalf of the person now accused before you of a Beastial Rape. On the Contrary I wish may attend him the full Deserts of his Crime if he is Guilty, but I write you this to put you in mind the Respect that is due to the Authority of your Court which you Suffered yesterday to be Invaded in the highest degree by receiving Interrogatorys in Writing from the pretending Prosecutors, wherein my Character (being the Chief Magistrate on this Island) is Scandalized without calling the Offender to make good the Scandall he there Insinuates; however since you have Indiscreetly received those Interrogatorys, if the person will give one thousand pounds Security to stand to such Punishment and Damages as the Law gives in such Cases, I

* It appears that the husband of Mrs. Mears had complained to Phipps, who arranged for Bates giving pecuniary reparation, said by Elliot to have been £100 (Consltn. of 21 Nov. 1723, B.P.P., vol. 5). Phipps said he was informed this was desired by the woman and her husband; but there was force in Matthews's assertion that it was compounding a felony and protecting Bates from punishment under the criminal law.

will declare upon oath what he there requires, though the same be unreasonable and against Law and Equity.

'Or I will excuse his Demanded Security, if he will declare his Author upon sufficient Testimony and such as may be called to Justice here.

'Given under my hand in Parell this fifth day of December one thousand Seven Hundred twenty three. William Phipps.'

The Justices replied that this letter

'gives us no small concern not being aware of having Incurred Your Honour's displeasure, but we humbly hope when we have put our proceedings in a true light they will appear sufficiently and Candid, and not very derogatory to your Honour's Character and Dignity which we shall always revere and maintain against all attempts whencesoever they arrive, and that if we seem to have omitted either it will appear to your Honour not our Intention, but the very reverse, and that wherein we are Culpable, if your Honour finds us so, was only an Error in Judgment of the properest time of Distinguishing ourselves, and showing our Zeal, for what shall allways be our Nearest Concern, Your Honour's Character both private and publick.'

They then proceeded to explain all the circumstances in detail, saying they humbly conceived they 'could not but admitt of any paper as we did this', and pointing out that 'the meritts of the Interrogatorys were not Entered into, nor any point Discussed but the method of proceeding'. They ended by reiterating their determination 'to have done that Justice to your Honour's Character and Dignity, your Honour so well deserves and our duty requires from us and that in the most publick manner, and in the highest degree of Indignation and Resentment'. Elliot failed to enter into the required Recognizance, pleading illness and asking that before he did so replies should be given to his Interrogatories. An application of Bates to be discharged was thereupon granted. There were serious defects in the prosecution and the evidence available, which were fully stated in the Court's letter reporting the proceedings to the Governor and Council. The Justices there repeated their sentiments of resentment and abhorrence of the scandalous insinuations in Elliot's Interrogatories, and an assurance that 'this Court will never be wanting with their best Zeal and Service to vindicate your Honour's Character and Dignity and repell with their power all Attempts to oppose or malign either, being determined to follow your Honour's Steps, and always make Honour Justice and Virtue the Rule of their Actions'.

This undoubtedly shows a degree of servility which would be considered unbecoming in these days; but there is nothing in the proceedings that otherwise reflects on the independence of the Bench. They could properly object to the Interrogatories that attacked the Governor as irrelevant; and it would have been better if they had at once done this when they were presented. The Governor also said nothing in his letter that could be regarded as undue interference with the judicial functions of the Court.

There is no instance of a death sentence in these Registers; but the Consultations mention two cases of murder, in which the Governor in Council passed such a sentence.* 'Gallows' are shown to have been in existence by entries like the following:[45]

'Antonio D'Coasta late soldier in Major Jonathan Stanton's Company having endeavoured to spirit away several slaves, and in order thereto having stolen from Dr. Crafford with the help of his slave Lorenzo a Silver Castor . . . this being a Crime of very ill Consequence to all familys where slaves are most employed about the family affairs and thro' whose hands plate generally passes for cleaning &c, The Court ordered him to be publickly Punished under the Gallows by receiving thirty nine Lashes three several Court days, then to work at the Breach for a Year and a Day and then to be banished from the Island.'

Lorenzo was also given thirty-nine lashes. This illustrates both the accepted jurisdiction of the Court over soldiers and the severity with which it punished offences by, or relating to, slaves. On the other hand it was established custom, recognized by the Court, that a slave who escaped and was not returned, gained his freedom. This is stated in the following passage, which supports the old complaints against the Portuguese that they forcibly converted orphans to Christianity:†

'Anna D'Souza Presents a Petition wherein she setts forth that she being a Jentue Child and her Parents dead was seized by the Lord of the Aldea who at Versova immediately had her Christned and after some time married

* Both sentences were for murder, viz. Consltn. of 7 June 1723, B.P.P., vol. 5, p. 114, and Consltn. of 12 Feb. 1725, B.P.P., vol. 6, p. 24. In the former a reference is made to the Charter of 1668 and 'the late orders of the Hon. Company', i.e. presumably the orders in the Company's dispatch of 27 Feb. 1719, referred to on p. 176 *ante*. On the other hand a prisoner convicted of rape, a capital offence under the then English law, was sentenced to imprisonment for seven years and the pillory (Consltn. of 16 Sept. 1726, B.P.P., vol. 6).

† Thus the petition of the Povo of Bombay in 1667 stated that 'they (the Roman Catholics) tooke orphan children from whomsoever they pleased and perforce made them Christians', *E.F., 1665–7*, p. 310.

her to a Cullumbee named Manuel, that he using her very ill she fled to this Island, lived some time with a Renol* named Joseph D'Coasta, that afterwards they both went to Tellicherry where he served in Capt. Douglasses Company and that the said Joseph D'Coasta being one day upon Action was shot thro the heart upon which Capt. Douglass seized her under pretence she was a slave to the said Joseph D'Coasta and that he the said Da Coasta was indebted to him, upon which he sent her to Bombay and Ordered her to be sold, which was accordingly done first to Capt. Button and since to Several others, that Mr. Garland being the last he pretended to give her away to Capt. Baynton who now insists in her being his Slave and denyes her her Liberty tho' she might be well married, The Court taking this into Consideration and examining several witnesses do not find that the Woman was ever a Slave at least since she came upon this Island whereby [she got the advantage of] an Established Custom that even Slaves that run away and are not returned again are undoubtedly free, it is therefore the Oppinion of the Court that her first sale by Capt Douglass was illegal and unwarrantable and that thereby he is answerable for the Damages which the Attorneys of Mr. Garland insisting to amount to 170 Rupees the Court order that the Register write to Mr. Adams Chief of Tellicherry where said Capt. Douglas now resides that he would please to recover said money from him and adjust this affair with said Capt. Douglass as he shall see fitting.'[46]

In another case where the escaped slave had returned to the Island, the Court decided to ascertain 'the Governor's pleasure' in the matter, before considering whether the boy should be restored to his former master.[47]

The next extract[48] shows that the Court also exercised jurisdiction to revise orders passed by caste *Panchayats*:

'A Bandaree and his Wife named Vita Patel and Buda, complaining they are turned out of their Cast, and the Bandarees being asked the reason, say it is upon the Accusation of Antonio a Christian servant to the Woman, who says he lived severall years with her and Carnally knew her all that time, it appearing a Scandalous Story and proceeding from a quarrell betwixt the partys, and the Woman of ill Repute enough, Ordered the Bandarees according to their Custom [to] restore the man and Woman to their Casts, but not to oblige the Woman to go off the Island, and Ordered Antonio for his Scandalous Behaviour and Language twenty one Lashes in the publick Buzar and discharged paying his fees.'

* This is the Portuguese *reinol* ('of the kingdom'), meaning one that had come out from Portugal, as distinguished from a Portuguese born in the Indies; cf. Yule's *Hobson-Jobson*, pp. 759, 760.

In fact there appear to have been no definite limits to the Court's jurisdiction, except in regard to capital offences committed outside the Island. There were also no Penal or other Codes to bother them with questions, such as whether the definition of an offence was satisfied by the facts of a particular case, or what their procedure should be. Speaking generally, they acted on their sense of justice and equity, coupled with the necessity of deterring crime, as well as the principles of English Law, so far as they might be applicable.

The Civil work of the Court does not require much notice. It was mainly of a simple kind, though occasionally there was a case which called for some legal knowledge for its proper disposal.[49] Most of the litigation was for the recovery of debts. In the case of mortgage-decrees, time was allowed for payment before foreclosure.[50] A case mentioned by Malabari[51] shows that mortgages (and presumably other alienations of immovable property) were still registered. The Court rate of interest allowed on a decretal debt was '5 per cent Common Interest of England'.[52] An unusual way of endeavouring to collect a debt was resorted to in the following case:[53]

'A Petition from Ranmatra Collumbees, Complaining that being engaged to a Woman and she mutually to him, to be married, two persons to whom her former husband is Indebted, Impede the marriage, the heads of their Casts having Examined the affair, declare this to be no Lawfull Impediment, and that the partys may marry, Ordered accordingly.'

The recovery of decretal debts by execution followed the English practice, as before.* Usually the judgement-debtor, if he had no visible property to attack, was committed to prison 'till payment be made'.[54] But this was often mitigated by allowing time to pay, or by ordering payment in instalments. Thus we read that:[55]

'Lakhmidass Tuckidass petitioning for a Letter of License, being incapable of paying his Creditors, the Court considering his circumstances, order the Register acquaint his Creditors of this his Request and join the Intercession of the Court, for allowing him three years to sattisfy them, he at present being utterly unquallify'd.'

This practically recognized his insolvency, and in another case[56] a debtor 'being Insolvent [was ordered to be] let alone till better able'. Again we have the following order:[57]

'Not being able to get any satisfaction from Jevan or Jeva nor able to

* Cf. pp. 66, 67 *ante*.

recover any money they being wretchedly poor, and subsisting upon the Charity of the Prisonkeeper, The Court ordered them to be discharged, the boy to serve the Marshall six months to answer the Expenses he has been at in maintaining the Prisoners and to pay his Prison fees.'

The last words of the above passage, as well as the frequent order 'Discharged paying his fees', show that Court fees were still charged; and in fact this continued to be the main source for meeting the expenses of the Court, apart from the Chief Justice's salary, which alone was borne by the Company. Its dispatch of 4th November 1719 mentioned that the Instructions to the Court contained a Table of Fees, which appeared 'generally pretty moderate'.* They were probably based on the Table of 1677,† but some of the fees mentioned in this dispatch were heavier.‡ Possibly these were later on reduced, as desired by the Company. The Registrar, who must have had a good deal of work, also drew fees for entering causes, &c.§

Probate and administration work continued to be done by the Court. Hindu wills were also recognized, as will be seen from the entry below:[58]

'A Gentue Will being produced in Court, wherein the Opinion of Casts are different, one holding the power the father has to be partial to one son more than the other, the other denying it, declaring 'tis not Customary for them to make Wills, but that Inheritance ought to be Divided, the Court after hearing both partys allow the Will to be good and Confirm it for several good and substantial reasons to them appearing.'

As the Court do not state the reasons for their decision, it is unfair to criticize it; but it is noticeable that the question whether the estate was joint family property, or the separate property of the father, does not appear to have been raised. If it was the former, the opinion that the estate should be divided between the two sons would of course prevail nowadays.

No mention is made in these Registers of any appeal to the Governor and Council, except in the case of Rama Santa, reproduced by Malabari at pp. 475–6. This indicates that *leave to appeal* had to be obtained from the Court. If so, it was a departure from the Deed constituting the Court, under which any person aggrieved had 'free liberty' to

* See p. 175 *ante*.

† Cf. pp. 63 and 108 *ante*.

‡ Viz. '5 Xs. for an attachment, 2½ for a release, a rupee for registring a Petition, as much for an Arrest or a Sub-poena'.

§ Cf. the entries on back of p. 28 of the Court Register for 1726: 'To the Register of Court for his gratuity in entrin this Cause', &c.

appeal, provided he signified his intention within forty-eight hours of the judgement. This was also in accordance with the Company's instructions in their dispatch of 4th November 1719 that an appeal should be allowed 'on any account whatsoever', provided it was made within a reasonable time of the order appealed from. In practice appeals were probably very rare,* especially as the appellate Court would always comprise at least two members of the Court of Judicature.

The Court, though its administration of justice was rough and ready and though it fell short of the ideals that attended its establishment in Aungier's time, clearly served a useful purpose during the ten years of its renewed existence up to the 10th February 1728, when the Mayor's Court was inaugurated in its place.[59]

* I have found only two instances of such appeals in the records in the India Office, but of course there may have been some other record of them. In the first case (Consltn. of 29 Sept. 1718, B.P.P., vol. 4) Bernard Wyche asked the Council for a second hearing before them of a suit brought against him by Thomas Wilshire, which had been decreed against him by the Court. This request was made by letter, and the Consltn. says this 'being contrary to the 20th Paragraph of Instructions to the Justices and in contempt to the Authority thereof', the appeal was not admitted. Wyche was told he must first deposit the sum decreed in the Court and 'return the former orders of the Court', when they would be willing ' to give him all the Satisfaction we can with Justice'. In the second case (Consltn. of 9 Feb. 1722) the Council dismissed the appeal and confirmed the decree of the Court. These cases do not indicate that the leave of the Court was then required.

CHAPTER XII

THE COURTS IN MADRAS AND CALCUTTA

IT is of interest to compare the development of judicial arrangements in the other two Presidency towns during the period of fifty-six years (1672–1728) covered by the preceding account of the Court of Judicature in Bombay. That Court, as constituted in 1672, derived its form and jurisdiction from 'laws' made by the Company under the Crown's authorization in the Bombay Charter of 1668. Its constitution, in providing for trial by Jury under the presidency of a Judge, who might not be a servant of the Company—as in fact was the case during the Judgeships of Niccolls and Gary (1675–83)—introduced the English ideal of the judiciary being independent of the executive Government. The Court as re-established in 1718 was inferior in this respect, as well as in its legal basis. It was constituted by the Governor and Council instead of by the Company, and its Bench was mainly composed of members of Council. It had, however, an outside element in its composition, and was a distinct improvement on the Court of the Governor and Council, which had been the sole judicial authority during the interval of thirty years between the two Courts of Judicature.

In Calcutta, during the whole period, the judiciary never attained the same degree of independence. The Court of the Governor and Council was the only one established by the Company, though it was supplemented by other Courts presided over by members of Council, which will be described later on. Madras was more fortunate in this respect. The Court of the Governor and Council, which was first regularly constituted in 1666,[1] came under the reforming hands of Streynsham Master, who had been on Aungier's Council at Surat and became Governor of Madras in 1678. He was aware of the arrangements in Bombay and naturally followed them, as far as he could. By a Resolution of the Council on 18th March 1678 the Governor and Council were constituted a Court of Judicature, which was to sit twice a week for the trial of all civil and criminal cases (except petty ones) by Juries in accordance with the laws of England.*

* Love's *Vestiges*, vol. I, pp. 404, 405. The Consultation of 18 March 1678 refers

This Court continued till the 10th July 1686,* when a Court of Admiralty first sat in Madras and superseded it.

The latter Court had a more extensive jurisdiction than Dr. St. John was allowed to exercise in Bombay. It was not confined to hearing Admiralty cases proper, but also acted as a general Court of Judicature and even as the Supreme Court of the settlement. This was at any rate the case from the 28th July 1687, when Sir John Biggs, who had for a long time been Recorder of Portsmouth, was sworn in as Judge-Advocate of the Court.[2] He had a seat as third in Council and presided at the Quarter Sessions, as well as at an occasional court martial.[3] When a Mayor and Corporation were inaugurated in September 1688, Sir John Biggs was associated with it as Recorder of the Corporation and in this capacity was to be Assistant to the Mayor for judicial work in 'all causes of any considerable value or intricacy, where he can be present from other more weighty affairs'.[4] The Company's Charter for the Corporation styled him 'Judge of Our Supreme Court of Judicature commonly called Our Court of Admiralty', and made appeals from the Mayor's Court lie to the latter Court, instead of to the Governor and Council, who thus ceased to exercise any ordinary judicial powers.† The difference between St. John's treatment and that of Biggs is remarkable and was no doubt largely due to the different characters of the two Judges and the Governors with whom they came in contact.‡ But other circumstances contributed to it, particularly the exceptional confidence that the Company reposed in Biggs from the outset, as compared with the obvious distrust of St. John shown by their direction that he should

to the Bombay Court of Judicature as the model followed. A record of the cases tried by the Madras Court in 1678 will be found in F.R. Fort St. George, vol. 38.

* Love's *Vestiges*, vol. 1, pp. 406–8 and 491, 492. There was, however, a temporary discontinuance of the Court for a few months in the first half of 1684, in consequence of the receipt of the dispatch about a Court of Admiralty at Madras. The complaints as to the want of a Court led to its revival pending the inauguration of the other Court (ibid., pp. 491, 492).

† A power to reprieve execution and grant pardons in criminal cases was, however, reserved to the Council by the Charter of 1687. It also sometimes sat for the trial of exceptional cases, such as those of murder or piracy committed by Englishmen on the high seas, cf. Love, vol. 1, p. 494, and vol. 2, pp. 174, 175. See also Consultations of 7 and 8 Sept. 1686 (F.R. Fort St. George, vol. 4, pp. 107, 108), as to its holding a trial with a Jury regarding a claim for seamen's wages that the Admiralty Court had refused to try.

‡ This is the view taken by Miss Helen J. Crump in her useful book *Colonial Admiralty Jurisdiction in the Seventeenth Century*, p. 178.

not be put in charge of the Court of Judicature until his 'good deportment' had been ascertained.* The Company's attitude in this respect would naturally influence their representatives in India. Another circumstance was the non-occurrence at Madras of irritating incidents connected with interloping, such as gave rise to suspicion and animosity in Bombay. Madras was therefore fortunate in securing the services of an able and independent Judge for the disposal of its main judicial work during the two years between his arrival in July 1687 and his death in April 1689. He had the assistance of Company's servants, but his would be the predominating voice.

One reason for this discrimination was that St. John derived his appointment from a recommendation by Sir Leoline Jenkins, the Secretary of State,[5] whereas Biggs had the advantage of being personally known to Sir Josiah Child, who had made a fortune as victualler to the navy at Portsmouth.[6] His work and personality doubtless gained Child's confidence.

The establishment of the Mayor's Court so soon after that of the Admiralty Court calls for an explanation. One might have supposed that the Company would have been content with the latter achievement, and not have followed it up in the next year with an additional Court, and one based on such a Western institution as a Mayor and Corporation, with aldermen, burgesses, maces, silk gowns and all the other paraphernalia of an English municipality in the seventeenth century. One explanation that has been given[7] is that it was due to disturbances that occurred in Madras in January 1686, when the Hindus in Black Town resorted to 'strike' methods, such as abandoning their duties, shutting up their shops, and hindering the passage of provisions to the settlement. Their object was to resist the collection of a house-tax, which had been imposed under the Company's orders to defray the cost of building a wall round Black Town; but firm action by Governor Pitt and his colleagues speedily quelled the revolt, and the tax was then collected without difficulty. There is good ground for saying that the Company thought the new Corporation would make taxation of that kind more acceptable to the native population, for this was expressly stated in its first dispatch about the proposal. The idea was that by setting up a Corporation of 'the Natives mixed with some English freemen' and giving it some small powers and privileges, the caste-leaders, as Aldermen and Burgesses,

* See p. 122 *ante* and n. 6 to Chap. IX.

would be ready to tax themselves and the inhabitants generally for various municipal purposes.[8] Accordingly the Charter, while providing that the Mayor and the three senior Aldermen should always be convenanted British servants of the Company, allowed the remaining nine Aldermen to belong to any nationality; and a Frenchman, two Portuguese, three Hindus, and three Jew or Armenian merchants were among the first Aldermen nominated by the Company. Thirty of the sixty Burgesses were also to include the heads of all the Castes, so as to induce the Hindu inhabitants to contribute cheerfully to the public works that were contemplated. The proposal had much to commend it; but like many Western innovations, when transplanted to Asiatic soil, it did not quite work in the way intended. When in 1692 the Company expostulated with the Madras Government for having too many English Aldermen and desired that most of them should be supplied by 'the heads of the severall foreigne Casts',[9] the reply was given that it was found difficult to reduce the number of English Aldermen, as the Armenians refused to accept the office, the Jew qualified for it had left Madras, the Portuguese were unwilling to officiate for fear of their countrymen settled at St. Thomé, and it was not safe to confide in the Mussulmen.[10] Nor did the Corporation raise any taxation or found any institution of the kind contemplated; on the contrary the Governor and Council had to assign town revenues to it, to prevent it falling into insolvency.[11]

This was not, however, the sole reason for the scheme. The Charter itself recites as its justification that the Company had 'found by Experience and the Practice of other European Nations in India that the Makeing and establishing of Corporations in Citties and Towns that are grown exceeding populous tends more to the well-governing of such populous Places, and to the Increase of Trade, than the constant Use of the Law Martial in trivial Concerns', and expresses a desire to provide for 'the speedier Determination of small Controversies of little Moment, frequently happening among the unarmed* Inhabitants' of Madras. The reference to 'other European Nations' was one mainly to the Dutch, whose system of government it was desired to imitate, Sir Josiah Child being such an admirer

* An order prohibiting the wearing of arms by any Christian in Madras, except the subjects of His Majesty the King of Great Britain, was issued in 1679, Love, vol. I, p. 446. But even the latter would be included in 'unarmed' inhabitants' (as the expression is used here), if non-military.

of the 'Dutch methods' that he sent Governor Yale a book on the subject, with an injunction that he should study it.* The raising of Madras to a 'Regency' was another imitation of the Dutch arrangements.[12]

The presence of Sir John Biggs at Madras no doubt encouraged the Company in the idea of having a Mayor and Corporation. They first of all put it forward tentatively, and sent the Madras Council a copy of the Charter granted to the Borough of Portsmouth, 'where', they wrote, 'Sir John Biggs was Recorder and therefore understands well not only that constitution but the practicall way of proceeding in it'.[13] Within three months, however, of their letter, the Company, finding that the idea was approved by the King, determined on its fulfilment and in January 1688 sent out an engrossed Charter, with an intimation that if any amendments were found necessary, this would have to be done by a supplementary Charter.[14] The engrossment issued under the Company's seal, and not under the Great Seal of England, for reasons explained in the following letter to Yale,[15] which has been often quoted but is well worth reproduction:

'The Governour and Deputy were commanded last night being Sunday to attend his Majestie at the Cabinet Council where our intended Charter for incorporating Fort St. George into a Body Politique consisting of Mayor Aldermen and Burgesses was largely debated before his Majestie. One of the Council being a Lawyer seemed to be of opinion that it was best the Charter should pass immediately by the King under the Great Seal of England. His Majestie asked the Governour his opinion, who replied that

* Company's dispatch of 28 Sept. 1687, paras. 78 and 100 (L.B., vol. 8, pp. 427, 430); cf. dispatch of 26 March 1686 (L.B., vol. 7, p. 162), and Hunter, *History of British India*, vol. 2, p. 237. The only European nation, however, that had established a Corporation in any of its settlements in India was the Portuguese: a Mayor and Corporation of Goa having been instituted as early as 1550 (see R. S. Whiteway, *The Rise of Portuguese Power in India*, pp. 196, 197). Sir William Foster has suggested to me the possibility that the word 'India' in the quotation from the Charter is used in the sense (then common) of 'East India', i.e. the East Indies. This would bring in Batavia and other commercial centres in Java, which (as stated by Sir Hesketh Bell, *Foreign Colonial Administration in the Near East*, p. 28) have for a long time past been controlled by municipalities. There appears, however, to have been no municipal corporation (in the usual sense of that expression) in Batavia during the seventeenth century, though a mixed Board, consisting of three of the Dutch Company's servants, four burghers, and two Chinese headmen were given the powers of a subordinate judicial Court in 1642. They had also, in agreement with the bailiff, power to make orders regarding streets, bridges, &c., but these could not be issued without the approval of the (Company's) government. For the latter information I am indebted to Professor C. Otto Blagden, Dean of the School of Oriental Studies, London.

what his Majestie thought best the Company would alwaies think so, but if His Majestie expected the Governours private opinion he said he had ever been of opinion that no person in India should be imployed by immediate Commission from his Majestie, because if they were it would be prejudiciall to our service by their arrogancy, and prejudiciall to themselves, because the Wind of extraordinary honour in their heads would probably make them so haughty and overbearing that in a little time we should be forced to remove them, and we instanced particularly Sir John Wyborne and Dr. St. John. In conclusion his Majestie did so apprehend it as to think it best that the Charter should go under our Seal, because the Corporation must be alwaies in some measure subject to the controul of our President and Council, and so at length it was agreed, and the Charter is now engrossing.'

The Mayor's Court was thus merely a Company's Court until it was superseded in 1727 by one established under a royal Charter.[16] It had a very wide jurisdiction, being empowered to try to determine all causes, civil or criminal, subject to a right of appeal to the Admiralty Court in civil cases when the value of the award exceeded three pagodas, and in criminal cases if the offender was sentenced to lose life or limb. Though there was at first some uncertainty as to its power to inflict capital punishment, this was conceded in 1712 by the Council, and there are several instances of the Court doing so in cases of murder.[17]

When the Admiralty Court ceased to operate owing to the death of Sir John Biggs, there was no Court authorized to hear appeals from the Mayor's Court. In this emergency Yale and the majority of the Council set up a temporary Court of Judicature, consisting of himself as Judge-Advocate and two Justices, who were members of Council. With them were associated two merchants, one an Armenian and the other a Hindu, to assist them in regard to native languages, laws, and customs.[18] This Court subsisted till 1692, when the Company sent out a new Judge-Advocate, John Dolben.* The Court of Admiralty then continued to June 1704, when on the incumbent

* His Commission is dated 15 Feb. 1692 (L.B., vol. 9, pp. 222, 223). Though he is described as a merchant and was appointed a writer (Court Book of 26 Feb. 1692 and 2 March 1692, vol. 36, pp. 101, 103), he probably had had legal training. He was not the John Dolben, the son of the Archbishop of York, who was called to the bar at the Temple and afterwards went to the West Indies (*Dictionary of National Biography*, vol. 15, p. 192); but he was probably a member of the same family, as Gilbert Dolben of the Inner Temple, who was the elder son of the Archbishop, was one of his sureties to the Company (Court Book, vol. 36, p. 101).

Judge-Advocate's return to England it was decided that his office should remain vacant.[19] Admiralty jurisdiction thereafter appears to have been exercised by the several Governors and Councils under royal Commissions issued in conformity with the Piracy Act of 1698 (11 Will. III, c. 7) and similar enactments.* The Governor and Council had also by 1704 constituted itself the Court of Appeal from both the Admiralty and the Mayor's Courts.[20] This was probably based on the Company's instructions to Pitt, when he was appointed Governor of Madras in 1698, that the President and Council should hear appeals in cases where the matter of complaint was not less than 100 pagodas.†

In Calcutta no regular Court of Admiralty was ever set up during the period 1683–1728. On account of the war with the Moghul, a Commission was given in January 1686 to Capt. Nicholson, the Admiral of the expedition to the Bay of Bengal;[21] but his Court only heard prize business.[22] There were two subsequent Commissions issued in 1688 and 1693, but there is no evidence that the Court ever sat.‡ Nor did the Company pass any subsequent orders for its establishment.

The conditions at Calcutta were not in fact favourable for the establishment of any such Court. After Job Charnock had finally settled at Sutanati in 1690, the factory had various difficulties to contend with. Thus in 1693, owing to piracies in the Red Sea that were attributed to Europeans, Aurangzebe suspended the Company's privileges, and their trade could only be carried on secretly.[23] All idea of establishing a Court of Judicature was, therefore, postponed;[24] and in 1698 the Council was instructed to send prisoners to Madras for trial, if necessary.[25] It was not till December 1699 that, in view of the improved position and prospects, the Company declared Bengal a Presidency and sent out Sir Charles Eyre as the first President and

* Under sec. 2 of the Act the Court of Admiralty was to consist of seven members. Interlopers were sometimes seized and tried as pirates by the Courts of Admiralty, J. T. Wheeler, *Madras in the Olden Times*, vol. 1, p. 320, and Anderson, *The English in Western India*, p. 257.

† L.B., vol. 10, p. 10, para. 31 of the Instructions. Previously the Mayor's Court had contended that, in the absence of the Admiralty Court, their decisions were final (Love, vol. 1, p. 502).

‡ H. J. Crump, *Colonial Admiralty Jurisdiction*, &c., p. 182. The orders of 1693 were principally intended to deal with misconduct by officers of private trading ships on the Coast (Company's dispatch to Bengal, of 10 April 1693, L.B., vol. 9, p. 257).

Governor of Fort William.[26] It is significant, however, that the instructions to Eyre contain no direction to improve the Courts of Justice, as had been given to the Governor of Madras in the previous year.[27] In fact the Company never authorized any regular Court of Judicature other than that of the Governor and Council up to 1728, when the Mayor's Court was set up. In August 1704 the Council established a Committee of three members for the decision of 'small controversies', but its sittings were irregular;[28] and the main judicial business of the settlement was disposed of by other Courts that came into existence in its early days.

Their jurisdiction was not derived from the Company or any royal Charter or Commission. It was due to a feature that distinguished Madras and Calcutta from Bombay. In the former places sovereign rights were at this time vested in Indian potentates, and judicial powers over the native inhabitants, who were their subjects, were derived from the suzerains. In Madras English magistrates had exercised this jurisdiction from about 1654, in place of the native *Adigar* or Town Governor, who had formerly done so.[29] As they sat at the Choultry (Town-house) they were known as the Choultry Justices. Streynsham Master increased their number from two to three, and confined their summary jurisdiction to 'causes of small misdemeanours, matters of the peace, and actions of debt of the value of 50 pagodas and under', unless the parties agreed to their exercising higher powers. He also allowed an appeal to the Governor and Council, 'there to have a tryall by a Jury'.[30] Though the civil jurisdiction of the Justices was replaced by the Court of Requests established in 1753, they continued to exercise criminal powers till a late period in the eighteenth century, and the Court was not finally abolished till 1800.[31] The Justices were members of the Council, except for a short period (September 1688 to November 1689) when Aldermen of the Mayor's Court took their places.[32] The senior of them was styled the Chief Justice.[33] The ordinary punishments they inflicted were whipping, fines, imprisonment, and the pillory.

In Calcutta, the tenure of the settlement was greatly improved in 1694 by the purchase of the three villages of Sutanati, Govindpur, and Calcutta, with the consent of the then Nawab of Bengal.[34] This raised the Council to the status of a *Zamindar*, similar to the position at Madras, and involved the administration of justice among the

native inhabitants in the manner of a *Zamindar*, who fined, whipped, or imprisoned offenders at will. Accordingly one of the Council, who held the office of 'Receiver of revenues',* was not only a Collector in the familiar sense of that word, but also a Magistrate. In the latter capacity he held a *Zamindari* Court, which had both civil and criminal jurisdiction. Thus Holwell, the well-known survivor of the 'Black Hole', who had himself been Collector of Calcutta from 1752 to 1756, states[35] that the Collector

'as Judge of the Court of Cutcherry, a tribunal constituted for the hearing, trying and determining all matters and things, both civil and criminal, wherein the natives only, subjects of the Moghul, are concerned . . . tried in a summary way, had the power of the lash, fine and imprisonment; he determined all matters of *meum* and *tuum*; and in all criminal cases proceeded to sentence and punishment immediately after hearing, except where the crime (as murder) requires the lash to be inflicted until death,† in which case he suspends execution of the sentence until the facts and evidence are laid before the President, and his confirmation of the sentence is obtained. . . . In all causes of property an appeal lay to the President and Council against his decrees.'

The Court even appears to have exercised civil and criminal jurisdiction in cases where Europeans and Indians of European descent were concerned;[36] and a dispute about this arose between Holwell and the Mayor's Court, which considered that he had interfered with their jurisdiction in a case of that kind. The Council decided that in future the *Zamindar* should not take cognizance of causes between Europeans or *Feringis* (i.e. natives of European descent) unless they were referred to him as an arbitrator, and also ordered that a quorum of three Justices should be appointed to deal with criminal cases in which Christians were concerned.[37] The *Zamindar* was one of them, but this meant a Bench of three members of Council, instead of the *Zamindar* sitting alone, as had been usual. The dispute was referred to the Court of Directors, which held that the Mayor's Court, having

* The post was first so called in 1700, when Sir Charles Eyre became Governor, but it had of course existed previously.

† The reason for this mode of punishment was not any fear that 'a public hanging, without judge or jury, might have raised an outcry among the enemies of the Company in England' (as surmised by Wilson, loc. cit., p. 219), but a prohibition by the Mughal Emperor against sentencing Mohammedans to death in that way, for hanging was esteemed too ignominious a death for a Mohammedan to suffer (cf. W. Bolts, *Considerations on Indian Affairs*, vol. 1, p. 81).

intervened not on any complaint, but merely on information given in the course of the examination of a witness before it, had no valid ground for the proceedings it had taken against Holwell.* The actual cause of the quarrel was thus not settled, but a year later the Company made sweeping reforms in the *Zamindar*'s régime, which among other things provided for the practical extinction of his sole jurisdiction.[38] Two separate Courts were ordered to be set up,

(*a*) for the trial of all criminal cases by a quorum of three Justices, composed of the members of Council sitting in rotation, each of whom was to sit in turn as the *acting* Justice for a month to deal with 'slight offences' subject to a right of appeal from him to the quorum; and

(*b*) for the trial of all civil causes among natives, where the property in dispute exceeded Rs. 20 in value, by a Court of five persons appointed from the Company's servants of a standing below Council, with a right of appeal to the President and Council, where the property in dispute was over Rs. 100 in value.

As to the former Court, the Company explained their intention to be that the same tribunal of three Justices should deal with both Europeans and Indians, but in the latter case as a *Zamindari* Court.[39] Accordingly we find sentences of whipping to death submitted by the quorum of *Zamindars* to the President and Council for confirmation in 1759.[40] Later on, however, the *acting* Justice—though the Company had directed him to refer 'all matters of consequence' to the Quorum for decision—seems to have monopolized the powers of the Court, for in 1772 the 'Zemindary or Fouzdary Court' was described by William Bolts, who was in a position to know the practice, as being held by one of the Council, or one of the Company's servants, sitting *alone*.[41] The quorum of three survived in the Civil Court, which was known as 'Court of Cutcherry'; but, according to Bolts, who had himself been a member of the Court, it confined itself to deciding cases that did not admit of much contest, and appeals to the Governor and Council were rare, as it was the practice to refer other cases to arbitration.[42] This statement is corroborated by a complaint made by Indian merchants in 1762 as to the hardship caused them by being required constantly to sit in the Court as arbitrators and being fined for non-attendance, even if this was due

* Bengal Dispatches, vol. 1, pp. 541–5; dispatch of 27 April 1757, paras. 128–36. Holwell was treated discourteously, being obliged to appear before the Mayor's Court and deposit the value of the property in dispute.

to urgent business. The Board condemned this practice as dilatory and ineffective for the decision of cases and ordered its discontinuance, probably with little effect.[43]

In addition to these *Zamindari* Courts, there was a third one, called the 'Collector's Cutcherry'. Bolts says that it had been established ever since the Company had anything to do with the collection of ground-rent, and that in it the Collector punished farmers or tenants under his jurisdiction who were backward with their payments, independently of the other Courts in Calcutta.[44] This procedure corresponded with the usual practice in native *Zamindaris*.*

Thus Calcutta in 1759 boasted of no less than seven Courts, viz. the Court of Appeal and that of Quarter Sessions, each consisting of the Governor and Council or a part of that body; the Mayor's Court and the Court of Requests, established by the Charter of 1753; and the three *Zamindari* Courts. But in most of the period under consideration there were only the Court of the Governor and Council, and the *Zamindar*'s Court. The first Mayor's Court under the Charter of 1726 did not start till 1728.[45] Except for the short periods of two years that Sir John Biggs (1687–9) and John Dolben (1692–4) presided over the Court of Admiralty at Madras, there was no trained lawyer employed by the Company in either of these two towns; and the conditions of judicial administration were much the same as in Bombay, in that it was carried on by Company's servants in a rough-and-ready, but generally just and sensible, manner. Punishments in criminal cases naturally followed the prevailing severity of those days, but the death penalty was usually not inflicted, except in cases of murder.† In Calcutta trial by Jury was never introduced till Quarter Sessions were held by the Governor and Council under the Charter of 1726. In Madras on the other hand it lasted longer than it did in

* Cf. Long, p. liv. His statement that 'the authorities added whipping' is open to question. Many instances could be given of this form of punishment being used in native *Zamindaris*: thus a farmer of the customs of Golconda was 'chawbucked' (whipped) and cast into prison for a deficiency in paying up his dues (A. T. Pringle, *Diary and Consultation Book of the Governor and Council at Fort St. George*, vol. 4, p. 4, for 1685).

† Thus sentences of death for theft or robbery passed by the Mayor's Court and Admiralty Court respectively in Madras were commuted (Love, vol. 1, p. 493; Wheeler, *Madras in the Olden Times*, vol. 1, pp. 219 and 304). In the case of robberies, the *Zamindari* Court in Calcutta sentenced offenders only to whipping or imprisonment, see Holwell's statement to the Council in the proceedings of 16 June 1755 (Bengal Public Consltns., vol. 28, p. 258).

Bombay. The first trial by Jury took place in 1669, when Mrs. Dawes (the wife of a Company's servant) was tried for the murder of a slave-girl before the Governor and Council, under a royal warrant specially obtained for the purpose; and it was because of this case that the Agent received promotion to the status of Governor, so that there should be no room for doubt as to the jurisdiction of himself and his Council under the Charter of 1661.[46] From 1678 to 1686 the Court of Judicature set up by Streynsham Master tried all civil and criminal cases by Jury.[47] When, therefore, the Admiralty Court began its work in July 1686, Madras was well accustomed to this form of trial, and it is not surprising that it was followed in the first Quarter Sessions at which Sir John Biggs presided.[48] The Table of Fees that he drew up covered warrants for Juries,[49] and trial by Jury in Sessions cases appears to have persisted as long as the Admiralty Court lasted.* The same was the case with the Mayor's Court from 1688 to 1727.†

In civil cases, however, trial by Jury probably ceased in July 1686. It is true that the accounts of Madras given by Salmon and Lockyer, which relate to the period 1669–1704, state that in the Judge-Advocate's Court civil causes were decided by a Jury;[50] but this is opposed to the only case in that Court of which a full report has survived. This relates to a suit of 1694 by the Company against Elihu Yale (after he had ceased to be Governor) claiming Rs. 50,000, which he was alleged to have extorted from certain merchants. Yale contended that the Court, consisting of Dolben and two Assistants, who were members of Council, had no jurisdiction to try the case except by a Jury in accordance with the Laws of England. This contention was overruled on two grounds, *firstly*, that the Charters of 1683 and 1686 required cases to be determined by the Court itself and not by Juries, and *secondly*, that the latter method was 'wholly impracticable', for want of a sufficient number of Europeans capable of discharging the duty of Jurors.[51] The second reason was a weak one, in view of the past practice of the Court of Judicature, which had tried civil, as well as criminal, cases by Jury for nearly nine years;

* Thus the Judge-Advocate in 1696 had a case of murder tried by a Jury (see Wheeler, *Madras in the Olden Times*, vol. 1, pp. 303, 304).

† Thus cases were so tried in 1689 and 1718 (see Wheeler, ibid., vol. 1, pp. 219, 220, and vol. 2, p. 292). The Consltn. entry of 16 June 1718 about the latter case states that the trial was 'in the Mayor's Court', not 'by' that Court, and this points to the trial having been by Jury.

but the first was unimpeachable. As regards the Mayor's Court, it is clear that civil cases were not tried with a Jury.*

The general result of this survey is that Madras compares favourably with Bombay in its judicial arrangements up to 1728, while the reverse applies to those of Calcutta.

* Thus the petition of appeal from the Mayor's Court appended to the Consltn. of 10 Sept. 1719 clearly shows that the decision was by the Bench. The Charter of 1726 provided for trial by Jury only in Criminal cases, and in the dispatch about it to Madras the Company said that it empowered the Mayor's Court to 'try all civil causes after the manner they used to do formerly' (L.B., vol. 20, pp. 473, 474).

CHAPTER XIII

THE MAYOR'S COURTS IN THE PRESIDENCY TOWNS

THE Charter of 24th September 1726, establishing civil and criminal courts that derived their authority from the King instead of the Company, marks a turning-point in its policy. Hitherto its general aim had been to confine the exercise of judicial powers to Judges or Justices who were its servants or freemen dependent on its pleasure for their stay in India, and to establish no courts under immediate commission from his Majesty. Its action in refusing to send out a trained Judge for the Bombay Court of Judicature in 1671, and Sir Josiah Child's insistence that the Charter of 1687 should issue under the Company's seal, are instances of this policy. The Mayor's Court established under that Charter was the model followed, as regards civil justice, in the new arrangements: the dispatch about the Charter itself says, 'We applyed to get the management of the civil affairs as near as we can agreeable to the practice and methods of' that Court.[1] The changes made in regard to the constitution and jurisdiction of the new Court, and the substitution of the Governor and Council as the body to preside at the Quarter Sessions, could have been effected by a similar Charter of its own. What was it that led to the Company's desire to have a Charter from the King instead?

The document itself throws little light on this question. It recites a representation by the Company that 'there was a 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 misdemeanours'. This is a vague generality that accords no doubt with a desire for improvement, but does not reveal the real reason for the change. The records do not contain any complaints about the general administration of justice in the three settlements, nor any correspondence about difficulties in the proper punishment of crime. There is nothing to support the theory that dissatisfaction with the way justice was or could be administered led to the Company's application to the Crown.*

* Kaye's *History of the Administration of the East India Company*, p. 320, says that the Charter of 1668 contained a proviso that the offender against any law of the

It is in fact clear that it was actuated by a different motive. The petition to His Majesty[2] and the only Court Minute relating to it[3] say nothing to reveal this, but the Company's dispatches after the Charter had been obtained are more enlightening. They mention two defects that it hoped the Charter would remedy. The first (mentioned in a dispatch to Madras) is 'the Militarys refractoriness, sometimes deserting, at other times running over to the Enemy and joyning with them in their attacking us, and now and then killing one another in their drunken quarrels'.[4] This is the Company's only complaint as to the need for increased authority to punish crime; and it is difficult to see why such offences could not be adequately dealt with by courts martial in the usual way. In Madras there had been appropriate military regulations for their punishment from 1672, and these were revised by Streynsham Master in 1678.[5] Possibly doubt had arisen as to the validity of Articles of War, the use of which for the purpose of military discipline in time of peace was in India not put on a firm legal basis until the Mutiny Act of 1754 authorized the application to the Company's forces of provisions corresponding to those embodied in the annual English Mutiny Acts.[6] The Charter of 1726, however, did not help to remove this doubt, as it only authorized the use of martial law in time of war.

The second reason is more cogent. It relates to the power conferred by the Charter on the Mayor's Courts to grant probates and letters of administration, even in a case where the executors of the deceased, or his legal representatives if he died intestate, were not in the settlement. In drawing attention to this provision, the dispatch to Madras says, 'This last part we got added to prevent any more vexations like that occasioned by the litigious Mr. Woolaston on

Company 'did not appeal, and that, as every man sentenced to death was pretty certain to appeal, it would not seem that the Courts had any great power over the life of an offender, so long as they respected the letter of the Charter'. I have been unable to find any such restriction about appeals, or any evidence that such a difficulty ever prevented the infliction of death or other sentences. The only restriction contained in the Charter as to the Company's power to make laws or prescribe penalties was that they should 'be consonant to reason, and not repugnant or contrary, but, as near as may be, agreeable to the laws of this our realm of England, subject to the provisos and savings hereinbefore contained'. As pointed out by Malabari, p. 111, the last eight words only refer to the proviso securing the free exercise of the Roman Catholic religion to Portuguese subjects, which, though repugnant to the then law of England, the Company was thus disabled from repealing.

account of his deceased son'.* Under long-standing orders of the Company it was the practice for the Councils to take possession of the effects of a deceased servant and sell them by public auction, the proceeds being deposited with the Company's Cash for the benefit of his heirs. But this sometimes gave rise to troublesome suits against the Company. An allied cause of trouble was the seizure of property by the Councils without judicial authority. Thus in a case where the goods of a covenanted servant had been attached in this way on account of his alleged indebtedness to the Company, the Court of Directors remonstrated, saying the dispute should have been referred to judicial adjudication, 'since there is a proper Court established for this purpose, and which in a great measure was erected to prevent our Officers taking upon themselves to intermeddle in and dispose of the propertys of others in an extra-judicial manner'. They added that the right to seize a covenanted servant's effects under his covenant did not preclude him from contesting the whole or part of the alleged debt, 'and therefore it is that the Company have been so often called to account in Chancery respecting such seizures, which the Council of contending Partys always call by the names of Arbitrary and Illegall, and if in the event of the Suit it appears to the Courts here that the Company is debtor on the ballance of the Account, they have been decreed and very justly too, to repay the money with interest and sometimes with costs'.[7] Similarly in writing to Bengal, the Company deprecated a disparaging remark that the Council had made about the Mayor's Court, saying:[8]

'The Charter being calculated to secure yours and every man's property, learn to value such a prize, when it is put in your hands, and willingly forego the love of power for the common good, remembering that one time or other you may have cause to embrace it, as setting bounds to the resentment and anger of those who in the heat of passion would otherwise ruin you. The many instances of such illegal proceedings was one main reason of our applying for such a remedy. . . .'

We have, therefore, authoritative statements that one of the main reasons for the Company's change of attitude was to avoid civil litigation against it in England, due to executive intermeddling with private property. For this purpose it was requisite not only to have

* Dispatch of 17 Feb. 1727, para. 5 (L.B., vol. 20, p. 474). Woolaston had brought several suits against the Company and their agents in India, which were referred to arbitration with the result that he was awarded £300 (Court Minutes of 1 Aug. 1722 and 20 Feb. 1723, vol. 50, pp. 79, 261).

Courts with civil and testamentary jurisdiction to take cognizance of such cases, but also to establish them under authority that would be recognized by the English Courts. The original Court of Judicature at Bombay in the form that had been recognized by the Privy Council in 1677, and the Admiralty Courts authorized by the Charters of 1683 and 1686, had vanished. The Mayor's Court at Madras, though established with royal approval, would not carry the same weight as a Court established under Letters Patent from His Majesty. The Company was thus forced to give up the one-sided standpoint taken in 1687, and an important stage in the evolution of British Courts of Justice in India was consequently reached. It meant the authoritative introduction of English law in the Presidency towns, and foreshadowed the parliamentary interference that first took shape in the Regulating Act of 1773.[9]

The above analysis of the reasons for the Charter shows that it did not impute a condemnation of the existing Courts. They no doubt needed improvement, but it is a false reading of history to say, as has been said, that the Company complained of the Courts as bad and inefficient, and that this plaint had just cause.[10] There was occasional irregular or oppressive conduct; but this should not be allowed to outweigh the value of the bulk of the work that was satisfactorily performed.

The assertion that 'justice gained little by the establishment of the Mayor's Courts'[11] also calls for comment, so far as it implies that the justice they administered was bad and inefficient. A full account of the working of the Courts is outside the scope of this work, but the remarks that follow will suffice to show that they resulted in distinct progress in the administration of justice according to the principles and practice of the English Courts of Law. They formed a useful link in the chain that led to the establishment of the improved Courts of the nineteenth century.

Another important link was the institution of trial by Jury for all criminal cases in the Sessions Court of Oyer and Terminer set up by the Charter. Not only was there to be a petty jury of twelve for the actual trial, but the novelty in India of having a grand jury of twenty-four for preliminary finding of a 'true bill' was also introduced.* The

* The number of a petty jury was reduced to nine by Act X of 1875, and grand juries were abolished by Act XIII of 1865. See p. 85 *ante* as to an exceptional instance of a grand jury.

latter body could, and often did, make presentments on matters affecting the administration of justice to the Bench.* This was composed of the President and two or more of the five senior members of his Council, who as Justices of the Peace had to hold Quarter Sessions four times a year, with jurisdiction over all offences except high treason. This practically revived the Court of the Governor and Council, with the restraints on arbitrariness or partiality that were involved in trial by jury. Such a transfer of criminal jurisdiction from the Mayor's Court at Madras was a natural reversion to previous practice, but the adoption of trial by jury was a significant change from the attitude of Sir Josiah Child in 1687.

The Charter also showed restraint in the authority it conferred on the President and Council over the Mayor's Court. While they could remove an Alderman for misconduct in his office, they could only do so after a proper hearing of his defence and not for extraneous reasons.[12] Although they became the Court of Appeal from decisions of the Mayor's Court, this was subject to a right of appeal to the King in Council in all cases where the value of the property in dispute exceeded 1,000 pagodas (about Rs. 3,000).† And far from the members of the Court being habitually servile to the Council, there is ample evidence of frequent opposition in all three Presidencies.

Thus a justifiable spirit of independence soon showed itself in the Mayor's Court at Bombay. In 1730 a dispute arose between Governor Cowan and the Court about its jurisdiction over Natives in caste or religious matters. A Hindu woman of the Shimpi caste had turned Roman Catholic, whereupon her son, aged about twelve, had left her and gone to live with a relative in Bombay. The mother charged the relative with improperly detaining some jewels, and as a sequel the boy was ordered to be delivered to her.[13] The heads of the caste complained to the Governor, who brought the matter before the Council. That body considered that the Court had no authority 'to determine causes of a religious nature or disputes concerning casts among the Natives', and the Court was warned not to interfere in such cases.[14] The Bench strongly protested, urging that the dispute

* Cf. the account of presentments given in Dodwell's *Nabobs of Madras*, p. 153.

† The first appeal made from India to the Privy Council was one from Madras in 1731 (P.R.O., P.C. Register No. 2, 1729–32, p. 351). The Arab plaintiff in the case at Bombay that is mentioned on p. 220 gave security for an appeal to the Privy Council and commissioned a suspended factor, Thomas Waters, to carry it on in England; but no such appeal appears to have been actually filed.

was not really religious, and that it had jurisdiction to decide it under the Charter.[15] The following passage from their letter is of interest, in regard to the wide jurisdiction exercised by the previous Court of Judicature:

'. . . on searching into and carefully inspecting the registers of the late Court, we find many disputes between the severall Casts purely of a religious nature were there taken cognizance of and determined, such as causes of adultery, divorces, and when a person has been turned out of his Cast by the Heads, the Court has ordered him in again and fined their Heads for their presumption.'

Though the dispute no doubt arose out of the mother's change of religion, the Court could legitimately claim that this was not the paramount consideration in the case and that caste matters had been expressly placed within their jurisdiction.[16] Cowan and the majority of the Council stuck to their previous opinion, but one Thomas Rammell dissented, with the result that the rest of the Board suspended him from the Company's service for his 'scandalous and malicious' minute on the subject.* This was certainly scurvy treatment, considering he had been asked to put his reasons for dissent in writing and that there was no substantial ground for the charge against him except his objection to the Governor's claim to decide such cases. The Council in their resentment went even further and turned the Mayor, Edward Page, out of his post of Secretary, because in the course of the debate he had had the temerity 'to tell the President that, while he had the honour to preside in the Mayor's Court, rather than give up any of the Prerogatives or pretensions thereunto belonging (or words to that purpose) he would go to England and appeal to the King in Council, which menacing expressions, whatever might be the opinion and resolution of Mr. Mayor, were highly unbecoming the Secretary to the Board'.[17] It is satisfactory to find that the Court of Directors severely trounced the Bombay Council for their action, whereby (they said) 'the laudable practice of dissenting would be

* B.P.P., vol. 7, pp. 97, 102–12. There was evidently a good deal of personal animosity between Cowan and Rammell. Thus Cowan minuted that 'were the rest of his Council Gentlemen of no sounder judgment or deeper penetration than Mr. Rammell, he would find himself but little edified by their . . . advice'; and there were cross-suits between them in the Mayor's Court regarding monetary transactions (B.P.P., vol. 7, pp. 107–12, and Court Register, vol. 104, pp. 40, 52–8, 63, 65–9, 75–80, 83–8, and 100).

banished quite out of doors'.[18] They also issued general orders to prevent a repetition of such tyranny.[19]

A minor conflict arose in the same year over a case in the Mayor's Court where an Arab merchant sued to recover the value of pearls said to have been extorted from him by his rescuers from a burning boat off the coast of Gujarat. The defendant had been previously tried for piracy in regard to the same occurrence and acquitted. In view of this acquittal and the dispute just mentioned, the Court consulted the Council as to its jurisdiction. The reply, while conceding that it could take cognizance of the suit, made suggestions against the validity of the claim. The Court, however, held these were unsubstantial and decreed the suit. On appeal, this decision was reversed; but as this was only by the casting vote of Cowan, the Court were naturally dubious of the legality of the reversal.[20] Relations between the two bodies were strained, and it is not surprising that in December of that year Cowan departed from the previous practice of inviting the newly elected Mayor and his brethren to dinner.[21]

Such 'independency', as the Company styled it,[22] even spread to the Attorneys of the Bombay Court,* though they were covenanted servants. A striking instance of this occurred in 1735, after Cowan's dismissal by the Company.† Henry Lowther, a member of the Council, was sued in the Mayor's Court on a pro-note passed by him while 'Chief' at Surat. Lowther demurred to the Court's jurisdiction, and John Cleland, an Attorney of the Court,‡ who represented the plaintiff, gave vent to a very spirited remonstrance, which is on record.[23] He urged in vigorous language that Lowther's refusal to pay the debt at Bombay gave the Court jurisdiction, and that his plea was a mere screen to avoid payment. To allow it, he said, would endanger not only the credit of every Englishman at Surat, but also the Company's 'dear-bought privileges' of trading there. The

* There were two such Attorneys (Court Register, vol. 101, p. 29). The Registrar also used frequently to appear for parties. An oath was administered to an Attorney on entering his office (Court Register, vol. 103, p. 210).

† This dismissal was ordered in the Company's dispatch of 15 March 1734 on account of Cowan's allowing a Portuguese ship to dispose of its cargo in Bombay, contrary to its positive orders (L.B., vol. 23, p. 231). He sailed for England on 22 Jan. 1735 (B.P.P., vol. 8, p. 48).

‡ Cleland was sworn in on 26 Aug. 1730 (Court Register, vol. 103, p. 210). He was described by the Court as 'already somewhat acquainted with the business', and 'the fittest person for that employ' (ibid.).

majority of the Court, however, admitted the demurrer and dismissed the suit.[24] Cleland in his address to the Court had also denounced certain proceedings of Cowan for recovery of money from the Surat Government by forcible means. Both Lowther and Cowan complained to the Council against Cleland. Governor Horne at first tried to hush up the matter and proposed to banish Cleland to a subordinate factory. This was defeated by Braddyll, who was now again on the Council and who objected to this course, while Cleland also protested against a 'silent escape' of that kind as implying an admission of guilt, and demanded that the whole proceedings should be submitted to the Company.* It was natural that he should be apprehensive for his future in view of the resentment caused by his outspoken attack on an influential and highly placed officer like Lowther. To its credit the Company supported Cleland, telling Horne that his conduct should not be allowed 'to prejudice him in your esteem, but you must encourage him and all our servants while they behave well in their several stations'.† Another instance of similar fair-mindedness in the case of an Attorney falling foul of high authority is furnished by the following remarks:

'Mr. Henry Rumbold has petitioned us to return to your place, from whence we find he was ordered home, but for what reason does not appear, either in your Letters or Consultations, which is a pretty good prooff of what he asserts, that he was sent off shore by an arbitrary order of the late Governor's, for having been concerned as an Attorney against him in some disputes that he had in the Mayor's Court.'

* B.P.P., vol. 8, pp. 2, 3, 17, 23, 24. Horne justified this attempt to hush up the matter on the ground that several of the Company's directors had asked him to discourage disputes between the Company's servants (see his letter of 30 Dec. 1934 in the papers).

† Dispatch of 11 March 1736, para. 122 (L.B., vol. 23, p. 658). It may be added that Cleland's anticipation of the bad effect of allowing the demurrer was partly realized. The plaintiff in the suit, after his failure in the Mayor's Court, proceeded to Delhi and obtained an order from the Mughal Emperor for Lowther's seizure and conveyance in custody to Delhi—a disgrace which Lowther, who had meanwhile resumed his former post of Chief at Surat, had great difficulty in avoiding by part-payment of the debt and the passing of a bond with two sureties for the rest (B.P.P., vol. 8, p. 190). He was in fact in such difficulties from his indebtedness to the Company and others, that in March 1736 he absconded and was dismissed by the Bombay Council, almost at the same time that the Company at home dismissed him for gross mismanagement of their affairs at Surat (ibid., pp. 161, 162, and 166; Company's dispatch of 11 March 1736, para. 134, L.B., vol. 23, p. 662). On the other hand, in 1732 he had shown great courage and initiative in the hostilities of that year at Surat (see Arnold Wright, *Annesley of Surat*, pp. 338–42).

The Company allowed him to return as a Free Merchant, and directed that, in view of his abilities, he should be employed as Attorney in all cases where the Company was concerned.[25]

The Mayor and Aldermen were usually members of the Grand Jury at a Quarter Sessions and sometimes annoyed the Council by making presentments that did not show 'due respect' to their authority.[26] During the dispute between the Bombay Council and the Mayor's Court as to the form of oath for a Hindu witness, the Grand Jury even held up two successive Sessions by refusing to find any 'true bills', unless the Hindu Interpreter and witnesses were sworn 'upon the Cow' instead of 'the Book called Geetan'.*

A similar dispute over the form of oath arose in Madras; and when the Court in 1736 imprisoned two Merchants for refusing to take the 'pagoda' oath,† a great crowd of Hindu residents invaded the Fort and complained to the Governor, at whose intervention the men were released on parole.[27] This naturally increased a tension that had developed from disputes between the Court and the Council during the previous three years.[28] The latter complained about the Court's conduct and its ill consequences, with the result that the Company, after obtaining the opinion of their Standing Counsel, replied:[29]

'We must say that it too plainly appears to us from the past conduct of the Mayor's Court that they are too apt to assume a greater power than does legally belong to or become them; and that they have been wanting in a due deference and respect to you their Superiours, in that Awe and Reverence for the Company, and concern for the welfare of the Settlement which we expect from all who reside under our protection. And we hereby acquaint them once for all that, in case any such like cause of complaint in future is given us from that Quarter, now their duty is so plainly laid before them, we shall not suffer those who disregard the wholesome advice which is given them to Trade within our Limits. At the same time we expect that you on your parts will do nothing to obstruct the regular course of Justice or discountenance those who have a Seat on the Bench while they behave prudently and uprightly in the said Station, and keep within the due bounds prescribed by the Charter.'

* Home Misc., vol. 432, pp. 57–78, Register of proceedings at the sessions during 1746. Similar non-co-operation also occurred once in Madras (Dodwell's *Nabobs of Madras*, p. 153). In the 'cow-oath' the witness was made to take hold of a cow's tail and swear to speak the truth. The book 'Geetan' was the *Bhagavata Gita*, one of the *Purana* series, to which a divine origin is attributed. For further details of the dispute see *Bombay Quarterly Review*, vol. 5 (1857), pp. 178–80.

† This was an oath taken in a Pagoda (temple); for the form of one see Love's *Vestiges*, vol. 2, pp. 232, 233.

It repeated this 'wholesome advice' next year, in consequence of reports that the Court still acted in an unbecoming manner towards the Government.[30]

Nor was Calcutta free from the same sort of discord, and in 1733 the Company expressed their disapproval of 'that affected independency, which we are informed has crept in among' all the young Aldermen and Attorneys in the Mayor's Court.[31] Again, in 1746 it commented on the Bengal Council exposing itself to 'a sort of insult' from the Mayor's Court.[32] But, though the conduct of the Courts may at times have been unduly factious or discourteous, in the main it was inspired by the laudable aim of judicial independence and integrity. The Charter gave a decided impulse to the promotion of the ideal of absolute impartiality so admirably expressed by Aungier at the opening of the Court of Judicature in 1672.

Another stimulus towards the proper administration of justice came from the Company's supervision of the three Courts. Copies of the Registers of their proceedings were submitted annually and were subject to scrutiny by Counsel employed by the Company.[33] Its dispatches of 1729, 1730, and 1731 include many pages of comments on the proceedings that are obviously based on his remarks.[34] Many of them related to *minutiae* of the English law, such as the exact phraseology of an indictment, while some of the objections were of a technical rather than a substantial nature. But in the main the remarks impressed on the Courts the fundamental principles of English law that ensured a fair trial, and gave them useful instructions on many points. At the same time the Company was careful to make it clear that it did not mean to dictate to the Courts, but only tendered its opinion and advice, which it doubted not would be followed as far as it was found to be just and reasonable.[35] In 1731 it started a special heading in its dispatches for remarks relating to the Charter;[36] but in the following year it deputed this work to the Company's Standing Counsel and Attorney, who were to send their remarks separately. This was because the books and records of the proceedings had grown 'so voluminous' that the Company found it impracticable to attend to them, in view of its other more important affairs.[37] It invited the several Councils to submit any questions on which doubts might arise for the concurrent opinion of those gentlemen and of the Attorney-General.* With the Charter the Company had sent each

* Thus in regard to the 'oath' dispute, the Company took not only the opinion

Presidency a Book of Instructions and multifarious forms as to the Method of Proceedings in civil suits, Sessions trials, and probate and administration work.[38] It will thus be seen that the Company made considerable efforts to keep the Courts in the straight and narrow path of English law.

The insistence on this law had of course its weak points. It was in many respects unsuitable for the prompt and satisfactory disposal of civil and criminal cases in which the native inhabitants of the settlements were concerned; and the difference between the conditions of England and those of India, and between the atmosphere of Westminster Hall and that of the Courts in India, was apt to be overlooked. Thus the Bombay Mayor's Court, in view of the delays generally entailed by references to arbitration, and in an effort to have suits settled before they came to a hearing, ordered the two Attorneys of the Court to try to adjust disputed accounts, but the Company objected that 'the arbitrators are not to be named by the Court but by the partys'.[39] The taking of security for discharge of a demand before a debtor might leave the Island was objected to as contrary to English law,[40] and so on. But in spite of this the general effect of the Company's supervision was beneficial, while it also prevented illegalities such as the attempt of the Madras Council to set up a Sheriff's Court for the recovery of petty debts,* and to make a standing order for the Court's guidance in a matter of procedure.[41] It deprecated the old-standing punishments of thirty-nine lashes and the pillory, and approved of juries in India, as in England, getting round the death penalty for larceny by undervaluing the stolen property.[42]

Its insistence on English law was due to the Charter being 'principally designed for the government and benefit of Europeans', and it encouraged the continued recognition of any 'peculiar customs' of the native inhabitants.[43] The latter point was elaborated in a reply to a petition of the Castes at Madras.[44] The following passage[45] explains the main principle adopted:

'We say in the next place that such differences that happen between the Natives, in which the Kings subjects are not involved, these may and should

of the Attorney-General, but also of the late and present Solicitor-Generals (Home Misc., vol. 432, pp. 40, 41; *Bombay Quarterly Review*, 1857, p. 180).

* Dispatch of 21 Feb. 1727, para. 98 (L.B., vol. 21, p. 414). The need for such a Court was met in the Charter of 1753 by the institution of the Court of Requests.

be decided among themselves, according to their own Customs or by Justices or Referees to be appointed by themselves or otherwise as they think fit; but if they request and choose them to be decided by English Laws, those and those only must be pursued, and pursued too according to the directions in the Charter: and this likewise must be the case when differences happen between Natives and subjects of England, where either party is obstinate and determined to go to Law.'

An important consequence of this petition[46] was that the Charter of 1753, which continued the arrangements of 1726 with some alterations, expressly excepted from the jurisdiction of the Mayor's Court all suits and actions between the natives only, and directed that these suits and actions should be determined among themselves, unless both parties submitted them to the determination of the Mayor's Court. The Registers show, however, that Indians continued to resort to these Courts to much the same extent as before. This consent to their jurisdiction gives a clear indication that it was favourably regarded by the native inhabitants of the settlements. Indian litigation in fact contributed the bulk of the Court work from their start; and in 1731 the Company expressed surprise that the number of suits at Madras 'should rival those of one of the principal Courts at Westminster Hall'.[47] In the face of this evidence, the view that justice suffered because 'the Mayor's Court knew nothing and could know nothing of jurisprudence'[48] is misleading. Most of the litigation was of a simple character, such as claims for debts, and was dealt with in a prompt and satisfactory manner. Any reader of the Registers* with legal knowledge or judicial experience will realize that, though the Benches had no professional lawyer among them, they judged the causes before them with apparent fairness and in a sensible manner that was none the worse for its avoidance of legal technicalities.

On the other hand, the fact that native inhabitants could object to the jurisdiction undoubtedly led to difficulties. The Company's admonition that they should settle disputes among themselves was bound to be largely futile in the absence of other Courts where such disputes could be litigated. In Calcutta the *Zamindar*'s Court supplied this need, while in Bombay the exemption seems to have been ignored

* They are worth looking at also for other reasons. Professor Dodwell's *Nabobs of Madras* shows how details of historical and social value can be found in them.

in practice.* But in Madras the only other Court available for civil litigation was the Court of Requests, established by the Charter of 1753, in which only suits of a small pecuniary value could be tried. In 1770 the Council decided to establish a Court for determining disputes dependent on the customs of the natives; but nothing appears to have been done to carry out this resolution until 1795, when (acting under powers conferred by the Charter Act of 1793) the Governor and Council established a special 'Cutcherry Court' for this purpose.[49] Its life was, however, a short one, owing to the inauguration of the Recorder's Court in 1798.

Before this, however, even the Company's ideas were changing, and in 1786 they indicated their desire 'to accommodate their views and interests to the subsisting manners and usages of the people rather than to any abstract theories drawn from other countries or applicable to a different state of things'.[50] The time had arrived for a change. This is well put by the Madras Council in the following passage from a letter to the Company in 1791:[51]

'It appears to us that, in the infancy of your Settlement here, and even during its progress until the last twenty years, the administration of Justice was liable to few difficulties. The causes which came before the Mayor's Court were chiefly of a commercial nature, and the Gentlemen who composed the Court being well qualified by their habits to decide upon such disputes, justice was generally distributed with impartiality and good sense. In the Criminal Court likewise, which was composed of the Governor and Council in their characters of Justices of the Peace, the proceedings being few and conducted by certain prescribed Rules, the same effects were produced, and the society preserved in a state of much security and happiness.

'As the Colony increased with the increase of commerce and of territory, causes multiplied and became more complex. The Judges now felt the want of experience, and even of time sufficient to go through their duties: new points constantly arose which required legal as well as mercantile knowledge: men who professed or pretended to this knowledge were therefore introduced as Attornies, and gradually obtained considerable influence in Courts where the Judges pretended to no legal skill. Thus by a change of circumstances unforeseen and unprovided for, the current of Justice was in great measure turned into a new channel.

* Cf. Morley's *Digest*, Introduction, p. clxix. In a case decided by the Supreme Court of Bombay in 1843, Perry J. held that the exemption had never legally applied to the native inhabitants of that town, and added: 'Certain it is that the Mayor's Court here dispensed justice to such inhabitants.'

'These inconveniencies have been of late further augmented by Acts of Parliament which extend the jurisdiction of the civil and criminal Courts to Places, Persons and Offences that were not before subject to their authority. By such extension the business has increased to a degree which renders it utterly impracticable for any but professional Judges to execute it with due solemnity and effect.'

They accordingly recommended the propriety of having professional Judges for the civil and criminal Courts. This proposal had already been adopted in Bengal, where the Supreme Court put an end to the Mayor's Court in 1774. In Bombay and Madras they lasted till 1798, when the Recorder's Court was substituted.

The system of confining the administration of justice to the covenanted servants or freemen of the Company thus ended, and the professional lawyer took his place in the Presidency towns. The history of subsequent Court developments has been dealt with adequately and is well known. This is, therefore, a proper place at which to finish this account of the Company's previous Courts. It will not have been written in vain if it helps towards a realization of the earlier stages in the growth of British justice in India, and the spade work done in rougher times. The Courts of those days, in spite of their defects, made an effective contribution to the development in India of the high standard of justice that is one of the pillars of the British Empire.

That contribution, however, lacked an important element of present-day conditions. A remarkable feature of the history of the early Courts is the practical exclusion of Indians from any share in the work of the Bench. The only exceptions are the appointments of Indian merchants to the Bombay Court of Judicature in 1718–28, and the similar arrangements in Madras between 1687 and 1692. Under the Charters of 1726 and 1753 the only capacity in which Indians could participate in the administration of justice was as jurors in the Sessions Court; but this privilege was restricted to those professing the Christian religion.* There was of course a reason for this exclusion. In English settlements that were merely mercantile and liable to attack from hostile neighbours, such a policy was almost

* This was not specifically stated in the Charters, but was indicated by the provision that the jurors should take an oath similar to that taken in England. It was not till 1826 that Wynn's Jury Act (7 Geo. IV, c. 37) allowed Indians, not professing the Christian religion, to serve on petty juries.

inevitable. It was not till the securer days of the nineteenth century that an effective start was made in associating Indians as judicial officers in the administration of justice, with a successful development in the highest, as well as the lower, Courts that has made the British Courts in India one of the strongest ties between that country and Great Britain.

REFERENCES TO AUTHORITIES

CHAPTER I

1. Hunter, *A History of British India*, vol. 2, p. 214; Arnold Wright, *Annesley of Surat and his Times*, p. 52.

2. *The Advocate-General* v. *Richmond*, Perry's *Oriental Cases*, p. 573.

3. P.R.O., C.O. 77, vol. 9, f. 221; Khan, *Anglo-Portuguese Negotiations, &c.*, p. 467; *E.F.*, *1665–7*, p. 45.

4. P.R.O., C.O. 77, vol. 9, f. 308, no. 142; Khan, p. 476.

5. P.R.O., C.O. 77, vol. 9, f. 221; Khan, p. 467; *E.F.*, *1665–7*, p. 45.

6. P.R.O., C.O. 77, vol. 10, f. 98; *E.F.*, *1665–7*, pp. 289, 290.

7. P.R.O., C.O. 77, vol. 10, f. 88; Khan, p. 487; *E.F.*, *1665–7*, p. 291.

8. *E.F.*, *1665–7*, p. 70, and *1668–9*, p. 55.

9. Khan, p. 497. In addition to the record of the speech contained in the copy of Wilcox's Report in the Public Record Office, there is a copy of it in F.R. Surat, vol. 106, pp. 121–3.

10. Bom. Consltn. of 28 June 1672, F.R. Misc., vol. 2, p. 139; Wilcox's Report, as reproduced by Khan, p. 491.

11. Bom. Consltn. of 31 Jan. 1670, F.R. Surat, vol. 3, p. 36. The supersession of the Portuguese *Ovidore* by an Englishman was also discussed in Nov. 1669 (F.R. Surat, vol. 105, p. 180).

12. Forrest's *Selections*, vol. 1, p. 55, reproduced in *Bombay in the Making*, p. 126. The 'Proposals' were sent home on 10 Jan. 1672 (O.C. 3611).

CHAPTER II

1. *E.F.*, *1668–9*, p. 61.

2. *E.F.*, *1668–9*, p. 76.

3. *The English in Western India*, p. 119.

4. *A History of British India*, pp. 213, 214.

5. *The Origin of Bombay*, p. 275.

6. *Bombay in the Making*, p. 85.

7. The main portions of these records are given in *E.F.*, *1668–9*, pp. 93–9 and 100, 101.

8. These were contained in a letter of the Company, dated 27 March 1668, reproduced in ibid., p. 56.

9. Ibid., p. 100.

10. Vol. 2, p. 242. So also does Beckles Wilson in his history of the East India Company, *Ledger and Sword*, vol. 1, p. 306.

11. F.R. Bom., vol. 1, pp. 69, 70; *E.F.*, *1668–9*, p. 227.

12. Surat letter of 21 June 1669, F.R. Bom., vol. 1, p. 76; *E.F.*, *1668–9*, p. 229.

13. See Prof. Firth's *Cromwell's Army*, pp. 282, 409–22, where the Articles are reproduced.

14. *History of England*, vol. 1, p. 58 of Longmans ed. of 1883.

15. F.R. Bom., vol. 1, pp. 55, 56, and 59.

16. F.R. Surat, vol. 105, p. 97; *E.F., 1668–9*, p. 219.

17. Bruce's *Annals*, vol. 2, p. 242; Anderson's *The English in Western India*, p. 124.

18. F.R. Surat, vol. 105, pp. 97 and 99.

19. Letter Book, vol. 4, p. 182; *E.F., 1668–9*, p. 236.

20. Oxenden died on 14 July 1669; for further details see *E.F., 1668–9*, pp. 182, 183.

CHAPTER III

1. *E.F., 1668–9*, pp. 56, 60.

2. Miss Sainsbury's *Court Minutes, 1668–70*, p. 100.

3. Ibid., pp. 112, 115, 136, 149, 157, 160; *Original Court Minutes*, 25 Nov. 1668 and 9 Dec. 1668, Book 26, pp. 348, 355.

4. L.B., vol. 4, p. 224; *E.F., 1668–9*, p. 237. The dispatch mentions 'the severall Lawes and Constitutions, herewith sent you, under our seale'.

5. O.C. 3373, Surat general letter of 26 Nov. 1669. The passage referring to the arrival of the ships and the 'Laws for regulation of your Island Bombay' will be found at p. 172 of the transcript in India Office, Home Misc., vol. 49.

6. O.C. 3361, Surat letter, 1 Nov. 1669, informing the Bombay Council that Aungier would bring the Laws and Constitutions with him to Bombay. The passage is at p. 246 of the Transcript in Home Misc., vol. 49.

7. Bom. Consltn. of 2 Feb. 1670, F.R. Surat, vol. 3, p. 39, and Surat Diary, No. 1, p. 184 (the latter is in the records of the Bombay Government).

8. The Charter was dated 24 Sept. 1726, but did not affect Bombay till Feb. 1728 (see *Bom. City Gaz.*, vol. 2, pp. 213, 214).

9. General Records, Miscellanies, vol. 11, pp. 68–78.

10. F.R. St. Helena, vol. 1, pp. 16–32. Another copy is contained in L.B., vol. 6, pp. 493–501. The Company's dispatch of 1 Aug. 1683 (F.R. St. Helena, vol. 1, p. 35) says that they were 'for the most part drawn from the Modell of Laws we establisht upon our Island of Bombay'.

11. L.B., vol. 5, p. 528; Home Misc., vol. 51, p. 54. Habitual thieves, however, still continued to be sent to St. Helena occasionally; e.g. President Child ordered this in Surat letter of 2 Oct. 1685 (F.R. Bom., vol. 3, p. 101).

12. Cf. Bombay letter 9 May 1671 (F.R. Surat, vol. 105, p. 163).

13. Surat letter to Company, 9 Jan. 1671 (O.C. 3538; H.M., vol. 49, p. 348). See also Surat Consltn., 8 Aug. 1670 (F.R., vol. 3, pp. 78, 79); Surat letter to Bombay, 9 Aug. 1670 (F.R. Bom., vol. 19, p. 34).

14. O.C. 3373; *E.F., 1668–9*, p. 250.

15. The former are at pp. 55–67 of the volume. The copies come between letters dated 22 and 23 March 1748 (1747 O.S.).

16. Dispatch to Fort St. David, dated 24 July 1747 (L.B., vol. 26, p. 652, cf. Love's *Vestiges of old Madras*, vol. 2, p. 382), and dispatches of the same date to Fort William and Bombay (L.B., vol. 26, pp. 658, 664), where the Company says: 'We doubt not from your past actions that you will abhor the

thought of giving up our Settlements, and the more monstrous one of a Ransome afterwards.'

17. L.B., vol. 26, pp. 649–53. He had, however, died on 14 Apr. 1747 (Love, op. cit., vol. 2, p. 386).

18. Dispatch to Bengal (L.B., vol. 27, pp. 106, 110, 123, 128–34). Also similar dispatches to Bombay and Fort St. David on the same date in this volume. The Misc. Volume contains copies of the Commissions of one Alexander Delavaux as 'Captain of the train of Artillery' and Chief Engineer at Fort St. David, and his instructions to embark at Portsmouth, dated 18 Feb. 1748, pp. 35–7.

CHAPTER IV

1. O.C. 3245; *E.F., 1668–9*, p. 39.
2. *E.F., 1668–9*, p. 226.
3. F.R. Bom., vol. 1, pp. 6, 7, 27; *E.F., 1668–9*, p. 227.
4. This date is given in the deposition of Richard Ball and three others, F.R. Bom., vol. 1, p. 6; cf. *E.F., 1668–9*, p. 251.
5. *E.F., 1668–9*, p. 231.
6. Ibid., p. 244.
7. F.R. Surat, vol. 3, pp. 11, 12.
8. *E.F., 1668–9*, p. 252.
9. F.R. Surat, vol. 3, pp. 19–33.
10. O.C. 3403; *E.F., 1668–9*, p. 253.
11. Cf. *E.F.*, p. 225. Thus the Surat Council had to complain of his violent passions, e.g. on 25 and 26 Nov. 1669, F.R. Misc., vol. 2, pp. 57, 58.
12. *E.F., 1668–9*, p. 253, n. 1, and Rolt's letter of 12 Apr. 1672, F.R. Bom., vol. 6, p. 172.
13. His letter of 18 March 1674 to Rolt and Young, F.R. Bom., vol. 6, p. 90.
14. Bombay letters to Persia of 20 Aug. 1674 and 20 Sept. 1674, F.R. Bom., vol. 6, pp. 172 and 220.
15. *New Account*, &c., ed. W. Crooke, vol. 1, pp. 170 and 304.
16. F.R. Surat, vol. 3, pp. 36–8, 49.
17. *E.F., 1668–9*, p. 253, n. 1.
18. *Gaz. of Bombay City*, vol. 2, p. 205. Malabari in *Bombay in the Making*, pp. 114 and 290, makes the same mistake.
19. *The English in Western India*, pp. 207, 208.
20. Bom. Consltn. of 31 Jan. 1770 (F.R. Surat, vol. 3, p. 37).
21. F.R. Surat, vol. 3, pp. 38, 39.
22. F.R. Surat, vol. 3, pp. 39–41. The orders are reproduced in Campbell's *Materials*, &c., vol. 3, p. 2; Edwardes's *Rise of Bombay*, p. 111, and *Gaz. of Bombay City*, vol. 2, p. 205; and Malabari's *Bombay in the Making*, pp. 146–8.
23. Surat letter of 30 March 1670 (O.C. 3415). A transcript of this passage will be found in Home Misc., vol. 49, p. 218.
24. Malabari, p. 148, and other references given in n. 22.

25. Surat letter of 30 March 1670 (O.C. 3415; Home Misc., vol. 49, p. 219). Cf. the Company's reply in their dispatch of 22 Feb. 1671 (L.B., vol. 4, p. 423; Home Misc., vol. 49, pp. 297, 298).
26. Campbell's *Materials*, &c., vol. 3, p. 2; Malabari, p. 147.
27. *Bombay in the Making*, p. 147.
28. See n. 22.
29. F.R. Surat, vol. 3, pp. 36, 37; Campbell's *Materials*, &c., vol. 3, p. 2; *Bom. City Gaz.*, vol. 2, p. 206.
30. F.R. Surat, vol. 3, pp. 36, 37, 42–5.
31. *The English in Western India*, p. 130; *History of British India*, vol. 2, p. 220.
32. O.C. 3415; Home Misc., vol. 49, p. 219.
33. F.R. Bom., vol. 19, p. 8.
34. Ibid., p. 40.
35. F.R. Surat, vol. 3, p. 39. Surat Diary No. 1 of 1660–96 contains the same wording, as I have verified by a reference to the Record-keeper, Bombay.
36. *Gaz. of Bombay City*, vol. 2, p. 206, n. 4.
37. *The English in Western India*, p. 131.
38. L.B., vol. 5, p. 262; Home Misc., vol. 49, p. 349.
39. Bom. Consltn. of 1 Jan. 1670, F.R. Surat, vol. 3, p. 36.
40. Ibid.
41. Ibid., pp. 42–5.
42. O.C. 3415; Home Misc., vol. 49, p. 218.
43. F.R. Surat, vol. 3, p. 46.

CHAPTER V

1. This is reproduced in Yule's *Diary of William Hedges*, vol. 2, p. 317.
2. F.R. Bom., vol. 1, p. 2.
3. Ibid., pp. 2 and 3.
4. Ibid., p. 4.
5. Ibid.
6. F.R. Bom., vol. 19, pp. 30, 32.
7. F.R. Bom., vol. 1, pp. 8 and 9.
8. Ibid., pp. 2 and 3.
9. F.R. Surat, vol. 106, p. 4.
10. Bom. letter of 6 Oct. 1670 (F.R. Surat, vol. 105, p. 34).
11. Surat Consltn. of 28 Oct. 1670 (F.R. Surat, vol. 3, p. 98). Cf. Surat letter of 27 Aug. 1670 (F.R. Bom., vol. 19, p. 46).
12. F.R. Surat, vol. 105, pp. 127–30.
13. Bom. letter of 2 Sept. 1671 (F.R. Surat, vol. 106, pp. 7 and 8); Bom. letter of 18 May 1672 (ibid., p. 106); Bom. letter of 24 May 1672 (ibid., p. 108).
14. Surat letter of 16 May 1672 (Forrest's *Selections*, vol. 1, p. 64; reproduced by Malabari, p. 250).

15. F.R. Surat, vol. 105, p. 161.
16. F.R. Misc., vol. 2, p. 114.
17. F.R. Surat, vol. 105, p. 172.
18. Cf. Stephen's *History of the Criminal Law*, vol. 2, p. 434.
19. 1 Jac. I, cap. 12, repealed by the Witchcraft Act of 1736 (9 Geo. II, cap. 5).
20. Bom. Consltn. of 12 Feb. 1670 (F.R. Surat, vol. 3, pp. 48, 49).
21. F.R. Surat, vol. 106, pp. 106, 107.
22. Bom. letter of 21 Dec. 1672 (F.R. Bom., vol. 6, p. 29).
23. O.C. 3614, sent with Surat letter of 10 Jan. 1672 (O.C. 3611); it is reproduced in Forrest's *Selections*, vol. 1, p. 56, and by Malabari, p. 126.
24. Surat letter of 9 Jan. 1671 (O.C. 3538; Home Misc., vol. 49, p. 346).
25. Surat letter of 25 Sept. 1671 (O.C. 3580).
26. L.B., vol. 4, p. 423; Home Misc., vol. 49, p. 299.
27. Ibid., pp. 297, 298. This is noticed in Bruce's *Annals*, vol. 2, p. 279; and it is evidently this passage that is paraphrased by Sir Michael Westropp in the portion of his judgement in *Naoroji Beramji* v. *Rogers* (Bom. High Court Reports, vol. 4, p. 1) cited by Malabari, pp. 159, 160.
28. P.R.O., C.O. 77, vol. 12, f. 136; see Khan, p. 494.
29. F.R. Surat, vol. 87, p. 4.
30. Ibid., p. 35; reproduced in Forrest's *Selections*, vol. 1, p. 64, where the transcript wrongly substitutes 'heer' for 'Secy', i.e. Secretary.
31. *Bombay in the Making*, p. 149.

CHAPTER VI

1. Surat letter of 6 April 1672 (O.C. 3633).
2. *Anglo-Portuguese Negotiations*, pp. 490–9.
3. P.R.O., C.O. 77, vol. 12, f. 136. The report was probably sent to the Privy Council in connexion with the Company's plea in Alvaro Perez's case that there was a properly constituted Court of Judicature in Bombay (see Chap. VIII, and Khan, pp. 555, 558).
4. Cf. O.C. 3725, item 31, and O.C. 3736. There is a note in the India Office Records (O.C. 3722, p. 31) that a copy of the report was offered to the British Museum in Feb. 1915.
5. F.R. Misc., vol. 2, pp. 139, 140.
6. In his report, see Khan, p. 491.
7. Bom. letter of 12 July 1672 (O.C. 3649).
8. Khan, p. 495; F.R. Misc., vol. 2, p. 139.
9. Khan, p. 145; F.R. Misc., vol. 2, p. 140.
10. Khan, pp. 491–3.
11. O.C. 4298.
12. Khan, p. 493.
13. Bom. Consltns. of 22, 26, and 28 June 1672, F.R. Misc., vol. 2, p. 139. Aungier's big report on Bombay of 15 Dec. 1673 (O.C. 3910) also mentions *four* Justices as assisting Wilcox in the Sessions. Capts. Shaxton and Gary

were appointed for Bombay, Mr. Adams for Mahim, Lieut. Langford for Mazagaon, and Lieut. Ustick for Sion.

14. Bom. Consltn. of 28 June 1672 (F.R. Misc., vol. 2, p. 139).

15. Bom. Consltn. of 5 March 1675 (F.R. Bom., vol. 2, p. 40); cf. Edwardes, *Gaz.*, vol. 2, p. 212.

16. Khan, pp. 494, 495; Bom. Consltn. of 2 Aug. 1672 (F.R. Misc., vol. 2, p. 140).

17. Bom. Consltn. of 2 Aug. 1672 (F.R. Misc., vol. 2, p. 140). Previously the rate had been fixed at 2 per cent. (Consltn. of 28th June 1672, ibid., p. 139). Later on the levy seems to have been limited to 'Reall actions', i.e. suits for land; and 2½ per cent. was charged in all other actions: O.C. 4298.

18. Khan, p. 494.

19. O.C. 3722, pp. 44–7; F.R. Bom., vol. 6, pp. 39–41.

20. Khan, pp. 495–9.

21. Dispatch of 5 March 1675 (L.B., vol. 5, p. 165; Home Misc., vol. 50, p. 256). Cf. Arnold Wright, *Annesley of Surat*, pp. 55–8.

22. Khan, p. 491.

23. Ibid.

24. A copy of the speech is also contained in F.R. Bom., vol. 6, book of 1671–2, pp. 121–3.

25. *A new Account, &c.*, vol. 1, p. 188; Argonaut ed., vol. 1, pp. 108, 109.

26. Bom. Consltn. of 2 Aug. 1672 (F.R. Misc., vol. 2, p. 140). Cf. Khan, p. 499.

27. Khan, p. 499.

28. O.C. 4115; Home Misc., vol. 50, p. 390.

29. *History of British India*, vol. 2, p. 220.

30. *Bombay in the Making*, p. 149.

31. *Gaz.*, vol. 2, p. 207.

32. *A new Account of the East Indies*, Argonaut ed., vol. 1, p. 109.

CHAPTER VII

1. Dispatch of 10 March 1669 (L.B., vol. 4, p. 224; Home Misc., vol. 2, p. 22). Cf. *Court Minutes, 1668–70*, p. 122.

2. Khan, pp. 499, 500.

3. O.C. 3930.

4. O.C. 3910, last para.

5. O.C. 4298.

6. Khan, p. 493.

7. O.C. 3910.

8. The passage will be found at p. 37 of the printed copy of the report, contained in *JBBRAS* for Aug. 1931, vol. 7, nos. 1 and 2.

9. O.C. 3930.

10. Bom. letter of 11 Nov. 1677 (Forrest, *Selections*, vol. 1, p. 140).

11. See pp. 171, 183, and Malabari, *Bombay in the Making*, pp. 494, 452, 453.

12. Malabari, *Bombay in the Making*, p. 153; R. and O. Strachey, *Keigwin's Rebellion*, p. 14.
13. *K.R.*, p. 14, n. 3.
14. Dispatch of 15 March 1678 (L.B., vol. 5, p. 528; Home Misc., vol. 50, p. 51).
15. Dispatch of 7 March 1677 (L.B., vol. 5, p. 403).
16. O.C. 3929. Cf. Edwardes, *Gaz.*, vol. 2, p. 64, n. 4.
17. Home Misc., vol. 46, p. 223.
18. Court Book, vol. 28, proceedings of 19 Dec. 1673, and vol. 30, proceedings of 28 Feb. 1677, p. 99.
19. Court Book, vol. 28, proceedings of 15 Oct. 1673.
20. Ibid., proceedings of 19 Dec. 1673.
21. *K.R.*, p. 14, n. 3.
22. *JBBRAS*, Aug. 1931, p. 36.
23. e.g. F.R. Bom., vol. 1, pp. 27, 28, 29; 42; 116.
24. F.R. Bom., vol. 1, pp. 27, 28.
25. O.C. 3910; *JBBRAS*, Aug. 1931, p. 36.
26. Moseley's *Law Dictionary*, p. 68; *Encyclopaedia Brittannica*, 14th edn., p. 282.
27. Orders in Table of Court-fees of 1677 (O.C. 4298).
28. F.R. Bom., vol. 2, p. 7.
29. O.C. 3930, para. 4.
30. O.C. 3930, and Campbell's *Materials*, &c., vol. 3, p. 2.
31. Court Book, vol. 29, p. 18.
32. Dispatch of 7 March 1677 (L.B., vol. 5, p. 403).
33. Dispatch of 15 March 1678 (L.B., vol. 5, p. 528).
34. Ibid.
35. O.C. 4298, prescribing an attorney's fee of 2 Xeraphins.
36. Halsbury's *Laws of England*, vol. 2, p. 359, n. (g).
37. Forrest, *Selections*, vol. 1, pp. xvii and 81, reproducing p. 70 of Surat Outward Letter Book No. 2 of 1675–6.
38. Company's dispatch of 15 March 1678 (L.B., vol. 5, p. 528, and Home Misc., vol. 51, p. 54); Bom. letter of 6 Jan. 1679 (O.C. 4555). Aungier's Instructions of Sept. 1675 also refers to 'common barretting and vexatious causes of Law' (O.C. 4115 and Home Misc., vol. 50, p. 390).
39. Malabari, pp. 474–6.
40. Surat letter of 18 Dec. 1675 (Forrest, *Selections*, vol. 1, p. 73); Company's dispatch of 7 March 1677 (L.B., vol. 5, p. 403).
41. O.C. 4298.
42. Bom. letter of 12 July 1680 (F.R. Bom., vol. 9, p. 29), and Bom. letter of 18 Aug. 1680 (F.R. Bom., vol. 9, pp. 31, 32).
43. Surat letter of 3 Sept. 1680 (F.R. Bom., vol. 19, p. 42).
44. Dispatch of 15 March 1681 (L.B., vol. 6, p. 318).
45. O.C. 3930, para. 2.
46. Gary's letter of 8 Jan. 1678 (O.C. 4306).
47. Bom. letter of 27 Oct. 1673 (F.R. Bom., vol. 6, p. 184).
48. Bom. letter of 10 Nov. 1673 (F.R. Bom., vol. 6, pp. 261, 262).

49. Bom. Consltns. of 6 June 1676 and 30 June 1677 (F.R. Bom., vol. 2, pp. 12, 13 (1676) and 7 (1677)).
50. O.C. 4298.
51. Ibid. Xs. 60 were then worth about Rs. 45.
52. Bom. letter of 6 Jan. 1679 (O.C. 4555).
53. Reproduced by Yule, *Hedges' Diary*, vol. 2, p. 313, and by Malabari, pp. 76, 77, n.
54. Edwardes, *Gaz.*, vol. 2, pp. 216, 217.
55. O.C. 3930, para. 2.
56. Bom. Consltn. of 24 June 1673 (F.R. Bom., vol. 1, pp. 61, 62).
57. Cf. *E.F., 1668–9*, pp. 306, 307.
58. Bom. Consltn. of 10 July 1674 (F.R. Bom., vol. 1, p. 61).
59. Cf. *E.F., 1665–7*, p. 199.
60. Bom. Consltn. of 4 July 1673 (F.R. Bom., vol. 1, p. 62).
61. Ibid.
62. Bom. Consltn. of 29 Jan. 1675 (F.R. Bom., vol. 2, pp. 23–5).
63. O.C. 3930.
64. Surat letter of 19 Jan. 1674 (O.C. 3910; Home Misc., vol. 50, p. 251).
65. Bom. Consltns. of 18 April 1673 and 25 June 1675 (F.R. Bom., vol. 1, pp. 42, 62).
66. O.C. 3910; Home Misc., vol. 50, p. 251.
67. Halsbury's *Laws of England*, vol. 6, art. 369 at p. 248 and n. (e), which cites two cases of 1673 and 1674.
68. Bom. Consltn. of 10 Nov. 1673 (F.R. Bom., vol. 1, p. 107).
69. Bom. letter of 27 Oct. 1673 (F.R. Bom., vol. 6, p. 236).
70. Table of Court Fees, O.C. 4298.
71. Ibid.
72. Forrest, *Selections*, vol. 1, pp. 112, 129; reproduced by Malabari, pp. 138, 139.
73. F.R. Bom., vol. 1, p. 39.
74. See sections 59–64 of 52 Geo. III, cap. 165. Cf. Carey's *Good Old Days of Hon. John Company*, vol. 2, p. 140.
75. Khan, p. 492.
76. O.C. 4298.
77. See n. 72.
78. Bom. letter of 21 Dec. 1672 (O.C. 3722 and F.R. Bom., vol. 6, p. 10).
79. Khan, pp. 492, 493; O.C. 3930.
80. Home Misc., vol. 23, pp. 18–20. It was sent home in 1678 (O.C. 4318, items 15 and 16).
81. O.C. 3722 and F.R. Bom., vol. 6, pp. 10 and 11.
82. Surat proceedings of 28 Nov. 1674 (F.R. Bom., vol. 3, p. 50).
83. Wilcox's second report (O.C. 3930).
84. O.C. 4298, Fees 'to the Judge'.
85. O.C. 4298, Fees 'to the Hon. Co.'
86. O.C. 3930.
87. 15 Car. II, cap. 17. See Halsbury, *Laws of England*, vol. 24, p. 307.
88. Bom. Consltn. of 29 Jan. 1675 (F.R. Bom., vol. 2, p. 25).

89. Dispatch of 7 March 1677 (L.B., vol. 5, p. 412).
90. O.C. 4298.
91. Wilcox's second report (O.C. 3930), and Court Orders in O.C. 4298.
92. O.C. 3930.
93. Ibid., and Aungier's letter of 21 Dec. 1672 (O.C. 3722).
94. Ibid.
95. O.C. 3930, penultimate para.
96. Ibid.
97. Bom. Consltn. of 4 Sept. 1673 (F.R. Bom., vol. 1, p. 78).
98. F.R. Bom., vol. 6, pp. 187, 188.
99. Surat Consltn. of 20 Sept. 1673 (F.R. Surat, vol. 3, p. 36).
100. Bom. Consltn. of 6 Oct. 1673 (F.R. Bom., vol. 1, p. 95).
101. Bom. letter of 10 Oct. 1673 (F.R. Surat, vol. 106, p. 199).
102. Bom. Consltn. of 6 Aug. 1674 (F.R. Bom., vol. 1, p. 74).
103. Bom. Consltn. of 1 March 1675 (F.R. Bom., vol. 2, pp. 41–3).
104. Dispatch of 7 March 1677 (L.B., vol. 5, p. 412).
105. Surat letter of 27 Nov. 1677 (F.R. Surat, vol. 88, p. 72); and Surat letter of 29 Sept. 1682 (F.R. Bom., vol. 19, p. 20).
106. Bom. Consltn. of 8 March 1675 (F.R. Bom., vol. 2, p. 41).
107. Surat letter of 24 Oct. 1681 (F.R. Bom., vol. 19, p. 40).
108. Bom. letter of 16 July 1681 (F.R. Bom., vol. 9, p. 62).
109. Halsbury, *Laws of England*, vol. 9, art. 1158, p. 572.
110. Surat letter of 25 April 1682 (F.R. Bom., vol. 19, p. 13).
111. O.C. 3930, para. 1.
112. Khan, pp. 499, 500. The man, however, was subsequently reprieved and banished (Khan, p. 500).
113. Capt. A. Hamilton, *A New Account, &c.*, vol. 1, p. 235, reproduced by Malabari, pp. 170, 171. See Chap. IX, p. 134.
114. Dispatch of 13 Dec. 1672 (L.B., vol. 5, p. 28, and Home Misc., vol. 50, p. 10); dispatch of 3 April 1674 (L.B., vol. 5, p. 115, and Home Misc., vol. 50, p. 98).
115. Surat letters of 2 Oct., 29 Oct., and 17 Dec. 1683 (F.R. Surat, vol. 91, pp. 184, 210, and 24).
116. Surat letter of 29 Oct. 1683 (F.R. Surat, vol. 91, p. 210).
117. F.R. Surat, vol. 109, pp. 45, 46.
118. F.R. Bom., vol. 7, p. 60.
119. Ibid., p. 64.
120. Dispatch of 15 March 1678 (L.B., vol. 5, p. 578; Home Misc., vol. 51, p. 57).
121. e.g., the cases cited in Malabari's *Bombay in the Making*, pp. 442, 444, 448, 451, and 457. Cf. pp. 190, 191, 197.
122. F.R. Bom., vol. 6, pp. 12, 13.
123. O.C. 3930, para. '1st'.
124. Aungier's report on Bombay (O.C. 3910; *JBBRAS*, Aug. 1931, p. 33), and cf. clauses 1 to 3 of section V of the Laws.
125. Khan, p. 500.
126. Bom. letter of 24 June 1671 (F.R. Surat, vol. 105, p. 178).

127. F.R. Misc., vol. 2, p. 140.
128. F.R. Bom., vol. 1, p. 82.
129. Bom. Consltn. of 13 Nov. 1676 (F.R. Bom., vol. 2, pp. 17, 18).
130. Bom. letter of 23 Nov. 1680 (F.R. Bom., vol. 9, p. 48).
131. Bom. Consltn. of 25 April 1685 (F.R. Bom., vol. 3, p. 61).
132. See cases cited by Malabari, pp. 491, 492, and 493.
133. F.R. Bom., vol. 7, pp. 60, 61.
134. Bom. Consltn. of 17 Sept. 1673 (F.R. Bom., vol. 1, p. 87).
135. Bom. Consltn. of 3 Oct. 1673 (F.R. Bom., vol. 1, p. 94).
136. F.R. Bom., vol. 1, p. 109, Charge No. 6.
137. Bom. Consltn. of 30 Oct. 1674 (F.R. Bom., vol. 1, p. 110).
138. Bom. Consltn. of 11 Nov. 1674 (F.R. Bom., vol. 1, p. 116 *re* Charge No. 6).
139. Khan, p. 499.
140. O.C. 4115; Home Misc., vol. 50, p. 390.
141. O.C. 3930, last para.
142. Bom. letter of 16 Dec. 1674 (O.C. 4051 and Home Misc., vol. 50, p. 316).
143. Bom. Consltn. of 7 Nov. 1673 (F.R. Bom., vol. 1, p. 108); and Bom. Consltn. of 24 July 1674 (F.R. Bom., vol. 1, pp. 66–9, para. 6).
144. O.C. 3611; Forrest's *Selections*, vol. 1, p. 54; Malabari, p. 125.
145. L.B., vol. 4, p. 224; Home Misc., vol. 49, p. 19, cited in *E.F., 1668–9*, pp. 239, 240.
146. Malabari, pp. 125, 126. Similarly Douglas in *Bombay and Western India*, vol. 1, p. 73, gives the sole credit to Aungier for this idea.
147. Bom. Consltn. of 24 July 1674 (F.R. Bom., vol. 1, pp. 66–9).
148. Ibid.

CHAPTER VIII

1. Bom. letter of 15 Aug. 1674 (F.R. Bom., vol. 6, p. 162).
2. Surat Consltn. of 31 Aug. 1674 (F.R. Surat, vol. 3, p. 31).
3. Wilcox's first report (Khan, p. 494).
4. Bom. Consltn. of 2 April 1673 (F.R. Bom., vol. 1, pp. 27, 28).
5. Ibid., and O.C. 3724.
6. Bom. Consltn. of 2 April 1673 (F.R. Bom., vol. 1, pp. 27, 28); Bom. Consltn. of 16 May 1673 (F.R. Bom., vol. 1, pp. 48, 49); Bom. Consltn. of 23 May 1673 (F.R. Bom., vol. 1, p. 50).
7. Bom. Consltn. of 7 Nov. 1673 (F.R. Bom., vol. 1, p. 103); Bom. Consltn. of 26 Nov. 1673 containing Alvaro's Protest dated 27 Oct. 1673 (F.R. Bom., vol. 6, p. 218); cf. Khan, pp. 552–8.
8. Certified copies of the proceedings are contained in O.C. 4378.
9. L.B., vol. 5, p. 182.
10. *Calendar of State Papers, Charles II, 1677–8*, p. 190.
11. Khan, p. 555.

12. Khan, p. 557, and *Calendar of State Papers, 1667–8*, p. 190.
13. P.R.O., C.O. 77/49, p. 217.
14. Court Book, vol. 30, pp. 183, 183a; Khan, pp. 551, 559, 560.
15. Aungier's report on Bombay of 15 Dec. 1673 (see *JBBRAS*, Aug. 1931, p. 43).
16. See note 14.
17. Bom. Consltn. of 9 Sept. 1678 (F.R. Bom., vol. 2, p. 30).
18. Bom. Consltn. of 12 Sept. 1678 (F.R. Bom., vol. 2, pp. 30, 31).
19. F.R. Misc., vol. 2, p. 121.
20. Cf. Aungier's answer to complaints of the Viceroy of Goa (P.R.O., C.O. 77, vol. 12, p. 43).
21. Bom. Consltn. of 26 Sept. 1673 (F.R. Bom., vol. 1, p. 90).
22. Bom. Consltn. of 7 Nov. 1673 (F.R. Bom., vol. 1, p. 104).
23. Ibid.
24. Bom. letter of 17 Jan. 1676, cited by Malabari, p. 410.
25. Bom. Consltn. of 14 May 1675 (F.R. Bom., vol. 2, p. 64).
26. Dispatch of 7 March 1677 (L.B., vol. 5, p. 403, and Home Misc., vol. 51, p. 17); cf. dispatch of 15 March 1681, para. 38 (L.B., vol. 6, p. 311), and Surat letter of 2 Jan. 1686 (F.R. Bom., vol. 3, p. 140).
27. Bom. Consltn. of 28 June 1672 (F.R. Misc., vol. 2, p. 139).
28. Bom. Consltn. of 5 June 1674 (F.R. Bom., vol. 1, p. 49).
29. Bom. Consltn. of 6 July 1674 (F.R. Bom., vol. 1, pp. 59, 60).
30. Ibid.
31. Ibid.
32. Bom. letter of 9 July 1674 (F.R. Bom., vol. 6, p. 151).
33. Bom. letter of 15 Aug. 1674 (F.R. Bom., vol. 6, p. 161).
34. Ibid.
35. *New Account*, &c., Hakluyt ed., vol. 1, pp. 303, 304.
36. Bom. letter of 16 Dec. 1674 (O.C. 4051 and Home Misc., vol. 50, p. 323).
37. Ibid., and Bom. letter of 19 Nov. 1674 (F.R. Bom., vol. 6, pp. 222, 223).
38. Bom. Consltn. of 19 Oct. 1673 (F.R. Misc., vol. 2, p. 145).
39. Surat letter of 22 Jan. 1677 (O.C. 4258).
40. *The Complete Baronetage* by G.E.C., vol. 5 (1906); and Betham's *Baronetage* (1804), vol. 3, p. 379.
41. Surat letter of 10 April 1683 (F.R. Surat, vol. 91, p. 90).
42. F.R. Surat, vol. 88, p. 128.
43. Bom. letter of 19 June 1678 (F.R. Bom., vol. 8, p. 25).
44. Bom. Consltn. of 14 Aug. 1674 (F.R. Bom., vol. 1, pp. 97, 98).
45. Surat Consltn. of 31 Aug. 1674 (F.R. Surat, vol. 3, p. 31).
46. Bom. letter of 15 Sept. 1674 (F.R. Bom., vol. 6, p. 188).
47. Bom. Consltn. of 28 June 1672 (F.R. Misc., vol. 2, p. 139).
48. Bom. Consltn. of 12 Aug. 1672 (F.R. Misc., vol. 2, p. 141), and Aungier's report on Bombay (O.C. 3910), reproduced in *JBBRAS*, pp. 35, 36.
49. Bom. Consltn. of 19 May 1673 (F.R. Bom., vol. 1, p. 96).
50. Bom. Consltn. of 18 Aug. 1673 (F.R. Bom., vol. 1, p. 72).
51. Cf. n. § on p. 46.

52. Surat letter of 5 April 1679 (O.C. 4595 and Home Misc., vol. 51, p. 163).
53. Surat letter of 29 Jan. 1681, para. 23 (F.R. Misc., vol. 4, p. 44).
54. Surat letter of 24 Jan. 1680, para. 70 (F.R. Misc., vol. 4, p. 35); and dispatch to Surat of 10 Feb. 1682 (L.B., vol. 6, p. 457).
55. Bom. Consltn. of 2 July 1675 (F.R. Bom., vol. 2, p. 92).
56. Ibid.
57. Bom. letter of 26 Oct. 1675 (F.R. Bom., vol. 2, p. 2).
58. Surat letter of 18 Dec. 1675 (Forrest's *Selections*, vol. 1, p. 73).
59. See n. 58. The Judge's horse and gown were still allowed him in 1680, Bom. letter of 12 July 1680 (F.R. Bom., vol. 9, p. 29).
60. See n. 58.
61. Dispatch of 7 March 1677 (L.B., vol. 5, p. 403, and Home Misc., vol. 50, p. 14).
62. Bom. letter of 4 Nov. 1675 (F.R. Bom., vol. 7, p. 158).
63. Surat letter of 24 Jan. 1676 (Forrest's *Selections*, vol. 1, p. 79, and Malabari, p. 249).
64. Surat letter of 8 Feb. 1676 (Forrest's *Selections*, vol. 1, p. 81, and Edwardes, *Bom. City Gaz.*, vol. 2, pp. 207, 208).
65. Bom. letter of 20 Dec. 1676 (F.R. Bom., vol. 7, p. 78).
66. Forrest's *Selections*, vol. 1, p. 126, reproduced by Malabari, pp. 254, 255.
67. Surat letter of 26 March 1677 (F.R. Surat, vol. 89, pp. 20, 21).
68. Bom. Consltn. of 20 Aug. 1677 (F.R. Bom., vol. 2, pp. 10, 11).
69. Ibid. The Bom. letter to Surat of 28 Aug. 1677 repeats the charges against Niccolls in much the same language (Forrest's *Selections*, vol. 1, p. 135, and Malabari, pp. 151, 152).
70. Surat letter of 22 Jan. 1677 (O.C. 4258; Home Misc., vol. 51, p. 35).
71. Bom. Consltn. of 20 Aug. 1677 (F.R. Bom., vol. 2, p. 20), and Bom. letter of 28 Aug. 1677 (Forrest's *Selections*, vol. 1, p. 135).
72. Bom. letter of 24 Aug. 1677 (Forrest's *Selections*, vol. 1, pp. 135, 136).
73. Ibid.
74. Dispatch of 19 March 1680, para. 10 (L.B., vol. 6, p. 172).
75. Surat letter of 29 Sept. 1679 (F.R. Bom., vol. 19, p. 43), and Surat Consltn. of 11 March 1680 (F.R. Bom., vol. 2, p. 20).
76. Surat letters of 20 April 1680 and 24 Oct. 1680 (F.R. Bom., vol. 19, pp. 28, 52).
77. Bom. letter of 27 Oct. 1680 (F.R. Bom., vol. 9, p. 44), and Surat letter of 24 Nov. 1680 (F.R. Bom., vol. 19, p. 52).
78. Bom. letter of 27 Oct. 1680 (F.R. Bom., vol. 9, p. 44).
79. Bom. Consltn. of 20 Sept. 1680 (F.R. Bom., vol. 2, pp. 54, 55).
80. Surat letter of 27 Nov. 1677 (F.R. Surat, vol. 89, pp. 70, 73).
81. Bom. Consltn. of 20 Sept. 1680 (F.R. Bom., vol. 2, p. 55).
82. Bom. letter of 27 Oct. 1680 (F.R. Bom., vol. 9, p. 44).
83. Surat letter of 24 Nov. 1680 (F.R. Bom., vol. 19, p. 52); Surat letter of 20 Jan. 1681, para. 36 (O.C. 4716 and F.R. Misc., vol. 4, p. 46).
84. Company's dispatch of 6 March 1680 (L.B., vol. 6, p. 177); cf. *Keigwin's Rebellion*, p. 48.

85. Dispatch of 31 Jan. 1682, para. 14 (L.B., vol. 6, p. 468), and dispatch of 25 Sept. 1682, para. 14 (L.B., vol. 7, p. 71).

86. Surat letter of 11 Sept. 1677 (F.R. Surat, vol. 89, p. 57), reproduced in Campbell's *Materials*, &c., vol. 3, p. 5, and in Malabari, p. 153.

87. See n. 80.

88. Bom. letter of Dec. 1677 (Forrest's *Selections*, vol. 1, p. 142), reproduced by Malabari, p. 156.

89. Surat letter of 22 Jan. 1678 (O.C. 4323).

90. Bom. letter of 6 Jan. 1679 (O.C. 4555).

91. Bom. letter of 21 Feb. 1678 (F.R. Bom., vol. 8, p. 15).

92. Bom. letter of 28 March 1678 (F.R. Bom., vol. 8, p. 18).

93. See n. 79.

94. See n. 76.

95. Malabari, p. 153.

96. Edwardes, *Bom. City Gaz.*, vol. 2, p. 208, and Malabari, p. 151.

97. Bom. letter of 21 Jan. 1678 (F.R. Surat, vol. 89, p. 30).

98. Campbell, *Materials*, &c., vol. 3, pp. 586, 587, and 660–6; Malabari, p. 123; Edwardes, *Bom. City Gaz.*, vol. 2, p. 213.

99. Bom. Consult. of 20 Aug. 1677 (F.R. Bom., vol. 2, p. 11); Surat letter of 11 Sept. 1677, reproduced by Campbell, *Materials*, &c., vol. 3, pp. 5, 6, and by Malabari, p. 153.

100. Bombay letter of 11 Nov. 1677 (Forrest's *Selections*, vol. 1, p. 140), reproduced by Malabari, p. 155.

101. F.R. Surat, vol. 89, p. 40.

102. Surat letter of 6 Feb. 1678 (O.C. 4341).

103. Dispatch of 19 March 1680 (L.B., vol. 6, p. 172).

104. Ibid.

105. F.R. Bom., vol. 9, p. 48.

106. O.C. 4713, reproduced in Yule's *Hedges' Diary*, vol. 2, p. 328 (cf. also *K.R.*, pp. 44, 45).

107. Surat letter of 16 Feb. 1681 (F.R. Surat, vol. 90, p. 15), and Surat letter of 24 Jan. 1681 (O.C. 4716, para. 36).

108. Ibid.

109. Danvers, *The Portuguese in India*, vol. 2, p. 356; Edwardes, *Rise of Bombay*, p. 104.

110. F.R. Surat, vol. 88, p. 166.

111. Bom. letter to the Company (F.R. Bom., vol. 7, p. 79).

112. F.R. Bom., vol. 9, p. 5.

113. O.C. 4794, para. 59.

114. See n. 103.

115. O.C. 4935, para. 25, and F.R. Surat, vol. 91, p. 107.

116. L.B., vol. 7, p. 282.

117. F.R. Surat, vol. 109, p. 11.

118. F.R. Surat, vol. 91, p. 177.

119. Surat letter of 29 Oct. 1683 (F.R. Surat, vol. 91, p. 210).

120. See *K.R.*, pp. 37–40, for an account of this.

121. Bom. letter of 15 Nov. 1679 (F.R. Bom., vol. 8, p. 64).

122. Bom. letters of 27 Nov. 1680 and 1 Jan. 1681 (F.R. Bom., vol. 9, pp. 52 and 57).

123. Surat letter of 20 Dec. 1682 (F.R. Surat, vol. 91, p. 15; cf. *K.R.*, p. 67).

124. Commission to Gary, dated 24 Dec. 1682 (F.R. Bom., vol. 9, p. 43).

125. Bom. letter of 21 Dec. 1683 (F.R. Surat, vol. 109, p. 69).

126. Cf. *K.R.*, pp. 98, 99.

127. Surat letter of 25 Jan. 1684 (O.C. 5066, para. 45).

128. Surat letter of 26 Sept. 1684 (O.C. 5206, para. 59).

129. Cf. his letter of 15/25 Nov. 1684 (O.C. 5256), reproduced by Yule, *Hedges' Diary*, vol. 2, pp. 184, 185, and in *K.R.*, p. 146.

130. Dispatch of 26 March 1686 (L.B., vol. 8, p. 115; cf. *K.R.*, p. 157).

131. See Chap. IX, n. 10.

132. Zinzan's letter of 21 Feb. 1685 (F.R. Surat, vol. 109, p. 110).

133. Surat letter of 17 March 1685 (F.R. Surat, vol. 92, p. 55).

134. O.C. 5206, para. 59.

135. Child's letter of 14 March 1685 (F.R. Surat, vol. 92, p. 50), in answer to Zinzan's letter of 21 Feb. 1685 (F.R. Surat, vol. 109, p. 108).

136. *A New Account*, &c., vol. 2, p. 30.

137. *Oxford English Dictionary*, p. 349 of vol. 6, pt. 2.

138. *Court Minutes*, 1640–3, pp. 367, 368.

139. *E.F.*, *1642–5*, p. 175.

140. See n. 102.

141. *The English in Western India*, p. 207.

142. See note ‡ at pp. 101, 102.

143. Surat letter of 5 Feb. 1678 (O.C. 4340 and F.R. Surat, vol. 89, p. 45).

144. Bom. Consltn. of 24 June 1679 (F.R. Bom., vol. 2, p. 2), approved by Surat letter of 18 Aug. 1679 (F.R. Bom., vol. 19, p. 27).

145. O.C. 4298, in the first para. of 'Orders to be observed in the Court of Judicature', &c.

146. O.C. 4298, in the part containing the Table of Fees.

147. Surat letter of 27 July 1680 (F.R. Bom., vol. 19, p. 38).

148. Bom. letter of 18 Aug. 1680 (F.R. Bom., vol. 9, p. 31).

149. Cf. Malabari, chap. viii, 'The Barbarity of the Age'.

150. O.C. 4314, Gary's letter of 14/24 Feb. 1678.

151. Dispatch of 15 March 1678 (L.B., vol. 5, p. 528, and Home Misc., vol. 50, p. 62).

152. Bom. Consltn. of 9 Sept. 1678 (F.R. Bom., vol. 2, p. 29).

153. Bom. Consltns. of 16 Sept. 1678 and 18 March 1679 (F.R. Bom., vol. 2, pp. 31, 32).

154. Surat letter of 27 Jan. 1679 (F.R. Bom., vol. 19, p. 7). Mintage was charged, but its remission was afterwards recommended (Bom. letter of 12 Oct. 1681, F.R. Bom., vol. 9, p. 93).

155. O.C. 5256, reproduced by Yule, *Hedges' Diary*, vol. 2, pp. 174, 175.

156. Bom. letter of 28 Nov. 1683 (F.R. Surat, vol. 109, p. 41).

157. *Bombay in the Making*, p. 113.

158. *New Account of the East Indies*, vol. 1, p. 192; Argonaut Press edn., vol. 1, p. 110.

159. *The English in Western India*, p. 207.

160. *Annesley of Surat and his Times*, p. 77.

161. See *K.R.*, pp. vii, viii, and ix.

162. See pp. 31 and 82 of that book. Hamilton's story about Gary is cited in support of this view at p. 31.

163. Bom. letter of 5 June 1679 (F.R. Bom., vol. 8, pp. 21, 22), and Bom. letter of 3 July 1679 (ibid., p. 23).

164. See Chap. VII, n. 110.

165. See n. 158.

166. At p. 2102 of the MS. The passage is given at pp. 10, 11 of *Bombay in the Days of Queen Anne*.

167. Surat letters of 31 Jan. and 25 April 1682 (F.R. Bom., vol. 19, pp. 5, 13).

168. On 31 Dec. 1684 (F.R. Surat, vol. 109, pp. 50, 51).

169. Bom. Consltn. of 4 Aug. 1685 (F.R. Bom., vol. 3, p. 51).

170. Dispatch of 26 March 1686 (L.B., vol. 8, p. 115).

171. Anderson, *The English in Western India*, p. 236.

172. Dispatch of 6 May 1685 to St. Helena (L.B., vol. 7, p. 485), and his Commission (ibid., p. 478).

173. Dispatches of 6 May 1685 (L.B., vol. 7, pp. 459 and 468).

174. Dispatch of 28 Oct. 1685 (L.B., vol. 7, p. 12).

175. Ibid.

176. Forrest's *Selections*, vol. 1, pp. 145, 146, reproduced by Malabari, pp. 167, 168.

177. Dispatches of 3 and 8 Aug. 1687 (L.B., vol. 8, pp. 326 and 337). Wyborne died at Bombay on 26 Nov. 1688 (Bom. letter of 10 Feb. 1689, O.C. 5659).

178. F.R. Bom., vol. 3, *Diary of events during the Siddi's Siege, 1689–90*, p. 33.

179. Argonaut Press edn., vol. 1, p. 132.

180. *A New Account of the East Indies*, vol. 1, p. 194, and Argonaut Press, edn., vol. 1, p. 112. Cf. Malabari, p. 188, and *K.R.*, p. 138.

181. St. John's letter of 10 Aug. 1685 (F.R. Surat, vol. 109, p. 219).

182. Surat letter of 31 Aug. 1685 (F.R. Bom., vol. 3, p. 76).

183. Bom. letter of 11 Aug. 1685 (F.R. Bom., vol. 3, p. 54).

184. Surat letter of 27 Oct. 1685 (F.R. Bom., vol. 3, p. 128).

185. *Encyclopaedia Britannica*, 14th ed., vol. 1, p. 171.

186. Surat letter of 6 March 1691 (F.R. Surat, vol. 93, p. 4).

187. Bom. letter of 29 April 1685 (F.R. Surat, vol. 109, p. 167), cf. *K.R.*, p. 158.

188. F.R. Bom., vol. 11, p. 5.

189. O.C. 5563.

190. Dispatch of 23 April 1697 (L.B., vol. 9, p. 566).

191. Bom. letter of 25 Jan. 1678 (F.R., Bom., vol. 14, p. 34).

192. Cf. Arnold Wright, *Annesley of Surat*, pp. 157, 158.

193. See n. † on p. 118.

CHAPTER IX

1. Report of the Committee of Secrecy on the Rebellion in August 1684 (L.B., vol. 7), cited by R. and O. Strachey, *K.R.*, p. 116.
2. Dispatch of 25 Sept. 1682 (L.B., vol. 7, p. 71; cf. *K.R.*, p. 76).
3. Cf. *K.R.*, p. 77, and Appendix C.
4. O.C. 5282; cf. *K.R.*, pp. 149, 151, and Yule, *Hedges' Diary*, vol. 2, p. 170.
5. Dispatch of 7 April 1684 (L.B., vol. 7, p. 284).
6. L.B., vol. 7, p. 285.
7. Surat letter of 26 Sept. 1684 (O.C. 5206, para. 76).
8. F.R. Bom., vol. 3, p. 6; cf. *K.R.*, pp. 152, 153.
9. F.R. Surat, vol. 92, p. 36.
10. Zinzan's letter to Child of 21 Feb. 1685 (F.R. Surat, vol. 109, pp. 110, 111).
11. Child's letter to Zinzan of 17 March 1685 (F.R. Surat, vol. 92, p. 54).
12. Ibid., p. 55.
13. Surat letter of 14 March 1685 (F.R. Surat, vol. 92, p. 50).
14. Bom. letter of 2 April 1685 (F.R. Surat, vol. 109, p. 141).
15. O.C. 5295, cited by Strachey, *K.R.*, p. 153.
16. *The English in Western India*, p. 256.
17. See O.C. 5199, and cf. Helen J. Crump, *Colonial Admiralty Jurisdiction*, p. 171.
18. Dispatch of 26 March 1686 (L.B., vol. 8, p. 116).
19. Ibid., p. 115.
20. L.B., vol. 8, pp. 325, 326.
21. Bom. letter of 21 Feb. 1685 (F.R. Surat, vol. 109, p. 109); Surat letter of 9 March 1686 (F.R. Bom., vol. 3, pp. 169–71).
22. Bom. letter of 18 July 1685 (F.R. Surat, vol. 109, pp. 209, 210).
23. Bom. letter of 2 April 1685 (F.R. Surat, vol. 109, p. 141).
24. Surat letter of 9 March 1686 (F.R. Bom., vol. 3, p. 170).
25. Bom. Consltn. of 27 March 1685 (F.R. Bom., vol. 3, p. 48).
26. Hamilton, *A New Account*, &c., vol. 1, p. 234; Argonaut Press edn., vol. 1, p. 132.
27. Bom. Consltn. of 27 March 1685 (F.R. Bom., vol. 3, p. 48).
28. Child's letter of 17 March 1685 (F.R. Surat, vol. 92, p. 55).
29. Consltn. of that date (F.R. Bom., vol. 3, p. 5).
30. Cf. *K.R.*, pp. 145, 151.
31. Bom. Consltn. of 17 Dec. 1684 (F.R. Bom., vol. 3, p. 5).
32. Bom. Consltn. of 27 March 1685 (F.R. Bom., vol. 3, p. 48).
33. Surat letter of 11 June 1685 (F.R. Surat, vol. 92, pp. 98, 99).
34. His death is mentioned in Bom. letter of 10 Feb. 1686 (F.R. Bom., vol. 3, p. 152).
35. Surat letter of 14 March 1685 (F.R. Surat, vol. 92, p. 51).
36. Child's letter of 12 Feb. 1685 (F.R. Surat, vol. 92, p. 36).
37. Zinzan's letter of 21 Feb. 1685 (F.R. Surat, vol. 109, p. 111).
38. Child's letter of 17 March 1685 (F.R. Surat, vol. 92, p. 55).

39. St. John's letter to Child of 9 March 1685 (F.R. Surat, vol. 109, p. 117).
40. Bom. letter of 2 April 1685 (F.R. Surat, vol. 109, p. 141).
41. Dated 27 April 1685 (F.R. Surat, vol. 109, p. 72).
42. Bom. Consltn. of 27 March 1685 (F.R. Bom., vol. 3, p. 49).
43. Surat, vol. 109, pp. 217–19.
44. Bom. letter of 18 July 1685 (F.R. Surat, vol. 109, p. 206).
45. Surat letter of 2 Oct. 1685 (F.R. Bom., vol. 3, p. 99).
46. Surat letter of 15 Aug. 1685 (F.R. Surat, vol. 92, pp. 155, 156).
47. Cf. p. 74.
48. See p. 121 and passage cited from O.C. 5068.
49. Dated 27 Jan. 1686 (F.R. Bom., vol. 3, p. 148).
50. Dispatch of 14 July 1686 (L.B., vol. 8, p. 160). The instruction 'our Letters are Lawes to all that are in subjection to us' was also given to Fort St. George on 8 April 1687 (L.B., vol. 8, p. 290).
51. L.B., vol. 8, p. 168.
52. Dispatch of that date (L.B., vol. 8, p. 265).
53. *Encyclopaedia Britannica*, 14th edn., vol. 5, p. 467.
54. L.B., vol. 8, p. 168.
55. *A New Account*, &c., vol. 1, p. 235; Argonaut edn., vol. 1, p. 132.
56. Additional Manuscripts, 14253.
57. Surat letter of 15 Aug. 1685 (F.R. Surat, vol. 92, p. 159).
58. F.R. Bom., vol. 3, pp. 32, 33.
59. Bom. letter of 13 April 1687 (Forrest's *Selections*, vol. 1, pp. 157, 158, reproduced by Malabari, *Bombay in the Making*, p. 259).
60. Malabari, pp. 170, 171.
61. See Arnold Wright, *Annesley of Surat*, &c., pp. 181, 188, 214, &c.
62. Dispatch of 26 March 1686 (L.B., vol. 8, p. 163); cf. dispatch to Fort St. George of 8 April 1687 (L.B., vol. 8, p. 290).
63. *Bombay in the Making*, p. 169.
64. See n. 180 of Chap. VIII.
65. Anderson, *The English in Western India*, p. 256, relying on Bruce's *Annals*, &c., 1685–6.
66. Cf. Strachey, *K.R.*, pp. 70, 156, 157.
67. Aungier's speech at the opening of the Court of Judicature, Khan, *Anglo-Portuguese Negotiations*, p. 498.
68. Rawlinson MS. A 170, fol. 273, in the Bodleian Library, Oxford, cited by Harihar Das in his article in the *Calcutta Review*, vol. 22, p. 78.
69. Surat letter of 11 June 1685 (F.R. Surat, vol. 92, p. 104).
70. The date was 6 Jan. 1688 (L.B., vol. 8, p. 499).
71. See pp. 122, 125, 126.
72. Bom. letter of 8 Sept. 1685 (F.R. Surat, vol. 109, pp. 232, 233).
73. Surat letter of 17 Oct. 1685 (F.R. Surat, vol. 92, p. 177).
74. Surat letter of 15 Aug. 1685 (F.R., Surat, vol. 92, p. 154).
75. Surat letter of 11 June 1685 (F.R. Surat, vol. 92, p. 99).
76. Surat letter of 23 July 1685 (F.R. Surat, vol. 92, p. 150).
77. Bom. letter of 19 Sept. 1685 (F.R. Surat, vol. 109, p. 233).

78. Surat letter to Karwar of 7 Nov. 1685 (F.R. Surat, vol. 92, p. 189); cf. Strachey, *K.R.*, p. 119.
79. Bom. Consltn. of 19 July 1675 (F.R. Bom., vol. 2, p. 102).
80. Bom. letter of 18 July 1685 (F.R. Surat, vol. 109, p. 210).
81. Surat letter of 31 Aug. 1685 (F.R. Bom., vol. 3, p. 76).
82. Ibid., pp. 75, 76.
83. Bom. Consltn. of 4 Aug. 1685 (F.R. Bom., vol. 3, p. 51).
84. Surat letter of 31 Aug. 1685 (F.R. Bom., vol. 3, p. 76).
85. Bom. Consltn. of 27 March 1685 (F.R. Bom., vol. 3, p. 49). Further proceedings regarding this appeal to Charles II will be found in Bom. Consltn. of 30 April 1685 (F.R. Bom., vol. 3, pp. 62, 63).
86. Forrest, *Selections*, vol. 1, p. 158.
87. Diary of Proceedings in the Admiralty Court from 17 Sept. 1684 to 30 Oct. 1684 (O.C. 5199).
88. Ibid. Proceedings of 22 Sept. 1684.
89. Plaintiff's petition of 1 Dec. 1685 (F.R. Surat, vol. 109, p. 283).
90. Bom. letter of 19 Sept. 1685 (F.R. Surat, vol. 109, p. 232); Bom. letter of 27 Jan. 1686 (F.R. Bom., vol. 3, p. 148).
91. Surat letter of 11 June 1685 (F.R. Surat, vol. 92, p. 107).
92. St. John to Child and petitions of 30 Nov. 1685 (F.R. Surat, vol. 109, pp. 281, 282, 283).
93. Child to St. John, letter of 30 Nov. 1685 (F.R. Surat, vol. 92, p. 196); and St. John to Child, 30 Nov. 1685 (F.R. Surat, vol. 109, p. 281).
94. Petition of Shaxton (F.R. Surat, vol. 109, pp. 285, 286).
95. St. John's order (F.R. Surat, vol. 109, p. 286); St. John to Child, letter of 1 Dec. 1685 (F. R. Surat, vol. 109, p. 285); and Child to St. John, letter of 1 Dec. 1685 (F.R. Surat, vol. 92, p. 197).
96. Company's dispatch of 28 June 1686 (L.B., vol. 8, p. 166).
97. Bom. letter of 29 April 1685 (F.R. Surat, vol. 109, p. 176), and Plff.'s petition of 30 Nov. 1685 (F.R. Surat, vol. 109, p. 282).
98. Company's dispatch of 28 June (L.B., vol. 8, p. 166).
99. Company's dispatch of 26 March 1686 (L.B., vol. 8, p. 115).
100. Company's dispatch of 28 June 1686 (L.B., vol. 8, pp. 166, 167).
101. Company's dispatch of 14 July 1686 (L.B., vol. 8, p. 160).
102. Dispatch of 18 Feb. 1687 (L.B., vol. 8, p. 269).
103. Bom. letter of 9 Jan. 1689, para. 142 (F.R. Misc., vol. 4, p. 164).
104. Bom. letter of – May 1685 (F.R. Surat, vol. 109, p. 176).
105. Surat letter of 11 June 1685 (F.R. Surat, vol. 92, p. 104).
106. See n. 18.
107. Surat letter of 18 April 1685 (F.R. Surat, vol. 92, pp. 74, 75).
108. St. John's letter of 27 April 1685 (F.R. Surat, vol. 109, p. 163).
109. Surat letter of 11 June 1685 (F.R. Surat, vol. 92, p. 104).
110. Yule, *Hedges' Diary*, vol. 2, p. 181, and Strachey, *K.R.*, p. 131.
111. Company's dispatch of 7 April 1684, para. 76 (L.B., vol. 7, p. 285).
112. Bom. letter of – May 1685 (F.R. Surat, vol. 109, p. 176).
113. Letter of 9 March 1685 (F.R. Surat, vol. 109, p. 115).
114. Surat letters of 18 and 25 March 1685 (F.R. Surat, vol. 92, pp. 56, 67).

115. Surat letter of 11 June 1685 (F.R. Surat, vol. 92, p. 99).
116. Letter dated 1 Dec. 1685 (F.R. Surat, vol. 109, p. 285).
117. St. John to Surat dated 27 April 1685 (F.R. Surat, vol. 109, p. 165).
118. Surat letter of 8 May 1685 (F.R. Surat, vol. 92, p. 85).
119. St. John to Surat, dated 9 March 1685 (F.R. Surat, vol. 109, p. 118).
120. Ibid.
121. St. John to Surat, dated 25 Nov. 1685 (F.R. Surat, vol. 109, pp. 279, 280).
122. See n. † on p. 140.
123. St. John to Surat (undated but seems to be in Nov. 1685) (F.R. Surat, vol. 109, p. 276).
124. Ibid., p. 276.
125. Ibid., p. 277.
126. Ibid., p. 277.
127. Child to Zinzan, 12 Feb. 1685 (F.R. Surat, vol. 92, p. 36).
128. Dispatch of 11 April 1688 (L.B., vol. 8, p. 552).
129. Bom. letter of 7 June 1689 (O.C. 5671).
130. See his letter to Pepys of 18 July 1688, cited p. 139.
131. Bom. letter of – May 1685 (F.R. Surat, vol. 109, p. 177).
132. Surat letter of 17 July 1685 (F.R. Surat, vol. 92, p. 141).
133. Ibid.
134. Surat letter of 31 Aug. 1685 (F.R. Bom., vol. 3, p. 76), and Surat letter of 17 Oct. 1685 (F.R. Surat, vol. 92, p. 179).
135. Bom. letter of 14 Nov. 1685 (F.R. Bom., vol. 3, p. 119).
136. Surat letter of 2 Jan. 1686 (F.R. Bom., vol. 3, p. 140).
137. Bom. letter of 10 Feb. 1686 (F.R. Bom., vol. 3, p. 155), and Bom. Consltn. of 10 Feb. 1686 (F.R. Bom., vol. 3, p. 151).
138. Surat letter of 24 Feb. 1686 (F.R. Bom., vol. 3, p. 164).
139. Cf. Strachey, *K.R.*, pp. 154, 155.
140. Bom. letters of 2 April and 18 July 1685 (F.R. Surat, vol. 109, pp. 148, 209).
141. Bom. letter of 10 Feb. 1686 (F.R. Bom., vol. 3, p. 156).
142. F.R. Bom., vol. 3, *Siege Diary*, pp. 15, 17, 20, and 27.
143. Company's Instructions to Sir John Gayer, dated 26 May 1693 (L.B., vol. 9, p. 271).
144. Company's dispatch of 26 March 1686 (L.B., vol. 8, p. 115), and Bom. letter of 9 June 1688, para. 27 (F.R. Misc., vol. 4, p. 172).
145. Surat letter of 11 June 1685 (F.R. Surat, vol. 92, p. 98).
146. Bom. letter of 22 Oct. 1697 (F.R. Bom., vol. 14, p. 35).
147. Vaux's Diary, p. 9.
148. Ibid., entry of 21 Oct. 1693, p. 15.
149. Ibid., back of p. 101.
150. Bom. letter of 6 Jan. 1700, para. 70 (F.R. Bom., vol. 17, p. 23).
151. Anderson, p. 257, and Rawlinson, *British Beginnings in Western India*, p. 138. They are wrong, however, in giving 1697 as the year of Vaux's death and in saying that his wife was also drowned.
152. O.C. 4298 in the Table of Fees sanctioned in 1677.

153. Consltn. of 1 Sept. 1685 (F.R. Bom., vol. 3, pp. 67, 68).
154. Surat letter of 8 Aug. 1683 (F.R. Surat, vol. 91, p. 153).
155. Surat letter of 17 July 1690 (F.R. Surat, vol. 92, p. 110).
156. Para. 7 of the Instructions, Consltn. of 24 July 1674 (F.R. Bom., vol. 1, pp. 66–9).
157. Consltn. of 8 April 1685 (F.R. Bom., vol. 3, p. 56).

CHAPTER X

1. Company's dispatch of 13 May 1698 (L.B., vol. 10, p. 80).
2. Surat letter of 16 Oct. 1690 (F.R. Surat, vol. 92, pp. 165, 166).
3. Company's dispatch of 1 May 1693 (L.B., vol. 9, p. 280).
4. Surat letter of 25 June 1691 (F.R. Surat, vol. 93, p. 87).
5. Surat letter of 15 Sept. 1691 (F.R. Surat, vol. 93, p. 111).
6. Surat letter of 4 Aug. 1691 (F.R. Surat, vol. 93, p. 95).
7. Ibid.
8. Surat letter of 26 July 1691 (F.R. Surat, vol. 93, p. 91).
9. Surat letter of 24 Aug. 1691 (F.R. Surat, vol. 93, p. 100).
10. L.B., vol. 9, p. 211.
11. Surat letter of 11 Feb. 1693 (F.R. Surat, vol. 93, p. 29).
12. F.R. Surat, vol. 93, p. 29, and O.C. 5862.
13. Cf. Bom. letter of 11 Feb. 1695 (F.R. Bom., vol. 11, p. 7), and Campbell, *Materials*, &c., vol. 1, p. 101, and vol. 3, p. 544.
14. Cf. Bom. letter of 11 Feb. 1695 (F.R. Bom., vol. 11, p. 7); Bruce's *Annals*, vol. 3, p. 164.
15. O.C. 5774, cf. the list in O.C. 5763.
16. Surat letter of 3 Feb. 1692 (F.R. Surat, vol. 93, p. 40).
17. Annesley's letter of 12 Feb. 1693 to the Company (O.C. 5865).
18. Bom. letter of 5 May 1692 (O.C. 5787).
19. Company's dispatch of 28 Sept. 1687 to Fort St. George (L.B., vol. 8, p. 427).
20. Ibid., p. 429.
21. Ibid., p. 428.
22. Company's dispatch of 6 Jan. 1688 (L.B., vol. 8, pp. 499, 500).
23. Bom. Consltn. of 16 Aug. 1694 (F.R. Bom., vol. 4, p. 62). Cf. Anderson, *The English in Western India*, p. 288.
24. Surat letter of 6 March 1691 (F.R. Surat, vol. 93, p. 44).
25. Bom. letter of 5 May 1692 (O.C. 5787); and Bom. letter of 11 Feb. 1693 (F.R. Surat, vol. 93, p. 24).
26. Company's dispatch of 1 May 1693 (L.B., vol. 9, p. 280).
27. Ibid. Cf. pp. 83–6.
28. On 10 May 1694 (F.R. Surat, vol. 94, pp. 2 and 3).
29. L.B., vol. 9, p. 268.
30. Bom. Consltn. of 16 Aug. 1694 (F.R. Bom., vol. 4, p. 16).
31. Ibid.
32. Dated 11 Feb. 1695 (F.R. Bom., vol. 11, p. 7).

33. Dispatch of 1 July 1696 (L.B., vol. 9, pp. 500, 501).
34. Cf. Anderson, p. 288. A statement as to assistance given by the 'Padree Superior' of Bandora to the Siddi will be found in F.R. Bom., vol. 3, under date 29 Aug. 1689 in the *Diary of the Siege*.
35. Cf. Da Cunha, *Origin of Bombay*, p. 225.
36. Dispatch of 13 Sept. 1695, para. 26 (L.B., vol. 9, p. 443).
37. Ibid., p. 444.
38. Bom. letter of 9 Oct. 1696 (F.R. Bom., vol. 12, p. 35).
39. Bom. letter of 18 Feb. 1697 (F.R. Misc., vol. 5, p. 28).
40. Bom. letter of 25 Jan. 1698 (F.R. Bom., vol. 14, p. 5).
41. F.R. Bom., vol. 4, p. 47.
42. F.R. Bom., vol. 4, p. 13.
43. Consltn. of 23 Aug. 1700 (F.R. Bom., vol. 5, p. 31).
44. Consltns. of 7 Oct. 1698, 13 Jan. 1703, 24 Feb. 1703, 15 March 1703, and 24 May 1703 (F.R. Bom., vol. 5, pp. 73, 75, 17, 19, and 32).
45. F.R. Bom., vol. 5, p. 27.
46. Ibid., p. 21.
47. Ibid., p. 22.
48. Ibid., p. 31.
49. Orme *MSS., India*, vol. ix, p. 2156; *Bombay in the Days of Queen Anne*, pp. 115, 116.
50. Orme *MSS., India*, vol. viii, p. 2112; *Bombay in the Days of Queen Anne*, p. 36.
51. Orme *MSS., India*, vol. ix, pp. 2129, 2130; *Bombay in the Days of Queen Anne*, p. 71.
52. F.R. Misc., vol. 5, p. 143.
53. L.B., vol. 10, p. 649.
54. Bombay Public Proceedings (henceforth cited as B.P.P.), vol. 2.
55. Bom. Consltns. of 6 Jan. and 10 July 1705 (B.P.P., vol. 2, pp. 90 and 233).
56. Bom. Consltn. of 6 Jan. 1705 (B.P.P., vol. 2, p. 90).
57. e.g. Consltn. of 28 June 1705 (B.P.P., vol. 2, p. 225).
58. e.g. Consltn. of 1 Aug. 1706 (B.P.P., vol. 2, p. 7).
59. Consltn. of 15 Oct. 1706 (B.P.P., vol. 2, pp. 42, 43).
60. Consltn. of 15 May 1705 (B.P.P., vol. 2, p. 192).
61. Consltn. of 4 Dec. 1705 (B.P.P., vol. 2, p. 103).
62. Consltn. of 30 May 1706 (B.P.P., vol. 2, p. 252).
63. Cf. Arnold Wright, *Annesley*, &c., pp. 288, 289.
64. B.P.P., vol. 4.
65. L.B., vol. 15, p. 588, para. 78.
66. Consltn. of 6 Oct. 1712 (B.P.P., vol. 4).
67. Bom. Account Journal of 1712–13, p. 101.
68. Bom. Account Journal of 1713–14, p. 88, and of 1714–15, p. 48.
69. B.P.P., vol. 4, p. 19.
70. Consltns. of 19 and 20 Feb. 1717 (B.P.P., vol. 4, pp. 32–7).
71. Consltn. of 4 Nov. 1717 (B.P.P., vol. 4, p. 191) and of 23 Feb. 1719 (B.P.P., vol. 4).

72. B.P.P., vol. 4, p. 109.
73. Ibid., pp. 148, 149.
74. Ibid., p. 153.
75. Ibid., p. 196.
76. Ibid., pp. 22, 23. The Company reduced the salary to Rs. 500 a year (see p. 175).
77. Ibid.
78. Ibid., p. 30.
79. Ibid., pp. 26–30.
80. Company's dispatch of 4 Nov. 1719, cited on pp. 174–6.
81. Consltn. of 7 July 1718 (B.P.P., vol. 4, p. 114).
82. L.B., vol. 17, p. 469.
83. Dispatch of 27 Feb. 1719 (L.B., vol. 16, p. 684).

CHAPTER XI

1. Bom. letter of 30 Oct. 1718 (F.R. Misc. 7A, p. 23).
2. Cf. Malabari, pp. 304, 308, and 321.
3. Malabari, p. 316.
4. See Capt. Stanton's deposition, Malabari, p. 309.
5. Malabari, p. 317.
6. Malabari, p. 340.
7. Cf. Malabari, pp. 296, 297, and 306.
8. Malabari, pp. 295–7 and 341.
9. Malabari, p. 323; Bom. Diary 1A of 1720, p. 152.
10. Forrest, *Selections*, &c., vol. 2, pp. 27, 28.
11. Consltn. of 19 Jan. 1721 (B.P.P., vol. 5).
12. Consltns. of 21 and 22 Feb. 1721 (B.P.P., vol. 5).
13. Consltn. of 21 Feb. 1721 (B.P.P., vol. 5). The complaint is given at length in Consltn. of 23 Feb. 1721 (ibid.).
14. B.P.P., vol. 5.
15. Bom. Journal of 1720–1, p. 152, and Journal of 1721–2, p. 73.
16. Bom. Journal of 1723–4, p. 107.
17. Bom. Journal of 1726–7, pp. 56, 117.
18. Ibid., and Malabari, p. 494.
19. Malabari, p. 494, and Bombay Journal of 1727–8, pp. 57 and 118.
20. Malabari, p. 494.
21. Progs. of 21 Feb. 1726 in the Court Register, and Malabari, p. 494.
22. Da Cunha, *Origin of Bombay*, p. 230; Malabari, p. 465.
23. Ibid., p. 261; Campbell, *Materials*, &c., vol. 1, p. 21.
24. L.B., vol. 15, p. 588; see p. 169.
25. e.g. pp. 465, 468, and 470.
26. e.g. progs. of 26 Feb. 1724 and 4 March 1724.
27. Bom. letter of 17 Aug. 1722, para. 26, in Bombay Letters Received, 1709–25, vol. 1. Cf. Edwardes, *Bom. City Gazetteer*, vol. 1, p. 212, and Malabari, p. 466.

28. Court Register progs. of 11 Dec. 1723.
29. Cf. Malabari, pp. 478–80.
30. Progs. of 24 June 1724.
31. Campbell, *Materials*, &c., vol. 3, p. 7, and Malabari, p. 177.
32. Cf. Edwardes, *Bom. City Gaz.*, vol. 2, p. 221. Blagdon's *History of Ancient and Modern India* (1805) contains a portrait of the Pandit in Sir William Syer's time.
33. Court Register progs. of 8 Jan. and 19 Aug. 1724.
34. Malabari, p. 440.
35. Cf. Malabari, pp. 282–7.
36. Court Register progs. of 16 to 23 Feb. 1726.
37. Malabari, pp. 442, 450.
38. Consltn. of 4 March 1726 (B.P.P., vol. 6). The fine was ordered to be appropriated to the building of a new prison.
39. Progs. of 16 March 1726.
40. Cf. Malabari, pp. 327, 457, 486, 488.
41. *History of the Administration of the East India Company* (1853), p. 320.
42. Court Register progs. of 12 Dec. 1723.
43. Cf. Malabari, pp. 457–61.
44. Cf. the case of rape in the progs. of 24 Aug. 1726.
45. Progs. of 20 July 1726. Cf. the two cases in Malabari at pp. 457 and 461, where 'the gallows' are similarly mentioned.
46. Progs. of 4 April 1726.
47. Progs. of 11 June 1724.
48. Progs. of 4 Nov. 1724. See also p. 219.
49. Cf. Malabari, p. 461, and see p. 191.
50. Progs. of 26 Feb. and 2 Sept. 1724.
51. At p. 468.
52. Progs. of 16 Jan. 1724.
53. Progs. of 4 March 1724.
54. Cf. progs. of 26 Feb. 1724.
55. Progs. of 29 April 1724.
56. Progs. of 23 Sept. 1724.
57. Progs. of 6 July 1726.
58. Progs. of 19 Aug. 1724.
59. Cf. Edwardes, *Bom. City Gazetteer*, vol. 2, p. 214, citing *The Bombay Quarterly Review*, vol. 3 (1856), pp. 326–8.

CHAPTER XII

1. H. D. Love, *Vestiges of old Madras*, vol. 1, p. 273.
2. Love's *Vestiges*, vol. 1, p. 493.
3. Ibid., pp. 493, 494.
4. Ibid., pp. 499, 500; Shaw's *Charters of the High Court of Judicature at Madras*, p. 8.
5. H. J. Crump, *Colonial Admiralty Jurisdiction*, &c., p. 170.

6. Ibid., p. 176; *Encyclopaedia Britannica*, 14th edn., vol. 5, p. 466.
7. J. T. Wheeler, *India under British Rule*, vol. 1, pp. 14–17.
8. Company's dispatch of 28 Sept. 1687, para. 80 (L.B., vol. 8, p. 427).
9. Company's dispatch of 22 Jan. 1692 (L.B., vol. 9), cited by Love, vol. 1, p. 503.
10. Bruce's *Annals*, vol. 3, pp. 155, 156.
11. Love, vol. 1, pp. 501, 502, and 513; Wheeler, *British Rule*, &c., vol. 1, p. 18.
12. Bruce's *Annals*, vol. 2, p. 590.
13. Company's dispatch of 28 Sept. 1687, para. 81 (L.B., vol. 8, p. 427).
14. Company's dispatches of 12 Oct. 1687 and 25 Jan. 1688 (L.B., vol. 8, pp. 445 and 483). A copy of the Charter will be found in Shaw's *Charters of the High Court of Judicature at Madras*; and extracts are given by Love, vol. 1, pp. 497–9.
15. Letter dated 12 Dec. 1687 (L.B., vol. 8, p. 463); Bruce's *Annals*, vol. 2, pp. 591, 592.
16. Love, vol. 2, p. 242.
17. Love, vol. 2, pp. 174, 175.
18. Love, vol. 1, p. 495; Consltn. of 16 June 1690 (F.R. Fort St. George, vol. 6, pp. 44, 45).
19. Love, vol. 2, p. 30.
20. Love, vol. 2, p. 30. For an appeal from the Mayor's Court so heard, see Madras Public Consultations, vol. 83, Consltn. of 19 Aug. 1707.
21. L.B., vol. 8, pp. 82 and 84.
22. H. J. Crump, *Colonial Admiralty Jurisdiction*, &c., p. 181.
23. C. R. Wilson, *Early Annals of the English in Bengal*, vol. 1, p. 141.
24. Ibid., p. 147; Bruce's *Annals*, vol. 3, p. 206.
25. Bruce, ibid., p. 268.
26. Company's dispatch to Bengal of 20 Dec. 1699 (L.B. vol. 10, p. 249).
27. L.B., vol. 10, pp. 10, 257–60.
28. Wilson, *Early Annals*, &c., vol. 1, p. 197.
29. Love, vol. 1, pp. 128, 373.
30. Ibid., vol. 1, pp. 404, 405.
31. Ibid., vol. 3, pp. 305, 379.
32. Ibid., vol. 1, pp. 495, 496.
33. Ibid., vol. 1, p. 495.
34. Wilson, *Early Annals*, &c., p. 163; Chas. Stewart, *History of Bengal*, 2nd ed., p. 357.
35. Holwell's *India Tracts*, p. 120, reproduced by Wilson, *Early Annals*, &c., p. 220.
36. Consltn. of 16 June 1755 (Bengal Public Consultations, vol. 28, pp. 205, 206, and 258).
37. Consltn. of 23 Sept. 1755 (ibid., pp. 419, 420); see also Bengal letter of 8 Dec. 1755 to the Company, paras. 134–43, Bengal Letters Received, vol. 3, pp. 103–8. Most of the documents are reproduced in *Bengal Past and Present*, vol. 10, pp. 123–45.
38. Company's dispatch of 3 March 1758, paras. 98 and 99 (Bengal Dispatches, vol. 1, pp. 690–2).

39. Ibid., para. 100, p. 692.
40. J. Long, *Selections from Government Records*, vol. 1, p. 178.
41. *Considerations on Indian Affairs*, 2nd edn., vol. 1, p. 80.
42. Ibid. As to Bolts having been President of the Court in 1763, see J. Long, loc. cit., pp. 316, 317.
43. J. Long, pp. 277, 294.
44. Bolts, vol. 1, pp. 81, 82.
45. The first entry relating to it in the Fort William Records in the India Office is dated 5 Oct. 1728 (Public Consultations, vol. 6, p. 198).
46. Love, vol. 1, pp. 273, 274.
47. Ibid., pp. 405, 492.
48. Ibid., p. 493.
49. Crump, loc. cit., p. 177.
50. Love, vol. 2, pp. 76, 80, 81.
51. F.R. Fort St. George, vol. 38, p. 10 of the second part.

CHAPTER XIII

1. Dispatch of 5 April 1727 to Bombay (L.B., vol. 20, p. 566).
2. P.R.O., P.C. ¼, Bundle No. 21.
3. Minutes of 6 April 1726 (Court Book, vol. 52, p. 7).
4. Dispatch to Fort St. George, dated 17 Feb. 1727 (L.B., vol. 20, p. 473).
5. Wheeler's *Madras in the Olden Time*, App. pp. 425–31 and 444–61.
6. Cf. Ilbert's *Government of India*, pp. 35, 36. See also n. * at p. 11.
7. Dispatch to Bombay of 12 March 1731 (L.B., vol. 20, p. 249).
8. Dispatch to Bengal of 6 Feb. 1733, para. 80 (L.B., vol. 21, p. 682).
9. Cf. Ilbert's *Government of India*, pp. 34, 35 and 48–50.
10. Kaye's *History*, &c., pp. 320, 321.
11. Ibid., p. 321.
12. Cf. dispatch to Madras of 12 Feb. 1731, paras. 100–3 (L.B., vol. 21, pp. 171, 172).
13. Proceedings of 24 June 1730 in the Court Register for that year.
14. B.P.P., vol. 7, pp. 75, 78, 79.
15. Court Register for 1730 (vol. 103), pp. 140–4.
16. Dispatch of 5 April 1727, para. 21 (L.B. vol. 20, p. 571), and para. 8 of the Council letter to the Court of 5 Nov. 1728 (B.P.P., vol. 7, p. 110).
17. B.P.P., vol. 7, p. 97.
18. Dispatch to Bombay of 3 March 1732, paras. 98, 99 (L.B., vol. 21, pp. 493, 494).
19. Dispatch to Madras of 6 Feb. 1733, para. 31, and to Bengal of same date, para. 104 (L.B., vol. 21, pp. 649 and 689).
20. Mayor's Court Register, vol. 103, pp. 162–4, 176, 177–80, 182, 194, 205–8. Cf. Cowan's letter of 29 Sept. 1731 to the Company, para. 31, complaining of the Court's paying little attention to the advice given at their request (Bom. Abstract Letters Received, vol. 1A, p. 368). Also Register of

Court of Appeal, vol. 102, proceedings of 29 Sept. 1730, and Mayor's Court Register, vol. 104, pp. 12, 13.

21. B.P.P., vol. 6, Consltns. of 20 Dec. 1728 and 26 Dec. 1729; vol. 7, pp. 200, Consltn. of 24 Dec. 1730.

22. Dispatch of 6 Feb. 1733 to Bengal, para. 81 (L.B., vol. 21, p. 683).

23. B.P.P., vol. 8, pp. 7, 19–23.

24. Ibid., p. 8.

25. Dispatch to Madras of 12 Feb. 1731, para. 70 (L.B., vol. 22, p. 165).

26. Cowan's letter of 29 Sept. 1731 to the Company, paras. 24, 25 (Bom. Abstract Letters Received, vol. 1A, p. 366).

27 Love, vol. 2, p. 276.

28. Ibid., vol. 2, pp. 264–6.

29. Ibid., vol. 2, pp. 266, 267.

30. Dispatch to Madras of 9 Feb. 1737, para. 69 (L.B., vol. 24, p. 171).

31. Dispatch to Bengal of 6 Feb. 1733, para. 81 (L.B., vol. 21, p. 683).

32. Dispatch of 7 May 1746, para. 62 (L.B., vol. 26, p. 471).

33. This is mentioned in para. 123 of dispatch of 12 Feb. 1731 to Madras (L.B., vol. 21, p. 179). The original notes of Mr. Matthews on the first Registers submitted from the three settlements will be found in Home Misc., vols. 420, 427, and 432.

34. L.B., vol. 21, pp. 411–15, 434, 435, 654–6, 721–3; vol. 22, pp. 169, 171, 173–83, 213–19, 252–62.

35. Dispatch to Madras of 12 Feb. 1731, para. 123 (L.B., vol. 21, p. 179); dispatch to Bombay of 12 March 1731, para. 153 (L.B., vol. 21, p. 258).

36. Dispatch to Madras of 12 Feb. 1731, to Bengal of same date, and to Bombay of 12 March 1731 (L.B., vol. 21, pp. 169, 213, 252).

37. L.B., vol. 21, pp. 49, 458, 495.

38. L.B., vol. 20, pp. 474, 515, 568.

39. Court Register, vol. 101, pp. 28, 29, progs. of 12 Feb. 1729; dispatch of 12 March 1731, para. 146 (L.B., vol. 21, p. 256).

40. Ibid., paras. 143 and 145, pp. 255, 256.

41. Dispatch of 23 Jan. 1730, para. 105 (L.B., vol. 21, pp. 655, 656).

42. Ibid., para. 107, p. 656.

43. Dispatch of 5 April 1727 to Bombay, para. 21 (L.B., vol. 20, pp. 570, 571); and similar remarks to Madras and Calcutta.

44. Dispatch of 12 Feb. 1731, paras. 110–14 and 116 (L.B., vol. 21, pp. 174–6). See also dispatch to Madras, dated 10 Nov. 1732 (L.B., vol. 21, pp. 562, 563).

45. Dispatch of 12 Feb. 1731, para. 112, at p. 174.

46. Cf. para. 136 of dispatch of 31 Jan. 1755 to Bengal, cited in Long's *Selections*, pp. 67, 68.

47. Dispatch of 12 Feb. 1731, para. 107 (L.B., vol. 21, p. 173).

48. *Bombay Quarterly Review*, 1857, p. 180.

49. Love's *Vestiges*, vol. 3, pp. 13, 14, 303, 305, 471, 472.

50. Dispatch of 12 April 1786, cited in Kaye's *History*, p. 333.

51. Love, vol. 3, p. 427.

INDEX

References to books or authors are only given when they are mentioned in the text, *exclusive of the footnotes.*

ABBREVIATIONS

Adm.	Admiralty.	Dep.	Deputy.
C.J.	Chief Justice.	Gov.	Governor.
Co.	Company.	Jud.	Judicature.
Cl.	Council.	J.P.	Justice of the Peace.
Ct.	Court.	Pres.	President.

Acton, Richard, 171, 172.
Acts of Parliament, 131, 132. *See also* Statutes.
Adams, James, 29; member of Cl. at Bombay, 29, 30; deported, 32; his wife, 29–32; J.P., 91, 128, 234; Attorney-General, 91, 128; Judge at Bombay, 58, 88, 90, 91, 99, 128.
Adams, Mr., Chief of Tellicherry, 197.
Adderton, Capt. Stephen, 95 n.
Adigar, 208.
Administration, of estates at Bombay, 49, 50, 60, 67, 68, 173, 199. *See also* Ct. of Jud., *and* Mayor's Ct.
Admiralty, Court of, *see* Ct. of Adm.
Adultery, 16, 25, 78, 219.
Adventure, the, 165.
Aislabie, William; Dep. Gov. of Bombay, 167; Gov. of Bombay, 112, 170; called 'General', 166; his judicial work, 167, 168, 170.
Albuquerque, xv.
Aldermen, 218; at Madras, 160, 175, 203, 204, 205, 208; at Bombay, 171, 172, 220; at Calcutta, 223.
Alphonso VI, xvi.
Alvaro Perez de Tavora, *see* De Tavora.
Angria, the, xvii, 180, 192.
Anjidiv, xvi.
Anna D'Souza, 196.
Anne, 76.
Annesley, Samuel, Pres. at Surat, 137, 154, 161.
Antonio d'Coasta, 196.
Antonio d'Silva, Portuguese Registrar, 171, 191 n.
Antonio Pinto, 135, 136.
Antonio Ribeiro, J.P. at Bombay, 34, 37.
Antonio (servant), 197.
Appariter, 50 n.
Appeals, at Bombay, 16, 33, 35, 64, 65, 130, 142, 143, 169, 170, 215 n. *See also* Ct. of Adm., Ct. of Gov. and Cl., Ct. of Jud., *and* Mayor's Ct.
Apsett, 186, 189, 190.
Arabs, 218 n., 220.
Arbitration, 225; at Bombay, 81, 82, 224; at Calcutta, 209, 210, 211.
Arlington, Lord, 102 n., 107 n.
Armenian Merchant, the, 134.
Armenians, at Madras, 204, 206.
Arrack, 118.
Arrest, law as to, 15, 21, 66, 82, 158, 166, 173, 199 n.
Articles of War, for Bombay, 9–11, 17, 18; adopted by the Co., 11 n., 215.
Assault, unlawful, 16, 26, 76, 77, 185.
Attachment, law as to, 67, 92, 93, 198, 199 n.; by the executive, 216.
Attorney-General, at Bombay, 91, 112, 121, 128; in England, 144, 223, 224 n.
Attorneys, at Bombay, 52, 53, 61, 62, 130, 131, 135, 142, 171, 191 n., 220, 221, 224; at Madras, 221; at Calcutta, 223.
Aungier, Gerald, Pres. at Surat and Gov. of Bombay, xvi, 2, and *passim*; the true founder of Bombay, 2; his proposals for Bombay, 6, 82; visits Bombay (1670), 13, 29–38, (1672–5), 47, 48; his judicial reforms (1670), 33–6, 45–7; his establishment of the Ct. of Jud., 48–56, 173 n.; his speech at opening of Ct., vi, 6, 53–5; his support of the Ct., 55, 80, 81, 92, 94, 141; his impartiality, 38, 51, 54, 55, 124, 139, 178, 223; establishes *Panchayats*, 81, 82, 184; his 'Convention', 86, 87, 88, 107, 161; trials before, vi, 30–2, 35–7; opposes the Dutch, xvii, 1; his instructions (1675), 55, 81, 141; encourages settlers at Bombay, xvii, 66; charge of 'grandure' against, 53; his death, 94.
Aurangzeb, Moghul Emperor, xvii, xviii, 221; the Co.'s war with, 161, 207.

Baccaboy, 186.
Bail, grant of, 15, 21, 37, 158, 173, 186, 188.
Ball, Richard, 29 n., 31; his trial, 35, 36, 37; sued, 41, 42; debt of, 93, 96.
Bandra, xv, 5, 108.
Banishment from Bombay, 16, 25, 70, 185, 196; Gov.'s consent to, 185.
Bantam, 144, 167 n.
Barbor, Robert, J.P., 33, 34.
Barly, Thomas, 73.
Barristers, at Bombay, 61, 62.
Barritors, at Bombay, 61, 92, 235.
Bassein, xvi, 65, 84, 183; its cession to the Portuguese, xv, 3 n.; Cts. of justice in, 3, 4.
Batavia, 205 n.
Bates, Capt. William, 184 n., 193, 194, 195.
Bay, the (of Bengal), 175, 207.
Baynton, Capt., 197.
Bedford Level, the, legislation regarding, 68.
Bendall, Ephraim, member of Ct. of Jud., 182.
Bendoo Bandaree, 191.
Bengal; its settlements made subordinate to Madras, xviii; declared a Presidency, 207; Nawab of, 208; grant of its Diwani, v.
Benjamin, Mr., 76.
Berkeley Castle, the, 46 n., 98.
Bernardo, 191, 192.
Berwick-upon-Tweed, 132.
Best, Capt. Thomas, xv.
Bhandaris, 52, 69, 173 n., 197.
Bhongulee, 69.
Biggott, Thomas, 95 n.
Biggs, John (St. John's servant), 147, 148.
Biggs, Sir John, Recorder of Portsmouth, 202, 205; Judge Advocate at Madras, 202, 205, 211, 212; member of Cl., 202; Recorder of the Mayor's Ct., 202; his table of fees, 212; the Co.'s confidence in, 202, 203; his death, 203, 206.
Bills of sale, at Bombay, 68.
Bills of Sale Act (1854), 68.
Bird, Dr. John, 29, 30 n.
Black Hole, the (of Calcutta), xviii, 209.
Black Justices, the, at Bombay, 183.
Blessing, the, 76, 154.
Bolts, William, 209 n., 210, 211.
Bombay; its cession to the Portuguese, xv; its grant to Charles II, xvi; its former insignificance, 4; its Castle, 5 n., 170, 172, 173 n.; its Church, 68 n., 102, 116 n., 182 n.; its transfer to the East India Co., xvi, 8; survival of Portuguese law and language in, 2, 3, 6, 7, 34, 44, 49, 53, 54; its defence, xvii, 1; it's population, 1, 159, 161; development of trade in, 1, 158; mortality at, 67, 120, 159; its weak condition (1690–1710), 157, 159, 160; its revenues, 86, 87, 159, 161, 162; seized lands in (1667–72), xvi, xvii, 86, 87, (1673–8), 84–6, (1690–6), 157, 158, 159, 160–3. *See also* By-laws, Ct. of Adm., Ct. of Gov. and Cl., Ct. of Jud., Englishmen, Garrison, Jesuits, Judge, Jury, Laws, Prisons, Registration, Sales, *&c.*
Bombay Merchant, the, 165.
Bonds, writing of, 68, 69.
Boogy Patell, 164, 165.
Booker, Jeremiah, 75.
Boone, Charles, Gov. of Bombay, xvii, 17, 168, 170–6, 178–81; his commission, 17; the Co.'s instructions to, 168, 169, 176; his charges against Parker and Braddyll, 178, 180; his use of torture, 179; his employment of police, 192 n.
Boroughs, Litten, 165.
Bowcher, George, Interloper at Surat, 146, 148.
Braddyll, John, member of Cl. and Dep. Gov. of Bombay, 180; member and C.J. of Ct. of Jud., 180, 181, 182; his other duties, 180; his trial and dismissal, 181; his charges against Major Vane, 180, 181; his reinstatement by the Co., 181 n., 221; his independence, 182.
Brazier, George, 171.
Breach, the, *see* Great Breach.
Bristol, the, 116, 138, 149.
Brock, Tobias, 76.
Browne, Hannah, 31.
Broxoline, Mr., 128.
Bruce, John, his *Annals of the Hon. East India Company* cited, 9, 55.
Buckingham, Private, 113.
Burgess, Capt. John, 30 n., 33 n., 48, 64.
Burgess, Samuel, 6 n., 30 n., 31 n.; deported, 32; re-employed, 46 n.
Burgesses, at Madras, 203, 204, 205.
Burnell, Ensign John, 112; his *Account of the Island of Bombay* cited, 112, 115, 117, 165, 166.
Burning, punishment by, 43, 109; of a deceased person's papers, 67.
Burniston, Douglas, 170.
Butler, James, factor at Bombay, 116; J.P. and assistant in Cts. of Adm. and Jud., 116, 126, 149.

Butler, John, 76.
Button, Capt., 197.
By-laws, for Bombay, 132, 133, 137, 138.

Calcutta, factory at, xviii, 207, 208; its subordination to Madras, xviii, 207; *zamindari* rights at, 208; its Cts. of Justice (1690–1774), 201, 207–11, 213. *See also* Collector, Ct. of Adm., Ct. of Cutcherry, Ct. of Gov. and Cl., Mayor's Ct., *Zamindari* Ct., *&c.*
Calicut, xv.
Cannarin language, the, 13, 14.
Canterbury, Archbishop of, 146.
Cape of Good Hope, xv, 133.
Caste, headmen at Bombay, 70 n., 184, 218, 219; jurisdiction in caste-matters, 169, 173, 197, 198, 199, 218, 219, 224, 225; fine imposed on a, 190.
Castle, *see* Bombay.
Catholic Emancipation Act (1829), 102.
Centinel, 39, 74.
Chambers, *see* Panchayats.
Chancery, bill in, 96; Court of, *see* Ct. of Chancery.
Charles II, King, xvi, 97 n., 107 n., and *passim.*
Charles II, the, 124.
Charnock, Job, Chief of the Bay, xviii, 207.
Charters, Royal (1600), xv; (1661), v, xix, 72 n.; (1668), vi, xix, 6, 9 n., 13, 68, 72, 74 n., 77, 143, 145, 167, 174, 176, 196 n., 201, 212; (1683), 124, 132, 133, 143, 145, 146, 147, 212; (1686), 132, 133, 212; (1726), v, 14, 206, 213 n., 214–19, 223, 225, 227 n.; (1753), v, 60 n., 211, 224 n., 225, 227 n.; Co.'s (1687), 202 n., 204, 205, 206.
Charter Act (1793), 226.
Cheating, law as to, 16, 26; registration checks, 68.
Chief Justice, at Bombay, 44, 58, 100, 101, 121, 171, 172, *and see* Ct. of Jud.; at Madras, 208.
Child, Sir John, member of Cl. (at Bombay), 88, (at Surat), 93, 94; Dep. Gov. of Bombay, 95, 96, 102; Pres. at Surat and Gov. of Bombay, xvii, 98, 111, 112, 122–31, 135, 138–55, 157, 158, 160, 161; called 'General', 111, 116, 117, 118, 119, 139, 140, 145; his sister, 100 n.; quarrels with Niccolls, 93, 94–6, 127, 152; praises Gary, 104, 105; disapproves of Gary, 106, 107; intervenes in judicial cases, 74, 75, 139, 140, 141; his support of Cts. of Adm. and Jud., 141; his life-guards, 144 n.; alleged misappropriation by, 116 n.; his death, 115, 157. *See also* St. John, Zinzan, *&c.*
Child, Sir Josiah, Gov. of the Co., 13 n.; member of the Ct. of Committees, 133, 137 n.; his views as to martial law, 113, 114; his relations with Vaux, 126, 134, 137; his views as to Acts of Parliament, 74, 131–4, 136, 137; his orders as to subordination of the judiciary, 144, 145, 150; his relations with Dr. St. John, 144, 145, 150, 202, 203; his acquaintance with Sir John Biggs, 203; admires the Dutch, 204, 205; obtains a Charter for Madras Mayor's Ct. (1687), 205, 206, 218.
Chillon, 189.
Choultry Justices, at Madras, 208.
Chowghulas (Chugulars, Chugulass's), 173, 184.
Christians, at Bombay, 142; at Calcutta, 209; as jurors, 61, 227; their protection from slavery, 141, 142.
Churchwardens, at Bombay, 51, 53, 70, 178 n., 184 n.; in England, 80 n.
Civilian, a, vi n.
Civil Law, the, 132, 133, 138.
Clapham, John, member of Cl. and J.P. at Bombay, 170, 171 n.; member of Ct. of Jud., 171, 172, 178.
Clark, Robert, 114.
Cleland, John, Attorney, 220, 221.
Clerk of the Crown, 69.
Clerk of the Papers, 52, 53, 69.
Clerk of the Peace, 50, 53, 69, 76, 77, 160.
Clive, Lord, xv, xvii, xviii.
Cobbe, Rev. Richard, 182 n.
Codes, at Bombay, vi, 49 n., 185 n., 198.
Codgee or *Codgi*, see *Kazi.*
Coffrys or *Cofferees*, 75, 191, 192.
Coke's Institutes, 190.
Collector, at Calcutta, 209.
Comjee Naik, 140.
Commissary-General, the, 161.
Committee, of the Co., 13 n., *and see* Ct. of Committees.
Common Law, the, 132 n., 133, 134, 137.
Community, *see* Caste, Panchayats, *and* Povo.
Company, the, *see* East India Co.
Company's Laws, the, *see* Laws.
Company's servants, as Judges, v, vi, 45, 200, 211, 217; as Attorneys, 220.
Confessions, obtaining, 121, 140, 179, 180, 185, 191.

Confiscation, of property, 16, 25, 27, 84, 117, 119, 162, 163.
Conscience, Ct. of, *see* Ct. of Conscience.
Consett, Capt., 98.
Conspiracy, law as to, 190.
Constables, at Bombay, 22, 45, 50, 51, 53, 70, 77, 160; in England, 80 n.
Conventicle Act (1664), 40.
Conzee, 73.
Cooke, George, Dep. Gov. of Bombay, 115, 160
Cooke, Humphrey, provisional Gov. of Bombay, xvi, 3, 4, 63, 110, 183.
Cooper, John, 65.
Coromandel Coast, xviii.
Coroner, at Bombay, 51, 53, 155, 168; his emoluments, 155.
Corporal punishment, *see* Whipping.
Corporations, *see* Aldermen, Burgesses, Mayor.
Cosna Naik, 140.
Cotes, Thomas, 42.
Council, meetings at Bombay, 59 n., 60; Judge, a member of, 46, 47, 59, 60, 86, 109, 126, 138; dissenting in, 219, 220.
Counsel, at Bombay, 53, 188, *and see* Attorneys *and* Barristers.
Court-crier, at Bombay, 69, 77.
Courtney, John, member of Cl. at Bombay, 172; member and C.J. of Ct. of Jud., 172, 178, 182.
Court of Admiralty, the, xix, 217; at Bombay (1684–90), 111, 112, 114; history of, 121–56; Capt. Hamilton's account of, 111, 115, 116; jurisdiction of, 113, 117, 124, 125, 133, 143, 147; no trial by jury in, 147; its Judges, 111–15, 121, 122, *and see* St. John, Vaux, *and* Wyborne; assistants in, 116, 117, 126, 139, 142, 143, 147, 149; power of Bombay Cl. to appoint its Judges, 144, 145, 159; its subordination, 124, 139, 144, 145, 150; its Court-room, 128; its procedure, 133 n., 134, 147; its fees, 150; appeals from, 145, 147; case of *Day* v. *King* in, 143–5; condemns the *Bristol*, 116, 149; the *Satisfaction*, 139, 140; the *Prosperous*, 151, Gary's *shibar*, 117, 119 n., a *grab*, 158; amalgamated with Ct. of Jud., 115, 117; its cessation (1690–1718), 156, 158, 159, 163, 164;
at Madras (1687–9 and 1692–1704), its institution, 202; its jurisdiction, 202; appeals to, 202, 206; appeals from, 207; Judges of, 202, 206, 207, 211, *and see* Sir John Biggs *and* John Dolben; assistants in, 212; Indians in, 206, 228; trial by jury in, 212, 213; punishments by, 211 n.;
at Calcutta (1683–1728), not instituted, 207.
Court of Appeal, the, at Calcutta, 211. *See also* Ct. of the Gov. and Cl.
Court of Chancery, the, at Bombay, 115 n., 130, 143, 145; in England, 46 n., 156, 216.
Court (Cutcherry) of Collector, at Calcutta, 211.
Court of Committees, the, 13, 52, 59, 137 n.
Court of Conscience, the, 60, 83.
Court of Cutcherry, the, at Calcutta, 175, 209, 210, 211.
Court of Governor (*or* Deputy Governor) and Council, the, at Bombay, xix, 218; Aungier's reforms in, 33, 34, 35; Supreme Ct. of the Island, 22, 33, 88, 89; its jurisdiction, 33, 36, 93, 145, 147; trial by jury in, 33, 35, 42, 64, 65, 87, 88; sittings of, 33; records of, 35, 39, 87; trial of military offences by, 17, 88, 89; other trials (1670–2), 36, 37, 38, 39–43, (1715–28), 170, 171, 180; punishments by, 37, 38, 40, 43, 44; revision of death sentences by, 73, 74; civil revision by, 108; called Ct. of Chancery, 115 n., 130, 143, 145; its fees, 169, 176; appeals to (from Ct. of Jud.), 16, 33, 64, 65, 129, 130, 169, 170, 173, 175, 176, 199, 200, (from Ct. of Adm.), 145, 147, (from Mayor's Ct.), 218, 220; appeals from, 35, 36, 93, 129, 130; the sole Ct. of Justice, 156, 158, 159, 164; its work delegated to a single member of Cl., 167, 168, 169, to three members, 170, 171;
at Madras, its institution, 212; Master's reforms in, 201; trial by jury in, 201, 211, 212; its work as a Ct. of Jud., 201, 206, as a Ct. of Appeal, 175, 207, 208, 213 n.;
at Calcutta, the sole Co.'s Ct., 201, 208; its work delegated to three members of Cl., 208; appeals to, 209, 210.
Court of Judicature, the, at Bombay (1672–90), its history, v, vi, 2, 45–7, 83–156; the Co.'s orders for its establishment, 6, 7, 13, 15, 22, 23; Wilcox's proposals for, 49, 50, 51; its opening ceremony, 49, 52–5; its Judges, 15, 23, 47, 49, 51, 52, 55, 58, 80, 83–120, *and see* Adams, Gary, Niccolls, Vaux, Wilcox; J.P.s in, 16, 22, 23, 33, 34,

Court of Judicature—*cont.*
44, 45, 50, 52, 58, 60, 82, 100, 126, 155; assistants in, 58, 126, 128, 136; its jurisdiction, 65, 68, 133, 143; trial by jury in, 15, 24, 49, 50, 60, 61, 177; attorneys in, 52, 53, 61, 62; its probate and administration work, 49, 50, 60; its execution work, 66, 67; its Sessions work, 50, 61, 69–80, 109; its registration work, 11, 16, 24, 51, 60, 67, 68; its supervisionary work, 78–80; its Court of Conscience, 60, 83; its civil procedure, 49, 50, 62, 63–7, 135; its criminal procedure, 50, 69–80, 135; pauper suits in, 63; grant of bail by, 15, 21, *and see* Bail; its Court-house, 51, 62, 99, 112, 117, 128, 152, 157, 170 n.; its sittings, 16, 59 n.; its vacations, 23, 57; its library, 49 n., 131, 132 n.; its officers, 16, 22, 23, 45, 46, 50, 52, 61, 69, 70, 77, 80, 127, 160; *and see* Clerk of the Papers, Clerk of the Peace, Constables, *and* Court-crier; its fees, 16, 23, 24, 49, 50, 51, 58, 60, 62, 63, 67, 77, 108, 109, 127, 128, 150, 234; its expenses, 62, 70, 92, 101; its recognition by Privy Council, 85; its re-opening (1685), 127, 128; its independence, 98; its subordination, 92, 93, 139; its cessation (1690–1718), 156, 158–77; copied at Madras, 201, 202 n.;
at Bombay (1718–28), proposals for, 171, 172; instructions to, 172, 173, 174, 175, 176, 185 n., 193, 199, 200 n.; commissions to the Justices of, 172; its C.J., 172, 178, 181, 182, 187; his salary, 172, 175, 178, 199; its Justices, 172, 178, 182, 183; its quorum, 174; its Indian members, 58, 171, 172, 174 n., 183, 227; its deed of constitution, 172, 199; proclamation regarding, 172, 173; its opening, 173 n.; its jurisdiction, 172, 173, 188, in caste matters, 197, 198, 219, over soldiers, 179, 196; its criminal work, 185–96; its civil work, 196–8; its probate and administration work, 173, 199; its execution work, 173, 198, 199; its registration work, 173, 174, 198; punishments awarded by, 185 and *passim*; informations in, 183, 187, 188, 189, 193; indictments in, 186; rules of limitation in, 173, 174, 175; international law applied in, 191; infanticide case tried by, 185–90; frivolous and malicious complaints in, 192, 193; the justice administered by, 184, 185, 186, 214, 217; its Court-house, 176; its sittings, 184; its Registrars, 171, 172, 184, 186, 191 n., 199; its officers, 173, 178, 179; its fees, 173, 175, 179 ,190, 191, 197, 199; its expenses, 179, 199; appeals from, 173, 175, 176, 199, 200; appeals to, from the *Vereadores*, 173, from the Mahim chief, 173, from the *Kazi*, 184; its independence, 182, 187, 192, 195, 196, 201; some defects in, 191, 192; its abolition, 182, 200;
at Madras (1678–86), its institution, 201; trial by jury in, 201, 212; its records, 202 n.; its supersession, 202; (1689–92), 206;
at Calcutta (1690–1728), not instituted, 206.
Court of Quarter-Sessions, the, at Bombay, Madras, and Calcutta, 211, 217, 218, 222.
Court of Requests, the, at Bombay, Madras, and Calcutta, 60 n., 208, 211, 224 n., 226.
Courts Martial, at Bombay, 6, 9, 29, 89 n., 112, 113, 114, 115; at Madras, 215.
Cowan, Robert, Dep. Gov. at Bombay, 182; Gov. of Bombay, 218; his dispute with the Mayor's Ct., 218, 219, 220; his complaint against Cleland, 221; his dismissal, 220.
Cowell, J. C., his *History of the Constitution of the Courts in India* cited, v.
Crafford, Dr., 196.
Crommelin, Mark Anthony, factor at Bombay, 172.
Cross, Serjeant, 81.
Cundajee (Cundsett), 187, 189.
Custom of Merchants, the, 133.
Customs, at Bombay and Mahim, houses, 51, 166; officers, 4, 5, 33, 34, 44, 166.

Da Cunha, J. G., his *Origin of Bombay* cited, 8.
Daniell, Zachary, 37 n.
Dandji, his conviction for murder, 122, 123, 125, 126, 140.
Davenant, Dr. Charles, 163 n., 164 n.
Davis, Col. John, his *History of the 2nd Queen's Royal Regiment*, cited, 10.
Dawes, Mrs., 212.
Day, Francis, member of Cl. at Surat, 96 n., 100 n., 144; his death, 144 n.
Day, Francis, the founder of Madras, xix.
Day v. *King*, 143–5, 147, 149.
Deceased person, a, papers of, 67; effects of, 164, 216.

Delivery of possession, writs for, at Bombay, 67 .
De Megallanis, Remano, 75.
De Mesquita, Domingos, 76.
De Miranda, Donna Ignez, 5.
Deportations to England, for trial, 32, 33 n., 36, 180, 181; as a punishment, 25, 221.
De Sencation, Joseph, 75.
Deserters, 78, 115 n., 118, 119, 215.
De Tavora, Alvaro Pirez, 83–6, 99 n., 161, 162.
De Tavora, Bernadin, 5.
De Tavora, Christopher de Souza, 161.
Diego Borges, 76.
Diogenes Laertius, 100.
Disarmament, at Madras, 204 n.
Diu, xvii.
Divorce, 219.
Dolben, John, Judge-Advocate at Madras, 206, 211, 212.
Dolben, Gilbert, 206 n.
Dominga, 168.
Domingos, 76.
Dongri Fort, 112, 166, 168, 178.
Dongri (Dungaree) Hill, 118, 119, 166 n.
Douglas, Capt., 197.
Drunkenness, 16, 24, 25, 51 n., 70 n., 79 n., 80, 82, 215.
Dutch, the, war with, xix; hostilities, against Bombay, xix, 1, 82, against Madras, xx; at Surat, 154; at Batavia, 205 n.; the Co.'s imitation of, 204, 205; soldiers in Bombay garrison, 74 n.

East India Company, the, its orders about the government of Bombay, 8, 12, about the Ct. of Jud. at Bombay (1669), 6, 7, 13, 15, 22, 23, (1715), 168, 169, (1719), 174–6, about the translation of the ten Commandments, 77, 78, about the Poplar Charity, 62; its Ct. of Committees, 13, 52, 59, 137 n.; its Solicitor, 13; its Laws enacted for Bombay, *see* Laws; suits against, 216; its transfer to the Crown, xxi; the Old Co., xx; the New Co., xx, 144 n., 154, 167; the United Co., xx, 144 n., 167, 172.
East Indies, the, xvii, 205 n.
Edwardes, S. M., his *Bombay City Gazetteer* cited, v, vii, 36, 56, 98.
Elliot, Christopher, 193, 194, 195.
Elliot, Dr., 155.
Ellis, Private, 113.
Englishmen, trial of (at Bombay), 36, 73 (at Madras), 202 n.; their liability to be deported, 25; they oppose Aungier's Convention, 87, 88; their small number, at Bombay, 159, 160, 167; suits between, 174; form majority of Mayor's Ct. at Madras, 160 n.
Engrossments, 82.
Escheat, the Co.'s right of, 108 n.
Europeans, trial of (at Bombay), 76, 77, 98; (at Calcutta), 209, 210; (under Charter of 1726), 224; wanted for juries, 160, 212; piracies by, 159 n., 207.
Extortions, 82.
Eyre, Sir Charles, Pres. and Gov. at Fort William, 207, 208, 209 n.

Fake, Corporal James, 73 n.
Fakirs, 40.
Farman (*Firman*), xvii, 157.
Fees, *see* Ct. of Adm., Ct. of Jud., Mayor's Ct., *or other* Ct. *concerned*.
Felonies, at Bombay, 16, 25, 26, 71–6, 82, 185–90, 193–6.
Feringis, at Calcutta, 209.
Fieri facias, writ of, 67.
Fines, collective, 190; at Bombay, 15, 16, 23, 24–7, 70, 77, 78, 81, 92, 116, 130, 141 n., 165, 176, 185, 190; at Madras, 208; at Calcutta, 209.
Fisher, Robert, 92.
Fletcher, Lieut. Henry, 98.
Foreigners, protection of, from arrest, at Bombay, 66; suits by, 66.
Forestallings, 82.
Forgery, 16, 26, 68.
Forke, Corporal, 73 n.
Fornication, 16, 25, 78.
Fort St. David, xx, 17, 18.
Fort St. George, xix, 202 n.
Fort William, 208, 214.
Foster, Sir William, his *English Factories in India* cited, vii, 8, 9, 29.
Foxcroft, George, 102 n.
France, Rev. John, 95, 102 n.
Francesco Antonio, 34.
Francisco Morzello Cotinho, 64.
Francis, Richard, 93.
Freemen, 215, 227; at Bombay, 80, 87, 99 n., 109, 110, 148, 152, 160, 178, 182; at Madras, 203, 222.
French, the, their occupation of St. Thomé, xx; their capture of Madras, xx, 17; at Madras, 204; soldiers in Bombay garrison, 74 n.
Fryer, Dr. John, his *New Account of East India and Persia* cited, 1, 32, 88, 106.

Gallows, at Bombay, 72, 196.
Gaming, at Bombay, 82, 138, 190.
Garland, Mr., 197.
Garrison, at Bombay, xviii, xix, 53, 74, 78, 80, 144 n., 147, 160, 166, 172, 178, 179.
Gary, Capt. Henry, xviii, 5; engaged as a factor, 5 n., 106; acting Gov. of Bombay, xviii, 5, 6, 8, 73, 107; his opposition to the Co., 101, 102 n., 107; his charges against Cooke, 3; a good linguist, 6 n., 106, 108; punished for selling arrack, 79; freeman, 87, 106, 129; J.P., 87, 99, 100, 101, 233; sued, 64; his military title, 111 n., 152 n.; his trial before Aungier, 10, 87, 107; becomes C.J., 44, 75, 76, 100, 101; the Co.'s objection to his appointment, 101–3; is certified to be a Protestant, 102; his appointment confirmed by the Co., 104; accused of being a Papist, 102, 103; methodizes the Bombay accounts, 101, 106, 107; not a member of Cl., 109, 138, 201; his salary as C.J., 101, 153; his wife and family, 101, 110 n., 120 n.; his work as C.J., 107, 108, 109; his judicial punishments, 75, 76, 109; his judicial merits, 108, 111, 120; reduces fees of Ct. of Jud., 62, 108, 109; praised, 103–5, 108; requests to resign his post, 104, 105; is employed on missions, 105, 106; his trading, 109, 110; his conduct during Keigwin's Rebellion, 105, 106; recommended for Ct. of Jud. (1685), 106; his timidity, 107, 119; his conceit, 107; Capt. Hamilton's story about him and his alleged inebriety, 110–17, 120; his alleged treachery, 118, 119; his house and gardens ruined, 119; his *shibar* condemned by Ct. of Adm., 117, 119 n.; his flight from Bombay, 118, 120 ,157; his age, 101, 104, 120; his death, 119, 120.
Gary, Henry (junior), 110 n., 120 n.
Gary, Theophilus, 110, 118, 119, 128–30.
Gayer, Sir John, Gov. of Bombay, 118, 119, 137 n., 158, 159, 161–5, 184, 193 n.; his confinement at Surat, xx, 167; his death, 167 n.
Gemara, 76.
General in India, the Co.'s, 167, *and see* Boone, Child, *&c.*
Gentus, *see* Hindus.
George I, King, 215.
German soldiers in Bombay garrison, 74 n.
Gheria, xix.
Ghorbandar (Gorebunder), 189.
Gibson, Capt., 190.
Girgaon, 34.
Goa, xviii, 47 n.; Viceroy of, xviii, 97, 103, 191 n.; capture of, xvii; municipality at, 205 n.
Godson, Jame, 76.
Golconda, 211 n.
Goldsborough, Sir John, 161.
Gombroon, 32, 41.
Gonsalves, George, 164.
Goodier, John, Dep. Gov. of Bombay, 29.
Govindpur, 208.
Gozay, 186, 189.
Grand Jury, 85, 217, presentments by, 218, 222.
Grantham, Sir Thomas, recovers Bombay from the mutineers, 106, 110, 113, 121; invests Dr. St. John with chair of Justice, 122, 126; his deposition against John Child, 124; his departure from Bombay, 124 n., 147.
Gray, Matthew, 30; Dep. Gov. of Bombay, 39, 46; judicial work of, 39–42.
Great Breach, the, 180, 192, 196.
Guildhall, the, at Bombay, 51, 75.
Gujarat, xvii, 220.

Hamilton, Capt. Alexander, 110 n., 115, 117, 134, 142 n.; his *New Account of the East Indies* cited, 55, 56, 110–2, 115, 116, 117, 134, 138.
Harbin, Robert, 100.
Harris, Bartholomew, member of Cl. at Surat, 144; Chief at Surat, 154, 157–62; his death, 157 n., 161.
Harrison, William, 76.
Hastings, Warren, Governor-General of India, vi, 146 n.
Havens, William, 37.
Hawkins, Capt. William, xvii.
Hayes, Samuel, 128, 131, 132 n., 135.
Highways, supervision of, at Bombay, 51, 80.
Hill, Elias, 41, 42.
Hinde, John, Gov.-designate of Fort St. David, 18.
Hindu, law, 184; wills, 199.
Hindus, at Bombay, 52, 78, 172; at Madras, 203.
Hockwell, Richard, 76.
Holland, xix, *and see* Dutch.
Holles, Lord, 103 n.
Holwell, J. Z., Collector at Calcutta, 209; his dispute with Mayor's Ct., 209, 210.

Hope, John, C.J. of Ct. of Jud., 182, 187, 191.
Horne, John, Gov. of Bombay, 221.
Hornigold, John, 96 n., 105.
Hospital, the, at Bombay, 62 n., 182 n.
House of Lords, the, 65.
Hughes, Ensign Daniel, 76.
Humphrey and Elizabeth, the, 46 n.
Hundreds, 50, 70.
Hunter, Sir William, his *History of British India* cited, v, xvii, 2, 35, 56.
Hurly, Private, 81.
Hutchinson, Rev. James, 30, 40.

Imprisonment, at Bombay, 15, 16, 21, 25, 26, 27, 78, 87, 141 n., 180, 190, with hard labour, 70, 71, 185, 193, 196, for debt, 50, 66, 67, 166, 198; at Madras, 208; at Calcutta, 209, 211 n.
Inch of candle, auction by, 164.
Indian High Courts Act (1861), v.
Indian Justices, at Bombay, 34, 171, 172, 174 n., 183; at Madras, 206.
Indians, as jurors, 61 n., 227; their exclusion from the Courts, 227, 228; their present-day association, 228.
Indictments, 50, 69, 186.
Insolvency, law as to, 66, 67, 198.
Insolvent Debtors Act (1812), 67.
Instalments, 198.
Instructions, *see* Ct. of Jud. (1718–28) *and* Mayor's Ct.
Interest, Court-rate of, at Bombay, 198.
Interloping, 13 n., 115, 116, 117, 125, 139, 140 n., 146, 147, 203; treated as piracy, 116, 207 n.
Interpreters, 69, 186; fees of, 108.
Interrogatories, 194, 195, 196.
Isupjee, 184.

Jadu Naik, 64.
Jailor, at Bombay, 63, 160, 192, 199.
James I, King, xvii, 137.
James II, King, 113, 146, 205.
James, Thomas, 76.
Janjira, xix, 1 n.
Java, 205 n.
Jealousy, between military and civil officers, 89.
Jeejee Jamset Moody, Justice in Ct. of Jud. (1718–28), 171, 172.
Jehangir, Emperor, xvii.
Jenkins, Sir Leoline, 122 n., 138 n., 203.
Jessop, John, factor and J.P. at Bombay, 75, 116, 126; assistant in Ct. of Adm., 116, 126 n., 128; attorney-general, 128; assistant in Ct. of Jud., 126; accuses Niccolls of bribery, 135, 136.
Jesuits, at Bandra, xix, 5, 108; at Bombay, 5, 86, 118 n., 163.
Jeva, 198.
Jevan, 198.
Jews, at Madras, 204.
Jogues (*Yogis*), 165, 166.
Johanna, 111 n.
John (a slave boy), 76.
Joseph D'Coasta, 197.
Judge-Advocate, at Bombay, 6, 34, 112, 113, 114, 117, 121–53, 162, 163, 164, 214; at Madras, 202–7, 211, 212; at Calcutta, not appointed, 207.
Judge of Court of Judicature at Bombay, 15, 23, 34, 47, 49, 51, 52, 55, 58; his salary, 51, 52, 59, 62, 91, 92, 100, 101, 153; his horse and gown, 92, 240; affronts to, 80, 81; vacancy of, 157, 158. *See also* Ct. of Jud., Adams, Gary, Niccolls, Vaux, Wilcox.
Judicial clerks, 45, 61, *and see* Ct. of Jud., *&c.*
Jury, trial by, 217, 224; at Bombay, vi, 15, 16, 17, 21, 24, 33, 34, 35, 36, 42, 43, 45, 49, 50, 60, 61, 65, 69–76, 78, 82, 87, 88, 95, 107, 114, 129, 131, 135, 140, 154, 160, 167, 168, 201; not for civil cases in Bombay Ct. of Adm., 147; not in 1690–1718, 158, 170, 177; before Bombay Coroner, 168; at Madras (1669–1727), vi, 201, 208, 211, 212; at Calcutta, not till 1728, 211; in Quarter-Sessions Cts., 217, 218; native Christians on, 61 n., 227.
Justice Hall, at Bombay, 99, 128.
Justices, at Madras, 208; at Calcutta, 175, 209–11.
Justices, Country, 149.
Justices, Indian, *see* Indian Justices.
Justices of the Peace, *see* Bombay, Ct. of the Gov. and Cl., Ct. of Jud., Quarter Sessions, *&c.*

Kalyan, 105.
Kanarese language, the, 14 n.
Kaye, J. W., his *History of the Administration of the East India Company* cited, v, 192, 214 n.
Kazi (*Codgi*, *Codgee*), 184, 193.
Kazi, Ibrahim, 184.
Keigth Thakau, 191.
Keigwin, Capt. Richard, 80 n.; J.P. at Bombay, 99, 100; his rebellion, xix, 75, 98, 104, 105, 111, 115, 121, 141, 142, 147, 151; his deposition against John Child, 124; his departure from Bombay, 124 n.
Kendry, 105.

Khan, Dr. Shafaat Ahmad, his *Anglo-Portuguese Negotiations relating to Bombay* cited, v, vii.
King, Hezekiah, member of Cl. at Bombay, 182; member of Ct. of Jud., 182; his wife, 193, 194.
King, James, member of Cl. at Surat, 144; defendant in *Day* v. *King*, 144, 145; sues John Thorburne, 142.
King in Council, the, *see* Privy Council.
King's Courts, the, in India, v, 146.
Knipe, Edward, 111 n.
Kung, 41, 42.

Laborne, Corporal, 81.
La Bourdonnais, Admiral, 17.
Lakhmidas Tuckidass, 198.
Lambton, John, secretary of the Bombay Cl., 190.
Langford, Lieut. Reynolds, J.P. at Mazagaon, 234.
Larceny, 224, *and see* Theft.
Law, *see* Civil Law, Common Law, Hindu Law, Martial Law.
Laws, the Company's, for Bombay, vi, 13–28, 48, 54, 131, 133, 135, 138, 143, 167, 176, 177, 185, 201; English, xxi, 217, 223, 224, 225, at Bombay, 3, 16, 44, 48, 53, 54, 74, 131–5, 168, 173, 177, 185, 191, 198, at Madras, 201.
Lee Harcourt, Mr., factor at Bombay, 190.
Lewis Jehondah, 128.
Leyden, University of, 122 n.
Lockyer, Charles, 212.
Lorenzo (slave), 196.
Lowther, Henry, factor at Bombay, 182; member of Cl., 182, 220, 221; member of the Ct. of Jud., 182; chief at Surat, 220, 221 n.; sued, 220, 221; his dismissal, 221 n.; his character, 182 n., 221 n.
Lucas D'Mell, 191, 192.
Lucas, Sir Gervase, 4; Gov. of Bombay, xviii, 4; his report about Cooke, 3; his judicial arrangements, 4, 5; his seizure of lands at Bombay, xviii, xix, 64, 82, 86, 87; his death, xviii, 5.
Luiz Cazada, 34.
Lush, Humphry, 42.
Lyon, H.M.S., 193 n.

Macaulay, Thomas, his *Essays* cited, vi; his *History of England* cited, 10.
Mackenzie, Sir George, 75 n.
Madosett, 189.
Madras, the Co.'s settlement at, xix; raised to a Governorship, 212; raised to a Presidency, xix, xx; raised to a Regency, 205; surrender of, xx, 17; Cts. at, 201–7, 211–13; *zamindari* rights at, 208.
Magna Carta, 176.
Magregory, William, 158.
Mahim, 4, 5, 71, 72, 76, 164, 165, 182 n., 191; J.P.s at, 33, 34, 50, 51, 126, 128, 166, 234; *Vereadores* at, 183 n.
Maiming, 72, 109.
Maintenance allowance, 184.
Malabar coast, xix.
Malabari, Phiroze B. M., his *Bombay in the Making* cited, v, vii, 8, 56, 57, 98, 110, 138, 183, 191, 198, 199.
Malacca, 134.
Malcolm, Sir John, Gov. of Bombay, 146.
Manuel, 197.
Manuring, of lands, at Bombay, 162.
Mapla Por, 99.
Mareene, Michael, 155 n.
Maria, 76.
Marlborough, Earl of, xviii, 13 n.
Marshall, at Bombay, 63, 85, 95 n., 192, 199.
Martial Law, at Bombay, 6, 10, 89 n., 112, 113, 114, 132, 133, 215; at Madras, 204, 215; in England, 10, 215.
Master, Streynsham, member of Cl. at Surat, 40; Gov. of Madras, 201, 208, 215; trials before, vi, 201, 202 n.
Matches, 121 n., 180.
Mathias Queng, 135, 136.
Matthews, Commodore Thomas, 193 n., 194 n.
Mattraes, 169.
Mayor, at Bombay, 171, 219, 220; at Goa, 205 n.; at Madras, 174, 203, 204; unsalaried, 175.
Mayor's Court, at Bombay, proposals for its establishment (1690–1728), 160, 171; its inauguration, 200; suits in, 218, 219 n., 220, 221; attorneys in, 220; its Registrar, 220 n.; its independence, 218–20;
at Madras (1687–1727), 160, 171, 174, 177, 206, 208, 211 n.; its institution, 203–6; its jurisdiction, 206, 208; trial by jury in, 212, 213; its subordination, 206; appeals from, 175, 177, 202, 206, 207, 213 n.; its Charter from the Co., 205, 206, 214; (1728–98) its procedure, 224; its judicial merits, 226; its independence, 222, 223; attorneys in, 221, 222;

Mayor's Court—*cont.*
at Calcutta (1728–74), its institution, 211; its jurisdiction, 209; its dispute with Holwell, 209; its independence, 223;
generally for the three towns, reasons for their establishment, 214–17; the model followed, 215; their probate and administration powers, 215, 216, 217; their judicial merits, 217, 225; their independence, 218–21; the Co.'s instructions to, 223, 224; their registers, 223, 225; their participation in Grand Juries, 222; their jurisdiction under Charter of 1753, 225, 226; appeals from, 218; removal of Aldermen from, 218, 222; volume of litigation in, 225.
Mazagaon, 5, 34, 50, 51, 83, 161, 165, 189, 234.
Mears, Mrs., 194.
Meddowes, Samuel, 76.
Merchant, Co.'s salary to a, 91 n.
Meum and *Tuum*, 54, 176, 209.
Mews, Benjamin, 116.
Michael Jehondah, 128.
Middleton, William, 37.
Mildmay, William *and* Sir William, 89.
Military land-tenure, at Bombay, 84.
Military regulations, at Bombay, 17, 18, 26–8, 89 n.; at Fort St. David, 18; at Fort William, 18; at Madras, 215.
Militia, at Bombay, 73, 76 n., 78, 83, 152, 157, 162; militia tax, 183 n.
Minchell, William, 13.
Minchin, Capt. William, 146.
Minors, appointment of guardians of, 156, 184.
Misprision of treason, 84.
Modi (*Moody*), 149.
Mohammedan punishments, 43.
Mohammedans, at Bombay, 52, 78, 172, 184; at Madras, 204; at Calcutta, 209.
Moore, Thomas, member of Cl. at Bombay, 169.
Moormen, 52, *and see* Mohammedans.
Morley, W. H., his *Analytical Digest of Cases decided in the Supreme Courts* and *Administration of Justice in British India* cited, v.
Mortgage-decrees, 198.
Moses, William, Solicitor to the Co., 13.
Municipality, at Madras, 203, 204; at Goa, 205 n.; at Batavia, 205 n.
Murder, punishment for, at Bombay, 16, 26, 43, 44, 73, 76, 77, 111, 140, 165, 167, 168, 180, 193, 196, at Madras, 206, 211, at Calcutta, 209, 210, 211; jurisdiction to try cases of, 176, 206; Bombay Coroner's jurisdiction in cases of, 51, 155; trials for, at Bombay, 29–32, 35, 37, 43, 122, 123, 140, 141, 166, 168, 180, 193–5, at Madras, 202 n., 212; inquiry into case of, 192 n.
Mutiny Acts, 9, 11, 215.
Mutiny, punishment for, at Bombay, 27, 28.
Myndus, 100 n.

Naoroji v. *Rogers*, 163 n., 233.
Naranjee Ballajee, 186, 187.
Narran (goldsmith), 185 n.
Native Christians, *see* Christians.
Native Customs, vi, 169, 173, 206, 224, 225, 226.
Naylor, Daniel, 51.
Neema Parrack, 66, 67.
New Company, the, *see* East India Co.
Newlin, Robert, C.J. of Ct. of Jud., 181.
Newman, William, 76.
Newnam, Capt. Thomas, 134 n.
Niccolls, Capt. Thomas, a soldier at Bombay, 46 n.; dismissed for insubordination, 46 n.; employed at Surat, 46 n.; clerk of Ct. of Jud., 46, 91; J.P., 90; Judge of the Ct. of Jud., 58, 59, 79, 91–9, 128, 201; his salary, 92, 152; his other employment, 91; not a member of Cl., 59, 138; his alleged partiality, 92; sued, 93, 94; offends the Bombay Cl., 93, 94, 96, 102, 107; John Child's enmity to, 93, 94, 96, 127; suspended from his Judgeship, 94–7; further inquiry as to his suspension, 95, 96, 102, 103; appointed Captain of the 'elder' company, 95 n., 98, 127, 152; supervises the militia, 152; suspended from his military employment, 95; dismissed, 96; his charge against Rev. John France, 95; recommended for post of C.J. (1685), 106; assists Vaux in Ct. of Jud., 126, 127–31, 135, 151, 152; assists Sir Thomas Grantham, 127; his affronts to Dr. St. John, 128; alleged bribery of, 135, 136; buys the *Prosperous*, 151, 152; praised, 97, 151, 152; his quick temper, 46 n., 96, 98; his wife and family, 93, 97, 151, 152; his death, 127, 151, 157; his judicial merits, 98, 127, 152.
Nicholas Searle, 67, 68.
Nicholson, Capt., 207.
Notary Public, at Bombay, 53, 68, 69.
Nursingjee Purvoe, 164.

Oart, 135 n. and *passim*.
Oath, of officers at Bombay, 22, 23, 55; of Judge at Bombay, 23, 55; of juryman at Bombay, 24; of a witness at Bombay, 63; of a Hindu, 63, 186, 222, 223 n.; of a Mohammedan, 63; of an attorney, 130, 220 n.; a special, 42; a *pagoda*, 222.
Old Company, the, *see* East India Co.
Orme Collection, 112 n.
Orphans, estates of, 4, 155, 156.
Orta, 135 n. and *passim*.
Outcasting, 197, 219.
Outlawry, 84, 85, 162.
Ovidor, at Bombay, 46; at Thana, 4.
Oxenden, Henry, 97.
Oxenden, Sir George, xvi, 8, 173 n.; Pres. at Surat, 2, 8; Gov. of Bombay, xvi, 8, 29; visits Bombay, 8–12; his supposed regulations for Bombay, 8–12; his complaint against Gary, 107; his death, xvi, 2.
Oyer and Terminer, Sessions Court of, 188, 217.

Padre Vicario, 65.
Page, Edward, Cl. Secretary and Mayor at Bombay, 219.
Pagoda (coin), 206, 207, 218, and *passim*; (temple) 222.
Panchayats, at Bombay, 80 n., 81, 82, 155, 156, 184; orders passed by, 197.
Pandit, Hindu, 184.
Papillon, Thomas, director of the East India Company, 13.
Parbhus, 62.
Pardons, 141, 202 n., 237.
Parel, 5 n., 163, 195.
Parker, Laurence, Dep. Gov. of Bombay, 170, 178; member of Ct. of Justice (1716–18), 170; member and C.J. of Ct. of Jud., 171, 172, 178, 181; his trial, 179, 180; his suspension, 178, 180; his impartiality and independence, 179, 182; his charges against Major Vane, 180, 181.
Parry, Mr., 85 n.
Parsis, 172.
Pasqual Barrett, member of Ct. of Jud., 171, 172.
Pasqual D'Souza, 191.
Patil (Patell), 173 n.
Paxton, Capt., 158.
Peace of Aix-la-Chapelle, xviii.
Pearse, Thomas, 64.
Pedro de Silva, 141.
Pendus, 100.
Pepys, Samuel, 139.
Percival, George, member of Cl. and of Ct. of Jud., 182.
Pereira, John, 60.
Perjury, 16, 25, 26, 65, 186, 188, 190, 192.
Perojeboye v. *Ardaseer*, 74 n., 226 n.
Pero Luis Symon, 41, 42.
Perry, Sir Edward, his judgements cited, 2, 7 n., 74 n., 226 n.
Petition of Right, 10 n.
Petit, John, Dep. Gov. of Bombay, 96, 97, 98, 100.
Phipps, William, Dep. Gov. of Bombay, 169; Gov. of Bombay, 169 n., 191 n., 193 n., 194 n., 195.
Phoenix, the, 114, 140.
Piece of eight, a, 21 n., 24, 25, 26.
Pillory, the, at Bombay, 16, 25, 26, 75, 76, 87, 190, 196 n.; at Madras, 208; its use deprecated by the Co., 224.
Piracy, in Indian Ocean, xviii, 159 n.; in Red Sea, 207; by Angria, xvii; suppression of, 193 n.; trial of, 176, 202 n., 207, 220; interloping regarded as, 116, 207 n.
Piracy Act (1698), 207.
Pitt, Thomas, Gov. of Madras, 203, 207.
Plague, 159.
Planters, *see* Freemen.
Plassey, xviii.
Pleaders, at Bombay, 52, 135, *and see* Attorneys.
Police, at Bombay, 55, 69, 70, 76, 82, 140, 192.
Pondicherry, xviii.
Poplar Charity, the, 62.
Portsmouth, 203, 205.
Portuguese, the, at Bombay, 1, 34, 62, 156, 172, 183, 196, 215 n., 220 n.; at Madras, 204; at Surat, 154; their acquisition of territory in India, xv; their hostility to Bombay, xvi, 1, 192; their laws, 2, 3, 6, 7, 34, 44, 49, 53, 54; their language, 3, 7, 13, 34, 45.
Povo, the, at Bombay, 70 n., 87, 88, 107 n., 196 n.
Precedence, warrant of, at Bombay, 89.
Prerogative Courts, 46, 82.
Prices, regulation of, 80.
Prisons, at Bombay, 4, 50, 137, 166, 168 199; fees in, 166, 199.
Privy Council, the appeals to, 85, 218, 219.
Prize business, 207.
Probates, at Bombay, 49, 50, 67, 68, 83, 173.
Professional lawyers, v, 225, 226, 227; *see also* Barristers.

Prosperous, the, 151, 152.
Public houses, 79, 80, 137.
Punch-houses, 79.
Punishments, at Bombay, 16, 24–8, 42, 43, 70, 72, 78, 176, 185, 192, 193; at Madras, 206, 208, 211; at Calcutta, 209, 210, 211; some deprecated by the Co., 224. *See also* Banishment, Burning, Confiscation of property, Fines, Imprisonment, Maiming, Slavery, Warnings, Whipping.

Quarter Sessions, Court of, 215, 217, 218, 222, 226; the Co.'s Instructions to, 224; presentments by juries at, 218, 222; jurors in, 227.
Queen Anne, 68.
Queen Catharine, 85 n.
Queen Elizabeth, 137.
Queroo Thakau, 191.

Raghoosett Muckonsett, 186, 188, 189.
Rama Gunba, 189.
Rama Kamati (Comatee), member of Ct. of Jud., 171, 172, 176 n., 179; *Vereadore*, 183 n.; his trial for treason, 179, 180.
Rama Santa, 199.
Ramnaut Khan, 105.
Ramjee, 140.
Ramjee Purvoo, 66.
Rammell, Thomas, member of Cl. at Bombay, 219.
Ranmatra, 198.
Rape, punishment for, 74, 193, 196 n.
Receiver, of Revenues, at Calcutta, 209.
Recognizances, 194, 195.
Recorder's Courts, v, 184, 226, 227.
Registrars, *see* Ct. of Adm., Ct. of Jud., &c.
Registration, of land transfers, at Bombay, 11, 16, 24, 51, 68, 173, 198; of wills, at Bombay, 67, 68. *See also* Ct. of Jud.
Regratings, 82.
Regulating Act (1773), v, 217.
Reinol (Renol), 197.
Religion, freedom of, at Bombay, 1, 15, 20, 21, 78; laws relating to, 14, 15, 19, 20, 24, 70; offences against, 39, 40, 77, 79, 80; disputes of a religious nature, 218, 219.
Remand to Jail, 179.
Remonstrance, Wilcox's, 48.
Reprieves of capital sentences, 72, 73, 202 n., 237.
Requests, Ct. of, *see* Ct. of Requests.
Revenge, the, 64, 91.
Reversionary rights, the Co.'s, 108.
Revisional Ct., at Surat, 35, 36, 41.
Rial of eight, a, 21.
Riots, at Bombay, 165, 166.
Roby, Anthony, 80.
Rochester, Lord, 122 n.
Rolt, Thomas, chief in Persia, 32, 94; Pres. at Surat, 101, 104, 107.
Roman Catholic religion; freedom for, at Bombay, 15, 21, 215 n.; conversion to, 78, 137, 139, 196, 197, 218.
Roman Law, vi n., 132 n., 138.
Rumbold, Henry, 221.
Rustomji Monekji, 154.

Sadr Courts, v.
St. Helena, transportation of convicts to, 141, 168, 230; slaves sent to, 16, 71, 99, 126; the Co.'s laws for, 14, 18; martial law at, 113.
St. John, Dr. John, 121, 122 n.; Judge-Advocate of Bombay, 112, 113, 114, 116, 138; Judge of Ct. of Adm., 121, 122; his arrival at Swally Marine, 143; tries a case of murder, 122, 123; presides at a court martial, 113; takes depositions against the President, 123, 124, 148; claims the power to try soldiers, 113; his acting as C.J. ratified, 121, 126; refused the post of C.J., 106, 122–5, 128, 143, 203; his attempt to extend his jurisdiction, 124, 125, 142, 146, 147; refuses to produce his royal Commission, 143; fees charged by, 128; fees claimed by, 150; his visit to Surat, 144; his trial of *Day* v. *King*, 143–5; his intervention in Thorburn's case, 142, 143, 146; his alleged correspondence with interlopers, 146; his letters to England, 125, 146; his influence in England, 123; his salary as Judge-Advocate, 122, 125; praises John Child, 146, 148; complains against John Child, 139, 146, 150; John Child's support to, 141, 143, 148, 149; complains of his treatment at Bombay, 128, 148, 149; his alleged misdemeanours, 125, 148 n.; his quarrel with his servants, 147, 148; his insubordination, 124, 146, 163, 206; his dismissal, 113, 125, 139, 144, 146, 150; his appeal to the King, 143, 146; his petition to the Privy Council, 150 n., 151 n.; his treatment by the Co., 122, 144, 150, 151, 202, 203.
St. Thomé, xviii, 204.

Sales of land, at Bombay, 11, 16, 24, 68, 173.
Salmon, Thomas, 212.
Salsette, xvi.
Salvage expenses, 191.
Sambhaji, Raja, 105, 106 n.
Sampson, the, 57 n.
Sancroft, Archbishop, 122 n.
Sands, Serjeant Henry, 73, 111.
Satisfaction, the, 139.
Savajee Daramsett, 186, 187, 188.
Saul, John, 39.
Sawbridge, Rev. Dr., 193, 194.
Scroggs, C.J., 148.
Second, the, at Bombay, 179.
Security, taking of, at Bombay, 194, 195, 224.
Sepoys, at Bombay, 178, 192 n.
Serapheem, see *Xeraphin*.
Sessions Court, Sessions House, *see* Ct. of Jud.
Shaxton, Capt. John, 46 n., 73, 144 n.; J.P., 233; Dep. Gov. of Bombay, 46 n.; his company's mutiny, xvii, 88, 89, 147; his trial, 17, 36 n., 80, 88, 89; his son, 144.
Shaxton, John (junior), 144.
Shaw, John, his *Charters relating to the East India Company* cited, v.
Shenvis, 62.
Sheriff, at Bombay, 85; at Madras, 224.
Shibar, 110, 117, 119, 191.
Shipman, Sir Abraham, xvi, 5 n., 64.
Shiraji, Raja, xv, 8 n., 105.
Siam, the King of, 76 n., 140.
Siddi Cossim, 105.
Siddi, the, 1, 98, 105, 118, 119, 141; his fleet, xvii; his invasion of Bombay, xvii, 1, 115, 117, 118, 119, 136, 152, 157, 159, 163, 166 n., 170 n., 249.
Siddi Yakub, 163.
Simon Serron, 44.
Sion, 51, 163, 234.
Sirpat Pragjee, 187, 189.
Slavery, sentence of, 70, 71, 76, 98, 99.
Slaves, at Bombay, 76, 180, 186, 187, 196; obtaining them for Bombay, 142; their protection, 141, 142, 196, 197.
Solicitors, *see* Attorneys.
Sonu Shenvi, 64.
Stanley, Richard, 135.
Stanton, Major Jonathan, 196.
Statute of Limitation, 129.
Statutes, English, 49 n., 74, 130, 131–4, 137, 190, 227.
Stevens, Serjeant, 81.
Stirling, Rev. James, 30 n., 37, 40.
Strafford, Earl of, 9 n.
Strachey, R. and O., their *Keigwin's Rebellion* cited, 111.
Strutt, Stephen, member of Cl. and Ct. of Justice (1716–18), 170, 171; member of Ct. of Jud., 171, 172, 178.
Subpoena, 49, 50, 199 n.
Sugar, Serjeant Thomas, 76.
Sultan Bahadur, 3 n.
Summary Settlements, 86.
Sunday Observance Acts (1642–77), 15 n.
Supreme Courts, v; at Bombay, 146 n., 226 n.; at Calcutta, vi, 146 n., 227.
Surat, the Co.'s factory at, xv, xvi, xvii, xviii, and *passim*; Gov. of, xvii, 8, 153 n., 161; the English factors confined at, xviii, 119, 153 n., 154, 159 n., 161; visits of English ladies to, 90.
Survey of rights, at Bombay, 22.
Sutanati, 207, 208.
Swedish soldiers in the Bombay garrison, 74 n.

Tangier, 9 n., 10, 114.
Tapti River, 154, 155.
Taxes, at Bombay, militia-tax, 183 n., 'pension' under Aungier's Convention, 86–8, police-tax, 192 n.; at Madras, house-tax, 203, municipal tax, 204.
Tellicherry, 197.
Thana, its capture by the Portuguese, xv; Cts. in, 3.
Thanedar, at Bombay, 4.
Thefts, at Bombay, 16, 25, 36, 70, 71, 140, 166, 185; death-penalty for, 16, 71–4, 98, 99, 109, 185, 211 n., 224.
Thorburn, Ensign John, 121, 131; his imprisonment for debt, 142, 143, 146.
Thorpe, Nathaniel, 137, 139.
Tipstaffs, at Bombay, 52, 53, 70 n.
Toldervy, Capt. John, 9, 29, 48; deported, 32; his company, 46 n.
Torture, 121, 179.
Town Hall, at Bombay, 176.
Treason, 84, 85, 136, 137, 139 n., 218.
Treaty of 1661, the, 9 n., 15, 108 n.
Treaty of Westminster (1674), the, 87.
Trimbuck Sinay, 170, 171.
Tuckee Alodin Kazi, member of the Ct. of Jud., 171, 172.
Turner, John, 76.
Tyrell, Capt. John, 140, 149, 150.

Umberack, 76.
Unlawful Assault, *see* Assault.

Unlawful Assembly, 82.
Ustick, Lieut. Stephen, J.P. at Sion, 234.

Vacations, in Ct. of Jud., 23, 57.
Vadala, 163.
Valuation of land, at Bombay, 163.
Vane, Major, 180, 181.
Van Goen, Rickloffe, 1 n.
Vasco da Gama, xv.
Vaux, Capt. John, member of Cl. at Bombay, 126, 137, 138, 153; C.J. in Ct. of Jud., 115, 116, 117, 126–31, 137, 143, 151, 152; his appointment approved by the Co., 134; Judge of the Ct. of Adm., 115, 116, 117, 150; Dep. Gov. of Bombay, 115, 157, 160; his Salaries, 153, 178; his military employment, 152; his correspondence with Sir Josiah Child, 134, 138; his judicial merits, 134, 137–9, 150, 154; his dismissal from the Co.'s service, 137, 153, 159; his Diary, 134, 137, 153; alleged misappropriation by, 153; his possession of Co.'s books, 153, 154; his power of vituperation, 154; his death, 154, 247; his tomb, 154, 155; his widow, 153.
Venice, 103 n., 111 n.
Venturai, 76.
Vereadores, the, at Bombay, 164, 169, 173, 183; their election, 183; their duties, 183; their Ct., 173, 174, 183.
Vergis, William, 76.
Versova, 196.
Viceroy, the, of Goa, *see* Goa.
Vindea Chittea, 141.
Vissundas, 110.
Vita Patel, 197.

Waite, Sir Nicholas, Pres. of the New Co. at Surat and Gov. of Bombay, xviii, 144 n., 167; his alleged complicity in Gayer's confinement at Surat, 167; intervenes in *Day* v. *King*, 144; Chief judicial authority at Bombay, 168; deposed by his council, 168.
Walker, Samuel, 47.
Walsh, Mr., 153.
Walton, Col. Clifford, his *History of the British Standing Army* cited, 9 n.
Walton, Henry, 79.
Ward, Charles, Dep. Gov. of Bombay, 75 n., 100 n.
Warnings, at Bombay, 78.
Waters, Thomas, factor at Bombay, 218 n.
Watson, Admiral, xvii.
Weldon, George, Dep. Gov. of Bombay, 159, 163.
Wells, fencing of, at Bombay, 155.
Wentworth, Thomas, 9 n.
West Indies, the, 206 n.
Westropp, Sir Michael, 163 n.
Whipping, at Bombay, 16, 17, 21, 25–7, 37, 70, 75, 76, 78, 87, 141 n., 165, 166, 185, 191, 192, 193, 196, 197; at Madras, 208; at Calcutta, 209, 210 n., 211 n.; deprecated by the Co., 224.
Whitcombe, Samuel, member of Cl. at Bombay, 159.
White, Mr., 139.
Wilberforce's Act (1833), 70 n.
Wilcox, George, clerk in a Prerogative Office, 46; sent out by the Co., 46; Secretary of Bombay Cl., 46; member of Cl., 46, 47, 59, 60, 86, 110, 126; in charge of the Treasury, 60; Judge of the Ct. of Jud., 46, 47, 49, 53, 55, 83–90, 124, 126, 128; his proposals for the Ct., 47, 49–51; his reports, 48, 55, 56, 57, 62, 70, 71; his salary, 51, 52, 59; his work and abilities, 59, 60, 83–9; his wife and daughters, 59, 89, 90; affronts to, 80, 81; his serving on a Ct. martial, 113; his death, 80, 83.
Williamson, Sir J. W., 84 n., 107 n.
Wills, 49, 67, 68, 83, 199, *and see* Probates.
Wilshire (Wiltshere), Thomas, 172 n., member of Ct. of Jud., 171, 172, 178, 182; sues Wyche, 200 n.
Winter, Sir Edward, 102 n.
Wise, Lieut. Joshua, 180, 181 n.
Witchcraft, trials for, 43, 74, 75, 166.
Wooden Horse, the, 38.
Woolaston, Mr., 215, 216 n.
Wounding, *see* Assault.
Wright, Arnold, his *Annesley of Surat* cited, 110, 121, 154.
Writs, at Bombay, 67.
Wyborne, Sir John, 113; Dep. Gov. of Bombay, 113, 114, 115; Judge-Advocate at Bombay, 113, 114, 115, 116, 139, 140, 153; complains against John Child, 139, 140; dismissed by the Co., 139; its complaint as to his demeanour, 206; his death, 243.
Wyche, Bernard, Dep. Gov. of Bombay, 169; his taking the sole power to administer justice, 169; member of Ct. of Jud., 171, 172, 178; sued, 170, 171, 200 n.
Wynn's Jury Act (1826), 227 n.

Xerafin or *Xeraphin*, 4, 33 n., 36 n., and *passim*.

Yale, Elihu, Gov. of Madras, 205, 206; suit against, 212.
Yeomans, George, 171.
Yeomans, Thomas, member of Ct. of Jud., 182.
Yogis, 165, 166.
York, Archbishop of, 206 n.
Yorkshiremen, 63.
Young, Capt. Henry, 9 n.; Dep. Gov. of Bombay, 9, 10, 29; his trial for murder, 29–32, 36; other charges against, 32, 33; sued, 41, 42; deported, 32; his death, 32; his daughter, 93 n., 151 n.

Zamindar, at Calcutta, 208, 209, 210, 211.
Zamindari Courts, at Calcutta, 208–11, 225; at Madras, 208.
Zerafin, see *Xerafin*.
Zinzan, Charles, Dep. Gov. of Bombay, 106, 122, 124, 126–31, 132 n., 141, 145, 148; surety for defendant in *Day* v. *King*, 144; his treatment of Dr. St. John, 149; his dismissal, 152.

PRINTED IN
GREAT BRITAIN
AT THE
UNIVERSITY PRESS
OXFORD
BY
JOHN JOHNSON
PRINTER
TO THE
UNIVERSITY