

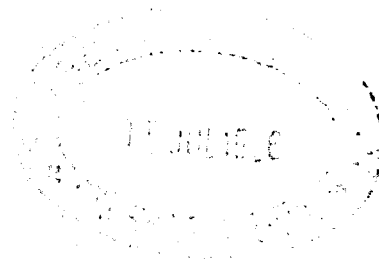
OUTLINES OF INDIAN
CONSTITUTIONAL HISTORY

OUTLINES *of* INDIAN CONSTITUTIONAL HISTORY [BRITISH PERIOD]

BY

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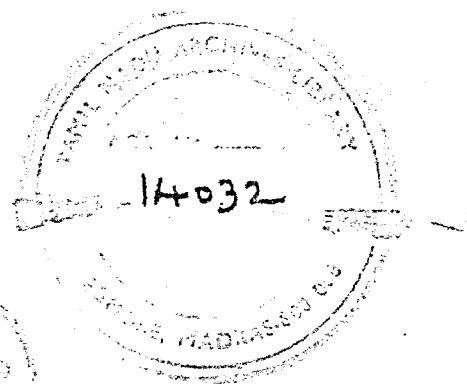
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TO
A. L. A.



PREFACE

THIS attempt to deal with a very difficult subject in brief outline is given to the world with considerable hesitation. Such a book cannot possibly cover the whole ground. It does not deal, for instance, with local self-government, which would need a volume at least for satisfactory treatment; the same may be said of taxation and finance. Nor does it go fully into the very complicated problems connected with the relations between the Government of India and the Provincial Governments, and between the Government of India and the Home Government. Again, a new and very difficult branch of Indian constitutional polity is that concerned with the exact powers and duties of the native princes; perhaps we speak of it as new merely because it is beginning to attract wider notice. There is indeed ample field for further speculation and research, and the consideration of an elementary matter such as the jurisdiction of the High Courts will show that much remains to be done. I cannot say that the writer of monographs will find in such questions the picturesqueness that belongs to the dim and half-forgotten kingdoms of India's ancient and mediæval days, but he may throw light on subjects of great historical interest; subjects, too, which have a very direct connection with the constitutional fabric of to-day.

I am under great obligations to the Government for allowing me to reprint, without making any monetary payment, such portions as the Montagu-Chelmsford Report as seemed useful for my purpose. To one who knows India that Report is indeed melancholy reading, especially when studied in the light of the events which have followed its publication; and the end is not yet. But idealism is always attractive, and it has a special charm where it

leads men to try to build up something new, as well as to destroy the work of those who have gone before. Such efforts may lead to temporary confusion, as seems to be the case in India to-day, but at the worst they add a chapter to the long history of Indian experience. As Mr. Gokhale truly said, to some of us it is given to serve our country only by our mistakes. The Indian constitution, such as it is, is in the main the creation of many silent, hard-working public servants whose names, in England at least, are well-nigh forgotten. It grew up with the country and it reflected the country's needs. If now we seem to have come to a period of difficulty and danger it can only be because there is a divergence between the ideas of the people and the nature of that constitution as it exists to-day. As a lover of India I can only express the hope that the clouds will pass and that we shall live to see India in the enjoyment of a government which will satisfy her aspirations whilst it recognizes her connection with, and her obligation to, that greater whole of which she forms and must form a part.

I cannot sufficiently express the indebtedness I feel to previous writers on Indian history; they have indeed "furnished the sticks with which I have built my nest." It is a thousand pities that the late Sir James Fitzjames Stephen did not spend more of his very valuable time in such pathways. There is no writer whose treatment of a subject is so satisfying; whether we agree with him or not, we always feel the value of his strong common sense. I have also, like others who perhaps do not always confess the fact, gained much from constant reference to the late Sir Courtenay Ilbert's classical work; and I have learned a very great deal from Dr. Firminger and from Mr. Cowell and the late Mr. Vincent Smith. At the end of this book will be found a brief bibliography, but it indicates the fact rather than the extent of my obligations.

I shall be very grateful for any corrections that may be sent to me.

W. A. J. A.

SELWYN CROFT,
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OUTLINES OF INDIAN CONSTITUTIONAL HISTORY

CHAPTER I

THE EARLY DAYS OF THE EAST INDIA COMPANY

THE English, as is well known, first went to India as traders. From very small beginnings in the year 1600, when the first Charter was granted to the East India Company by Queen Elizabeth, they gradually developed their power in the country until they finally became supreme; adding slowly to their authority, enlarging with great caution their territory, and adopting or altering what they found in the way of systems of law and methods of administration. It has often been pointed out that the Company either obtained their powers as rulers by force or consent from those whom they found as sovereigns in India, or that such powers were derived from Charters or Acts of Parliament. But the student must not forget that there never was any idea of making India a British Colony in the same sense that Canada, Australia, or South Africa have become such. There has been hardly any emigration from England to India at any time, and hence the problems that have faced the English in India are quite different in nature from those which they have had to face in other parts of the world. It has resulted from this, and from the very complete and well-organized religious, social, and legal systems which the English found in India, that their policy from the first

has been to govern those parts of the country which fell under their control according to Indian ideas, while maintaining the force of English law for the benefit of Europeans who might happen to be resident there. On the other hand, education in more recent times has been largely in the hands of the English, the higher branches of education particularly, and thus the English have, often unconsciously, sometimes unwillingly, been the channel of communication between West and East; it has been through the medium of English that modern political theories, whether exactly suited to Indian conditions or not, have influenced the educated classes of the country. And so we find that after the Company had become "a nation in India," with councils, law courts, fleets and armies, and after the great powers which it exercised had been transferred to the Crown, a new constitution, entirely Western in character, was bestowed upon the country. And we are at the present day witnessing the very striking spectacle of the handing back of the powers of government to the people of India because the comparatively small number of educated men in the country wish to exercise them.

At the beginning of the seventeenth century the idea of a man going where he wished and trading as he thought best was entirely opposed to public opinion. Indeed, such action on the part of an individual would have been in most cases difficult if not impossible; so much so that had he followed such a course he would probably have been regarded, with some justice, as little better than a pirate. The various countries of Europe did not maintain fleets and armies strong enough to protect their subjects outside their territorial waters; and means of communication were too slow and too uncertain for any sort of regular support to have been afforded, or for any kind of regular control to have been exercised. The notion, too, of individual liberty was then a very narrow one. Men were expected, nay forced, to do what the authorities thought right, and as wars were frequent it was important to avoid occasions of dispute. Thus foreign trade was usually carried on by

trading companies, responsible bodies of men who could be trusted to look after their members. These companies were either (a) *Regulated Companies* in which each member contributed towards a definite voyage or series of voyages, or, more usually, in which he traded as best he could under the control and subject to the rules of the Company, or (b) *Joint Stock Companies* in which there was a common stock, or capital as we should say, the Company sharing out the profits to its members in proportion to the shares which they held. The East India Company belonged to the former class for the first twelve years of its existence; it then became, by gradual stages, a joint-stock company, and it is certain that had it not done so its history and the history of India would have been very different from what they have been.

The Charter of the East India Company granted in 1600 contemplated a company of merchants having factories, or business houses, at various places on the coast of India and further East, and the powers and privileges which were granted were designed to meet the circumstances of the case. Though the language used was necessarily general in terms and of wide interpretation, we must not read into the document the ideas which have been the growth of later centuries. There were indeed imperialists in the days of Queen Elizabeth, but as has often been pointed out their eyes were turned towards the West; and they had certainly no idea of overthrowing or even seriously encroaching upon the power of the Great Mogul. The Charter granted to the Company the exclusive right for fifteen years of trading to and from the East Indies, that is to say the continents of Asia and Africa, from the Cape of Good Hope to the Straits of Magellan, with the exception of such places as were in the possession of any friendly Christian prince, without his consent. It could hold courts and make laws for the good government of the Company and its officers, and inflict reasonable punishment short of death in cases of wrong doing. The Government was vested in a governor and twenty-four committee men who were appointed yearly, but other officials were soon added

such as the deputy-governor, secretary, and treasurer. The Governor and the Committee managed the practical details of the voyages, but they called together a general meeting of the members whenever it was necessary to do so. There were, according to Sir William Hunter, five ways in which membership of the Company could be secured :

1. By purchase of a share in a voyage. The amount varied in the first voyages. It was an important matter because the freemen of the Company had a vote.
2. By redemption. This was the admission of a member by a fixed cash payment, usually £100. Funds were secured in this way.
3. By presentation. This was a gift of the freedom, usually to some distinguished person who could be of service to the Company.
4. By patrimony. The son of a member on reaching the age of twenty-one could claim membership.
5. By apprenticeship. One who joined the Company as an employee paid a small sum on admission to membership. Foreign service of course counted as well as English.

The same authority has admirably summed up the position of the Company in these early years.

"The Company was a syndicate with a concession for the Indian trade during fifteen years, and it worked its concession by forming minor groups, theoretically among its own members, to find the capital for each separate voyage—the management of all the voyages remaining in the hands of the parent syndicate, and the liability of the minor groups being limited to the separate voyage to which they individually subscribed. Their liability might, however, be extended to a forced contribution to a further venture if fresh capital could not be raised from a new group of subscribers."*

The earliest copy of the "Lawes" made by the Company seems to be that printed in 1621. It is chiefly concerned with the management of the Company's meetings and its officers and arrangements in England. But there are some

* Hunter. *History of British India*, I, Ch. VI.

sections which deal with the East, and among such may be noticed the following :

"ccxxix. The affairs of this Company in all parts of the East Indies, shall have dependence upon two principal factories, viz. Bantam in the Island of Java and Surat in the Gulf of Cambay under the Great Mogul or any other places where the Presidents shall reside : and unto them, all the other factories shall be subordinate in manner following.

ccxxx. And first unto Bantam shall be accomptable, all the factories in the several islands of the Moluccas, Banda, Amboyna, China, Japan, the Celebes, Borneo, Sumatra, and in the Provinces of Cochin China, Siam, Patania, Camboia, and all the factories upon the coast of Coromandel, as Petipoli, Masulipatam, Pelicato and all the rest in the Gulf of Bengala together with all the factories upon the coast of India or Malabar from Goa southwards.

ccxxxj. And unto Surat shall be accomptable Amadarar, Agenir, Agra, Baroche, the Court of the Great Mogul, and all the factories within the Gulf of Cambaia, and upon the coast of Malabar, southwards as far as Goa, together with Mocha, and all other places in or near the Red Sea, and the Coast of Melinda, and all the factories in Persia or within the Persian Gulf.

Section ccxxxv contemplates the employment of ships continuously in the Indies, and section ccxlvj orders all factors to seize goods shipped for private trade to the East and to send them home. The unlawfulness of such private trade and the liability of the goods to forfeiture is also emphatically stated in section cclxxxv.

Section ccxlix runs : For divers reasons (which have been duly considered) it is ordered, that all the gifts, presents, or other profits, given or bestowed, by any foreign Prince, ruler, or commander upon any whom the Company shall employ in their affairs, shall be from henceforth reserved to the use, and brought to the general account of this Company."

It is clear from these extracts that the Company's organization was developing very rapidly and that it still looked to the far East rather than the mainland of India as the more important sphere of its activities. From this view, chiefly owing to the hostility of the Dutch, it was diverted, and fortunately diverted, in the course of the seventeenth century.

The Company had at first to obtain a Royal Commission granting permission for a particular voyage to be undertaken, and this commission gave powers of a disciplinary nature to those in authority. In 1615, however, and on a wider scale in 1623, the officers of the Company were enabled to inflict the penalty of death provided the verdict

of a jury had been obtained. This placed the servants of the Company in much the same position as the sailors on board of a man-of-war. The organization rapidly adjusted itself to the requirements of the enterprise, but the tendency was for the successive bodies of subscribers to the voyages to become more important than the Company itself; there was also some confusion owing to overlapping inasmuch as a new voyage was begun before the last one was finished. The Charter was renewed and made permanent by King James I, in 1609, and in 1612 came the founding of the joint-stock system. From this time on forwards the Company had a capital to draw upon, and fixed and definite resources. The first joint stock provided for four fairly prosperous voyages, and the second which was to finance three voyages from 1617 to 1620 was subscribed without difficulty. But there was not yet the necessary permanence; each joint stock was for an adventure longer than a single voyage but was still limited in scope. This state of affairs lasted till 1661 with certain developments and experiments. It was changed because it was found to be open to the same objections as that of the Regulated voyages, and the stockholders, as they had provided funds for a series of voyages, became correspondingly powerful.

The story of the struggles with the Portuguese and the Dutch has been told by historians of India, but the student of the constitutional side of India's development must notice the attempts which were made by Englishmen to break down the Company's monopoly. Sir William Courteen, to whom we owe the colony of Barbados and the name at least of Australia, obtained in 1635 a licence to trade with the East, and a settlement was made at Assada in Madagascar which corresponds with the Company's conquest of Ormuz in 1622. This competition, however, was terminated by Cromwell's Charter of 1657 which united the new body of traders with the old. We know little of the details of the arrangements then made because this Charter has completely disappeared.

A vigorous development of the Company's affairs began

after the Restoration, due in large measure to the far-seeing statesmanship of Sir Josiah Child, one of the first of its many able servants. King Charles II granted a new Charter on April 3, 1661. By this the joint-stock principle became permanent, and every member who had subscribed £500 to the Company's funds received a vote in the general court. But the authority the Company possessed was much enlarged. It could appoint governors over its settlements, and the governor and council of a factory had power to administer the laws of England in all causes, whether civil or criminal, which affected the Company's people there; where there was a factor only he could send offenders to a place where there was a governor and council or to England. The Company was still further recognized as a state within a state, as it could send out ships of war and soldiers, and wage war with non-Christian peoples and otherwise act in a sovereign capacity. Similar powers were given in 1669 when Bombay was handed over to the East India Company; and in 1683 we have a Charter giving wider rights of a military character, though carefully reserving the royal authority. In the last named Charter, too, power was granted to establish a court of judicature, to be held where the Company thought best, and to consist of one person learned in the law and two assistants; as a result of this a judge was sent out to Surat. These provisions substantially reappeared in a Charter of 1686 and in consequence a court was established at Madras.

By the time of the Revolution of 1688, then, the Company was apparently very firmly established. Its monopoly had been upheld in the great case of *The East India Company* versus *Sandys* (1685), where judgment was given against an interloper; it had great if somewhat vague powers which had not as yet been very widely developed because there had not hitherto been sufficient opportunity; it was in possession of various factories on the mainland of India. That there were men connected with it who saw far into the future is shown by the famous resolution of 1688:

"The increase of our revenue is the subject of our care as much as our trade; tis that must maintain our force when twenty accidents

may interrupt our trade ; tis that must make us a nation in India ; without that we are but a great number of interlopers united by His Majesty's royal Charter, fit only to trade where nobody of power think it in their interest to prevent us."

The period which follows is, however, one of varied struggle and difficulty. The Company had, as Macaulay has shown, leaned to the Tory side in politics, and hence could hope for little court favour or support at a critical time like that of the opening years of William III. A new Company was formed which consisted of interlopers and of men who, jealous of the success of the Old Company, objected on various grounds to its monopoly. As the result of an appeal to Parliament in 1691 the House of Commons declared that the East India trade was beneficial to the country and that it would be best carried on by a joint-stock company possessed of extensive privileges. The Commons really wished to effect a compromise, but Child was against that plan and managed, largely by bribery, to secure the sealing of a new Charter to the Old Company on October 7, 1693. This Charter confirmed the privileges of the Company, but only on condition that it should accept such further regulations as should be laid down by the Crown before September 29, 1694. Accordingly, we have two other Charters : (a) that of November 11, 1693, which increased the capital by the addition of £744,000 to the joint stock. Books were to be at once opened at the East India House in Leadenhall Street, London, in which any subject of the Crown could write down the amount he wished to invest, no one being allowed to subscribe more than £10,000. Every stockholder was to have one vote in respect of each £1,000 up to £10,000 (but no more) in the general courts of the Company. The Governors and Deputy-Governors were to be holders of at least £4,000 worth of stock, and each of the twenty-four "committees," or committee men, was to hold at least £1,000 worth of stock. The general courts, provided the Governor or his deputy was present, could make such reasonable laws and ordinances for the good government of the Company as seemed necessary and convenient to the majority, provided they were not contrary

to the laws of the realm. The Company were not to license any private ships to engage in trade to the East Indies and were to sell all goods imported by public auction, excepting such saltpetre as the Crown might require. This Charter also bound the Company to export £100,000 worth of English goods per year and to pay dividends only in money. The joint stock was to continue for twenty-one years and no longer.

(b) The Charter of September 28, 1694. By this it was laid down that the Governor and Deputy-Governor were only to hold office for two years ; they could, however, be re-elected after an interval of two years. Of the twenty-four committee men, eight new members were to be chosen each year. The Company, provided a general court allowed it, could authorize its officers to engage in private trade. Six or more members of the Company, who each held one hundred pounds of stock at least, could demand the summoning of a general court, and the general court was to elect the private committees. It was also provided that the Charters could be revoked after three years' notice if found to be prejudicial to the interests of the realm.

A further modification was introduced by a Charter of April 13, 1698, when, "because, at present, the greatest number of the adventurers are excluded from the general courts, and the majority of votes lies in a few hands," the voting qualification was lowered, and every stockholder having £500 in the joint stock of the Company was to have one vote. If he held £1,000 stock he was to have two votes ; three votes for £2,000 ; four votes for £3,000 ; and five votes for £4,000, but no more.

The question of the Company's monopoly was not, however, to be allowed to rest. There was a strong party in the city of London opposed to the Company ; though it would be wrong to say that any responsible person or body favoured unregulated commerce, public opinion being against any such general freedom. The Company rashly provoked a contest in October 1693 by detaining a ship called *The Redbridge* on an order from the Privy Council. This vessel was nominally bound for Alicante, but really for India. The question of the validity of the detention

was raised in Parliament, and on January 19, 1694 the famous resolution was passed that "all subjects of England have equal right to trade to the East Indies unless prohibited by Act of Parliament." The situation has therefore been explained to be that the East India Company held its monopoly by Royal Charter, but that anyone who was sufficiently bold to trust in the House of Commons' resolution could trade on his own account. There was also a general prejudice against the India trade as one that competed with English manufacturers. However, the Government could not allow things to stand as they were, the House of Commons having by its resolution asserted the supremacy of Parliament in the matter. The solution, the work of Montagu, the Chancellor of the Exchequer, was an ingenious compromise. Some favoured the Old Company; some wished to have a regulated company; some wished for a joint-stock company on a wider basis. Montagu met the wishes of all in a measure, though his plan annoyed the out-and-out partisans of the Old Company.

Macaulay (*History*, iv. 233) has thus described his aims and scheme; it has always been admitted that no clearer exposition could be given:

"That dextrous and eloquent statesman had two objects in view. One was to obtain for the State, as the price of the monopoly, a sum much larger than the Old Company was able to give. The other was to promote the interest of his own party. Nowhere was the conflict between Whigs and Tories sharper than in the City of London; and the influence of the City of London was felt to the remotest corner of the realm. To elevate the Whig section of that mighty commercial aristocracy which congregated under the arches of the Royal Exchange, and to depress the Tory section, had long been one of Montagu's favourite schemes. He had already formed one citadel in the heart of that great emporium; and he now thought that it might be in his power to erect and garrison a second stronghold in a position scarcely less commanding. It had often been said, in times of civil war, that whoever was master of the Tower and of Tilbury Fort was master of London. The fastnesses by means of which Montagu proposed to keep the capital obedient in times of peace and of constitutional government were of a different kind. The Bank was one of his fortresses; and he trusted that a new India House would be the other.

The task which he had undertaken was not an easy one. For, while his opponents were united, his adherents were divided. Most of those who were for a New Company thought that the New

Company ought, like the Old Company, to trade on a joint stock. But there were some who held that our commerce with India would be best carried on by means of what is called a Regulated Company. There was a Turkey Company, the members of which contributed to a general fund, and had in return the exclusive privilege of trafficking with the Levant; but those members trafficked, each on his own account; they forestalled each other; they undersold each other; one became rich; another became bankrupt. The Corporation meanwhile watched over the common interest of all the members, furnished the Crown with the means of maintaining an Embassy at Constantinople, and placed at several important posts consuls and vice-consuls, whose business was to keep the Pasha and the Cadi in good humour, and to arbitrate in disputes among Englishmen. Why might not the same system be found to answer in regions lying still further to the East? Why should not every member of the New Company be at liberty to export European commodities to the countries beyond the Cape, and to bring back shawls, saltpetre and bohea to England, while the Company in its collective capacity, might treat with Asiatic potentates, or exact reparation from them, and might be entrusted with powers for the administration of justice and for the government of forts and factories?

Montagu tried to please all those whose support was necessary to him; and this he could effect only by bringing forward a plan so intricate that it cannot without some pains be understood. He wanted two millions to extricate the State from its financial embarrassments. That sum he proposed to raise by a loan at eight per cent. The lenders might be either individuals or corporations. But they were all, individuals and corporations to be united in a new corporation, which was to be called the General Society. Every member of the General Society whether individual or corporation, might trade separately with India to an extent not exceeding the amount which such member had advanced to the Government. But all the members or any of them might, if they so thought fit, give up the privilege of trading separately, and unite themselves under a Royal Charter for the purpose of trading in common. Thus the General Society was, by its original constitution, a Regulated Company; but it was provided that either the whole Society or any part of it might become a Joint Stock Company."

This elaborate scheme was embodied in an Act of Parliament (9 & 10 Wm III. c. 44) in 1698. The loan was subscribed quickly and without difficulty, the most important contributor being the Old Company, which by providing £315,000 secured the largest interest of anyone in the General Society. The General Society itself was incorporated by a Royal Charter on September 3, 1698. On September 5, 1698 a Charter of great importance was issued to the majority of the members of the General Society forming them into "The English Company trading to the

East Indies." The constitution which it outlined was much the same as that of the Old or London Company, as it was now called, and the Old Company received notice that in three years time—that is to say in 1701—their privileges would come to an end. But we must not forget that having subscribed to the General Society they would still be able to continue trading on that basis, and it appears that early in 1700, after some difficulties had been surmounted, they secured their future in any event by an Act of Parliament (11 & 12 Wm. III. c. 4) which allowed them to trade until the loan of £2,000,000 was repaid, in other words for ever.

Thus we have at the beginning of the eighteenth century three bodies to consider: the Old or London Company, the New or English Company, and the General Society. It was clearly to everyone's advantage, and perhaps such was the original intention, that this state of affairs should cease and that an amalgamation should take place. It may be imagined to what difficulties and disputes the divisions at home gave rise in India. The officers of the New Company pretended to have greater authority than was really theirs; whilst those connected with the older body who held the factories professed unbounded confidence in the future, strengthened, no doubt, by the news of the Bill continuing the powers of the Old Company. Thus the time was ripe for compromise and the Crown exerted all its influence in that direction. Negotiations began between the two Companies, which resulted in terms being agreed upon. The leading spirit in the settlement was Lord Godolphin. On April 27, 1702, just a week, it has been pointed out, before the outbreak of the war of the Spanish Succession, the instrument of union was agreed upon by the general court of each of the two Companies, and the terms were embodied in the Indenture Tripartite between Queen Anne and the two Companies, which bears date July 22, 1702.

This indenture provided for the union of the stocks of the two Companies which were to carry on trade together under the common title of the English Company, their affairs being managed for their joint benefit by a committee

of twenty-four, of whom half were to be elected by each Company. The existence of the Old Company was to terminate after seven years, when its Charters were to be surrendered. After that the English Company was to continue to trade under the name of "The United Company of Merchants of England trading to the East Indies," a name which it continued to bear until 1833.

These arrangements were cumbersome, and there was no small amount of bickering and jealousy. The transfers of property necessary were effected by the Quinquartite Indenture of conveyance, also dated July 22, 1702, but there was still much in dispute when the Earl of Godolphin intervened. The result was an Act of Parliament (6 Anne, c. 71), which received the Queen's assent on March 20, 1708. It ordered the English Company to pay £1,200,000 to the Crown without further interest; thus the total loan of the Company became £3,200,000, on which it now received 5 per cent. instead of 8. In consideration of this loan the powers and privileges of the English Company were prolonged until a date after March 25, 1726, of which they should have received three months' notice. All matters in dispute between the two Companies were to be settled by Lord Godolphin as arbitrator. The award of Lord Godolphin was given on September 29, 1708; it dealt with the financial details of the union only. On May 7, 1709 the Charters of the Old Company were formally surrendered to Queen Anne, and thus there was thenceforth but one Company, "The United Company," and the managers of the two previous Companies became its first directors. The few private adventurers who had taken out licences under the Regulated Company of Montagu and who held stock independently of the two Companies were bought out, and thus the Regulated Company vanished.

The United Company carried on its work under the provisions of the Charter to the English Company of September 5, 1698, to which brief allusion has already been made. The main points to which attention may be directed are the following: The Company had now the exclusive right of trading, up to the amount of their capital in any

one year, with the East, subject to a geographical limit that confined them to the countries and places between the Cape of Good Hope and the Straits of Magellan. No member was to trade but as a member of the Company. The Company were to bring their goods in practically all cases to England, and to sell them by auction. At least one-tenth part of their exports was to consist of goods which were of English produce. They must import at least five hundred tons of saltpetre yearly and sell it to the Government. They were to provide chaplains and schoolmasters in their factories. The court in London was to consist of twenty-four "directors," of whom thirteen formed a quorum. The first directors had been named by Government, but afterwards they were to be chosen in a general court (as distinguished from the court of directors) of the Company, where, however, about this, as about other matters, only those who held £500 of stock had the right to vote; and no one was to have more than one vote. A director must hold at least £2,000 of stock. There were to be at least four general courts held each year, but any nine members, holding at least £500 of stock each, might call upon the court of directors to summon a general court at any time. The directors were to carry on the business of the Company in accordance with the "by-laws, constitutions, orders, rules or directions," which had been made for them by the general court, but outside of such they had a wide discretion. The general court had power to make "reasonable by-laws, constitutions, orders and ordinances," for raising money, declaring dividends, and for the good government of the trade and the officers, agents, factors, and others concerned in the same, and to inflict reasonable penalties and punishments by imprisonments, fines and the like for any breaches of the same. Such by-laws not being repugnant to the laws of England, and being confirmed and approved according to the statutes made and provided in such cases.

The Company's powers as a quasi-sovereign body were so important that they may be stated in terms of the Charter:

"And we do, of our more especial Grace, certain knowledge and mere motion, for us, our heirs and successors, give and grant unto the said English Company, trading to the East Indies, that the said Company, for the time being, shall and may have the ordering, rule, and government of all forts, factories, and plantations, as shall be, at any time hereafter, settled by or under the said English Company, within the East Indies, and parts before mentioned, and shall and may name and appoint governors, and officers, from time to time, in and for the said forts, factories and plantations, and them to remove and displace at their will and pleasure; and that such governors, and officers, shall and may, according to the directions of the same Company, raise, train, and muster, such military forces as shall or may be necessary for the defence of the said forts, places and plantations respectively; the sovereign power and dominion, over all the said forts, places, and plantations, to us, our heirs and successors, being always secured.

And we have thought fit to erect and establish, and we do, by these presents, erect, and establish, one or more court or courts of judicature, to be held at such place or places, fort or forts, plantations or factories upon the said coasts, as the said Company, hereby established, shall from time to time, direct and appoint, every such court to consist of one person learned in the Civil Laws, and two merchants, with such officers of the said courts as shall be thought necessary to be nominated and appointed, from time to time, by the said Company, in a General Court of the members, or by the major part of them then present, and capable of voting as aforesaid; and the said person learned in the Civil Laws, and two merchants, or the major part of them, whereof the said person learned in the Civil Laws to be one, shall have commission and power to hear and determine all cases of forfeitures, and seizures, of any ships goods and merchandises, trading and coming upon any the said coasts or limits, contrary to the intent of the said Act, and of these presents; and also all causes mercantile or maritime, bargaining, buying, selling, and bartering of ware whatsoever; and all policies and acts of insurance, all bills, bonds and promises for payment of money, mercantile or trading contracts, charter parties, or trading contracts, for freightment of vessels, and wages of mariners, and all other mercantile and maritime cases whatsoever, concerning any person or persons residing, coming, or being within the East Indies, or other the limits aforesaid; and all cases of trespass, injuries and wrongs, done and committed upon the high sea, or in any the regions, countries, or places, within the limits aforesaid, concerning any person, or persons, residing being, or coming, in the parts of Asia, Africa, and America, within the parts and limits aforesaid; all which cases shall be adjusted and determined by the said court, or courts, upon due examination and proof according to the rules of equity and good conscience, and according to the laws and customs of merchants, by such methods, and rules of proceeding, as We, our heirs and successors, shall from time to time, direct and appoint, under our great seal, or privy seal, and for want of such direction, and until such direction shall be made, by such ways, and means, as by the judges of the said respective court, or courts, shall, in their

best judgment and discretion, be thought meet and just, whether it be by a summary way or otherwise, according to the exigency of the several cases, which shall be brought in judgment before them, and all judgments, determinations, and decrees, made in the same courts are to be put in writing, and signed by the same persons that were present at, and gave or made the same, and shall contain a short statement of the matter of fact, as it appeared to them, and their sentence and adjudication thereupon."

Such were some of the provisions of this wise and memorable Charter, the basis of the Company's rights for many years to come. It will be noticed that on the one hand the power of the Crown over the Company and all its doings and possessions is very expressly reserved and emphasized; and at the same time recognition is accorded to the fact that the Company was far from confining its aspirations to the foundation of a mere trading association; the possibility of a much grander future is clearly contemplated.

CHAPTER II

THE EARLY SETTLEMENTS

THE English were not the first Europeans to come to India, and the India to which they came was the Mogul Empire, for Akbar was reigning at the time. That sovereign had gradually united all the North and Centre under his rule, and though his power over the South was limited, from the point of view of the Company, all India was one. The English, however, who first came to India in an organized fashion wished to establish themselves in the Spice Islands, where they found formidable and indeed successful rivals in the Dutch. In the course of his first voyage Captain Lancaster obtained a Charter of privileges from the King of Achin in 1602 which, in addition to trading rights, granted certain interesting immunities. The following passages may be cited:

"*Item.* If any Englishman shall make his will and testament to whomsoever by the same will he shall give his goods, the party shall have them accordingly, and if he die intestate he to whom the Chief Factor or Governor shall say the goods of the dead to belong he shall possess the same."

"*Item.* If any English merchant, factor or servant shall offend the Agent or Chief Governor of the Factory it shall be lawful for the said Governor to do justice upon the said party or to send him home into England at his pleasure, and further we grant unto the said Governor power and authority to end any controversy that shall arise between them and to do justice according to their own laws and customs."

"*Item.* We do grant to the said merchants and to their successors that if any of them or of their servants shall be wounded or be slain in any part or place of our dominion then information thereof being given we our justices or other officers will execute due correction and punishment without delay according to the cause of the offence so that it shall be an example to all others not to offend in the like. And if it shall happen the factors, servants, or ministers of the said merchants to trespass or offend whereby they or any

of them shall incur the danger of death or punishment that then the goods wares or merchandises of their signiors shall not be forfeited, confiscated, seized upon nor spoiled by us our heirs or successors, or by any of our officers, ministers or subjects, but shall remain frank and free as discharged of all punishment or loss."

"*Item.* That we of our goodness have granted to the said English merchants, their successors, servants and deputies that do or shall remain in any part of this our kingdom of Somatra whether it be in Dachein or in any other part of our dominions freely to keep their own laws and in anywise none of ours to force them to our laws or faith against their wills."

On the mainland of India they first made a proper settlement at Surat in 1608, but they had bitter foes there in the Portuguese who had the ear of the Great Mogul, and it was some time before they were certain that they could stay. It is true that they obtained some trading rights from the local authorities, and that these were confirmed by the Great Mogul; but Sir Thomas Roe, who went as ambassador in 1615, was only moderately successful. He secured that they could trade, hire a house, and have self-government for their own people, but the privileges were not all that he wanted. The number of Englishmen was very small; in 1612 there seem to have been but ten at Surat, and in 1615 there were only seven factors and five attendants.*

The main part of the seventeenth century was filled with squabbles, often resulting in fierce battles, with the Portuguese and the Dutch, though a settlement was at last reached with both. The alliance with the Shah of Persia and the capture of Ormuz from the Portuguese in 1622 gave the Company a settlement in Gombroon, and other naval successes showed that they could hold their own with the men of that nation. However, as Portugal now became separated from Spain (1640), and as the tendency was rather towards friendship with her on the part of England, she ceased to be considered as a rival; when the marriage of Charles II with Catherine of Braganza in 1661 gave Bombay to the English the good understanding was complete. It was otherwise with regard to the Dutch. The Company attempted to found factories in

* Cf. Travels of Peter Mundy (Hakl. Soc.) II, 29, etc.

the Islands—we must remember that at first they looked for a large trade there and with China and Japan—and gave Bantam great importance, but they were never safe. In 1619 some sort of agreement was come to; squabbles, however, began again and the famous Amboyna massacre of 1623, the subject long afterwards (1673) of Dryden's play, made a friendly settlement impossible. Bantam was held till 1682, and after that little remained to the Company in the islands save Bencoolen in Sumatra. By this time, however, they had seen their true mission and were firmly established on the mainland of India.

There the Company founded factories in various directions with some rapidity. All, be it remembered, were not permanent; after a short trial it was easy to decide whether a particular establishment was worth continuing or not. They selected successively Masulipatam and Armagaon on the Coromandel coast; the latter they fortified—it was their first fortification—about 1628. Inland posts were secured in connection with Surat. In 1639 their agent, Francis Day, secured a piece of land on the east coast, hard by the Portuguese settlement of San Thomé, which he rented from the local Raja, and there he built Fort St. George. In the Bengal region the factories at Harsapur and Balasore were established in 1633, that at Hughli came in 1650, that at Dacca in 1669. Calcutta was founded by Job Charnock in 1690, and in 1698 the Company secured the Zemindari of Calcutta, Chattanutti, and Govindpore, which gave them powers of a judicial kind under the Mogul's authority, as well as those connected with the collection of the revenue. In 1669 King Charles II, finding that the possession of Bombay was likely to cause him both expense and trouble, handed it over to the Company, a quit rent of £10 being reserved doubtless as a mark of sovereignty.

We find in the "Indenture Quinque Partite" of 1702 a list of the properties of the two East India Companies at that time which is worth noting. The Old Company assigned:

"St. Helena; Bombay, including Bombay Castle, and the Forts of Mazagaon, Mahim, New Mahim, Syon, Sucre, and Worle; under

the presidency of Bombay the factories of Surat, Swally, and Broach, and the factories of Ahmadavad, Agra, and Lucknow (in which three last places the Company have only houses and buildings and some other conveniences remaining but they have at present no factors that reside there); on the Coast of Malabar, the forts of Carivar, Tellicherry, and Aryengo, and the factory of Calicut; in Persia the factories of Gombroom, Shyras, and Isphaum, and the yearly rent or pension of £3,333 6s. 8d. granted by the Sophy of Persia to the Company; on the Coromandel Coast, Chingee and Orissa, Fort St. George with the castle and territory belonging on which a large city is built consisting of houses which are held of and pay rent to the Company, together with the said city and its dependencies and Fort St. David (being a strong fort and factory) and about three miles compass of the circumjacent country, upon which several small towns or villages are erected; the factories of Codalore, Porto Novo, Pettipolee; Metchlepatam and Madapollam, and the fort and factory of Vizagapatam; on the island of Sumatra the settlement of York Fort at Bencoolen and the factory there, with a territory of about five miles thereto belonging, and the factories at Indrapore; also the factories of Tryamong and Sillebar, and some other out-pagars or factories, depending on the factory of Bencoolen; in Cochin China the factory of Tonqueen; in the Kingdom of Bengal, Fort William and the factory of Chattanutta, with a large territory thereto belonging; and the factories of Ballasore, Cossimbazar, Dacca, Hughly, Maulda, Rajamaul, and Patna; and also all the right and title of the said Governor and Company to Bantam or any other settlements on the South Seas."

There were also, of course, the warehouses and offices in or near London. The New Company's property only comprised, according to the same instrument: a settlement or factory at Surat, on the Bay of Bengal, at Metchlepatam, at Madapollam, on the Island of Borneo, and at Pulo Condore.

It has often been insisted on that the establishment of factories entirely altered the character of a trading Company's undertakings. The conduct of its affairs was no longer in the hands of the individual commanders of the ships which made the voyages; there were permanent officials on the spot who carried out a distinct and constant policy, and who carefully observed the local conditions and local political changes. It is sometimes said that this was the result of accident, but it seems in the case of the East India Company to have been the design from the first. Because the Company's organization developed suddenly after the middle of the eighteenth century we need not

believe that its dreams of territorial greatness began after the battle of Plassey; such ideas can be traced in the earliest parts of the correspondence, which has been preserved, between the Company and its servants in India.

In the days with which we are now concerned we find the Company with extensive but rather vague powers conferred by Charter, in possession of small portions of land, on which there were houses and in some cases forts, in various parts of India. But the organization was far from fixed. In 1617 and in 1630 we know that there were some eleven merchants at Surat, and there and elsewhere there seems to have been one in command assisted by a council. Mr. Foster has shown that about this time the term president began to be used regularly in connection with Bantam and Surat. There seem to have been four councillors at Surat in 1635. But it is clear that men were sent out with special and temporary powers, and on December 24, 1657, we find the Company at home deciding that there should be only one presidency in India, that of Surat. Fort St. George, Bantam, Persia, and Hughli were to be distinct agencies subordinate to Surat. It was also left to the discretion of the president and council at that place (Surat), if goods could not be had conveniently there, to settle factories at Agra and Lucknow. But this arrangement did not last. At the beginning of the fourth quarter of the seventeenth century we learn that next to the president at Bombay came the accountant, through whose hands passed all financial transactions. Then came the warehouse keeper, who registered all the European goods that were sold and who received all Eastern commodities that were bought. Then the purser-marine, who gave an account of all goods exported and imported, paid seamen and porters, and looked after ships' stores. Lastly, the secretary kept a record of all proceedings, wrote letters, and kept the Company's seal. The council at Surat consisted of about five members, though the number does not seem to have been rigidly fixed. The Company's servants were divided into three important classes: they began as writers, and after five years they became factors;

after three years more they were made senior factors and then merchants. It was from among the merchants that the chiefs of the factories and the higher officers mentioned above were chosen. All had to give security. About 1674 Madras had its governor or agent, who was naturally the first member of council; it had a book-keeper, who came second; the warehouse-keeper, who came third; and the customer, who collected customs, rents and taxes, was fourth. The council, which met twice a week and decided and discussed everything, was composed of the Company's merchants. The tenure of the houses and land which they had depended upon circumstances. At Surat for many years they were only allowed to hire a house, the Indians being afraid lest they should make a fortress there if they possessed a fuller estate. Such was the simple system from which an elaborate framework of local administration gradually developed.

With regard to the administration of justice, we must be more precise. The whole question, indeed, bristles with difficulties, as can be appreciated by anyone who reads Sir James Fitzjames Stephen's *Nuncomar and Impey*; the more so as neither Parliament nor the Charters nor the Company in the early days ever took the trouble to make matters at all definite. We know that there was a good deal of difference between the position as it was *de jure* and what it was in reality, and this pretence, if so we may call it, is reflected in the legal situation. Speaking generally, the Company's officers not being lawyers but traders, had no wish to pose as judges. They were gradually forced to do so, and they formed some sort of system which was improved as time went on by Charters and Acts of Parliament. They were always conscious of their own imperfections in the matter and they were obviously anxious that English Law should not be given too wide an application.

The first Charter empowers the Company to make laws and to impose punishments on their own servants, all within the bounds of the laws of England; and this seems, from the commission of January 24, 1600-1, to have extended to life and death. A similar provision was repeated in the

Charter of 1609 and by letters patent dated December 14, 1615, as we have briefly mentioned, they could issue commissions to their captains and principal commanders giving them authority to use martial law, provided there had been the verdict of a jury. And in 1617 we have the first case of the capital punishment of an Englishman in India; this, however, seems to have been under a commission to Captain Henry Pepwell giving him the necessary authority provided he had with him the two principal masters and the two principal merchants of the place, and these and more were actually present. In 1623 (February 14th) the Company were authorized by the Crown to issue to their presidents and other chief officers, commissions for the punishment of their servants on land, but there must be the verdict of a jury. Thus when in 1630 Thomas Rastell was made president at Surat, the authorities at Bantam, which now became an agency, lost the powers of life and death which they had under the grant of King James, and also the power to increase wages, both of which were now conferred upon the President at Surat.

The Charter of 1661 says that the governor and councils of the several places belonging to the Company in the East Indies are to have power:

"to judge all Persons, belonging to the said Governor and Company, or that shall live under them, in all causes, whether civil or criminal, according to the laws of this Kingdom, and to execute judgment accordingly."

This seems to have been regarded as giving more general power than the previous section of the Charter which limited the punishments inflicted to "imprisonment of body" or "fines and amerciaments," and hence we learn from Mr. Love's *Vestiges of Old Madras* that a case of homicide having arisen there about 1665, and the Agent and Council having asked for instructions, the Company replied that by the Charter of 1661 the Governors and Councils in their forts and towns had power to execute judgment in all causes, civil and criminal. That there might be no doubt they made George Foxcroft governor and ordered him to proceed with the trial. Accordingly an indictment was drawn, a grand

jury of twenty-four was summoned, a true bill was returned, and a jury of six Portuguese and six Englishmen returned a final verdict. Sentence was pronounced and duly carried out. But probably before the Charter of 1661, the Agent and Council had dealt in some summary way with Englishmen who gave trouble.

As to Indians, before the time we are considering at Madras the Agent and Council had only such authority as was derived from the local ruler, from whom those rights were obtained. And from the records preserved it would seem that he wished justice to be done according to the Laws of England. There was a court of long standing for Indians at Madras, held by the Adijar of the town, who sat at the Choultry or Town House. This post continued to be held by an Indian till about 1652, when two Englishmen were ordered to sit in alternate weeks. In 1661 one Englishman was installed. The changes made by Streynsham Master involved a new arrangement in 1678, as he then increased the number of the justices in the Choultry Court to three, providing that at least two should sit; he also gave the court jurisdiction over cases of small misdemeanour and breaches of the peace, and over actions for debt to the value of fifty pagodas—higher if the parties consented. He further provided for an appeal to the Governor in Council. The subsequent history of this interesting court may be summarized from Mr. Love's researches as follows: When the Mayor's Court was established (see p. 36) in 1688 the aldermen sat as magistrates at the Choultry; but as their duties in the Mayor's Court became heavy special justices for the Choultry were once more appointed. In 1727 a Sheriff's Court, to take the place of the Choultry, was erected (from which there was an appeal to the Mayor's Court if the value in dispute was over five pagodas), but it was abolished in 1729, and the justices sat in the Choultry once more in the old way. After the English restoration in 1749 the Choultry Court was again set up. It was temporarily suspended in 1774, but it seems to have been existing in 1775, for purposes of registration at all events. However, in 1783 the Attorney-General at Madras gave an opinion

that the Company had really no right to establish courts with jurisdiction over the natives of India at all. A single justice now sat for small criminal cases, perhaps at the Choultry, and in 1784 it was decided that for such matters as he could not try, three justices should sit once a week; the magistrate who usually sat singly being one. Suits for sums not exceeding five pagodas, were to be tried by the Court of Requests, composed of commissioners appointed by the Government. This court had been established in 1753 (see p. 41), and about the year 1775 it seems to have taken the place of the Choultry Court. The commissioners appear from a petition of 1798 to have had power of confinement, no doubt in cases of debt, for forty days. The jurisdiction of the Court of Requests was increased to matters involving not more than eighty pagodas by the Charter of 1798, and the Choultry Court was abolished in 1800.

There can have been no need for legislative powers, beyond such as could create mere by-laws, till the Company became the ruler of extensive and important territories. Hence we find that the power of legislation is very clearly expressed in the Charter of 1669, when Bombay was handed over to the Company (and similar provisions are inserted in the Letters Patent giving the Company control over St. Helena in 1674). It is clear that the proceedings as regards trials are to be similar to those used in England, as far as might be, and the death penalty is expressly mentioned. There is also included the right to use martial law in certain cases (a right which had been foreshadowed in the Charter of 1661). This was even more clearly expressed in the Charter of 1683, and the right was made perfectly general in scope. We read:

"And to execute and use within the said Plantations, Forts, and Places, the Law called the Martial Law, for the defence of the said Forts, Places, and Plantations, against any foreign Invasion, or domestic Insurrection or Rebellion."

This is stated to be the widest extent to which the right to exercise martial law was ever granted in India.

On February 2, 1670, Gerald Aungier, the Governor, after a consultation issued orders by which a scheme was

provided for the administration of justice in Bombay. The island was divided into two precincts. In each there were to be five justices who were all Englishmen; they were to sit, three being a quorum and the customers of Bombay and Mahim being presidents and necessary members, to try all actions about matters not involving more than five xeraphins as well as what was in the laws. He also said that the Deputy-Governor and Council were to sit once a week to hear appeals from inferior courts, and to try all actions treasonable, felonious, capital or criminal, and all suits above the value of two hundred xeraphins. In this court all trials were to be by jury. Mr. Malabari has suggested, with every probability, that there was a court held by the Company's officers which dealt with suits about matters of the values between five and two hundred xeraphins. Some sort of code was issued which has been lost, and about the same time (1672) a civil procedure code, we find also that in 1672 a judge was appointed who, assisted by two justices, was occupied with civil and criminal cases. Fryer, writing about 1673, says of Bombay:

"The Government here now is English: the soldiers have martial law; the freemen, common; the chief arbitrator whereof is the president, with his council at Surat; under him is a justiciary, and courts of pleas, with a committee for regulation of affairs, and presenting all complaints."

Things were in a very bad way in Bombay at the close of the century. The directors had written out in 1671 to the effect that

"care should be taken that trial by jury should be introduced into the Courts of justice agreeably to the English law but they declined engaging a judge versed in the Civil Law being apprehensive that such a person might be disposed to promote litigation, and probably might not obey the orders which the President and Council might find it for the interest of the Company to give him; it had therefore been resolved to send some persons who had received education in Law as civil servants, without making the practice of the law their only object, and if they deserved well, they might be appealed to as assistants in the Courts of Justice."

We read that a salaried judge was appointed at Bombay in 1675, but he behaved foolishly, and was suspended in 1677.

At Madras the need of a superior court was greatly felt, and Sheynsham Master and his council resolved on March 18, 1678, in virtue of the Charter of April 3, 1661, and in virtue of the Governor's commission, that the Governor and his council should sit twice a week and hear and judge all causes, the trials to be by jury. Small cases were to go, as we have seen, to the Choultry. The same year this energetic Governor authorized courts martial to be held when necessary.

Such was the situation when the Charter of 1683 (see p. 15) was granted. It was confirmed by another of 1686, and copies were duly sent out to India. "The person learned in the civil law" and two merchants appointed by the Company had to deal with all mercantile and maritime cases, and also with trespasses, injuries, and wrongs, but the jurisdiction, though vaguely expressed, seems to be confined to civil cases, as there is no mention of criminal punishment. In consequence of this in April 1684 the directors wrote to the President at Surat appointing Dr. St. John "Judge of the Admiralty Court in the East Indies and of all our maritime affairs there, to be erected in pursuance of His Majesty's Additional Charter of August 9th last" (1683). He was to establish a court and to look after cases against interlopers, amongst other matters; the proceedings were to be in English (not in Latin), and all other judicatures upon the island of Bombay were to remain as they were.

The worthy doctor came out, but he found that the Deputy-Governor of Bombay was established as Judge-Advocate. However, he set up his court at Surat on September 17, 1684, moving to Bombay shortly afterwards, and writing a report on Keigwin's Rebellion. He had disputes with the Deputy-Governor as to the jurisdiction, and when he went home, about 1690, no one seems to have been sent out to succeed him. It is perhaps with reference to these troubles that Bruce and Anderson say that there were no courts held at Bombay during the last eleven years of the seventeenth century.

The Company also wrote to the authorities at Madras appointing the Governor Judge-Advocate; apparently he

had to have the help of two merchants. But as there seems to have been some doubt as to the proper procedure we are told that the Governor and Council revived the old Court of Judicature in 1684 under the Charter of 1661. However, the Court of Admiralty was duly established on July 10, 1686 with a judge and two assistants, all members of council and civilians. In 1687 a judge-advocate came out from England who served as judge of the Court of Admiralty and also as recorder of the Mayor's Court, of which more later. He died, however, very shortly afterwards in 1689, and the authorities therefore erected in 1690 a Court of Judicature consisting of a judge-advocate and four judges, the Governor acting as judge-advocate till a new one came from England in 1692. The next year this man was dismissed and a Member of Council appointed in his place, and in 1696 it was ordered that the Members of Council should serve as judge-advocates in succession. This supreme court was generally known as the Court of Admiralty, and an appeal from its decisions lay to the President in Council.

The Company evidently thought that they were doing all that was necessary, and Mr. Malibari notes that in 1685 a rather angry letter to Surat (the move of the local government to Bombay did not take place till 1687) complains that an English prisoner had been sent home, and says that the Governor and Council had

"despotical powers as well as Martial Law and the living witnesses to justify any charge. Our courts of law (it continues) love not to be troubled with such remote causes, nor can admit for evidence in criminal causes, any written attestation, affidavits, or certificates, nor any other testimony than *viva voce*."

In 1687 the Company granted a Charter which had been previously approved by the King, constituting a corporation at Madras. It was to consist of a mayor, ten aldermen and one hundred and twenty burgesses, with a town clerk and a recorder. Three of the aldermen were to be Company's servants and seven to be natives of India. The mayor and aldermen were to form, we learn, a Mayor's Court, and the mayor and the two senior aldermen were to be justices of

the peace. This court was designed to try causes on the criminal side and civil causes as well. An appeal lay to the Court of Admiralty (the supreme court) where the value in dispute was over three pagodas and in criminal causes where the offender was sentenced to lose life or limb. Its constitution was not apparently properly carried out, as we are told that too many Englishmen were appointed, and the directors had to order that there should be among the aldermen, one Armenian, one Mohammedan and one or two each of the Jews, Portuguese, and Hindus.

There is a good deal of obscurity as to the Mayor's Court in the early days. The editor of *Elphinstone* in a valuable note says :

"The Mayor's Courts are asserted by travellers to have had the power of punishing piracy, with death, but I can find no Statute or Charter giving such a power; on the contrary, the Governor-General in 1697-8 recommended to the Company to apply for authority to try pirates in India stating that the natives consider these marauders to be in league with the Company, and think sending them to England for trial a mere pretence."

As to general criminal jurisdiction, we find that the Mayor's Court in Madras hanged a man in 1712, but that in 1718 they said that they had not power to try pirates or to hang an Englishman. This, it has been pointed out, seems confirmed by the statute 11 & 12 Will. III. c. 7, authorizing the King to constitute Courts of Admiralty for the trial of pirates in the East and West Indies; the preamble says that previously such offences could only be tried in England, and it provides that the court shall be constituted by all or any admirals, etc. (including judges of admiralty), or such other persons as His Majesty may commission by name, and it shall be composed of seven persons at least who are to be known merchants, factors or planters, or officers of the navy, or captains or mates of merchantmen. The author of the note alluded to concludes that if the Mayor's Court ever tried pirates it must have been under the appointment of a special commission subsequent to the year 1700.

Alexander Hamilton, who published his highly interesting *New Account of the East Indies* in 1727, gives a very

unsatisfactory description of the administration of justice at Madras. He says :

"They have a Town Hall, and underneath it are prisons for debtors. They are, or were a Corporation, and had a Mayor and Aldermen to be chosen by the free burghers of the Town ; but that scurvy way is grown obsolete, and the Governor and his Council or party fix the choice. The City had Laws and ordinances for its own preservation, and a Court kept in form, the Mayor and Aldermen in their gowns, with maces on the Table, a Clerk to keep a register of transactions and cases, and attornies and solicitors to plead in form before the Mayor and Aldermen ; but after all it is but a farce, for by experience, I found, that a few Pagadoes rightly placed, could turn the scales of justice to which side the Governor pleased, without respect to equity or reputation.

In smaller matters, where the case, on both sides, is but weakly supported by money, then the Court acts judiciously, according to their consciences and knowledge, but often against Law and Reason, for the Court is but a Court of Conscience, and its decisions are very irregular ; and the Governor's dispensing power of nulling all that the Court transacts, puzzles the most celebrated lawyers there to find rules in the statute laws.

They have no martial law, so they cannot inflict the pains of death any other ways than by whipping or starving, only for piracy they can hang. . . . That power of executing pirates is so strangely stretched that if any private trader is injured by the tricks of a governor and can find no redress, if the injured person is so bold as to talk of *Lex Talionis*, he is infallibly declared a pirate."

Such was the state of things in 1726 when the Court of Directors petitioned the king for a Charter that should give authority for the more speedy and effectual administrative justice in Madras, Fort William, and Bombay. The result was the very important Letters Patent of September 24, 1726, which established municipal institutions in India on a firm basis, and which has been considered to have introduced the common and the statute law of England into India.

These Letters Patent begin by stating that such administration of justice as there had been had encouraged not only Englishmen, but foreigners and Indians to settle in the presidency towns, which had become in consequence very populous. They then proceed to direct that at Madras there shall be a mayor and nine aldermen, who shall form the corporation ; of the nine, seven were to be English, as was the mayor. The mayor was to hold

office for a year and to be elected from among the aldermen by the mayor and aldermen. The aldermen were to hold office for life, and when they died or were removed fresh ones were to be chosen by the mayor and aldermen from amongst the principal inhabitants of the town. The aldermen could be removed from their office by the Governor and Council on reasonable cause, but an appeal lay to the King in Council.

The mayor and aldermen were to be a Court of Record to be known as the Mayor's Court, and the mayor or senior aldermen together with two other aldermen might hear and try all civil suits which might arise in Madras or in any of the factories subject to Madras. The sheriff, whose jurisdiction was to run in Madras and for ten miles round, was to be chosen annually by the President or Governor and the Council. The form of procedure in civil actions is interesting. On a complaint in writing made by anyone against a person resident within the court's jurisdiction, the court had to issue a summons in writing under the hands and seals of two of the judges (of whom the mayor or senior alderman must be one) directed to the sheriff and requiring appearance at a given time and place. In default of appearance the court might issue a warrant requiring the sheriff to bring the defendant before the court. Bail might be allowed or in default the defendant might be detained in custody. The examination was to be on oath, and after judgment had been given execution was to issue and the defendant was to be imprisoned if necessary till the judgment was satisfied. And if the defendant could not be found his property might be seized, and after six months the case might be heard without the defendant, and the property sold.

An appeal lay from the Mayor's Court within fourteen days to the Governor and Council, and they thus became a Court of Record, though they had not, we gather from Mr. Dodwell's report in Madras records, any original jurisdiction. Their decision was to be final in all cases where the value in dispute was under a thousand pagodas ; if it were over that amount, on security for interest being

given, an appeal to the King in Council would lie if it were lodged within fourteen days.

The Governor and five senior members of the council were to be justices of the peace, and to have the same powers within the jurisdiction, which then included Sumatra, as justices of the peace in England. They might hold quarter sessions four times a year and they had the powers of Commissioners of Oyer and Terminer and Gaol Delivery. They could try all offenders save those charged with high treason. They might proceed by way of indictment, or by such other way as might be used in England "as near as the condition and circumstances of the place, and inhabitants, will admit of." Provision is made for summoning of a grand and a petty jury, and the trials and the punishments were to be on the same lines, as near as might be, as those in England.

It was added that the Company might appoint for Madras and its dependencies a general or generals to command the land and sea forces, and such other officers as might be necessary; that they might raise and maintain sea and land forces; and that martial law might be exercised in time of war and open hostility.

The same provisions are laid down for Bombay and Calcutta.

It was also stated that as it might be necessary that certain by-laws and ordinances should be made for the better government and regulation of the several corporations that had been created, it was to be lawful (under the control of the Company) for the governors and councils of the three places to make such, and to impose reasonable pains and penalties in cases of breach, provided that the by-laws and punishments were not contrary to the laws of England, and that both had been confirmed by the Court of Directors before they had force and effect. The Mayor's Court in each place was also given authority to grant probate of wills and to appoint administrators in the case of those who died intestate.

In 1727 it was thought necessary to obtain Letters Patent granting all fines levied by these courts to the Company.

In 1746 the French occupied Madras and held it until the Peace of Aix-la-Chapelle in 1848; thus the court there was dissolved for a time. Experience had shown that certain alterations in the Charter of 1726 would be desirable, and hence the Company in 1753 surrendered the Letters Patent of 1726 and 1727 and received new ones differing from those of 1726 in several important respects.

The constitution of the municipality of Madras was as before, but the Governor and Council were to choose the aldermen on vacancies arising instead of the new members being co-opted. Should those nominated refuse to accept office they were to be fined. The jurisdiction of the court was as before, but it was stated that suits between Indian natives of Madras should be determined among themselves "unless both parties shall by consent submit the same to the determination of the Mayor's Court." Various other small improvements were made, such as, for instance, the confining the jurisdiction of the Mayor's Court to suits about matters of a higher value than five pagodas; the provision for evidence on oath by Christians, and in the case of Indians "in such manner as they according to their several castes shall esteem to be most binding on their consciences, to oblige them to speak the truth"; the dealing carefully with cases in which the mayor or one of the aldermen should be a party. Perhaps of even greater significance was the section providing for the procedure in case a suit was brought by or against the Company. The Mayor's Court was also to frame rules of practice and do what was necessary for the administration of justice, but subject to the control and interference where needful by the Company. Improvements were made, too, in the provisions as to appeals, the Governor and Council being authorized to put in execution a decision on appeal should the Mayor's Court neglect to do so. It was also provided that a Court of Requests, consisting of at least three commissioners out of a larger number, should be established to deal with suits where the matter in dispute did not exceed five pagodas in value; the commissioners were to be nominated by the Governor

and Council. The Governor and all the Council (not merely five, as before) were to be justices of the peace.

These provisions were repeated in the cases of Bombay and Calcutta, and the courts of all three places were to have power to grant probate and to see after the estates of intestates. Care was taken to provide for the removal of the presidency town or for a temporary interruption caused by conquest.

Thus it has been pointed out that after 1753 there were at least the following courts in each of the presidency towns :

1. The President and Council as justices of the peace and Commissioners of Oyer and Terminer and Gaol Delivery, holding quarter sessions.
2. The Mayor's Court.
3. The President and Council hearing appeals from the Mayor's Court
4. The Court of Requests.

CHAPTER III

THE ACQUISITION OF TERRITORY

THE authors of the *Imperial Gazetteer* have pointed out that as the English settled in India under the licence of a native governor the natural consequences would have been for them to have been subject to Indian law. Of course this would not hold in the case of a territorial acquisition such as that of Bombay. And in general it was not what happened, for three important reasons :

1. The idea of a territorial law applicable to all who live in a particular place is European and modern. The Shastras and the Khoran are personal in their application, though no doubt, as the authors of the Montagu-Chelmsford Report say, there grew up bodies of customary law which varied with the locality.
2. The law of nations, which was just developing in the West, in the case of Europeans settled among men differing from them in religion, manners, and habits gave them the national character of the parent State.
3. Many of the provisions of the Hindu and Moham-medan systems were so different from the usages of the West, that it would have been impossible to have enforced them. They presuppose a definite religious organization.

We have seen, and we shall have to return to the point, that many date the real introduction of English law into India from 1726, or even from 1661. The matter was not

perhaps at first regarded as of much importance, as there were very few Englishmen in the Company's factories and of them but a small fraction would need the laws' aid or incur its punishments. The primary object of the Company, whatever a few far-seeing individuals might think, was trade, and hence it was of all things necessary to keep out of local difficulties and disputes. The time, however, was now come when the whole attitude of the Company was to be altered, and when its very nature was to be entirely changed. The centre of interest is now found in Bengal.

In 1717 the Company had secured the right to purchase the rights of revenue over thirty-eight villages near Calcutta. This was definitely agreed in February 1757, and finally after the Battle of Plassey Mir Jaffar ceded to the Company the Zemindari of the twenty-four Parganas. The amount of the assessment was fixed the year after, and thus the revenue officers of a country more than 800 square miles in extent came under the Company's control.

Dr. Firminger has shown clearly that whatever might be the appearance of things, the Nawabs' position in Bengal was weakened enormously long before the grant of the Diwani in 1765. The military power had gradually passed from the Mogul's representative to the Company. Before the Battle of Plassey we must also remember that the revenues of Burdwan, Midnapore, and Chittagong had been made over to the Company and that they supervised the criminal administration there as well as collected the revenues. But the main sign of change was the fact of military control which the Company was paid to exercise. There was also, of course, Calcutta, an English creation, and there were the Northern Circars near the Godavery, which had been taken from the French in 1758, and were formally ceded in 1765.

The great organ for dealing with matters of importance in the Government of Bengal was the select committee. This was created by the order of the directors on December 15, 1756, the original idea being that it would be a temporary machine to be used during a period of great pressure when prompt decisions had to be made after

brief debate. The Court of Directors, however, prolonged its powers in 1769 and defined them as follows :

"They are to conduct everything that relates to the country government, either with respect to the Duannee or the Company's political interests with the neighbouring powers together with the military operations depending thereon. They are to negotiate with the soubah and the country powers, but to conclude no treaty of commerce or alliance without the approbation of the Council at large. They are to superintend the collection of the revenues arising from the Duannee, but without the power of disbursing them, nor do the revenues arising from the Company's other possessions fall under their jurisdiction. Their general superintending power ceased with the abuses that gave rise to that power with which they were entrusted ; and all other branches of the Company's affairs fall under the general department. The members of this committee are to stand conformable to Lord Clive's appointment viz. :

Harry Verelst, President.

John Cartier, Second.

Col. Richard Smith, Third but not to rise.

Mr. Francis Sykes, Fourth.

Mr. Richard Becher, Fifth.

We have in the foregoing paragraph directed that the military operations shall be conducted under the orders of the Select Committee but the supreme military power is vested in the Board at large conformable to the usual practice. We have already in our letter of 24th December para 54 expressed our sentiments on the nature of your power over the military, not only that it is supreme, but that you may delegate your authority to any civil servant you please, and that the highest officer in our army must obey that Civil Servant in the same manner he is bound to obey the orders of the President and Council ; and upon any doubt or disobedience, or indeed for whatever cause may appear sufficient to the majority of the Council, they may dismiss any officer, be his rank what it will, without assigning such officer any other reason but your own pleasure, reserving the justification of your conduct to us, from whom you derive authority, and to whom alone you are accountable. Upon the decease or coming away of Colonel Smith, no other military officer is to succeed him in the Select Committee but the Commanding Officer for the time being is to be consulted upon military affairs only, at which time he is to have a seat and voice at the Board as the third in the Committee."

[Printed by Firminger *Fifth Report* clxiiij-clxiv.]

The Select Committee afterwards came into conflict with the rest of the council, but had to give way. This question was finally settled in April 1771.

The cession of the Diwani or revenue administration of Bengal, Bihar and Orissa—as they were then, Orissa

being much smaller than it is now—marks indeed the beginning of a new epoch. But as has been indicated it merely marked in a more formal manner the transfer of functions which had been already exercised. In fact, the grant was but a make-believe. The Company had the real power, but Clive wished it to appear as though “the Company had acquired no sovereign rights, and that their administration was within, and not imposed over and above, the Mogul constitution.” No doubt Clive did not wish to increase the jealousy of the French, but he also and specially wished to avoid the appearance of large territorial acquisitions because of the opposition of the home authorities to any such policy. And it must be noted that by Letters Patent of January 14, 1758, while the East India Company was authorized to make conquests, the authority of the Crown was necessary in dealing with any lands which had been held by any European power.

The Diwani had been offered as early as 1758, and its final grant was arranged by articles of agreement dated August 12, 1765. It was part of an understanding by which the Nawab of Bengal was to pay twenty-six lakhs of rupees to the Great Mogul each year and the Company were to guarantee that it should be done. On September 30, the Nawab received a fixed allowance, a large part of which was to be devoted to the maintenance of troops under the control of an officer of the Company.

The grant of the Diwani did not directly affect the lands already in the possession of the Company, but with regard to those newly acquired the change was of increasing importance. The collection of the revenue was supervised by the resident at the Durbar, who was now one of the most important officers of the Company. And, although justice was still administered by native courts, the Company through its officers exercised considerable oversight. It must be obvious that after the grant of Diwani there could be no question of any authority on the part of the native courts over Europeans. All cases that concerned the Company came before the Council of

Control set up by Clive at Murshidabad for final settlement; and it must be remembered that this same council sat as a court of revision to deal with the decisions of the country courts.

Dr. Firminger has thus summarized the position of the English at the end of the year 1765 :

“1. The Company had acquired the right to defend by military force the three Mughal provinces of Bengal, Bihar and Orissa. Within those geographical limits there were vast districts into which the Mughal arms had never penetrated, e.g., the wild western lands. Only a part of Orissa came into the English sphere, for the Marathas remained masters of Cuttack till 1803. In the East the Assam Valley remained independent, Goalpara or Rangamati representing the most advanced outpost of the Empire. Assam was not annexed by the Company till 1826, and Kachar till 1830. Cooch Behar was annexed in 1773, but subsequently became a feudatory sovereign state. By the surrender of Benares in 1765, Clive had given proof of his sense of the just extent of the English occupation. In 1762 Eyre Coote, Carnac and three members of Council (of whom Verelst was one) had prepared to march the English forces to the gates of Delhi, but Clive, referring to this bold plan, wrote (September 30, 1765): ‘My resolution, however, was and will always be to confine our acquisitions, our conquests, our possessions, to Bengal, Behar and Orissa; to go further is in my opinion so extravagantly absurd no Governor-General, no Council, in these times can ever adopt it unless the whole system of the Company’s interest be first entirely remodelled.’

2. Calcutta was held in free tenure and in the adjacent twenty-four Pergunnahs the English held the position of Zamindar.

3. In the ceded districts, i.e. Burdwan, Chittagong and Midnapur, they had been in the direct management of the revenues, and had directly administered every function of Government, save that of criminal justice (which, however, they had supervised from 1760).

4. For the rest of Bengal the Company was Diwan; and as the Nawab was a minor, they had appointed a Naib Sabah of their own preference, and every matter of importance came before the Resident at the Durbar for decision.

5. As Diwan the Company not only administered the land revenue, but controlled and collected customs, its commercial supremacy was now beyond all question.”

We must also add the Northern Circars which have been mentioned above.

The reason for the deliberate way in which the Company undertook the active control over the ceded provinces may, as has been suggested, be found in their view that this was the most politic course to take; but it has also been

pointed out that another cause lay in the difficulty of suddenly attacking so complex and difficult a problem with such a small number of skilled assistants. For the moment then they did what they could to convey the impression that the authority of the Nawab of Bengal still existed. However, it soon became clear, both from the experience gained in their older possessions and from the actual state of affairs in the larger area, that the dual control could not with advantage continue.

The common assumption has been that the native authorities remained in complete control for the first few years after 1765; that is in regard to the details of administration. This Dr. Firminger has clearly shown to be a mistake. From the very beginning of the Diwani the Company took an active and increasing interest in the administration, and though it is difficult to be precise, owing to the length of time taken for letters to reach England and to receive a reply, and the necessity therefore for action to be resolved upon in India which might or might not please the home authorities, we can see that their general drift was to continue the policy of annexation and to obtain more and more control over every department.

The Company's directors at home at first wrote, May 17, 1766, that they conceived that

"the office of Dewan should be exercised only in superintending the collection and disposal of the revenues, which though vested in the Company, should be officially executed at the Durbar, under the control of the Governor and the Select Committee. The ordinary bounds of which control should extend to nothing beyond the superintending the collection of the revenues, and the receiving the money from the Nabobs' treasury to that of the Diwanny or the Company; and this we conceive to be neither difficult nor complicated. . . ."

But they soon saw that matters had gone further than that. The opinion has been expressed that the confused state of affairs in Bengal during the years that preceded the Regulation Act was due to the dual system, but it can hardly be seen what other policy would have succeeded. The Company's officers had to learn their business, and to understand the complicated revenue organization of

Bengal was no small matter. The Resident at Murshidabad grew more and more powerful and a Council of Control was appointed which kept the Naib Soubah under strict supervision.

Clive left for England in January 1767 and his successor, Verelst, though a greater believer than Clive in the advantages of giving the Nawab a real and not an imaginary sovereignty, followed out his policy on the whole. Things in 1769 were clearly in an unsatisfactory condition. A very significant letter from the Resident, dated May 24, 1769, is quoted by Miss Monckton Jones. It begins:

"It must give pain to an Englishman to have Reason to think that since the accession of the Company to the Dewanee the condition of the people of this Country has been worse than it was before; and yet I am afraid the fact is undoubted, and I believe has proceeded from the following causes—the mode of providing the Company's Investment, the export of specie instead of importing large sums annually; the strictness that has been observed in the collection; the endeavour of all concerned to gain credit by an increase of revenue during the time of their being in station without sufficiently attending to what future consequences might be expected from such a measure; the errors that subsist in the manner of making the collections, particularly by the employment of Aumils: these appear to me the principal causes why this fine country which flourished under the most despotic and arbitrary government, is verging toward its ruin while the English have really so great a share in the administration."

The directors wrote out in 1769:

"We find the revenues of the Calcutta lands, as well as of Burdwan, Midnapore, and Chittagong, have been considerably augmented, and this increase gives us a sensible pleasure, because we perceive the number of inhabitants have increased at the same time, which we regard as a proof that they have found in those Provinces a better security of their property and relief from oppressions; and it is with particular satisfaction we can attribute these advantages, to their being more immediately under the Company's management, and under the constant and minute direction of our covenanted servants. The like abuses which have been corrected in these districts, are still severely felt through all the provinces of Bengal and Behar, where the numerous tribes of Fougedars, Aumils, Sikdars etc., practise all the various modes of oppression which have been in use as long as the Moorish government has subsisted. To correct abuses of so long a growth will require much time and industry, and above all a patient and moderate exertion of the powers invested in us by the grant of the Dewanee; for we do not mean, by any violent and sudden reform, to change the constitution, but

to remove the evil by degrees, by reducing that immense number of idle sycophants, who for their own emolument, and that of their principals, are placed between the tenant and the Public Treasurer, and of which everyone must get his share of plunder, the whole mass of which must amount to a most enormous sum. . . ."

In this same letter we find a plan detailed for a committee at Murshidabad and one at Patna to look after the Diwani revenues of Bengal and Bihar respectively. The directors at this time also sent out a special commission to represent them in India, in view of the important changes that were taking place there. The commissioners were to go from presidency to presidency and to carry out the wishes of the authorities at home; unfortunately the *Aurora*, which conveyed them, was lost on the way out. Verelst, however, carried through a scheme which was to bear fruit in the future. It was accepted by the Select Committee on August 16, 1769, and consisted in sending out "supravisors," as they were called, to various districts of Bengal and Bihar. Their duties as outlined by Verelst were :

- "1. To prepare a history of the district assigned to each.
2. To draw up a report on the resources and amount of land in each district.
3. To ascertain the amount of the revenues, the cesses, or arbitrary taxes and of all the demands whatsoever which are made on the ryot either by Government zemindar or collector with the manner of collecting them; and the gradual rise of every new impost.
4. To make an estimate of the production of every district and the amount of manufactures. He also might prepare an account of the number of manufacturers and the duties that they pay and other statistics connected with manufacturing of various kinds.
5. As to justice to enforce it where the law demands, to check corruption, recommend arbitration in disputes as to real estate, and abolish arbitrary fines. They were to examine the credentials of local officers and see that records be kept at the local cutcherry and a monthly return sent to Murshidabad."

The instructions are very precise and extensive and deserve careful study. It has been pointed out that they are framed with a view to protect and assist the ryot as against the zemindar in every possible way. At the end of this same year (December 15th) a resolution was passed saying that the supervisors should have as little to do

with active work for the moment as possible so that they might have time to make the necessary researches. The local authorities were to consult them, and in cases of doubt a report was to be made to the Resident; but on the whole their work was to be negative and advisory. Resolutions of the same nature were passed in the following year.

The Company at home at first approved of the new scheme, but it seems from the documents published by Dr. Firminger that there were two main drawbacks. There was constant friction between native officials and the supervisors; and the supervisors became so powerful at times as to absorb all the trade of their particular part of the country under their control.

Verelst gave place to Cartier in December 1769 and Cartier tried to grapple with the many problems that faced him. The awful famine of 1770 could not but reflect on the administration, and the Government was obviously not yet properly organized. The spheres of influence of the council as a whole and of Clive's Select Committee which had hitherto dealt with Diwani matters were not properly determined and consequently when the directors' instructions as to the commissioners arrived there was difficulty. We learn from a letter of March 23, 1770 (printed by Dr. Firminger), that the ordinary course of government then for Bengal was as follows :

- "1. That with the Governor and exclusive of the military commander the Council of Bengal shall consist of nine members and no more.
2. That none of the Council be permitted to act as Chiefs of any of the subordinate factories, but shall all constantly reside at Calcutta, the Resident at the Durbar (if that office shall be filled by a Counsellor) and the Military Commander excepted.
3. That no member of the Council shall have any employment annexed to that station, but that all offices be executed by the senior servants not members of the Board.
4. And that the said Council be formed into proper Committees."

It was also added :

"Besides the foregoing regulations, it is our pleasure that our Governor of Bengal, Commander-in-Chief for the time being, and three senior members of our Council be a Select Committee, with

power to make regulations concerning peace and war, and negotiate with the Country Powers, but not finally to conclude any treaty, until the terms and conditions of such treaty shall have been first approved by our Governor and Council. The Governor singly shall correspond with the Country Powers; but all letters, before they shall be by him sent, must be communicated to the other members of the Select Committee and receive their approbation. And also all letters whatever which may be received by the Governor in answer to, or in the course of his correspondence, shall likewise be laid before the said Select Committee, for their information and consideration, and all the proceedings and correspondence must be regularly entered on their consultations and sent home in duplicate."

On September 8, 1770, two controlling councils of revenue were appointed for Bengal and Bihar, each consisting of the senior civilians, seated respectively at Calcutta, Murshidabad, and Patna, as the directors had suggested. In Cartier's time were also created a controlling committee of accounts and a controlling committee of revenue for the province, the latter of which, however, gave place to Warren Hastings's Board of Revenue in 1772.

But a new policy was now necessary; as Dr. Firminger has clearly shewn it was a bold development of that policy which the Company's officers had steadily pursued that was now to be inaugurated. Its inception was coincident with the return of Warren Hastings to India as Cartier's successor in 1772. The Naib Diwan was relieved of his office, and his duties were undertaken by the Company's officials. This vast and all-important change by which the President and Council were "to stand forth as Diwan and by the agency of the Company's servants to take upon themselves the entire care and management of the revenues," was undertaken in pursuance of a letter from the directors of August 29, 1771. But they did not understand what they were doing, and the consequences were the work of Hastings, a man not only of long experience but of great genius; one too who did not fear responsibility and whose aim was to complete and consolidate the British rule in Bengal. To carry out his policy it was necessary for him to unite the Diwani and the Nizamat under English control so that the Company should be all powerful in both executive and

judicial affairs. We must see how he affected these great changes.

The important Regulations as to Revenue of 1772 have been thus summarized:

- "1. The lands were to be let to Revenue farmers for a period of five years.
2. A Committee of circuit consisting of the Governor and four Members of the Council was to be appointed to visit the principal districts and form the five years' settlements.
3. The servants of the Company employed in the districts under the designation of 'supervisors' or 'supravisors' were henceforth to be termed collectors.
4. In each of the several districts a native officer under the title of Diwan should be appointed to inform or check the collector.
5. That no banian or employee of the several collectors should be permitted to farm any portion of the revenues.
6. Presents to the collectors from zemindars and others, and from the ryots to the zemindars were forbidden.
7. The collectors and their banyans were forbidden to advance money to the ryots."

The Councils of Revenue at Calcutta, Murshidabad, and Patna were abolished, and in October 1772 a Board of Revenue consisting of the whole council was established at Calcutta, where the Khalsa, or Exchequer, was to be in future.

Nothing can give a clearer view of the schemes of Warren Hastings for the better administration of justice than the famous letter from the President and Council to the directors, with its enclosures of November 3, 1772:

"The more regular administration of justice was deliberated on by the Committee of Circuit, and a Plan was formed by them, which afterwards met with our approbation. We cannot give you a better idea of the grounds on which this was framed, than by referring you to a copy of it, together with a letter from the Committee to the Board on the occasion. . . . We hope that they will be read with that indulgence, which we are humbly of opinion is due to a work of this kind, undertaken on the plain Principles of Experience and common observation, without the advantages which an intimate knowledge of the Theory of Law might have afforded us. We have endeavoured to adapt our Regulations to the manners and understandings of the People, and exigencies of the country, adhering as closely as we were able, to their ancient usages and institutions. It will be still a work of some months we fear, before they can be thoroughly established throughout the provinces, but we shall think our labours amply recompensed, if they meet with your approbation, and are productive of the good effects we had in view.

Letter from the Committee of Circuit to the Council at Fort William dated Cossimbazaar August 15, 1772. . . .

We now transmit to you the result of our deliberations on this subject (the magistracy of this Province) in the enclosed paper, entitled 'a plan for the administration of justice' and if it meets with your approval we wish to receive your instructions for carrying it into immediate execution.

For the information of our Honourable Employers it may be necessary to premise, what you will readily perceive, that in forming the enclosed Plan, we have confined ourselves with a scrupulous exactness to the Constitutional Terms of Judicature, already established in this Province, which are not only such as we think in themselves best calculated for expediting the course of justice, but such as are best adapted to the understandings of the people. . . .

The general principles of despotic governments, that every degree of power shall be simple and undivided, seems necessarily to have introduced itself into the Courts of Justice; this will appear from a review of the different officers of justice, instituted in these provinces, which however unwilling we are to engross your time with such details, we deem necessary on this occasion, in proof of the above assertions, and in justification of the regulations, which we have recommended.

First. The Nazim, as Supreme Magistrate, presides personally in the trials of capital offenders, and holds a court every Sunday, called the Rôz Adawlut.

Second. The Dewan, is the supposed Magistrate for the decision of such causes, as relate to real estates, or property in land, but seldom exercises this authority in person.

Third. The Darogo, Adawlut al Aalea, is properly the Deputy of the Nazim; he is the judge of all matters of property, excepting claims of land and inheritance, he also takes cognizance of quarrels, frays and abusive names.

Fourth. The Darogo Adawlut Dewanee, or Deputy of the Dewan, is the judge of property in land.

Fifth. The Phoujdar is the officer of the police, the judge of all crimes not capital, the proofs of these last are taken before him, and reported to the Nazim for his judgment and sentence upon them.

Sixth. The Caze, is the judge of all claims of inheritance or succession; he also performs the ceremonies of weddings, circumcisions, and funerals.

Seventh. The Mohtassib, has cognizance of Drunkenness, and of the vending of intoxicating liquors and intoxicating drugs, and the examination of false weights and measures.

Eighth. The Muftee, is the Expounder of the law. Memorandum: The Caze is assisted by the Muftee and Mohtassib in his court. After hearing the parties and evidences, the Muftee writes the Fettwa, or the Law applicable to the case in question, and the Caze pronounces judgment accordingly. If either the Caze or Mohtassib disapprove of the fettwa, the cause is referred to the Nazim, who summons the Ijlass or General Assembly, consisting of the Caze, Muftee, Mohtassib, the Darogos of the Adawlut, the

Maulavies and all learned in the law, to meet and decide upon it. Their decision is final.

Ninth. The Canongos are the Registers of the lands. They have no authority, but causes of land are often referred to them for decision, by the Nizam, or Dewan, or Darogo of the Dewanee.

Tenth. The Cotwall is the Peace Officer of the night, dependent on the Phoujdaree.

From this account it will appear that there are properly three Courts for the decision of Civil Causes (the Canongos being only made arbitrators by reference from the other courts) and one for the police and criminal matters. The authority of the Mohtassib in the latter being too confined to be considered as an exception: yet, as all defective Institutions soon degenerate by use into that form, to which they are inclined, by the unequal prevalence of their component parts; so these courts are never known to adhere to their prescribed bounds, but when restrained by the vigilance of a wiser ruler than commonly falls to the lot of despotic States; at all other times, not only the civil courts encroach on each other's authority, but both civil and criminal often take cognizance of the same subjects; or their power gradually becomes weak and obsolete, through their own abuses and the usurpations of influence. For many years past the darogos of the Adawlut al Alea, and of the Dewanee, have been considered as judges of the same causes, whether of real or personal property; and the parties have made their applications as chance, caprice, interest, or the superior weight and authority of either directed their choice. At present, from obvious causes, the Dewanee Adawlut is in effect the only tribunal: The Adawlut al Alea, or the Court of the Nazim existing only in name.

It must however be remarked in exception to the above assertions, that the Phoujdaree being a single judicature, and the objects of it clearly defined, it is seldom known, but in time of anarchy, to encroach on the civil power, or lose much of its own authority; this however is much the case at present.

The Court in which the Caze presides, seems to be formed on wiser maxims and even on more enlarged ideas of justice and civil liberty, than are common to the despotic notions of Indian Governments.

They must be unanimous in their judgment, or the case is referred in course to the General Assembly; but the intention of this reference is defeated, by the importance which is given to it, and the insurmountable difficulties attending the use of it. . . .

Another great and capital defect in these Courts is the want of a substitute or subordinate jurisdiction for the distribution of justice in such parts of the province, as lie out of their reach, which in effect confines their operations to a circle, extending but a very small distance to beyond the City of Murshedabad: this indeed is not universally the case but perhaps it will not be difficult to prove the exceptions to be an accumulation of the grievance, since it is true that the Courts of Adawlut are open to the complaints of all men; yet it is only the rich, or the vagabond part of the people who can afford to travel so far for justice; and if the industrious labourer is called from the furthest part of the province to answer

their complaints, and wait the tedious process of the courts, to which they are thus made amenable, the consequences in many cases will be more ruinous and oppressive, than an arbitrary decision could be, if passed against them without any law or process whatever.

This defect is not however left absolutely without a remedy, the zemindars, farmers, shicdars, and other officers of the revenue assuming that power, for which no provision is made by the laws of the land, but which, in whatever manner it is exercised, is preferable to a total anarchy. It will however be obvious, that the judicial authority lodged in the hands of men, who gain their livelihood by the profits on the collections of the revenue, must unavoidably be converted to sources of private emolument, and in effect the greatest oppressions of the inhabitants owe their origin to this necessary evil. The Cazeer has also his substitutes in the districts, but their legal powers are too limited to be of general use, and the powers which they assume being warranted by no lawful commission, but depending on their own pleasure or the ability of the people to contest them is also an oppression. . . ."

A plan for the Administration of Justice extracted from the proceedings of the Committee of Circuit August 15, 1772.

I. That in each district there shall be established two Courts of Judicature, one by the name of Mofussil Dewanee Adawlut or Provincial Court of Dewannee, for the cognizance of civil causes; the other by the name of Phoujdaree Adawlut, or Court of Phoujdaree for the trial of crimes and misdemeanours.

II. That for the better ascertaining the jurisdiction of each court and to prevent confusion, and a perversion of justice, the matters cognizable by each respectively are declared to be as follows.

All disputes concerning property whether real or personal; all causes of Inheritance, marriage and caste; all claims of debt, disputed accounts, contracts, partnerships, and demands of rent, shall be adjudged by the Dewannee Adawlut.

But from this distribution is excepted the right of succession to Zemindarees and Talugdarees, which shall be left to the decision of the President and Council.

All trials of murder, robbery and theft, and all other felonies, forgery, perjury, and all sorts of frauds and misdemeanours, assaults, frays, quarrels, adultery, and every other breach of the peace, or violent invasions of property, shall be submitted to the Phoujdaree Adawlut.

III. That in the Provincial Court of Dewannee the Collector of each district shall preside on the part of the Company in their quality of King's Dewan, appointed by the President and Council, and the other officers of the Cutcherry, and that the Court shall be regularly held every Monday and Thursday, and oftener if necessity require, and that no causes shall be heard and determined, but in the open court regularly assembled.

IV. That in the Phoujdaree Adawlut, the Cazeer and Muftee of the District, and two Maulavies, shall sit to expound the law, and determine how far the delinquents shall be guilty of a breach thereof,

but that the Collector shall also make it his business to attend to the proceedings of this court, so far as to see that all necessary evidences are summoned and examined, and that due weight is allowed to their testimony, and that the decision passed is fair and impartial, according to the proofs exhibited in the course of the trial, and that no causes shall be heard or determined, but in the open court regularly assembled.

V. That in like manner two superior Courts of Justice shall be established at the chief seat of government, the one under the denomination of the Dewannee Sudder Adawlut, and the other the Nizamut Sudder Adawlut.

VI. That the Dewannee Sudder Adawlut shall receive and determine appeals from the Provincial Dewannee Adawlut; that the President, with two members of the Council shall preside therein, attended by the Dewan of the Khalsa, the Head Canongos, and other officers of the Cutcherry; in case of the absence of the President, a third Member of the Council to sit, that is to say, not less than three Members to decide on an appeal, but the whole Council may sit if they choose it.

VII. That a Chief Officer of Justice appointed on the part of the Nazim, shall preside in the Nizamut Adawlut, by the title of Darogo Adawlut, assisted by the Chief Cazeer, the Chief Muftee, and three capable Maulavies; that their duty shall be to revise all the proceedings of the Phoujdaree Adawluts, and in capital cases by signifying their approbation or disapprobation thereof, with their reasons at large, to prepare the sentence for the warrant of the Nazim,* which shall be returned into the Mofussil, and there carried into execution; that with respect to the proceedings in this court, a similar control shall be lodged in the Chief and Council, as is vested in the collectors in the districts, so that the Company's administration in character of King's Dewan may be satisfied that the decrees of justice, on which both the welfare and safety of the country so materially depend, are not injured or perverted by the effects of partiality or corruption.

VIII. That in order to preserve the dignity and importance of the two superior Courts, there shall be two Courts of Adawlut established at the seat of government, exactly on the same plan as those of the Districts: In that of the Dewannee, a Member of the Council shall preside, and in that of the Phoujdaree another Member of the Council shall exercise the control specified in the 4th regulation: these duties to be performed by the members in rotation.

IX and X secure free access to the collector and consideration of all complaints.

XI. That in order to facilitate the course of justice in trivial causes, and to relieve the ryot from the heavy grievance of travelling to a great distance, to seek for redress, all disputes of property, not exceeding ten rupees, shall be decided by the Head Farmer of the Purgunnah to which the parties belong; and his decision shall be final.

* In this same year 1772 Hastings arranged that the Darogo of the Nizamut should be authorized to affix at Calcutta the seal of the Nazim on behalf of the Nabob to warrants for the execution of sentences of the Nizamut Adawlut. Thus he acted in a double capacity.

XII. The Procedure in the Provincial Dewannee Adawlut.

XIII and XIV. Proper records to be kept of the proceedings in the Mofussul Dewannee Adawlut and a copy to be sent to the Sudder Dewannee Adawlut twice a month through the channel of the President and Council.

XV. Limitation of suits as to time.

XVI. Levying of fees and commissions on the account of the money recovered or on decision given, and heavy arbitrary fees abolished.

XVII. The Court may inflict slight punishments at discretion in case of trivial and groundless complaints.

XVIII. Rate of interest on old debts.

XIX. That all bonds shall be executed in the presence of two witnesses.

XX. That whereas it has been too much the practice in this country for individuals to exercise a judicial authority over their debtors, a practice which is not only in itself unlawful and oppressive, seeing a man thereby becomes the judge in his own cause, but which is also a direct infringement of the prerogative and powers of the regular government; that publications shall therefore be made, forbidding the exercise of all such authority, and directing all persons to prefer their suits to the established Court of Adawlut; and that the Collector shall particularly attend to this regulation, which it is apprehended will prove a great means of relief to the helpless ryot from his merciless creditor, the money lender.

XXI. Proceedings in cases as to Real Property.

XXII. Arbitration by consent (the award becoming a decree of the Dewannee Adawlut) recommended in cases of disputed accounts, partnerships, debts, doubtful or contested bargains, non-performance of contracts, and the like.

XXIII. That in all suits regarding Inheritance, Marriage, Caste, and other religious usages or institutions, the laws of the Koran with respect to Mohammedans, and those of the Shaster with respect to Gentoos, shall be invariably adhered to; on all such occasions, the Maulavies or Brahmins shall respectively attend to expound the law, and they shall sign the Report, and assist in passing the Decree.

XXIV. That the Decree of the Provincial Dewannee Adawlut, on all causes for sums not exceeding Five Hundred Rupees shall be final; but that for all above that amount, an appeal shall lie to the Sudder.

XXV. Costs may be decreed to be taxed.

XXVI. Those preferring groundless appeals may be punished by advanced costs which will compensate the respondent.

XXVII and XXVIII. Records to be kept and transmitted from the Provincial Phoujdaree Adawlut to the Nizamut Sudder Adawlut.

XXIX. The authority of the Provincial Phoujdari Adawlut does not extend to capital sentences. In such cases the opinion of the Court with the evidence must be sent to the Nizamut Adawlut, confirmed by that Court, and referred to the Nazim for sentence, which shall be immediately carried out.

XXX. Persons whose station in life makes them unsuitable for corporal punishment may be fined, but the sentence should the fine be over 100 Rupees must be confirmed by the Nizamut Adawlut.

XXXI. Forfeiture and confiscation of property must be in the decision not of the Provincial Phoujdaree but of the Nizamut Adawlut.

XXXII and XXXIII. The Company is not to make a revenue by small collections in the Courts, and the officials are not to take fees. They may however take a voluntary present on the occasion of a marriage or a funeral.

XXXIV. The Kazee and the Muftee each to have two deputies in the Pargunnahs at convenient places.

XXXV. Dacoits to be executed in their villages, their families made slaves of the State, and their villages to be fined.

XXXVI. Tannadars and Pikes of the districts to be punished if they neglect their duty and rewarded if they exert themselves to protect their villages against Dacoits and breakers of the peace.

XXXVII. The Collectors can make subsidiary regulations for the due course of justice and the welfare and prosperity of the ryots as local circumstances shall require. They are to report such to the Committee of Circuit to be communicated to the Board for sanction and confirmation.

Such was this memorable scheme, by far the most important in the administrative history of India. It established, as will be seen, a civil and a criminal court in each district (and in Calcutta), and corresponding courts of appeal in Calcutta, which now became the capital of Bengal.

The collectors, who take the place of the supervisors, now begin their long career of usefulness. Not, however, without a temporary check, for on April 7, 1773, the directors wrote out as follows:

"As the sending our junior servants into the Provinces has not been attended with the wished for success, but has enabled them to monopolize the whole trade of the country, we direct therefore that they may be withdrawn as soon as possible, and we leave it to you to substitute some other plan for making yourselves acquainted with the exact value of every district, and for giving relief to the inhabitants, till we shall be able to send you complete regulations for conducting this branch of our affairs which we have now under consideration."

This promise was never carried out, and the Government of Bengal was forced to prepare a new scheme, in part temporary and in part permanent, which was described by the Board of Revenue on November 23, 1773:

The Board having at several meetings since the receipt of the Harcourt's advices debated on the various means which occur to

them for carrying into execution the intentions of the Honourable Court of Directors for the future control and management of the Revenue and for the removal of the collectors from their stations; and having maturely considered and weighed all the consequences which may attend every measure that may be adopted are of opinion, that the immediate removal of the collectors, or the establishment of any consistent and permanent system, without such preparatory measures as might prevent the bad consequences of too sudden a change, and gradually introduce a more perfect form of superintendency, would be hazardous to the collections, and bring at once a greater weight of business on the members of the Superior Administration than they could possibly support.

On these grounds they do propose the following Plan for a future establishment, to be adopted and completed by such means as experience shall furnish, and the final orders of the Honourable Company shall allow:

1. That the Districts which form the present collectorships shall remain, with such variations as shall render them more easy of control, and more subservient to the general system.
2. That each District be superintended by a Dewan or Aumil, except such as have been let entire to the zemindars, or their responsible farmers, who shall in such case be invested with that authority.
3. That a Committee of Revenue be formed at the Presidency, which shall consist of two members of the Board, and three senior servants below council, for conducting the current business of the collections in the manner following.
4. The Committee shall meet daily, etc.
- 5-6. The Dewans shall correspond with the President of the Committee and the Roy Royan, etc.
7. Occasional commissioners or inspectors shall be deputed to visit such of the districts as may require a local investigation, etc.
8. Sepoys only to be employed on military duties.
9. The officers of the Phoujdarry Adawlut shall be forbid to hold farms, or other offices in the Mofussil; they shall be obliged to reside, on pain of forfeiting their employments; and it shall be declared criminal in any person to officiate in the Courts of Adawlut, in the capacity of Naibs or Gomastahs, for Principals non-resident.
10. All complaints of the Ryots, or others, against the Dewans, farmers, zemindars, or other public officers of the Revenue, shall be received and decided by the Committee, or by Persons expressly appointed by them for that purpose.

As introductory to the foregoing, and only for a temporary purpose the following plan was immediately adopted:

The Provinces to be formed into the following Grand Divisions: Calcutta, Burdwan, Murshidabad, Dinajpore, Dacca, Patna. The districts of Chittagong and Tipperah to remain on their present footing, under the management of a chief.

A Committee of Revenue to be instituted at Calcutta for superintending the first Grand Division, to be composed of two members

of Council, and three senior servants; under them a secretary, a Persian translator, an accountant and five assistants.

The Councils of Revenue to be formed for superintending the second, third, fourth and fifth Grand Divisions to be composed of a Chief and four senior servants; under them a secretary, a Persian translator, an accountant, and three assistants. The sixth Grand Division, Patna, to be superintended by the Chief and Council at Patna. As the detail was to be conducted by the Committee at Calcutta and superseded the necessity of a superintendent of the Khalsa, that office to be abolished when the Provincial Councils have been all re-established. The Registry of the Khalsa is however still to remain as are the offices of Auditor and Accomptant-General.

A Dewan is to be appointed to each of the Provincial Councils who shall be chosen by the Board. Rules are laid down for the collection of Revenue.

The Naibs of the Districts under each Provincial Council to hold Courts of Dewannee Adawlut, according to the present Regulations, and transmit their proceedings to the Provincial Councils; but appeals in all cases to be allowed from them to the Provincial Sudder Adawlut of the Division, without the five per cent. fee—these Courts of Provincial Sudder Adawlut, to be superintended in rotation by the members who are out of the Council of Fort William; to decide ultimately on all cases not exceeding 1,000 Rupees. . . . In cases exceeding that sum, an appeal to be as at present, to the Sudder Dewannee Adawlut. In all cases the Provincial Councils at large may revise the decisions of the superintending member. Complaints against the head farmers, Naibs of the districts, zemindars, and other principal officers of the Government, relative to their conduct in the revenue, to be decided by the Provincial Councils, and entered on their proceedings. If any of them think themselves aggrieved, they may apply ultimately to the superior Council of Revenue at Calcutta. . . .

The officers of the Phoujdarry Adawluts shall be forbidden to hold farms or other offices in the Mofussil; they shall be obliged to reside, on pain of forfeiting their employments; and it shall be declared criminal in any person to officiate in the Courts of Adawlut, in the capacity of Naibs or Gomastahs for Principals non-resident.

Complaints against the officers of the Phoujdarry Adawluts to be made to the Governor, and to be referred by him to the Sudder Nizamut, for their enquiry and determination. Members of the Superior Council whether in Calcutta or in the Divisions forbidden to trade. And all covenanted servants are forbidden to make advances to natives for grain and other articles of subsistence.

The Collectors were formally called in for the time.

Thus we have new bodies: the Committee of Revenue (which was different from the Board of Revenue of 1772 and from the later Committee of Revenue of 1781) and the Provincial Councils which were abolished in 1781. The idea as to the Calcutta Committee was that ultimately it

should have a wider sphere and, carrying out the plans of 1773, absorb the duties of the Provincial Councils. The courts, as will be seen, continued though in a transitional and makeshift condition. In 1774 the authorities in India were busy compiling a code of Mohammedan and Hindu Law for the Courts, and Warren Hastings sent home a sample on March 24, 1774; he speaks of an intention on the part of the directors to establish new courts, but expresses the hope that such would not be done before those on the spot had been consulted. These new institutions were now to appear.

CHAPTER IV

THE REGULATING ACT

PARLIAMENT from 1698 onwards had taken an increasingly active interest in the affairs of India and a statute of 11 & 12 Will. III. (c. 12) authorized the punishment of governors of plantations in England for offences committed by them during the period of their office. It was natural therefore that the events of 1765 attracted deep interest. The Company though paying large dividends on its stock, was really in a very embarrassed condition, and this helped to enlarge the scope of parliamentary interference in the years that followed. A feeling, too, prevailed that all was not right, that there was probably oppression and probably wrongdoing, and that even where the intentions of the officials might be above suspicion, they were not administering the country in the best possible manner. Many thought, too, that a great power was being built up over which the Home Government had little or no control. To the credit of the Company it must be said that they showed the strongest wish to improve matters; often by their hasty endeavours to redress grievances they made things worse, but there was no lack of good-will. The Acts which we now come to show that the main idea that an Englishman had of dealing with the administration of India consisted too often, then as now, in making it more like that of his own country. This fundamental notion, together with a certain vagueness partly calculated and partly the result of ignorance, will go far to explain the honest but rather unsatisfactory attempts which were made to deal with so great a problem.

In 1766 a committee was appointed to inquire into the condition of the East India Company, and the report of that committee was followed by various Acts of Parliament. 7 Geo. III. c. 48 stated that members of companies or corporations for carrying on trade were after August 1, 1767, disqualified from voting until they had held stock for at least six months, save in cases where the stock had come by bequest or succession. It also said that dividends could only be declared at quarterly or half-yearly courts. These provisions were, as Sir Courtenay Ilbert surmises, clearly directed against the East India Company, although it was not mentioned by name.

7 Geo. III. c. 49 was more explicit. It laid down with regard to the East India Company that no dividend was to be made for any time subsequent to June 24, 1767, but in pursuance of a vote or resolution passed by way of balloting in a General Court of the Company which should have been summoned for the purpose of declaring a dividend, and of the meeting of which General Court for such purposes seven days' notice should have been given in writing fixed upon the Royal Exchange in London. It also enacted that it should not be lawful for any General Court of the Company at any time between May 8, 1767 and the beginning of the next session of Parliament to declare and resolve upon any increase of dividend beyond the rate of £10 per cent. per annum, being the rate at which the dividend for the half-year ending June 24, 1767 was made payable.

7 Geo. III. c. 57 was very important. It recited that the Company had proposed that a temporary agreement should be made in relation to the territorial acquisitions and revenues lately obtained in the East Indies, and that the East India Company was to pay £400,000 per annum for two years from February 1, 1767. In return the territorial acquisitions and revenues were to remain in the possession of the Company. This was it is said the first time that the British Parliament recognized the new possessions of the Company.

8 George III. c. 11 prolonged the regulation as to the 10 per cent. dividend until February 1, 1769.

The provisional agreement with the Company had to be either continued or ended, and by 9 Geo. III. c. 24 the payment of £400,000 a year to the exchequer was extended for five years from February 1, 1769, the territorial acquisitions remaining in the Company's power for a like period. The Company were not to increase their dividend by more than 1 per cent. in any one year, and it had not to exceed 12½ per cent. per annum in any case. Provision was made that if the dividends were reduced the payments by the Company would be reduced, and the balance after, practically, the discharge of their obligations had to be lent to the British Government at 2 per cent. per annum.

A session later a statute 10 Geo. III. c. 47 indicated that attention was being devoted to the details of the Company's affairs. Penalties were fixed for illicit trade; voting was regulated; and an important proviso stated that any of the Company's servants guilty of oppressing any of His Majesty's subjects beyond the seas or of any other crime or offence, might be tried in the King's Bench just as if the offence had been committed in England.

The terrible financial straits to which the Company was reduced, coupled with rumours of mismanagement, no doubt led everyone to think that something must be done in the way of change. News, too, of the great famine in Bengal of 1770 told in the same direction. An inquiry was held in 1772, and 13 Geo. III. c. 10 prevented the Company from sending any commissioners to India for six months from December 7, 1772, unless allowed to do so by Act of Parliament. Then came the famous Regulating Act of 1773, 13 Geo. III. c. 63, of which we must now give a brief summary.

It was described as an Act for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe. In future the twenty-four Directors were to be chosen for four years instead of annually. No person who had been employed in the East Indies was to be chosen a Director until he had returned and resided in England for at least two years. A proprietor who held £1,000 worth of stock and

had held it for at least twelve months had to have one vote in the Court of Proprietors, those who held £3,000 worth two votes, those who held £6,000 worth three votes, and those who held £10,000 worth four votes.

For the Government of the Presidency of Fort William in Bengal there were to be appointed a Governor-General and four councillors and the whole civil and military government of the presidency and also the ordering management and government of all the territorial acquisitions and revenues in the kingdoms of Bengal, Bihar, and Orissa were, during such times as the territorial acquisitions and revenues should remain in the possession of the Company, vested in the Governor-General and Council of the Presidency of Fort William in Bengal in like manner to all intents and purposes as the same were or at any time theretofore might have been exercised by the President and Council or Select Committee in the said kingdoms.

The opinion of the majority of the Governor and Council was to prevail, but if the votes were equal, the Governor-General was to have a casting vote. The Governor-General and Council were to have the power of superintending and controlling the government and management of the Presidencies of Madras, Bombay, and Bencoolen respectively, so far and in so much that it should not be lawful for any President and Council of Madras, Bombay, or Bencoolen for the time being, to make any orders for commencing hostilities, or declaring or making war, against any Indian princes or Powers, or for negotiating or concluding any treaty of peace, or other treaty, with any such Indian princes or Powers, without the consent and approbation of the Governor-General and Council first had and obtained, excepting in cases of imminent and dangerous necessity, or where the Presidents and Councils might have received special orders from the Company.

The Directors were to inform the Government of all news that they received as to the revenue civil and military affairs of the Company.

Warren Hastings was to be the first Governor-General and Clavering, Monson, Barwell, and Francis were to be

the councillors. They were to hold office for five years from the time they took over their posts. They were to be removable by the King at the request of the Directors, and the Directors were to nominate their successors.

The King was empowered to establish by Charter or Letters Patent a Supreme Court of Judicature at Fort William consisting of a Chief Justice and three judges who were to be appointed by the Crown. The Court was to have jurisdiction over all British subjects resident in Bengal, Bihar, and Orissa; and it had authority to hear and determine all complaints against any of His Majesty's subjects for crimes, misdemeanours, or oppressions, and also any suits or actions against any of His Majesty's subjects in Bengal, Bihar, and Orissa, and any suits against any person in the Company's service. There was, however, this exception, that no indictment or information could be heard save for treason or felony which was directed against the Governor-General or any of his Council, and they were not liable to arrest or imprisonment. As to Indians, the Supreme Court could hear and determine suits of subjects of His Majesty against Indians residing in Bengal, Bihar, or Orissa on a contract or agreement where the matter in dispute was over five hundred rupees and where the Indian had agreed that in case of dispute the matter should be settled in the Supreme Court. Such suits might be brought either originally or by way of appeal. An appeal was to be provided by the Charter to the King in Council. The Governor-General, the Members of Council, and the judges were to act as justices of the peace, and to hold Quarter Sessions.

The Governor-General, the councillors, and the judges were not to take presents or to engage in private trade. And no person holding civil or military office under the Crown or the Company was to accept or take from any Indian princes or Powers or their agents, or any of the natives of Asia, any present, with the exception of councillors-at-law, doctors, or chaplains in the way of their professions.

No collector, supervisor, or any of His Majesty's subjects

employed in the collection of revenue or the administration of justice in Bengal, Bihar, or Orissa, or their agents or servants were to buy or sell goods by way of traffic, or to be concerned in the inland trade in salt, betelnut, tobacco, or rice, excepting on behalf of the Company; but this was not to restrain His Majesty's subjects from trading in Calcutta.

No subject of His Majesty was to take more than 12 per cent. per annum for a loan.

Those who were dismissed or who resigned from the service of the Company were not to stay in the country and trade. Servants of the Company might be fined and imprisoned by the Company, and then sent to England. Offences were to be tried by a jury of British subjects resident in Calcutta.

The Governor-General and Council might make such regulations as appeared just, and they were to be valid when they were registered in the Supreme Court. But appeals might be made to the King in Council, who might repeal such rules.

If any Governor-General, President, Governor, Member of Council, Chief Justice, or judge of any of the Company's settlements in India, or any person who was or had been employed by or had been in the service of the Company should commit any offence against this Act or against any of His Majesty's subjects or any of the inhabitants of India, he might be tried for such offence in the Court of King's Bench in England.

Such was this famous Act. It was followed by 13 Geo. III. c. 64, which gave the Company the sum of £1,400,000 as a loan on certain conditions and relieved it from its liabilities under the statutes passed in 7 & 9 Geo. III. The Letters Patent establishing the Supreme Court of Judicature at Fort William were dated March 26, 1774. They settled, as had beenfore shadowed in the Regulating Act, the various details regarding the Supreme Court, abolishing as to Calcutta the legal provisions of the Charter of 26 Geo. II.

The Supreme Court then was to consist of a Chief Justice and three puisne judges, who were to be appointed by the King under the Great Seal and to act under and during

His Majesty's pleasure. They were to be barristers of at least five years' standing, and those first appointed were named in the Letters Patent. In authority they were to be in the position of judges of the King's Bench in England. Writs, summonses, rules, orders, etc., were to run in the King's name. They were to nominate three persons yearly to the Governor-General and Council for them to select one as sheriff. They were to appoint such subordinate officers as were necessary, but the Governor-General and Council must approve of the salaries. They were to admit and enrol advocates and attorneys-at-law and to settle the Court fees subject to the approval of the Governor-General and Council. The jurisdiction of the Court was carefully defined on the lines already laid down, but it was provided that it should not be competent to try any suit against a person who had never been resident in Bengal, Bihar, or Orissa, or against anyone resident in Great Britain or Ireland unless the action was commenced within two years of the time when the cause of action arose, and unless the sum to be recovered was not of greater value than 30,000 rupees. It could try cases against inhabitants of India residing in Bengal, Bihar, and Orissa upon any contract or agreement in writing entered into by any of these "inhabitants" with any of His Majesty's subjects, where the cause of action was over 500 rupees in value, and where the "inhabitant" had agreed in the said contract that in case of dispute the matter should be decided in the Supreme Court; this either originally or by way of appeal. The method of procedure is detailed: The plaint filed by the party aggrieved, the precept to the sheriff commanding him to summon the defendant to answer, the return of the Sheriff, the appearance or plea of the defendant, the hearing with evidence, the judgment and execution. The Court had powers of arrest and of taking bail, and the method by which the Company could be sued under the Charter of King George II was improved by the requiring the appointment of an attorney to represent the Company instead of the Governor.

It is interesting to note that the Court was to be a Court

of Equity in the English legal sense of the word, and that it was to have full power to administer justice in a summary manner as nearly as might be according to the rules and proceedings of the High Court of Chancery in Great Britain. It was also to be a Court of Oyer and Terminer and Gaol Delivery in and for Calcutta, the factory of Fort William, and the factories subordinate thereunto just as though it were in England. For this purpose the Sheriff had to summon Grand Juries and criminal justice was to be administered as in Great Britain. The jurors and criminals must be either subjects of His Majesty or in the service of the Company or of any of His Majesty's servants. The Court of Requests and the Court of Quarter Sessions erected by the Charter of 26 Geo. II and the justices, sheriffs, and other magistrates thereby appointed were put under the control of the Supreme Court in the same way as inferior courts and magistrates in England were under the control of the Court of King's Bench; and the Court was empowered to issue writs of mandamus, certiorari, procedendo, or error, in case of need, directed to such courts or magistrates, and to punish wilful disobedience.

The Court might also exercise ecclesiastical jurisdiction in the cases of British subjects resident in Bengal, Bihar, and Orissa, as it was exercised in the diocese of London so far as circumstances required or admitted, and in particular it had power to grant probates of wills and to deal with the estates of intestates and of insane persons. Further it was to be a Court of Admiralty for Bengal, Bihar, and Orissa, and all other territories and islands adjacent thereunto, and which then were or ought to be dependent thereupon, in the same fashion as though the English Court of Admiralty were exercising its jurisdiction in England. It had also the right to try by a jury of British subjects resident in the town of Calcutta and to punish all treasons, murders, piracies, etc., committed on the high seas within the jurisdiction of the Court in the same way as the High Court of Admiralty in England.

Civil appeals were to lie to the King in Council as in the case of other colonies. The petition must be presented

within six months and the matter in dispute must be over 1,000 pagodas in value. Criminal appeals required the consent of the Court before they were made. The Governor-General and Council and the judges of the Supreme Court were exempt from arrest save for treason and felony, but their goods and estates were subject to legal process. The Mayor's Court of Calcutta and the Court of Oyer and Terminer and Gaol Delivery there granted by the Charter of 26 George II were abolished. The sittings of the courts were regulated and the rules of practice and standing orders had to be sent for approval to the Privy Council in England.

This very important statute has been criticized on many grounds, and with reason.

In the first place it is vague and perhaps purposely vague; though no doubt some of its vagueness comes from its assuming that no one would read so much into it as people afterwards tried to do. Which was to be supreme, the Governor-General and the Company or the Supreme Court? How far, it has been asked, could the High Court question the legality of acts performed by the agents of the Company? Mill thought that if the Court had such a power it became the virtual government, though American analogies show us that such is by no means necessarily the case. We might also ask what under the statute were the powers of the Governor-General and his Council, and we should get no definite answer. And certainly the arrangement by which the Governor-General's will could be over-ridden by a majority of the Council was bound to result in difficulty, as indeed events soon showed.

The jurisdiction of the Court was by no means clearly defined. As Sir Courtenay Ilbert says, it had authority over British subjects and over persons employed by the Company. But who were included in these categories? It was not at all certain. The author of *Thoughts on Improving the Government of the British Territorial Possessions in the East Indies* (1780) says:

"The jurisdiction of the Supreme Court of Justice established at Calcutta by the Act of the 13 Geo. III. c. 63 is extended with respect to natives 'to all persons who are or have been employed

by, or shall then have been directly or indirectly employed, in the service of the said United Company or any of His Majesty's subjects.' The number of persons who fall within the description of being actually employed, or having been formerly employed in the service of Europeans, is very considerable, and this description was for some time interpreted by the judges to comprehend all persons connected with the collection of the rents, and also to such of the natives as were imprisoned by those collectors. Writs of Habeas Corpus were accordingly granted to public debtors so imprisoned. This was found to affect the public revenue of the country most essentially, and has at last been settled by a species of compromise between the Supreme Company and the Supreme Court."

Mr. Boyle, in his letter to Warren Hastings of February 16, 1779, shows how difficult the position had become. He says :

"The Legislature in passing the Act of Parliament for the regulation of Indian affairs, seems studiously to have left the Provincial Courts in possession of the same authority which they before held, and subject to the same control, no appeal to the Supreme Court is allowed."

This was quite an arguable position, though it was not that taken up by the Supreme Court. No action could be brought by a British subject against an inhabitant of the country unless by his consent in a civil suit. And, indeed, it seems certain that Dr. Firminger is right in his general conclusion :

"That the Court was not intended to hold 'an unlimited jurisdiction throughout the Provinces' is clear from the repeated references to 'European and British subject,' to natives under the protection or in the employment of British subjects. The Supreme Court was in fact to occupy the position of the Mayor's Court founded in 1727, and rechartered in 1753, and its institution was believed to be necessary because the Mayor's Court, composed of functionaries appointed in Calcutta, had been found an insufficient deterrent to wrong-doing on the part of the Company's officials. The Mayor's Court had authority to try causes in which the Company itself was a party, but the judges in that Court were removable at the pleasure of the President and Council. The judges (or aldermen) of the Mayor's Court had generally been junior servants of the Company ; and it was theirs to decide, without any professional knowledge of the law, cases affecting the property, the liberty, and the lives of British subjects and their native dependents. The process of an appeal from that Court to the King in Council had been intolerably tedious, and from time to time the Mayor's Court had been compelled to delay justice until counsel's opinion could be sent from England to determine vexed questions. The institu-

tion of the Supreme Court was, therefore, an act of reformation rather than of innovation. It was not intended to supersede or to trespass upon the judicature deriving their authority from the Mogul constitution, or to settle the question of the Mogul sovereignty by practically driving it into limbo. The Directors, no doubt, looked on the Supreme Court as an instrument of the kind they had long coveted, to terrorize their servants in Bengal. Its establishment enabled them to take the trial of alleged offences of its servants out of the hands of a complacent Council Board, and to have such cases determined by the awe-inspiring puisne judges of the Crown."

The question of the law which was to be administered was not settled in the Act, probably because the assumption was that the Court set up was meant for those who were actually or constructively British subjects and therefore required English law. That there was any idea, though such was often suggested, of introducing English law with all its technicalities throughout the whole of Bengal, Bihar, and Orissa, no one will believe, but a sufficient advance was made in the direction by the wide construction of the term British subject to cause considerable alarm. An example of this will be found in the *Observations upon the Administration of Justice occasioned by some late Proceedings at Dacca*. The passage runs :

"Instead of framing a new Code of Law for this new Institution, the English laws are introduced in their full extent, and with all their consequences ; without any restriction or modification whatever, to accommodate them to the climate and manners of Asia ; without any regard to religious institutions or local habits, or to the influence of other laws handed down from the remotest antiquity, and fixed in the hearts of the people ; without any latitude allowed to the magistrate to relax, compress, or change their application, according to the exigency of these circumstances, upon a more attentive observation of them. But all are transplanted entire into the opposite quarter of the globe, to be administered by Judges educated under them and wholly unacquainted with the religion, character or manners of the people over whom they were to preside."

On the other hand, some of the inhabitants of Calcutta professed to be horrified that they were not to have trial by jury in civil cases, though it was pointed out that they had not had that form of trial in the Mayor's Courts.

It must be remembered that the Act gave very narrow legislative powers to the Council. It was allowed to make regulations for Calcutta and other factories and places

subordinate thereto with the consent and approval of the Supreme Court. The common opinion has been that English Criminal Law was introduced into India in 1726 when the Mayor's Courts were established by Charter, and this view Sir James Fitzjames Stephen thinks is confirmed by the contents of the statute 9 Geo. IV. c. 74, which introduced into the presidency towns a great part of the Criminal Law as it was in 1828. Impey's theory was that it had been introduced into Calcutta three times : in 1726, in 1753, and in 1774 ; so that the law in India would depend upon the date of the offence. But there was always the modifying clause "as nearly as the conditions and circumstances of the place and the persons will admit." Perhaps if we add that it was partially introduced in 1661 also this view is the more likely to be correct.

The Supreme Court not only absorbed the powers of the Mayor's Court, it also took the place of the Phoujdari Court ; and for the time it left the Sudder Dewani Adawlut with nothing to do. We must remember that when the office of Naib Subah was revived, an order passed on October 18, 1775 directed that the occupant of the post Mahomed Riza Khan was

"to superintend the Phoujdari Courts, and the administration of Criminal Justice throughout the country, and to enforce the operation of the same on the present establishment, or to new-model or correct it. As the Board wish that he shall have full control of the Criminal Courts in the character of Naib Soubah, they propose to remove the Nizamut Adawlut now at Calcutta, to be held in future at Murshidabad."

This step rendered any general supervision of the Provincial Criminal Courts on the part of the Supreme Court impossible.

That such a vague statute and charter could only lead to dispute was obvious from the beginning. Sir James Fitzjames Stephen has ably summarized the three main issues between the High Court and the Company.*

1. The claim of the Court to exercise jurisdiction over the whole native population to the extent of making them

* Nuncomar and Impey, II, 236, etc. Every student of Indian Constitutional History ought to study this remarkably lucid and powerful book.

plead to the jurisdiction if a writ was served upon them. This claim resulted finally in the famous Cossijurah Cause in 1779-80. What it came to was this : A zemindar owed money, and his creditor having tried in vain to get it from him through the Board of Revenue in Calcutta, sued him in the Supreme Court ; making an affidavit that the zemindar was employed in the collection of the revenues, so as no doubt to bring him with greater certainty under the jurisdiction. The Company issued an order to the landowners to the effect that they were only subject to the Supreme Court if they were servants of the Company or if they had by their own consent placed themselves under its jurisdiction, and that otherwise they were to pay no attention to anything the Court might do. When the Sheriff tried to carry out the orders of the Court by force and to arrest the zemindar, the Governor-General and Council prevented him from doing so by an armed military force. The contention of the Council was that the Court's jurisdiction was outside Calcutta strictly limited to a few special cases. Indeed, the Council went farther, and put their case on the ground that Parliament had no right to legislate for the natives of India, though they weakened their position by saying that had the Court come to them they would have pointed out those subject to its jurisdiction and have enforced its process. The Court answered that they never asserted jurisdiction over the zemindars as such, and that if there was any doubt as to the jurisdiction, the question could easily have been referred to the Privy Council at home and decided. The result of the whole discreditable business was that the Company did not disapprove of the action of the Council and that therefore the Council may be said to have carried their point.

2. The second point at issue, one of great importance, was that of the jurisdiction of the Court over the English and native officers of the Company employed in the collection of the revenue in respect of corrupt or oppressive acts done by them in their official capacity. Here the Regulating Act was so clear that grumble as they might the Council could not question the authority of the Court.

3. The third question consisted in the right of the Supreme Court to try actions against the judicial officers of the Company for acts done in the execution of their legal duty. Here the Court was in a strong position, and the legality of its action was maintained. The great case is the well-known Patna Cause, a complicated matter in which Impey's action as judge afterwards formed one of the grounds of impeachment against him. Very heavy damages were given by the Supreme Court to Naderah Begum in an action against the nephew of her late husband and the officials of the Patna Council acting as a court of justice. Incidentally, this famous decision showed that the Provincial Councils were only nominally exercising their judicial functions; they had not the necessary trained men and handed such work over to subordinates who dealt with it in a very imperfect fashion.

The Governor-General and Council tried to improve matters and on April 11, 1780 they issued *Regulations for the Administration of Justice*. The object was to embody the rules of 1772, to prevent friction between the revenue and the judicial authorities, and to try to secure that justice should be done. The business of the Provincial Councils was divided into two parts. The revenue business continued to be under the direct care of the Provincial Councils, but the judicial business which consisted of suits between private persons were to be decided in Dewani Adawlut Courts over which a covenanted servant of the Company, with the title of Superintendent of the Dewani Adawlut, was to preside. There were to be such courts at Patna, Dacca, Dinajpore, Burdwan, Murshidabad, and Calcutta. Provisions were laid down to try and avoid difficulties with the revenue authorities, and if the amount at stake were large, an appeal, which must go through the chief of the Provincial Council, lay to the Governor-General and Council in the Sudder Dewani Adawlut. Impey gives some account of these courts and says that when he wrote, early in 1780, the Sudder Adawlut here mentioned was a revival of the old Sudder Adawlut which had been discontinued since the Regulating Act; and the Adawlut procedure, he added, was that the appeals were determined by the Board as a whole on

the recommendation of the Keeper of the Khalsa Records, the members of the Council not hearing evidence at all.

This was not a satisfactory way out of the difficulty, and Hastings seems to have felt that it was so. He therefore on September 29, 1780 proposed a new scheme by which the Sudder Dewani Adawlut should be presided over by the Chief Justice and should not only receive appeals in all causes exceeding a certain amount, but also exercise a general oversight in connection with the proceedings of all the inferior courts. This was carried by the casting vote of the Governor-General, and the necessary regulations were issued on November 3, 1780. This able and enlightened project coincided, it must be remembered, with the restoration of the collectors to their old position of importance. It would have lessened the friction between the Council and the Supreme Court, and have gradually fused the Sudder Dewani Adawlut and the Supreme Court together in the same way as was effected eighty years later.

Unfortunately the scheme was wrecked owing to Impey's having, without proper authority, accepted the appointment; it carried a large salary, made him a servant of the Company, and thus destroyed to some extent the independence of his position. It is clear that the Company's officials might come before the Supreme Court, though they were not likely to do so after the Cossijurah Case, and it might be felt that the Supreme Court owing to Impey's position as a salaried officer of the Company was not one of impartiality. On the other hand, as Dr. Firminger very properly points out, had the Sudder Dewani Adawlut been made really effective, it was unlikely that a case would arise in which the Chief Justice would feel the embarrassment of his position. But personal factions were too strong, and although Impey at once proceeded to reform the Diwani Courts* the Directors in 1782 ordered the Council to resume its jurisdiction. In May of that year the House of Commons voted for the recall of the Chief Justice, and one of the articles

* He drew up a valuable code (Regulation VI of 1781) relating to the civil procedure in the 18 courts which had just been established and in four only of which the collector was judge. It was reissued as amended in 1787.

of his impeachment was his acceptance of the judgeship of the Sudder Dewani Adawlut. The result of these troubles was an inquiry into the whole question by Parliament in 1781 and resulting legislation.

21 Geo. III. c. 65 prolonged the Company's monopoly and laid down various regulations as to financial and military matters.

21 Geo. III. c. 70 was more important because it dealt with some at least of the points at issue. The preamble spoke of doubts and difficulties as to the meaning of the Regulating Act, of dissensions between the judges of the Supreme Court and the Governor-General and Council of Bengal, and of the fears and apprehensions which have disquieted the minds of those subject to the Government of India; it adds that

"it is expedient that the lawful government of the Provinces of Bengal, Bihar and Orissa should be supported, that the revenues thereof should be collected with certainty, and that the inhabitants should be maintained and protected in the enjoyment of all their ancient laws, usages, rights and privileges."

It then goes on to provide as follows:

1. The Governor-General and Council of Bengal, acting as such, are not to be subject to the jurisdiction of the Supreme Court.
2. If an action is brought against anyone in the Supreme Court for acts done by order of the Governor-General and Council in writing they can plead that order in justification.
3. But with respect to such an order as extends to a British subject the Court should have as full and complete jurisdiction as if that Act had not been made.
4. The Governor-General and Council and anyone acting under their orders were to remain liable to complaint before any competent court in England.
5. If anyone made a complaint to the Supreme Court against the Governor-General and Council or those acting under their order and would execute a bond under suitable penalty with another person considered responsible to prosecute the complaint in Great Britain within two years, they were to have certified copies of the orders complained of and other facilities secured by the Regulating Act.
6. Such certified copies were to be accepted as evidence in the courts at Westminster.
7. All suits save those before Parliament had to be commenced within five years of the offence or the arrival of the party complained of in England.

8. The Supreme Court was not to have or exercise any jurisdiction in any matter concerning the Revenue, or concerning any act or acts ordered or done in the collection thereof, according to the usage or practice of the country or the Regulations of the Governor-General and Council.

9. And for removing all doubts concerning the persons subject to the jurisdiction of the said Supreme Court it was enacted that no person should be subjected to the jurisdiction of the Supreme Court by reason of his being a landowner, landholder, or farmer of land, or of Land Rent, or for receiving a Payment or Pension in lieu of any Title to, or ancient Possession of, Land or Land Rent, or for receiving any compensation or share of profits for collecting of rents payable to the public out of such lands or districts as are actually farmed by himself or those who are his undertenants in virtue of his farm, or for exercising within the said lands and farms any ordinary or local authority commonly annexed to the possession or farm thereof within the provinces of Bengal, Bihar and Orissa or for or by reason of his becoming security for the payment of the rents reserved or otherwise payable out of any lands or farms, or farms of land within the provinces of Bengal, Bihar and Orissa.

10. No person for or by reason of his being employed by the Company or the Governor-General and Council or by any person deriving authority under them, or for or on account of his being employed by a native or descendant of a native of Great Britain should become subject to the jurisdiction of the Supreme Court in any matter of inheritance or succession to lands or goods, or in any matter of dealing or contract between party or parties, except in actions for wrongs or trespasses and also except in any civil suit by agreement of parties in writing to submit the same to decision of the said Court.

11-16. Proper Registers of the natives employed by the Company and by British subjects to be kept and none who are not so registered to be employed.

17. The Supreme Court in actions between Hindu and Mohammedan inhabitants of Calcutta dealing with inheritance and contract should determine them by Hindu and Mohammedan Law respectively and where one party only was a Hindu or Mohammedan by the laws and usages of the defendant.

18. The rights and authorities of fathers of families and masters of families according as the same might have been so exercised by the Hindu or Mohammedan Law should be preserved to the Hindus and Mohammedans respectively within their families, nor should any acts done in consequence of the Rule and Law of Caste respecting the members of the said families only be held and adjudged a crime although the same might not be held justifiable by the laws of England.

19. The Supreme Court might frame such forms of process and make such rules and orders for the execution thereof in suits against the natives as should suit their religion and manners.

20. Such forms were to be transmitted to one of the Secretaries of State for His Majesty's approval.

21. The Governor-General in Council was to be still a court and its determinations on appeal as before were to be final save on to His Majesty in civil suits the value of which should be £5,000 and upwards.

22. This Court should determine on all offences abuses and extortions committed in the collection of the revenue and should punish for the same short of death maiming or perpetual imprisonment.

23. The Governor-General and Council should have power to frame regulations for the Provincial Courts and Councils. Copies were to go to the Directors and to one of the Secretaries of State. His Majesty might amend them in Council.

24. No action was to lie in the Supreme Court against judicial officers in the Country Courts for any decree or for consequent action taken.

25, 26. Rules were laid down as to information brought against judicial officers for corruption.

27. The Patna Cause settled.

28. The Governor-General and others indemnified.

This Act then made a bold attempt to settle the difficulties to which the ill-advised and ignorant policy of the framers of the Regulating Act had given rise. It checked any attempt to introduce English law wholesale into India. It recognized the Sudder and Provincial Courts as institutions having an independent existence. It upheld the authority of the Governor-General and Council, and it gave the right of legislation which was not to be subject to the veto of the Supreme Court. At the same time, it guaranteed to the Hindus and Mohammedans the protection of their own laws and customs. A new code was issued in 1781 in Bengal which gave effect to these ideas and which was succeeded by a continuous stream of useful regulations.

Professor Cowell has remarked with reference to one important point above :

"The Supreme Council, therefore, had from the first a twofold power of legislation conferred by two separate Acts of Parliament. The one enabled them to make laws for the good order and civil government of the settlement at Fort William and all factories and places subordinate thereto, and to make any Regulations not repugnant to the laws of the realm, and to enforce them by reasonable sanctions ; but the exercise of the power was subject to the supervision of the Court. . . .

The second power of legislation was derived from the Act of 1781, by which the Governor-General and Council or some committee thereof or appointed thereby was empowered as a Court of Record to determine on appeals or references from the Country or Provincial Courts in civil causes ; and from time to time to frame

Regulations for the Provincial Courts and Councils. . . . It was under this Act that, notwithstanding the limited purpose it professed to have in view, most of the Regulation Law was passed. The Supreme Court had no power of supervision or of veto in reference to any enactments passed in pursuance of this Statute, and in consequence the Council preferred to legislate under its provisions in preference to those of the earlier Act. But the Court, on the other hand, was not in terms nor in effect bound by any Regulations which were not duly registered by it."

It is beyond the scope of this short sketch to go into the very difficult subject of the impeachment of Sir Elijah Impey, or into the far greater one of the impeachment of Warren Hastings. Opinion has altered very much since the days of Macaulay, and the pendulum has swung again. We are indeed, perhaps happily, in danger of forgetting the few faults of Hastings in our anxiety to do justice to one whose character was so cruelly besmirched. It is greatly to be lamented that Sir James Fitzjames Stephen, who dealt with Impey's case with so much acuteness and candour, did not, as he at one time intended, also deal with that of Hastings. Perhaps, however, a short quotation from his well-known book may conclude this chapter :

"If a man's ability is measured by a comparison between his means of action and the results of his action, he (Hastings) must I think be regarded as the ablest Englishman of the eighteenth century. In a striking paper which he read to the House of Lords in 1791, and to which, should I ever write the history of his impeachment, I should refer at length, he said, so far as I can judge with strict truth, 'every division of official business which now exists in Bengal, with only such exceptions as have been occasioned by the changes of authority enacted from home, are of my formation. The establishment formed for the administration of the revenue, the institution of the Courts of Civil and Criminal Justice in the province of Bengal and its immediate dependencies ; the form of government established for the province of Benares with all its dependent branches of revenue, commerce, judicature and military defence ; the arrangements created for subsidy and defence of the province of Oudh, every other political connection and alliance were created by me.' "

A SUMMARY OF THE CONSTITUTIONAL HISTORY OF BENGAL UP TO 1793.*

1632. Arrival of the English in Orissa.

1681. The Bay of Bengal created a separate trade division.

* I have adopted Mr. Ascoli's table, but have made a few additions to it.

- 1698. Grant of the lease of the villages of Calcutta, Chattranutti and Govindpur.
- 1717. Proposed lease of 38 villages.
- 1756. Capture of Calcutta by Suraj-ud-Daulah.
- 1757. Treaty with Suraj-ud-Daulah. Confirmation of the lease of 1717.
- 1757. Plassey. Mir Jaffir made Nazim.
- 1757. Treaty with Mir Jaffir. Cession of the 24 Paganas.
- 1759. The grant confirmed by the Emperor.
- 1760. Treaty with Kasim Ali Khan and Cession of Burdwan Midnapore and Chittagong.
- 1763. Mir Jaffir confirms this Cession.
- 1765. Grant of the Diwance.
- 1766. Clive takes his seat as Diwan. The Nabob sits as Nazim, the Criminal Magistrates.
- 1769. Appointment of Supervisors.
- 1770. Appointment of Councils of Revenue and Justice at Patna and Murshidabad
- 1772. The Company "stands forth as Diwan." Abolition of the Naib Diwanship. The appointment of the Collectors. The Committees of Circuit. The Adawlut system. Hastings sits in the Nizamut Adawlut.
- 1773. Temporary abolition of Collectors. Creation of a controlling Council of Revenue and six provincial Councils for Judicial Revenue and Trade matters at Calcutta, Burdwan, Dacca, Murshidabad, Dinajpore and Patna. Judicial affairs managed by native judges with appeals to the Provincial Council and thence in certain cases to the Governor and Council in the Sudder Adawluts. Faujdars appointed for the police.
- 1773. The Regulating Act.
- 1774. The Supreme Court.
- 1775. Nizamut Adawlut sent back to Murshidabad under the Nazim Mahomed Riza Khan.
- 1777. Deputation of Amins.
- 1781. Dissolution of Controlling Committee and provincial Councils. Creation of Committee of Revenue. Reappointment of Collectors. Impey's appointment at the Adawlut. Creation of the six Courts under the Dewani Adawlut. Faujdari system abolished; police jurisdiction in some cases given to zemindars. Impey's regulations.
- 1782. Impey's appointment at the Adawlut abolished. The Governor-General and Council resume jurisdiction over the Sudder Dewani Adawlut which now becomes a King's Court.
- 1784. The India Bill of Pitt.
- 1786. Reformed scheme of judicial administration. Courts of Dewani Adawlut to be under the Collector. Where there was no Collector they were to be presided over by a special judge (Murshidabad, Dacca and Patna). The Board of Revenue takes the place of the Committee of Revenue.

- 1786. Arrival of Lord Cornwallis.
- 1787. Publication of rules as to evidence.
- 1788. Impeachment of Warren Hastings.
- 1790. The Governor-General accepts the responsibility for the administration of Criminal Justice. The Nizamut Adawlut removed from Murshidabad to Calcutta and vested in the Governor-General and Council with the aid of the Kazi and two Mullahs. Courts of Circuit established, each supervised by two covenanted civil servants.
- 1793. The Permanent Settlement introduced, establishment of a Court presided over by a native Commissioner in every district for small cases. In each district a judge or magistrate having cognizance of all civil suits in the first instance.

CHAPTER V

PITT'S INDIA BILL

FEELING on the subject of India continued to run high in England. It was partly the result of genuine and well-founded anxiety, but it was also partly being fanned in the interests of political agitation, and partly again fomented by dissatisfied enemies of Hastings in India. Two Parliamentary committees had been appointed to inquire into Indian affairs in 1781. The deliberations of one of them had resulted in the Act, of which we have spoken, dealing with the Supreme Court. The other was concerned chiefly with the war against the Marathas. Both reported on the Company's rule in terms that called for action, but the ebb and flow of political parties prevented that action from being taken at once. Parliament censured Hastings in the days of the Rockingham ministry and the Directors consented to his recall; but Rockingham gave place to Shelburne, and the Court of Proprietors would not listen to the Directors. Then came the coalition between Fox and North under which the East India Company admitted that they were in a very difficult financial position. Dundas, who had been chairman of the committee on the Carnatic War, brought in a Bill in 1783, but it gave place to Fox's more celebrated India Bill of the same year. This would have placed the powers exercised by the Directors and proprietors in the hands of a Board of Seven Commissioners, to be nominated at first by Parliament and later by the Crown. Commercial matters were to be regulated by a subordinate body of nine assistant directors, chosen at first by Parliament and later by the proprietors from among the largest stockholders.

This Bill was thrown out in the Lords largely through the influence of King George III, who saw in this a means of getting rid of the unpopular coalition.

After the elections of 1784 Pitt, who was now in office, was forced to bring in a Bill on the same subject. He had been one of the greatest opponents of Fox's Bill, but his own had precisely the same end in view, that of giving the British Government a real control over the affairs of the Company. The particulars of this famous statute, 24 Geo. III. c. 25, were as follows :

1. His Majesty is empowered to appoint six Privy Councillors, of whom one of His Majesty's principal Secretaries of State and the Chancellor of the Exchequer shall be two, who are to be Commissioners for the affairs of India.
2. Three of them (the quorum) are to form a Board for executing the powers given or to be given to them.
3. The Secretary of State to be president (or in his absence the Chancellor of the Exchequer, or failing him the senior Commissioner). The said Commissioners to have "the superintendence and control over all British Territorial possessions in the East Indies, and over the affairs of the United Company of Merchants trading thereto," in the manner thereafter directed.
4. The President to have a casting vote in case of equality.
5. The Commission can be revoked at any time and a new one appointed, but the number of members is always to be six.
6. "The said Board shall be fully authorized and empowered, from time to time, to superintend, direct, and control, all acts, operations, and concerns, which in any wise relate to the civil or military government or revenues of the British territorial possessions in the East Indies in the manner hereinafter directed."
7. Secretaries, etc., to be appointed.
- 8 and 9. Oaths of office.
10. Neither the Commissioners nor their Chief Secretary are to be disqualified from being elected members of Parliament under 6 Anne, c. 7.
11. "And to the intent that the said Board may be duly informed of all transactions of the said Company in respect to the management of their concerns in the East Indies; be it further enacted, that all the members of the said Board shall, at all convenient times, have access to all papers and muniments of the said United Company, and shall be furnished with such extracts or copies thereof, as they shall from time to time require; and that the Court of Directors of the said United Company shall, and are hereby required and directed to, deliver to the said Board, copies of all minutes, orders, resolutions, and other proceedings, of all general and special courts of proprietors of the said Company, and of the said Court of Directors, so far as relate to the civil or military government or revenues of the British territorial possessions in the

East Indies, within eight days after the holding of such respective courts; and also copies of all dispatches which the said Directors, or any committee of the said Directors, shall receive from any of their servants in the East Indies, immediately after the arrival thereof; and also copies of all letters, orders, and instructions whatsoever, relating to the civil or military government or revenues of the British territorial possessions in the East Indies, proposed to be sent or dispatched, by the said Court of Directors, or any committee of the said Directors, or any of the servants of the said Company in the East Indies; and that the said Court of Directors of the said United Company shall, and they are hereby required to pay due obedience to, and shall be governed and bound by, such orders and directions as they shall from time to time receive from the said Board, touching the civil or military government and revenues of the British territorial possessions of the East Indies."

12. Within fourteen days after receipt such copies are to be returned to the Court of Directors with their approbation subscribed by three members of the said Board or their reasons at large for disapproval together with their instructions and the instructions are to be sent out as amended and not otherwise and none sent without such submission.

13. Should the Directors delay in sending suitable instructions for the approval of the Board, the Board may prepare such and the Directors must forward them.

14. If orders or instructions are sent by the Board to the Court which do not in the opinion of the Court relate to the government and revenues of the territories and possessions in India then the Court may appeal to His Majesty in Council.

15. Secret orders may be sent to the Secret Committee of the Court, who shall forward them.

16. The Directors are to appoint this Secret Committee of not more than three and they are when necessary to transmit secret orders without informing the other Directors.

17. The Board of Control is not to appoint any of the servants of the Company.

18. The first vacancy in the Council at Fort William (other than that of the Commander-in-Chief) shall not be filled up by the Court. Then the Supreme Government henceforth will consist of a Governor-General, and three Supreme Councillors.

19. The Governments of Fort St. George and Bombay shall consist of a Governor or President and three Councillors only unless the Commander-in-Chief of India be there when he shall sit and vote and the local Commander-in-Chief shall sit only.

20. The Court of Directors shall within a month after the passing of the Act nominate and appoint from amongst the servants of the Company in India or any other person a fit and proper person to be the Governor and two other persons from among other servants in India who together with the Commander-in-Chief shall form the Council at Fort St. George and the same for Bombay.

21. The Governor-General or Governor or President is to have a casting vote in cases of equality.

22. His Majesty the King or the Court of Directors may recall any officer in India at any time.

23. On vacancies arising the Court shall nominate from among their servants in India excepting in the cases of the Governor-General, or Governors or Presidents, or Commander-in-Chief, in which cases they are not to be so limited.

24. The Commander-in-Chief is not to succeed to the Governor-Generalship or Governorship unless specially appointed by the Court of Directors. In case of an interim vacancy occurring the Councillor next to the Commander-in-Chief shall succeed till other arrangements are made.

25. If the Directors neglect to supply vacancies the King may do so, and if he does so those appointed shall hold office till he recalls them.

26. The Company may appoint qualified persons to succeed to these high posts in case of a vacancy, but they are not to receive pay till they assume office.

27. In such cases the senior man shall act.

28. Resignation by the Governor-General, Governor, Commander-in-Chief, or Councillors is to be by "Instrument in writing under the hand of the officer or person resigning the same."

29. Orders of the Court of Directors which have been approved by the Board are not to be affected or revoked by any resolution of the General Court.

30. The Directors are no longer to hand over copies of letters as directed by 21 Geo. III. c. 65.

31. "And be it further enacted, that the Governor-General and Council at Fort William aforesaid shall have power and authority to superintend, control, and direct the several presidencies and governments now or hereafter to be erected or established in the East Indies by the said United Company, in all such points as relate to any Transaction with the country powers, or to war or peace, . . . or to any such other points as shall, from time to time, be specially referred by the Court of Directors of the said Company to their superintendence and control."

32. "And in order to prevent the embarrassment and difficulty which may arise from any question, whether the orders or instructions of the Governor-General and Council of Fort William relate to other points than those aforesaid, be it further enacted, That notwithstanding any doubt which may be entertained by the said presidencies or settlements to whom such orders or instructions shall be given, respecting the power of the Governor-General and Council to give such orders, yet the said presidencies or settlements shall be bound to obey such orders and directions of the said Governor-General in all cases whatever, except only where they shall have received positive orders and instructions from the said Court of Directors, or from the Secret Committee of the said Court of Directors, repugnant to the Orders and Instructions of the said Governor-General and Council, and not known to the said Governor-General and Council at the time of dispatching their orders and instructions as aforesaid; and the said Governor-General and Council shall at the time of transmitting all such orders and instructions,

transmit therewith the dates of, and the times of receiving the last dispatches, orders, and instructions which they have received from the Court of Directors, or from the Secret Committee of the said Court of Directors, on any of the points contained therein: And the said Presidencies and Governments, in all cases where they have received any orders from the said Court of Directors, or from the Secret Committee of the said Court of Directors, as aforesaid, which they shall deem repugnant to the orders of the said Governor-General and Council of Fort William, and which were not known to the said Governor-General and Council at the time of dispatching their orders and instructions as aforesaid, shall forthwith transmit copies of the same, together with an account of all Resolutions and orders made by them in consequence thereof, to the Governor-General and Council of Fort William, who shall, after the receipt of the same, dispatch such further orders and instructions to the said Presidencies and settlements as they may judge necessary thereupon."

33. The Governments in India shall first deal with the business proposed by the Governor-General or President. If any other Councillor proposes business the Governor-General or President may adjourn the discussion for not over 48 hours and not more than twice without the consent of the proposer.

34. And whereas, to pursue schemes of conquest and extension of dominion in India, are measures repugnant to the wish, the honour, and policy of this nation, the Governor-General and Council are not without the authority of the Directors or the Secret Committee to declare war or commence hostilities, or enter into any treaty for making war against any of the country princes or states in India, or any treaty of guarantee. The exceptions, which are closely guarded, are the cases in which hostilities have actually been begun or preparations actually made for the commencement of hostilities against the British nation in India or against some of the princes or States dependent thereon, or those whose territory the Company has guaranteed.

35. The Governors or Presidents of Fort St. George or Bombay are not to commence hostilities or negotiate or conclude any treaty with any Indian Prince or State, "except in cases of sudden emergency or imminent danger, when it shall appear dangerous to postpone such hostilities or treaty," unless in pursuance of express orders from the said Governor-General and Council of Fort William, or from the Directors, or from the Secret Committee, "and every such treaty shall, if possible, contain a clause for subjecting the same to the ratification of the Governor-General and Council of Fort William." And in such matters the Governors and Presidents must be obedient to the Governor-General and Council of Fort William.

36. If they are not obedient they may be suspended. They must send such copies of orders, resolutions, acts of Council, and any other information that may be required.

37. The Court of Directors are to take into consideration the demands of British subjects on the Nabob of Arcot.

38. And also the disputes between the same Nabob and the Rajah of Tanjore.

39. Complaints of rajas, zemindars and other native landowners within British territories against the Company are to be considered and if well founded redressed.

40. All the Company's establishments civil or military are to be taken into consideration by the Court of Directors and all possible retrenchments and reductions are to be made. A list of the establishment with their emoluments is to be laid before the Houses of Parliament within 14 days of the beginning of every session.

41. Until such lists have been made no new officers under the rank of Councillors or Commander-in-Chief to be sent out and afterwards only sufficient to fill vacancies.

42. Promotions under the rank of Councillor or Commander-in-Chief are to be according to seniority, save in special cases where reasons are to be stated to the Court.

43. Cadets are not to go out under 15 years of age nor over 22; not over 25 when they have served a year in the army.

44. "And be it enacted, that all His Majesty's subjects, as well servants of the said United Company as others, shall be and are hereby declared to be, amenable to all Courts of Justice (both in India and Great Britain) of competent jurisdiction to try offences committed in India, for all acts, injuries, wrongs, oppressions, trespasses, misdemeanours, crimes, and offences whatsoever, by them or any of them done, or to be done or committed, in any of the lands or territories of any native Prince or State, or against their persons or properties, or the persons or properties of any of their subjects or people, in the same manner as if the same had been done or committed within the territories directly subject to and under the British Government in India."

45. "And be it further enacted, that the demanding and receiving of any sum of money, or other valuable thing, as a gift or present, or under colour thereof, whether it be for the use of the party receiving the same, or for, or pretended to be for, the use of the said Company, or of any other person whomsoever, by any British subject holding or exercising any office or employment under His Majesty, or under the said United Company in the East Indies, shall be deemed and taken to be extortion, and shall be proceeded against and punished as such, under and by virtue of this Act; and the offender shall also forfeit to the King's Majesty, his heirs and successors, the whole gift or present so received, or the full value thereof."

46. The Court may order the present to be returned.

47. The Statute 13 Geo. III. c. 63 is repealed so far as it relates to penalties for taking presents, or as it gives the presents to the Company.

48. Counsellors-at-law, physicians and chaplains may take professional fees.

49. Servants of the Company who disobey the Court of Directors' orders are guilty of misdemeanour.

50. Making bargains for the giving up or obtaining any office by British subjects resident in the East Indies is to be a misdemeanour.

51. The Company are not to restore servants dismissed by a Court of Law.

52. Oath of office.

53. The Governor-General may issue his warrant for securing any person suspected of carrying on illicit correspondence with persons in authority in India.

54. And so may the Presidents and Governors of Bombay and Fort St. George.

55-62. Servants of the Company after the 1st of January 1787, within two months of their return to Great Britain are to deliver upon oath before two of the Barons of the Exchequer an inventory of their real and personal estate wherever it may be, at the time of their arrival, unless in special circumstances.

63. No officer of the Company in India after his return to the United Kingdom residing in Europe for five years (save on account of health) shall be capable of reappointment to India unless by the Court of Directors with the approbation of three-fourths of a general Court of Proprietors specially convened for the purpose.

64. In cases of extortion or other misdemeanours in the East Indies process can be by rule or information in the King's Bench and the offender may be committed pending security or trial.

65. The information may proceed if the offender does not appear.

66. Within thirty days of the commencement of every session a special Court with appropriate powers consisting of three judges, four peers, and six commoners was to be chosen for the trial of informations for extortion and other misdemeanours.

This great statute remained the basis of the Government of India until the Mutiny. The main point was that the Company was now subject to a Government Department which was known as the Board of Control, at the head of which sat one of the Secretaries of State. Practically, Henry Dundas, the friend of Pitt, and the statesman whom Mill has described, ran the Board till 1793, when the salaried office of President of the Board of Control was created. Mill, writing of the Board, says :

"The Commissioners never now sit as a Board, though it appears that in former times they did so, and minutes of the attendance of Mr. Dundas, Mr. Pitt, and others exist. Subsequently, when there were two paid junior Commissioners, there were occasional meetings ; but since the only paid Commissioner has been the President, no Board has been held. The President is regarded as acting on his own responsibility.

The fiction of a 'Board' is however still kept up, by the signature of one of the ex-officio members being, in conformity with the law, attached to all the documents recording the decisions of the President."

It may be noted that though the Company was now under the control of the Government it still had the very considerable power which patronage and special knowledge gave. The special court for the trying of Indian offences, though the subject of further legislation in 1786, has never been made use of.

The great Act had no sooner been passed than it was seen that amendments were necessary. Lord Cornwallis wished for more authority if he was to go out as a Governor-General, and in consequence the Act 26 Geo. III. c. 16 gave the Governor-General the power to decide questions when he considered it necessary to do so even against the opinion of the majority of his council. And another section of the same Act, 26 Geo. III. c. 16, provided that the same man might be Governor-General and Commander-in-Chief, thus increasing his power. And another Act of this session, 26 Geo. III. c. 25, said that the King's consent was not to be necessary for the choice of Governor-General. And yet again 26 Geo. III. c. 57 took away the necessity for the officials of the Company to furnish inventories of their property on their return to England. This was the statute which revised the regulations as to the special court designed by Pitt's India Bill. It also said that all servants of the Company as well as all other subjects of His Majesty resident in India were to be amenable to the Courts of Oyer and Terminer and Gaol Delivery and Courts of General or Quarter Sessions of the Peace in any of the British Settlements in India for all crimes and misdemeanours committed in the countries between the Cape of Good Hope and the Straits of Magellan within the limits of the exclusive trade of the Company, and whether committed against any of His Majesty's subjects or against anyone else. It also settled on a new basis the jurisdiction of the Madras Courts, giving them civil and criminal jurisdiction over all British subjects whatsoever residing in the Company's possessions on the Coromandel Coast

"or any other part of the Carnatic, or in the five Northern Circars, including those parts of them within the province of Orissa, or within any of the territories of the Soubah of the Deccan, the Nabob of Arcot, or the Rajah of Tanjore."

A constitutional point of some importance was raised in 1788. The expenses of sending out English troops to India was borne before 1781 by the Home Government. But in the Act of 1781 a definite scale of payment by the Company, two lakhs per annum for each regiment, was agreed upon, provided they were sent out on the requisition of the Company (sec. 77). Some correspondence on the subject of the payments due took place between the Company and the Government in 1785 and 1786, and in 1787 the matter came to a clear issue. The Board of Control through Mr. Dundas informed the Directors that the King had ordered four regiments to be raised for service in India, the Court being allowed to nominate seventy-five officers. There was some difficulty as to the precedence of the officers, so the Directors wished on that ground, and on the ground of economy, that the King would withdraw his order. This the Government refused to do. The Court therefore said that they could not accept the regiments and that they were not liable for the consequent expense. There was a good deal of discussion, and in February 1788 Pitt moved in the House of Commons for leave to bring in a Bill for removing all doubts upon the matter. This took very high ground on the question of the powers of the Board of Control. The number of troops was indeed specified, but the Board of Control were given powers of charging the expenses of those sent out to the Company (28 Geo. III. c. 8); this was the first legislative enactment which settled the number of the King's troops that could be sent to India and maintained from the revenues of that country.

The Company's Charter had been continued till 1793, and when it was renewed an Act was passed of great length which dealt with the whole question of the Company's position. 33 Geo. III. c. 52 was not, it has been pointed out, subjected to much criticism because of the beginning of the Great War. It introduced a considerable number of small changes and a few of importance. The following points may be noted:

The Board of Control (as we may now call it) might include two members who were not Privy Councillors; salaries would be paid

to the Board and their officers, and were to be provided by the Company. The Commissioners and their Chief Secretary might be members of Parliament. The powers of the Board were made very wide and were to amount to the whole ultimate direction of the affairs of the Indian possessions. The views which Mr. Dundas had expressed in the discussions of 1788 were carried out, namely that if it should appear necessary for the security of our Indian possessions, the Board had power to apply the whole of the Revenue of India to purposes of defence, without leaving a single rupee for the Company's investment.

Section 32 provided that the Commander-in-Chief at the three Presidencies when not the Governor-General or Governor might by the authority of the Directors be second member of the Council. If a Governor-General, Governor, Member of Council, or Commander-in-Chief left for Europe he thereby resigned his office (Section 37). The Governor-General's "power and authority to superintend, control and direct" the Governments of Madras and Bombay "and all other Governments erected or to be erected by the said United Company, within the limits of their said exclusive trade, in all such points as shall relate to any negotiations or transactions with the country Powers or States, or levying war or making peace, or the collection or application of the revenues of the said acquisitions and territories in India, or to the forces employed at any of such Presidencies or Governments, or to the civil or military government of the said Presidencies, acquisitions, or territories, or any of them," is specified in Section 40. The other Presidencies are to obey the orders of the Governor-General at Fort William if not repugnant to the instructions from England (Section 41). Section 51 provided that the Governor-General and the Governors were not to make or carry into execution any order against the opinion of the counsellors of their respective Governments, "in any matter which shall come under the consideration of the said Governor-General, and Governors in Council respectively, in their judicial capacity; or to make, repeal, or suspend any general rule, order, or regulation for the good order and civil government of the said United Company's settlements; or to impose, of his own authority, any tax or duty within the said respective governments or presidencies." But Section 47 continues the power already given of overriding the wishes of the Councils in the case of Governor-Generals and Governors, provided the order would have been lawful if made by the Governor-General or Governor in Council. The Governor-General when absent on tour is to nominate (Section 53) a Vice-President to act during his absence, but he can on his own responsibility issue orders while absent to the Government's officers of any part of India. The Act contained various financial clauses of great importance. The Supreme Court at Fort William was stated to possess Admiralty jurisdiction in criminal matters over offences committed not only on the Coasts of Bengal, Bihar and Orissa but also on the High Seas (Section 156). The Governor-General and Council of Fort William were authorized to appoint covenanted servants of the Company and other British subjects as Justices of the Peace for any of the Provinces or Presidencies (Section 151; not merely for Bengal, Bihar and Orissa as

is often stated). Such Justices were not to sit in Courts of Oyer and Terminer and Gaol Delivery unless requested by the Justices of those courts to do so. Coroners might be appointed. The Company's monopoly was continued for a period of twenty years. Appointments to the offices of Governor-General, Governor, and Commander-in-Chief were to be made by the Directors but subject to His Majesty's approbation.

The Charter Act of 1793 following on Pitt's India Bill may be taken to be one of the great dividing points in the history of British India. The English were now in possession of a large territory and were taking steps, many of them still experimental in their nature, to consolidate their system of government. In a work written on the modest scale of this book we can but sketch some of the leading features of the constitutional development which follows.

CHAPTER VI

THE LAST DAYS OF THE COMPANY

THE Charter Act of 1793 had renewed the powers and privileges of the Company for another twenty years; years, it must be noted, which saw the birth of a new Europe, and years in which ideas which could not but have their influence upon institutions like the East India Company became the common property of all thinking men. The few Acts which were passed between 1793 and 1813 show that the condition of India still excited the interest and concern of the British Parliament, even occupied as it was with the more vital matters involved in the struggle for national existence. The Governor-Generals of the time, the Marquis Cornwallis, the Marquis Wellesley, and Lord Minto, were all men of great ability and all devoted to the great task they had undertaken. They differed from each other in many respects, but each in his own way added to the structure of which Hastings, who lived in a less grateful time, had laid the foundations.

37 Geo. III. c. 117 gave the right, under suitable regulations, to be made by the Directors and approved by the board of control, to ships of friendly countries to import goods into India. Another statute of the same session, 37 Geo. III. c. 142, enacted that no British subject could lend money to or raise any money for a native prince of India without the consent of the Court of Directors or the Governor in Council. If he violated this rule he was guilty of misdemeanour and his security void. This statute, as Mr. Cowell has pointed out, had important provisions regarding legislation. It recognized the legislative powers of the

Governor-General in Council for Bengal and ordered that the regulations passed by Government should be formed into a code, printed with a translation, and the grounds of such regulations prefixed. The provincial courts of justice were to regulate their decisions by the rules and ordinances which such regulations contained. The same kind of powers were granted to the Governor and Council of Madras in 1800, and in 1807 another Act (see below) gave the same powers to the Governors in Council of both Madras and Bombay, but the regulations had to be registered in the respective Supreme Courts. The Governor-General, though he had authority over the Governors of Madras and Bombay in political and revenue matters, does not seem to have exercised control over them in regard to legislation.

In 1799, the statute 39 Geo. III. c. 109 revised the rules as to the recruiting of the forces of the Company. The cost of the recruiting until the transfer was made to the service of the Company was to be borne by the Company, but the actual management was to be in the hands of the Crown. Suitable regulations as to discipline and limitations as to numbers were provided. This Act was amended slightly in 1810. The Act of 1800 as to law courts (39 & 40 Geo. III. c. 79) will be noticed in its appropriate place; and an Act of 1802 (42 Geo. III. c. 85) for extending the facilities for prosecuting officials out of Great Britain for offences committed in the execution of or under colour of office testifies to the attention excited by the possibility of such occurrences. In 1807 (47 Geo. III. session 2, c. 68) the Governments in the East Indies were authorized to establish banks of which the Company's servants could, with the exception of judges, become managers or directors.

We now come to the eventful years when the whole question of the administration of the Company came under inquiry and when its Charter was once more renewed. The result of the inquiry, which lasted from 1808 to 1812, was published in the well-known Fifth Report, and it led to the Charter Act of 1813, quoted as 53 Geo. III. c. 155. There was obviously a great improvement in the East India Company's management,

though its financial position was not a strong one. But its monopoly and the control it exercised over those who might wish for more freedom from various motives—notably missionary zeal—were the two points upon which most attention was directed; the two are intimately connected together. The views of the Government were expressed in the thirteen resolutions which after much debate were substantially represented by the Act of 1813. The following is a brief analysis of that Act:

The preamble states that it is desirable that the territorial possessions of the Company should, "without prejudice to the undoubted sovereignty of the Crown of the United Kingdom of Great Britain and Ireland, in and over the same, or to any claim of the said United Company to any rights, franchises, or immunities, remain in the possession and under the government of the said United Company for a further term . . . and it is expedient that from and after the 10th day of April 1814, the right of trading trafficking, and adventuring in, to, and from, all ports and places within the limits of the said United Company's present Charter, save and except the dominions of the Emperor of China, should be open to all His Majesty's subjects, in common with the said United Company, subject to certain regulations and provisions; but that the existing restraints respecting the commercial intercourse with China should be continued, and the exclusive trade in tea preserved to the said Company, during the further term hereby limited."

The early Sections therefore provide that the territories of the Company shall be under the government of the Company for a further period of twenty years, but it is laid down that excepting in regard to the Chinese trade the old monopoly is to cease. It is true that the Indian trade is only to be open under careful restrictions, but the step has been taken. The question of missions was one as has been said about which there had been much dispute. We seem to hear echoes of various views upon the subject in Section 33 which begins: "And whereas it is the duty of this country to promote the interest and happiness of the native inhabitants of the British dominions in India; and such measures ought to be adopted as may tend to the introduction among them of useful knowledge, and of religious and moral improvement: and in furtherance of the above objects, sufficient facilities ought to be afforded by law to persons desirous of going to and remaining in India, for the purpose of accomplishing those benevolent designs, so as the authority of the local governments respecting the intercourse of Europeans with the interior of the country be preserved, and the principles of the British Government, on which the natives of India have hitherto relied for the free exercise of their religion be inviolably maintained." The Act goes on to provide that licences must be obtained for going to India from the Directors (with an appeal to the Board of Control), and that when there such

persons will be subject to the regulations of the local governments, and that they must reside within certain limits. The Board of Control is to have authority over colleges and seminaries which the Company may establish in India and a lakh of rupees a year at least, if available, is to be applied to the "revival and improvement of literature and the encouragement of the learned natives of India, and for the introduction and promotion of a knowledge of the sciences among the inhabitants of the British territories in India"; the Governor-General in Council making suitable regulations subject to the approbation of the Board of Control. The Act recognizes the importance of and deals with the question of the training of the Company's officers, both civil and military. Full provision is also made for the establishment of a Bishop and three Archdeacons with handsome salaries to be paid by the Company.

Copies of Regulations made by the Governments of India under the authority of various Acts of Parliament are to be laid before Parliament by the Directors. Various provisions follow as to the way in which business is to be transacted by the Company and as to the way in which information is to be given to the Board of Control. The Directors are, subject to His Majesty's approbation, to appoint when a vacancy occurs in the office of Governor-General, Governor, or Commander-in-Chief. Various other regulations as to appointments follow. The Company unless they ask for more men are not to be required to pay for a greater number of British troops than twenty thousand officers and men. The Act also regulates various payments and pensions.

As we now reach a portion of the Act which deals with functions associated with regality we have an assertion of the rights of the Crown. It is stated in Section 95 that: "Nothing in this Act contained shall extend or be construed to extend, to prejudice or affect the undoubted sovereignty of the Crown of the United Kingdom of Great Britain and Ireland, in and over the said territorial acquisitions, nor to preclude the said United Company, after the determination of the term hereby granted, from the enjoyment of, or claim to, any rights, franchises, or immunities which they now have, or to which they may hereafter be entitled." The Governments in India are then empowered to make "laws and regulations and articles of war" for the native troops and to hold courts-martial. And, subject to the sanction of the Directors and the approbation of the Board of Control the Governments in India may levy taxes within their jurisdictions. The conclusion is occupied with rules as to the Courts.

It will be observed that though certain privileges were relinquished, much was retained. And yet this Act showed perhaps more than any that preceded it the hold which the British Government was gradually securing over the country. The Company might retain its patronage, but it was clear that it was only a matter of time before the interference in its affairs would be even more extensive

than that of the past. The ideas which had found expression in the democratic movement could not long be withstood.

We may briefly enumerate the legislative enactments which were passed between this Act and the next great statute, that of 1833.

In 1814 we have 54 Geo. III. c. 115 confirming the power of the Indian Governments to levy customs duties and other taxes "as well upon British subjects as foreigners and other persons whomsoever." The same year the Letters Patent dealing with the bishopric of Calcutta were issued.

In 1815 the statute 55 Geo. III. c. 84 gave the Governor-General and Governors in Council power to extend the limits of Calcutta, Madras, and Bombay from time to time. It also made certain improvements as to judicial matters and gave power to the various Indian Governments to remove persons not being British subjects or natives of the British territories in India if they so wished.

Another elaborate Act passed in 1818, 58 Geo. III. c. 83, reduced into one statute the various laws relating to the manner in which the East India Company were required to hire ships. In the same year, 58 Geo. III. c. 84 gave validity to marriages performed in India by ministers of the Church of Scotland, about which there seems to have been some doubt, and which, as Sir Courtenay Ilbert points out, have since formed the subject of Indian legislation (1872). Marriages contracted abroad were recognized again by a statute of 1823, 4 Geo. IV. c. 91. Amongst other statutes of small importance belonging to this time may be mentioned 59 Geo. III. c. 60, which allowed the English Archbishops and the Bishops of London to admit persons to orders specially for service in His Majesty's foreign possessions, such persons not being entitled without further permission to hold ecclesiastical positions in England. It may be doubted whether such an Act was quite in conformity with the teaching of the Church of England; it produced occasional difficulties in practice; but it showed the power of Parliament over the Church on the one hand,

and it allowed men to be ordained though they had not a distinct curacy, or title, in view, as was the case in ordinary English ordinations.

59 Geo. III. c. 69, a foreign enlistment Act of 1819, gave Englishmen permission to enter into the military service of any "state or potentate in Asia, with leave or licence, signified in the usual manner, from the Governor-General in Council, or Vice-President in Council, of Fort William in Bengal, or in conformity with any orders or regulations issued or sanctioned by such Governor-General or Vice-President in Council. In 1820 was passed the statute 1 Geo. IV. c. 99, which empowered the Company to raise and maintain a corps of volunteer infantry not exceeding 800 rank and file from among the persons in their employ.

The Act of 1823, 4 Geo. IV. c. 71, settled that the Company, out of the revenues from the territorial acquisitions, should pay the sums of sixty thousand pounds a year to His Majesty's exchequer, for the pensions of His Majesty's forces serving in India. The same statute settled the pensions of Indian bishops and archdeacons, the chaplains being left to the Company's regulations. It also gave power, which seems to have been doubtful previously, to the Bishop of Calcutta, to admit persons to holy orders, for the diocese of Calcutta only; and it states that unless the person be a British subject belonging to the United Kingdom, he need not take and make the oaths and subscriptions which persons ordained in England are required to take and make. The rest of the Act relates to the establishment of a high court at Bombay, which will be noticed in another place. Another Act of 1823, 4 Geo. IV. c. 80, regulated the proportion of British seamen to be employed on British ships, and gave full rights of trade from port to port to British ships in all places within the Company's sphere with the exception of China.

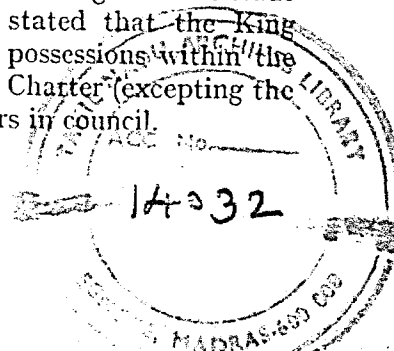
Statute 4 Geo. IV. c. 81 consolidated and amended the laws for punishing mutiny and desertion of officers and soldiers in the service of the East India Company. It was repealed by 3 & 4 Vic. c. 37.

The treaty between England and Holland of March 17, 1824, had settled that all the Dutch possessions on the Continent of India and also the town and fort of Malacca and its dependencies should be ceded to the English, the English handing over Bencoolen and the English possessions in Sumatra. 5 Geo. IV. c. 108 says that Singapore had been occupied by the Company and transfers it and all that had been gained by the treaty to the Company. One result was that Sumatra ceased to be a convict station.

The Act of 6 Geo. IV. c. 85 (1825) further regulated the salaries, pensions, and conditions of service of Indian bishops and judges. It also provided for the administration of justice in Singapore and Malacca. It stated that the ceded possessions on the Coromandel Coast or in the Northern Circars should be placed under Madras, and that the Company could make what arrangements seemed good to them as to Singapore and Malacca.

In 1828, by 9 Geo. IV. c. 72, the provisions of the East India Mutiny Act (4 Geo. IV. c. 81) were extended to the Bombay marine service. It afterwards gave place to another Act, 3 & 4 Vic. c. 37. We have also an elaborate bankruptcy Act for India (9 Geo. IV. c. 73, afterwards renewed and amended) of the same year, and an Act (9 Geo. IV. c. 74) for improving the administration of criminal justice.

When Catholic emancipation came in 1829, Roman Catholics were debarred from voting at or joining in the election of a person to an ecclesiastical benefice or office connected with the Churches of England, Ireland or Scotland: and they could take no part in the appointment of chaplains. In 1829 also, by 10 Geo. IV. c. 62, explaining the Act of Settlement, it was declared that no one elected Governor or Deputy-Governor under the East India Company could sit or vote in the House of Commons. An Act of 1833 (3 & 4 Wm. IV. c. 59), passed to regulate the trade of the British possessions abroad, stated that the King might regulate the trade of British possessions within the limits of the East India Company's Charter (excepting the possessions of the Company) by orders in council.



These, with the exception of a few Acts concerning the administration of justice, to be noted later, are perhaps all the statutes which deserve mention before the renewal of the Charter. But it is worthy of note that the Act 3 & 4 Wm. IV. c. 73 of 1833, which abolished slavery throughout the British Colonies, was expressly stated not to apply to any of the territories in the possession of the East India Company, or to the islands of Ceylon or St. Helena. In this connection, Dr. Firminger has directed attention to the letter from the Governor and Council of Bengal of October 18, 1774, referring to the regulations passed on May 17, 1774. They testify to the enlightened views both of Hastings and the Indian community. The important sections are the 9th and 10th :

"9th. That every person who shall forcibly detain, or sell any man, woman or child, as a slave without a Cawbala or Deed attested in the usual manner, by the Kazi of the place where the slave was purchased by the proprietor, or who shall decoy away or steal any children from their families or places of abode shall be punished as the law to which he is amenable shall direct.

10th. That from the 1st day of July 1774 answering to the 21st day of Rubee Asseny or the 11th Assar Bengal style, no person shall be allowed to buy or sell a slave who is not such already by former legal purchase, and any Kazi who shall grant any Cawbala after that date for the sale of any slave whatever, shall be dismissed from his employment and such Cawbala shall be invalid.

It is necessary to remark upon the two preceding Regulations, that the practice of stealing children from their parents and selling them for slaves, has long prevailed in this country, and has greatly increased since the establishment of the English Government in it. The influence derived from the English name to every man whose birth, language or even habit entitles him to assume a share in its privileges, and the neglect of the judicious precautions established by the ancient law of the country, which requires that no slave shall be sold without a Cawbala or Deed attested by the Kazi, signifying the place of the child's abode (if in the first purchase its parents' names, the names of the seller and purchaser and a minute description of the persons of both) having greatly facilitated this savage commerce, by which numbers of children are conveyed out of the country on the Dutch and especially the French vessels, and many lives of infants destroyed by the clandestine attempts to secrete them from the notice of the magistrates, there appears no probable way of remedying this calamitous evil but that of striking at the root of it, and abolishing the right of slavery altogether excepting in such cases to which the authority of Government cannot reach, such for example as laws in being have allowed, and where slaves

have become a just property by purchase antecedent to the proposed prohibition.

The opinions of the most creditable of the Musulmen and Hindoo inhabitants have been taken upon this subject, and they condemn the authorized usage of selling slaves, as repugnant to the particular precepts both of the Koran and Shaister, oppressive to the people, and injurious to the general welfare of the country."

The Governor and Council say that this resolution to abolish slavery was by their order published at all the provincial divisions. They continue :

"In consequence of these orders, we received a reference from the Council of Dacca advising us that it was an established custom throughout the Dacca districts to keep in bondage all the offspring and descendants of persons who have once become slaves, and requesting therefore to be furnished with our orders whether the benefit of our 10th Regulation was to be extended to the children of slaves subsequent to the period mentioned in that Regulation. Upon considering this reference we found it necessary to superadd to our former resolution the explanation which is contained in our Proceedings of the 12th of July, namely—That in those districts where slavery was in general usage or any way connected with or likely to have influence on the cultivation or revenue, particular advice was to be transmitted to us of such usage and every circumstance connected with it, when we should give such directions as we might judge to be necessary, but that considering their reference in the meantime in the light of a general proposition we were of opinion, that the right of masters to the children of their slaves could not legally be taken from them in the first generation, but that this right could not and ought not to extend further ; and we directed the several Provincial Divisions to make publication accordingly."

In 1811, by 51 Geo. III. c. 23, engaging in the slave trade was made a felony, and this statute applied to India. In 1824, excepting in certain cases, it was made piracy, the penalty being death. In the statute which renewed the Charter and which was passed in 1833, we find the following provision on the subject (3 & 4 Wm. IV. c. 85. s. 88) :

"And be it further enacted, that the said Governor-General in Council shall and he is hereby required forthwith to take into consideration the means of mitigating the state of slavery, and of ameliorating the condition of slaves, and of extinguishing slavery throughout the said territories, so soon as such extinction shall be practicable and safe, and from time to time to prepare and transmit to the said Court of Directors drafts of laws or regulations for the purposes aforesaid, and that in preparing such drafts due

regard shall be had to the laws of marriage and the rights and authorities of fathers and heads of families, and that such drafts shall forthwith after receipt thereof be taken into consideration by the said Court of Directors, who shall, with all convenient speed, communicate to the said Governor-General in Council their instructions on the drafts of the said laws and regulations, but no such laws and regulations shall be promulgated or put in force without the previous consent of the said Court; and the said Court shall within fourteen days after the first meeting of Parliament in every year, lay before both Houses of Parliament a report of the drafts of such rules and regulations as shall have been received by them, and of their resolutions or proceedings thereon."

Slavery was abolished in India by Act V of 1843.

We thus reach the important statute known as "The Charter Act of 1833, 3 & 4 Wm. IV. c. 85," which continued the Company's existence, under changed conditions, till April 30, 1854. It represented the results of a long and elaborate inquiry.

It was stated that with the exception of the island of St. Helena, which was now to be vested in the Crown, all the possessions of the Company should remain under their government, and that all the real and personal property of the Company was to be held

"by the said Company, in trust for His Majesty, his heirs and successors, for the service of the Government of India, discharged of all claims of the said Company to any profit or advantage therefrom to their own use, except the dividend on their capital stock, secured to them as hereinafter is mentioned, subject to such powers and authorities for the superintendence, direction, and control over the acts, operations, and concerns of the said Company as have been already made or provided by any Act or Acts of Parliament on that behalf, or are made or provided by this Act."

The exclusive right of trading with China and in tea was to cease. The Company were to close their commercial business and under the supervision of the Board of Control to sell such property as was not retained for the purposes of the government of the territories. Their debts were to be charged upon the revenues of the territories in India.

They were to receive a dividend out of the revenues of India at the rate of £10 10s. per cent. per annum on the actual amount of their stock, and as that consisted of £6,000,000, the yearly payment would be £630,000 a year.

This payment was to be made in Great Britain and was to be subject to redemption by Parliament after April 1874 on payment of £200 for every £100 of stock. And if the Company were deprived of their government at any time after April 1854, they could claim redemption at the same rate. The Company were to pay to the commissioners for the redemption of national debt such sums as would in the whole amount to £2,000,000. This to be invested and to accumulate until it amounted to £12,000,000, which would suffice for the redemption of the Company's stock.

The Board of Control was continued, but it was stated that as well as those nominated by commission, the Lord President of the Council, the Lord Privy Seal, the First Lord of the Treasury, the principal Secretaries of State, and the Chancellor of the Exchequer for the time being were to be *ex-officio* commissioners. Two commissioners might form a board, but Sir Courtenay Ilbert points out that as its powers were practically executed by its President, the changes in constitution were of little moment.

The Company retained its very large powers of patronage, and the section of the Act of 1773 preventing one employed in its service from being chosen a director was repealed. But the powers of the Board of Control continued as before, and they are by section 109 expressly said to cover everything save patronage; powers, that is to say, of approval and control. The secret committee of the Court of Directors, to which great importance was attached, was retained. Two changes of nomenclature were made which are of interest; the 39th section says: "The superintendence, direction, and control of the whole civil and military government of all the said territories and revenues in India shall be and is hereby vested in a Governor-General and councillors, to be styled 'The Governor-General of India in Council.'" And section 3 declared that "the United Company of Merchants of England trading to the East Indies" was henceforth to be known as "The East India Company."

With regard more particularly to India itself. The

Presidency of Bengal was to be divided into two portions, the Presidency of Fort William and the Presidency of Agra. Some such action had become necessary owing to the increase of territory. However, this scheme, which would have established the four Presidencies of Bengal, Madras, Bombay, and Agra, all subject to the Governor-General, was not carried out and the statute 5 & 6 Wm. IV. c. 52, of 1835, which authorized the directors to suspend it, provided that during such suspension a Lieutenant-Governor of the North-Western Provinces might be appointed by the Governor-General in Council.

The Council of the Governor-General is to consist of four ordinary members, of whom three are to be servants of the Company and the fourth is to be appointed by the directors with the approbation of the King from among persons who are not in the Company's service. This fourth member is only to be entitled to sit and vote when meetings are held for making laws and regulations. The Commander-in-Chief, or if there be none or if the office is united with that of the Governor-General, then the Commander-in-Chief of the Bengal army, may be appointed by the directors to be an extraordinary member of the council.

Leaving for the moment the question of the law administered at this time in the Indian courts, it is to be noted that the Act dealt with the question of legislation in a reforming spirit; the important provisions are the following. The Governor-General in Council was to have power to make, repeal, and amend laws and regulations

"for all persons, whether British or native, foreigners or others, and for all Courts of Justice, whether established by His Majesty's Charters or otherwise, and the jurisdiction thereof, and for all places and things whatsoever within and throughout the whole or any part of the said territories, and for all servants of the said Company within the dominions of princes and States in alliance with the said Company."

But he could not affect or alter the provisions of this Act, or any Act to be passed subsequently affecting the Company or its territories and their inhabitants, or Mutiny Acts, or

"any laws and regulations which shall in any way affect any prerogative of the Crown, authority of Parliament, or the construction

or rights of the said Company, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or the sovereignty or dominion of the said Crown over any part of the said territories."

The directors under the Board of Control's supervision could disallow any laws or regulations and they were in that case to be repealed. All laws and regulations made by the Governor-General in Council were to be of the same force as Acts of Parliament and did not need any registration in a court of justice. But it was not to be lawful for the Governor-General in Council without the previous sanction of the directors

"to make any law or regulation whereby power shall be given to any Courts of Justice, other than the Courts of Justice established by His Majesty's Charters, to sentence to the punishment of death any of His Majesty's natural born subjects born in Europe, or the children of such subjects, or which shall abolish any of the Courts of Justice established by His Majesty's Charters."

And in amplification of the provisions contained in 53 Geo. III. c. 155, s. 66 we have the following (sec. 51):

"Provided always, and be it enacted, that nothing herein contained shall extend to affect in any way the right of Parliament to make laws for the said Territories and for all the inhabitants thereof; and it is expressly declared that a full, complete, and constantly existing right and power is intended to be reserved to Parliament to control, supersede, or prevent all proceedings and Acts whatsoever of the said Governor-General in Council, and to repeal and alter at any time any law or regulation whatsoever made by the said Governor-General in Council, and in all respects to legislate for the said territories and all the inhabitants thereof in as full and ample a manner as if this Act had not been passed; and the better to enable Parliament to exercise at all times such right and power, all laws and regulations made by the said Governor-General in Council shall be transmitted to England, and laid before both Houses of Parliament in the same manner as is now by law provided concerning the rules and regulations made by the several governments in India."

With a view to the provision of a general system of judicial establishments and police and of a common and ascertained and where necessary amended system of law, a law commission of five members was to be appointed; they were to make inquiries and report from time to time.

The plan of the Act was that the executive governments of Bengal, Madras, Bombay, and Agra were to consist of a governor and three councillors, who were to have the same powers as the Governors of Madras and Bombay had in their councils at the time of the passing of this Act, with the exceptions that they should not have the power of making or suspending any regulations or laws in any case whatsoever (unless in cases of urgent necessity) or of creating any new office or granting any salary, gratuity, or allowance without the previous sanction of the Governor-General of India in Council.

Continuing the provisions on the subject contained in 33 Geo. III. c. 52, ss. 40, 41, 43 and 44, the Act provided that the Governor-General in Council was to have full power and authority to superintend and control the Governors and Governors-in-Council of Bengal, Madras, Bombay, and Agra in all points relating to the civil or military administration of their provinces, and the Governors and Governors-in-Council are to obey the orders and instructions of the Governor-General in Council in all cases whatsoever.

We have seen that the power of legislation was taken away from the local governments. They had, however (by sec. 56), the right to forward and propose drafts or projects of laws which they might think expedient to the Governor-General in Council, and he was required to take them into consideration.

The Governor-General in Council was empowered to appoint a member of the Council of India to be Deputy-Governor of Bengal. With regard to residence, it was stated that it should be lawful for natural-born subjects of His Majesty to proceed by sea to any port or place having a custom-house establishment within the territories of the Company and to reside thereat, or to proceed to and reside in or pass through any part of such of the said territories as were under the government of the Company on January 1, 1800, and in any part of the countries ceded by the Nabob of the Carnatic, of the province of Cuttack, and of the settlements of Singapore

and Malacca, without licence, provided they reported their arrival and business to the authorities. In other places they must have licences which might contain an intimation of the possibility of revocation. The Governor-General in Council, with the previous consent of the directors, might declare other parts open to residence without licence.

Regulations were to be made as to the punishment or expulsion of unauthorized persons, and this was afterwards done.

Section 85 runs :

"And whereas the removal of restrictions on the intercourse of Europeans with the said territories will render it necessary to provide against any mischiefs or dangers that may arise therefrom, be it therefore enacted, that the said Governor-General in Council shall, and he is hereby required, by laws or regulations, to provide with all convenient speed for the protection of the natives of the said territories from insult and outrage in their persons, religions, or opinions."

Lands might be purchased or held by any natural-born subject of His Majesty in any part where he was authorized to reside. And section 88 declared that

"no native of the said territories, nor any natural born subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office, or employment, under the said Company."

The Act provided, if His Majesty so pleased, for the erection of bishoprics at Madras and Bombay, and gave the Bishop of Calcutta metropolitan powers subject to the general superintendence and revision of the Archbishop of Canterbury. In each presidency, two chaplains of the Church of Scotland would be appointed and power was given to appoint ministers of other sects of Christians.

A general clause (sec. 109) subjected all the powers of the court save that of patronage to the Board of Control.

The Act 3 & 4 Wm. IV. c. 93 of this same year 1833 laid down a few simple rules with regard to the trade with India and China which was now to be open, and c. 101 of the same session regulated the tea trade in particular.

In 1835, as has been noted by 5 & 6 Wm. IV. c. 52, the directors were authorized to suspend the execution of

the provisions of the Charter Act of 1833 so far as they related to the division of the Presidency of Bengal into two; and in the meanwhile the Governor-General in Council was authorized to appoint any servant of the Company of ten years' service in India at least to be Lieutenant-Governor of the North-West Provinces. This was done in the next year, and the suspension was continued under the Act of 1853. In 1840 an important statute, 3 & 4 Vic. c. 37, settled the law on the subject of mutiny, desertion, and other offences in the Indian Army.

Thus there was but little legislative enactment before the Charter Act of 1853. And opinion was rapidly changing as to the whole position of India and as to the responsibility of England for it. Now that the control of the English Government was practically complete, now that the Company had ceased to be a trading association, now that the Governor-General was always a man of mark and one who could be trusted by politicians at home as well as by officials in India, and we may add now that the confidence of the home Government in the rank and file of Indian officials was complete, it seemed as though there was no longer any real need for the Company at all. This feeling was intensified by the enormous territorial expansion which took place in the first half of the nineteenth century, during which period the prophetic words of Child had been realized and the English had indeed made themselves a nation in India. That the vast importance of the problem was realized can be seen from the evidence given in the long and careful inquiries that were made before the next Charter Act was passed in 1853. But the Company clung to its shadowy rights, and it had served its day and generation so worthily on the whole that there was a natural hesitation to destroy so great, so powerful and so venerable an institution. This being the general opinion, and the previous inroads upon the Company's powers having been so complete, the Act 16 & 17 Vic. c. 95 was a comparatively short one, though the changes it made were of considerable importance.

It enacted that until Parliament should otherwise provide,

all the territories in the possession and under the government of the East India Company should continue under such government in trust for Her Majesty the Queen, her heirs and successors, with and under the powers and restrictions, and subject to the superintendence, direction, and control by law applicable to such government. The number of the directors of the East India Company was reduced from 24 to 18 and the quorum from 13 to 10. Six of the directors were to be appointed by the Crown, and all so appointed and six of those otherwise appointed, must be men who had served either the Crown or the Company at least ten years in India. A director must hold £1,000 worth of stock in his own right, and might sit in Parliament. The quorum of the General Court of Proprietors, not counting the directors, was to be twenty.

The suspension of the provisions of the Act of 1833 as to the creation of a Presidency of Agra which had, as we have seen, been effected by a later statute, was to continue until the suspension was revoked. But it was provided that the directors, under the authority of the Board of Control, might appoint, as was the case at Bombay and Madras, a Governor of Bengal apart from the Governor-General, and that until such governor was appointed a lieutenant-governor might be appointed. The latter was carried out in 1854, but it was not till 1912 that a Governor of Bengal was appointed, and then the appointment was a portion of a larger scheme.

The directors were also empowered to create one new presidency and meanwhile to create a new lieutenant-governorship. This resulted in 1859 in the creation of the Lieutenant-Governorship of the Punjab. The directors, subject to the direction and approval of the Board of Control, were given power to alter the territorial limits of the presidencies and lieutenant-governorships from time to time, as seemed necessary.

With regard to the Council of India, all appointments by the directors to it or to the council of any presidency must be approved of by the Queen. The fourth or legal member of the Council of India received the right to sit

and vote at all meetings of the council and not merely at those for making laws and regulations.

For the exercise of the powers of making laws and regulations vested in the Governor-General in Council, a legislative council was constituted consisting of the Governor-General, the Commander-in-Chief, the four ordinary members of Council, one member from each presidency and lieutenant-governorship for the time being established, appointed by the Governor or the Lieutenant-Governor, as the case might be, from local civilians of ten years' service, the Chief Justice of Bengal, and one of the other judges of the Supreme Court of Bengal appointed by the Governor-General. It was also added that the directors, acting under the authority of the Board of Control, could, if they thought fit, authorize the Governor-General of India to appoint, in addition, two civilians of ten years' service, but this provision was never carried into effect; and thus the council for legislative purposes consisted of twelve persons of whom the Governor-General or Vice-President or some ordinary member of council, and six, at least, members of the council (the Chief Justice, a judge or the legal member of the ordinary council being one of the six) had to be present. The Governor-General's assent was made necessary to the validity of all laws whether he had or had not been present at the making of them. The Act also recited the appointment of the Indian Law Commissioners under the Act of 3 & 4 Wm. IV. c. 85, mentioned the work they had done, but stated that on the greater part of their reports and recommendations no final decision had been come to. It therefore authorized the appointment of a commission in England to examine and consider the recommendations of the Indian Law Commissioners and other matters of the same nature which might be referred to them, and make reports during the next three years as to what laws and regulations should be made in relation to all such matters.

The Commander-in-Chief in India, and also in any presidency, was to control the Company's forces as well as those of the Queen. By a different section the limits previously

placed on the number of the Company's forces was abolished and the decision in the matter was within wider limits left to the Board of Control.

The patronage of the Company in respect of appointments was abolished and rules were to be framed on the subject by the Board of Control. Thus the civil service of India was thrown open to public competition, and soon afterwards, in 1858, the college of Haileybury, where the cadets were trained, was closed.

The only statute of any importance passed after the renewal of the Charter and before the Mutiny was that of 1854, 17 & 18 Vic. c. 77, which authorized the appointment of chief commissioners, though not under that name, and so provided for the administration of new areas or the relief of those which were too large. Such were Assam, Burma, the Central Provinces, Scinde, etc., though their positions were not exactly alike. As Sir Courtenay Ilbert points out, the title of Chief Commissioner was not recognized by Parliament till 1870; but though these officers were more directly under the authority of the Governor-General in Council than the Governors or Lieutenant-Governors, the experiment was successful, and an inexpensive but efficient form of government was provided for areas not yet ripe for a more developed organization.

In 1857 came the Mutiny which, whatever else may be said or thought about it, can in no sense be considered to represent any constitutional aspirations. In that the mutineers desired to get rid of English control, it may be said to have a slight connection with later political movements; but it would be truer to say that the latter are more Western than Eastern in origin, and owe their existence very largely to the ideas introduced after the Mutiny, and introduced not by Indians but by Englishmen. The Mutiny, however, was necessarily an event of overwhelming importance in the history of India, and it was felt that it marked the beginning of a new era, as well as the close of an old one. This transition had necessarily to be signalized in some very striking manner, and though the idea of imperial federation was then only in its infancy it was

thought necessary to prepare the way in so far as India was concerned by associating her more closely and directly with the English Government. She was to be made a province of the Empire in order that later on she could develop into a self-governing member of a federated system of states. We see the results of this policy to-day, and whilst there may still be room for some dissatisfaction and even doubt, there can be no question as to the generous spirit in which England dealt with India in 1858. The plan adopted left no place for the old East India Company; it had long ceased to be a trading company and its existence could hardly be reconciled with any steady advance in constitutional development.

The Bill which finally provided for the future government of India was passed in 1858, 21 & 22 Vic. c. 106.

All the territories in the possession or under the government of the East India Company were vested in the Crown. One of His Majesty's principal Secretaries of State was to have and perform all such powers and duties in anywise relating to the government or revenues of India then exercised by the Company or the Board of Control. In this way the office of Secretary of State for India was established. To aid him there was to be an under-secretary and a council of fifteen members. This council was to be known as the Council of India, the old body of that name being now called the Council of the Governor-General of India. The first members were to be seven directors, present or past, chosen by the court, and eight nominated by the Crown. Future vacancies were to be filled as to the seven by co-optation of the council and as to eight by royal nomination. The major part of those first chosen or elected were to be men who had resided or served at least ten years in India, and (excepting in the case of late and present directors and officers on the home establishment of the East India Company who should have so served or resided) should not have left India more than ten years before their appointment. And in the future at least nine members of the council were to be so qualified. No member of the council could sit in Parliament, and their

salaries were to be charged on the revenues of India. They were to hold office during good behaviour, but they could be removed on an address to the Crown by both Houses of Parliament.

The council was under the direction of the Secretary of State to conduct the business transacted in the United Kingdom in relation to the government of India and the correspondence with India, and every order or communication sent to India was to be signed by the Secretary of State and all dispatches from India were to be directed to the Secretary of State instead of to the directors or the secret committee. The council was to be divided into committees and the Secretary of State was to preside; he also was to take the place of the secret committee. A permanent establishment was to be organized consisting at first of the officials of the Company and the Board of Control in England.

The appointments of Governor-General of India, the fourth ordinary member of the Council of the Governor-General, the Governors and the Advocates-General were to be made by the Crown. The appointments of the ordinary members of the Council of the Governor-General of India, except the fourth ordinary member, and the appointment of the members of council of the several presidencies, were to be made by the Secretary of State in Council, with the concurrence of a majority of members present at a meeting. The appointments of Lieutenant-Governors of provinces or territories were to be made by the Governor-General of India, subject to the approbation of the Crown, and all such appointments were to be subject to the qualifications then by law affecting such appointments.

Appointments then made in India were to continue to be made there. The Secretary of State in Council, with the advice and assistance of the Civil Service Commissioners, was to make rules for the admission of all natural-born subjects of the Crown who are of the prescribed age and qualifications to the examination for the Civil Service of India. Such rules had to be laid before Parliament. Military cadetships were to be in the gift of the Secretary

of State and the members of his council in certain proportions. Sons of those in the service of the Indian Government had claims to at least one-tenth of the military cadetships. All other appointments and admissions to service were to be vested in the Crown.

The property of the Company was vested in the Crown for the purpose of the Government of India, and all powers of sale and purchase, etc., were transferred to the Secretary of State in Council, the property always remaining vested in the Crown when acquired or not transferred. The expenditure of Indian revenue was to be under the control of the Secretary of State in Council, and it was charged with the dividends on the stock of the Company and existing and future debts, liabilities, and expenses, for which detailed arrangements were set forth.

When an order to commence hostilities was sent to India the fact had to be communicated to Parliament within a certain time. Except for preventing or repelling invasion of the Indian possessions of the Crown, or under other sudden and urgent necessity, the revenues of India were not without the consent of both Houses of Parliament to be applicable to defray the expenses of any military operation carried on beyond the natural frontiers of such possessions by the forces of the Crown charged upon such revenues.

The military and naval forces of the East India Company were to be deemed to be the Indian and naval forces of the Crown, and were to be under the same obligations of service as they would have been under to serve the Company.

The Board of Control was abolished.

The records, etc., of the Company were to be handed over to the Secretary of State in Council.

The Act was to be duly notified in India, and accordingly the Viceroy, as he now became, Lord Canning, issued the following proclamation at Allahabad on November 1, 1858:

"Her Majesty the Queen having declared that it is her gracious pleasure to take upon herself the government of the British territories in India, the Viceroy and Governor-General hereby notifies that from this day all Acts of the Government of India will be done in the name of the Queen alone.

From this day all men of every race and class who, under the administration of the Honourable East India Company, have joined to uphold the honour and power of England, will be the servants of the Queen alone. The Governor-General summons them, one and all, each in his degree, and according to his opportunity, and with his whole heart and strength, to aid in fulfilling the gracious will and pleasure of the Queen, as set forth in her royal proclamation. From the many millions of Her Majesty's native subjects in India, the Governor-General will now, and at all times, exact a loyal obedience to the call which, in words full of benevolence and mercy, their Sovereign has made upon their allegiance and faithfulness."

The proclamation of Queen Victoria, to which allusion is made by Lord Canning, and which also bore the date of November 1, 1858, forms a landmark in the history of India. It was as follows:

"Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland, and of the Colonies and Dependencies thereof in Europe, Asia, Africa, America, and Australasia, Queen, Defender of the Faith.

Whereas, for divers weighty reasons, we have resolved, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, to take upon ourselves the government of the territories in India, heretofore administered in trust for us by the Honourable East India Company.

Now, therefore, we do by these presents notify and declare that, by the advice and consent aforesaid, we have taken upon ourselves the said Government; and we hereby call upon all our subjects within the said territories to be faithful, and to bear true allegiance to us, our heirs and successors, and to submit themselves to the authority of those whom we may hereafter, from time to time, see fit to appoint to administer the government of our said territories, in our name and on our behalf.

And we, reposing especial trust and confidence in the loyalty, ability, and judgement of our right trusty and well beloved cousin Charles John, Viscount Canning, do hereby constitute and appoint him, the said Viscount Canning, to be our first Viceroy and Governor-General in and over our said territories, and to administer the government thereof in our name, and generally to act in our name and on our behalf, subject to such orders and regulations as he shall, from time to time, receive through one of our Principal Secretaries of State.

And we do hereby confirm in their several offices, civil and military, all persons now employed in the service of the Honourable East India Company, subject to our future pleasure, and to such laws and regulations as may hereafter be enacted.

We hereby announce to the native princes of India, that all treaties and engagements made with them by or under the authority of the East India Company are by us accepted, and will

be scrupulously maintained, and we look for the like observance on their part.

We desire no extension of our present territorial possessions; and, while we will permit no aggression upon our dominions or our rights to be attempted with impunity, we shall sanction no encroachment on those of others.

We shall respect the rights, dignity, and honour of native princes as our own; and we desire that they, as well as our own subjects, should enjoy that prosperity and that social advancement which can only be secured by internal peace and good government.

We hold ourselves bound to the natives of our Indian territories by the same obligations of duty which bind us to all our other subjects, and those obligations, by the blessing of Almighty God, we shall faithfully and conscientiously fill.

Firmly relying ourselves on the truth of Christianity, and acknowledging with gratitude the solace of religion, we disclaim alike the right and the desire to impose our convictions on any of our subjects. We declare it to be our royal will and pleasure that none be in any wise favoured, none molested or disquieted, by reason of their religious faith or observances, but that all shall alike enjoy the equal and impartial protection of the law; and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure.

And it is our further will that, so far as may be, our subjects, of whatever race or creed, be freely and impartially admitted to office in our service, the duties of which they may be qualified by their education, ability, and integrity duly to discharge.

We know, and respect, the feelings of attachment with which the natives of India regard the lands inherited by them from their ancestors, and we desire to protect them in all rights connected therewith, subject to the equitable demands of the State; and we will that generally, in framing and administering the law, due regard be paid to the ancient rights, usages and customs of India.

We deeply lament the evils and misery which have been brought upon India by the acts of ambitious men, who have deceived their countrymen by false reports, and led them into open rebellion. Our power has been shown by the suppression of that rebellion in the field; we desire to shew our mercy by pardoning the offences of those who have been misled, but who desire to return to the path of duty.

Already, in one province, with a desire to stop the further effusion of blood, and to hasten the pacification of our Indian dominions, our Viceroy and Governor-General has held out the expectation of pardon, on certain terms, to the great majority of those who, in the late unhappy disturbances, have been guilty of offences against our Government, and has declared the punishment which will be inflicted on those whose crimes place them beyond the reach of forgiveness. We approve and confirm the said act of our Viceroy and Governor-General, and do further announce and proclaim as follows:

Our clemency will be extended to all offenders, save and except those who have been, or shall be, convicted of having directly taken part in the murder of British subjects. With regard to such the demands of justice forbid the exercise of mercy.

To those who have willingly given asylum to murderers, knowing them to be such, or who may have acted as leaders or instigators of revolt, their lives alone can be guaranteed; but in apportioning the penalty due to such persons, full consideration will be given to the circumstances under which they have been induced to throw off their allegiance; and large indulgence will be shown to those whose crimes may appear to have originated in too credulous acceptance of the false reports circulated by designing men.

To all others in arms against the Government we hereby promise unconditional pardon, amnesty and oblivion of all offences against ourselves, our crown and dignity, on their return to their homes and peaceful pursuits.

It is our royal pleasure that these terms of grace and amnesty should be extended to all those who comply with these conditions before the 1st day of January next.

When, by the blessing of Providence, internal tranquillity shall be restored, it is our earnest desire to stimulate the peaceful industry of India, to promote works of public utility and improvement, and to administer the government for the benefit of all our subjects resident therein. In their prosperity will be our strength, in their contentment our security, and in their gratitude our best reward. And may the God of all power grant to us, and to those in authority under us, strength to carry out these our wishes for the good of our people."

In this dignified and imposing fashion passed the greatest corporation the world had ever seen. It continued to possess a shadowy existence for the purpose of winding up its affairs till 1874.

CHAPTER VII

THE LAW COURTS

MR. COWELL has pointed out that in the Act of 1781, as in the more famous one of 1773 :

"there is no plain statement of the relation in which the Indian territories stood to the British Crown, nor whether any Indian natives were to be comprehended under the term 'subjects,' nor whether the provincial courts were to have a concurrent jurisdiction with the supreme court or an exclusive one; nor, if the latter, what were to be the limits of it. The phrase 'British subjects' is used in both Acts in such a way as necessarily to exclude from its meaning the Hindu and Mohammedan inhabitants; but it is so used that, with respect at least to subjects not being natives of Great Britain or India, subsequent glosses made it impossible to affix any definite understanding to it."

He goes on to show that the result of these Acts was the continuance of the distinction between the presidency towns and the Mofussil which has been so curious and so marked a feature of Indian legal history.

When Lord Cornwallis arrived in India in 1786 as the exponent of a new policy, the directors pointed out that

"they had been actuated by the necessity of accommodating their views and interests to the subsisting manners and usages of the people, rather than by any abstract theories drawn from other countries or applicable to a different state of things."

We have now to trace the efforts made to improve a naturally complicated and difficult state of affairs, and in so doing we must deal in the first place with the Supreme Court and then with Sudder and Mofussil Courts, civil and criminal.

There continued to be for some time but one Supreme Court in India, that of Fort William, the number of whose

judges was reduced by 37 Geo. III. c. 142 (1797) to three. By this last-named statute the old Mayor's Courts at Madras and Bombay were abolished, and Recorder's Courts, consisting in each case of the mayor, three aldermen, and a recorder who was to be appointed by the Crown, took their place. Their jurisdiction extended to civil, criminal, ecclesiastical, and admiralty cases :

"They were empowered to establish rules of practice, and they were to be Courts of Oyer and Terminer and Gaol Delivery for Fort St. George and Bombay; and their jurisdiction was to extend over British subjects resident within the British territories subject to the Governments of Madras and Bombay respectively, as well as those residing in the territories of native princes in alliance with those Governments. Their jurisdiction was also brought within the restrictions of 21 Geo. III. c. 70; the laws of the Hindus and Mohammedans were reserved to natives; and an appeal lay from their decisions to the King in Council."

These courts were, however, soon felt to be anomalous. Accordingly, in 1800, by 39 & 40 Geo. III. c. 79, the Crown was empowered to erect a Supreme Court at Madras, to which the powers of the Recorder's Court were transferred and which was to be similar, as regards constitution, powers, and jurisdiction, to the Supreme Court at Fort William. The Charter was issued by Letters Patent dated December 26, 1801. Similarly, a Supreme Court was established at Bombay in virtue of 4 Geo. IV. c. 71 passed in 1823. The position of these Supreme Courts was far from satisfactory. During the inquiry into the whole question of the judicial establishments which took place in 1830, a letter was written on the subject of which a portion (the whole deserves attentive study) is reprinted in the Appendix. It shows how difficult the question of the Supreme Courts had become. It will be noticed also that the great feature of the Indian judicial system was that it was a double one, the Supreme Courts on the one hand and the Mofussil Courts on the other. The jurisdiction of the Supreme Courts was thus summarized in 1853 :

"The local jurisdiction of the Supreme Court at Fort William is limited to the town of Calcutta, which for this purpose is bounded on the west side by the river Hooghly, and on the other sides by what is called the Mahratta ditch. Within these limits the Court

exercises all its jurisdictions, civil and criminal, over all persons residing within them, with the exception of its ecclesiastical jurisdiction, which has not been applied to Hindus and Mohammedans beyond the granting of probates of wills.

1. The persons residing within these limits, and therefore subject to the local jurisdiction of the Supreme Court, are computed, according to the latest information, at 413,182.

2. In like manner the Court exercises all its jurisdictions over all British-born subjects, that is, persons who have been born within the British islands, and their descendants, who are resident in any of the provinces which are comprehended within the Presidency of Bengal, or the subordinate Government of Agra. The number of persons so subject to the jurisdiction of the Court, including the members of the covenanted services, civil and military, but exclusive of the Queen's troops and their families, was on the 30th March 1851 according to the Parliamentary returns, 22,387.

3. All persons resident at any places within the said provinces, who have a dwelling-house and servants in Calcutta, or a place of business there where they carry on any trade, through their agents or servants, are held to be constructively inhabitants of Calcutta for the purpose of liability to the common law and equity jurisdiction of the Court.

4. Natives of India, within the said provinces, who have bound themselves upon any contract or agreement in writing with any British subject, where the cause of action exceeds the sum of 500 Rupees, to submit to the jurisdiction of the said Court, are subject to its jurisdiction in disputes relating to the said contract.

5. In like manner, persons who avail themselves of the Court's jurisdiction for any purpose, are held liable to its jurisdiction in the same matter, even on other sides of the Court than that of which they have availed themselves; as for instance, persons who have applied for and obtained probates of wills, are held liable to the Court's equity jurisdiction for the due administration of the estate.

6. All persons who, at the time of action brought or cause of action accrued, are or have been employed by or are directly or indirectly in the service of the East India Company, or any British subject, are liable to the civil jurisdiction of the Court in actions for wrongs or trespasses, and also in any civil suit by agreement of the parties in writing to submit it to the jurisdiction of the said Court; and all persons who, at the time of committing any crime, misdemeanour, or oppression, are or have been employed, or are directly or indirectly in service as aforesaid, are liable to the criminal jurisdiction of the Court.

7. The Admiralty jurisdiction of the Court extends over the provinces of Bengal, Behar, and Orissa, and all other territories and islands adjacent thereto, which, at the date of the Charter, were or ought to be dependent thereon, and comprehends all causes civil and maritime, and all matters and contracts relating to freights, and to extortions, trespasses, injuries and demands whatsoever between merchants or owners of ships and vessels employed or used within the jurisdiction aforesaid, or other persons, contracted,

done and commenced in or by the sea, public rivers, or creeks, or within the ebbing and flowing of the sea about and throughout the said three provinces and territories. The criminal jurisdiction extends to all crimes committed on the high seas by any person or persons whatsoever in as full and ample a manner as in any other Court of Admiralty in any colony or settlement belonging to the Crown.

8. The Supreme Courts at Calcutta, Madras, and Bombay, have criminal jurisdiction over all British subjects for crimes at any place within the limits of the Company's Charter, that is in any part of Asia, Africa, or America, beyond the Cape of Good Hope to the Straits of Magellan, or for crimes committed in any of the lands or territories of any native Prince or State in the same way as if the same had been committed within the territories subject to the British Government in India.

The local jurisdiction of the Supreme Court at Madras is confined to the town of Madras, which for this purpose is held to be bounded by the sea on the East, the Saint Thomé river on the South, the banks of the Long Tank and the Nungumbaukum Tank, with the villages of Kilpaukum and Peramboor on the West, and a line from the latter village to the sea on the North, and to comprise all the lands included in the villages of Chettapet, Kilpaukum, Peramboor, and Tandear. The inhabitants of Madras within these limits are computed at about 720,000.

The British subjects residing within the provinces attached to Madras, and subject to the jurisdiction of the Supreme Court, were on the 30th March 1851, according to the Parliamentary Census Returns, 15,133, including the civil and military members of the covenanted services, but exclusive of the Queen's troops. The Court's civil jurisdiction extends to British subjects within any of the dominions of the Native Princes of India in alliance with the Government of Madras, but the number of these must be very small, and cannot be taken into calculation.

The local jurisdiction of the Supreme Court at Bombay is confined to the Island of Bombay, the inhabitants of which are computed at 566,119.

The British-born subjects who reside within the provinces comprised in the Presidency of Bombay, including the covenanted servants of the Company, were on the 30th of March, 1851, according to the Parliamentary Census Returns, 10,704, exclusive of the Queen's troops. The Supreme Courts at Madras and Bombay have generally the same powers, and their jurisdictions are generally the same within the settlements of Madras and Bombay, as those of the Supreme Court of Judicature at Fort William within the territories attached to the Presidency of Bengal and Sub-presidency of Agra."

The question of the law to be administered in the Supreme Courts was a difficulty constantly alluded to in the authorities from the days of Nuncumar onwards. Morley, writing in 1858, summarizes it as follows :

" 1. The Common Law, as it prevailed in England in the year 1726, and which has not subsequently been altered by statutes especially extending to India, or by the Acts of the Governor-General in Council.

2. The Statute Law which prevailed in England in 1726, and which has not subsequently been altered by statutes especially extending to India, or by the Acts of the Legislative Council of India.

3. The Statute Law expressly extending to India, which has been enacted since 1726, and has not been since repealed, and the statutes which have been extended to India by the Acts of the Governor-General in Council.

4. The Civil Law as it obtains in the Ecclesiastical and Admiralty Courts in England.

5. Regulations made by the Governor-General in Council and the Governors in Council previously to the 3rd & 4th Will. IV. c. 85, and registered in the Supreme Courts, and the Acts of the Governor-General in Council made under the 3rd & 4th Will. IV. c. 85.

6. The Hindu Law and usages in actions regarding inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party in which a Hindu is defendant.

7. The Mohammedan Law and usages in actions regarding inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party in which a Mohammedan is a defendant."

With regard to the Sudder and Mofussil Courts, the historian can but abridge the careful account of Mr. Morley, to whom this chapter already owes so much.

We have already seen how Warren Hastings elaborated a system of justice which was adopted by the Government on August 21, 1772. As a result of this Mofussil Dewani Adawlut for civil business, presided over by the collectors, and Phoujdary Adawluts, for criminal matters, over which the collectors also kept control, were established in each district; the higher courts, the Dewani Sudder Adawlut, presided over by the president and members of council, assisted by native officers as a court of appeal in civil cases where the amount in dispute was over 500 rupees, and the Nizamut Sudder Adawlut, presided over by the Daroghah Adawlut, under the control of the council, which was to revise and confirm criminal sentences and those involving fines of over 100 rupees from the Phoujdary Adawluts, and to refer the former to the Nazim for confirmation also. But in the year 1774 the collectors were recalled. To

see after the revenue collection six Provincial Councils were appointed for the various divisions; as regards justice, its administration had to be transferred from the collectors to the amils, an appeal being in every case allowed to the Provincial Councils and from them in important cases to the Governor and Council as the Sudder Adawlut.

Another change came in 1775, when Warren Hastings gave up the work of superintending the Nizamut Adawlut, which was transferred under the presidency of the new Naib Nazim to Murshidabad, and Phoujdars were appointed in the districts to bring offenders against the peace to justice. In the year 1780, the Provincial Councils were directed to confine themselves to revenue matters, but to supply their place on the judicial side in each of the six divisions a Court of Dewani Adawlut was established, presided over by a covenanted servant of the Company who was termed the Superintendent of Dewani Adawlut. These courts dealt with all claims of inheritance to zemindaris and other real property, and mercantile disputes and all matters of personal property, with the exception of what was reserved for the Provincial Courts, namely, revenue business and demands of individuals for arrears of rent. The decisions of these Dewani Adawluts was final up to 1,000 rupees and in cases where the amount involved was greater an appeal lay to the Sudder Dewani Adawlut. Sir Elijah Impey's appointment to the Sudder Dewani Adawlut from which so much might have resulted came at this time, and his regulations, which were adopted in 1781, made all civil causes cognizable by the Dewani Adawluts, which he increased in number from six to eighteen. In four districts the office of civil judge and collector was exercised by the same person, but in others the two functions were in the hands of different officials. Where the amount in dispute was over 1,000 rupees there was an appeal to the Sudder Dewani Adawlut.

In 1781, the Phoujdari system already noticed was abolished and the police jurisdiction was transferred to the Dewani Adawlut judges, or in special cases to the

zemindar with the consent of the Governor-General in Council. Phoujdari Courts, however, continued in the divisions subject to the control of the Naib Nazim, and the judges were directed not to try but to apprehend offenders and hand them over to the daroghahs of the nearest Phoujdari Courts. These Phoujdary Courts were under the supervision of the remembrancer of the criminal courts, an official at headquarters, but the decision in important cases still lay with the Naib Nazim at Murshidabad. In 1781 the Provincial Councils gave way to the Committee of Revenue. In 1782, by 21 Geo. III. c. 70. s. 21, the Sudder Dewani Adawlut became a Court of Record and hence a Crown Court, and the Governor-General in Council resumed the superintendence. An appeal lay to the King in Council where the amount in dispute was over £5,000.

We are thus brought to the reforms of Lord Cornwallis. He at once directed the reunion of the judicial and executive functions and in 1787 placed the Dewani Adawluts under the collectors again, but at Murshidabad, Dacca, and Patna there were distinct courts under judges who were not collectors. The Revenue Courts in the districts, though presided over by the collectors, were kept quite distinct from the adawluts. Appeals in certain cases were allowed from the adawluts to the Governor-General in Council as judges of the Sudder Dewani Adawlut. From the Revenue Courts appeals were taken to the Board of Revenue and then to the Governor-General in Council. The collectors only dealt with small offences, they handed over other criminal offenders to the Mohammedan criminal officers, watching, however, the sentences awarded.

In a short time, by the end of 1790, Lord Cornwallis was convinced that the whole system of criminal justice was in need of reform. He therefore announced that the Governor-General in Council would once more undertake the superintendence of the matter. The Nizamut Adawlut was once more moved from Murshedabad to Calcutta and was henceforth to consist of the Governor-General and members of the Supreme Council with the assistance of

the Kazi al Kuzat and two muftis; it was to be a court of criminal appeal and a police board for the whole country. The magistrates were to arrest all persons charged with any offences and to hold an inquiry. The innocent were to be dismissed, those guilty of petty offences were to be punished by beating or imprisonment, those guilty of graver offences were to be committed for trial by the Court of Circuit. Bail was to be allowed save in cases of murder, theft, burglary, and robbery. These new Courts of Circuit, four in number, were to be superintended in each case by two judges, who were to be covenanted servants of the Company, and who were to be assisted by kazis and muftis as assessors. They were to hold a general goal delivery every six months and in capital cases their proceedings were to be confirmed by the Nizamut Adawlut of Calcutta. In 1792 the management of the police was taken out of the hands of zemindars and farmers of land, who were relieved of responsibility in the matter, and placed under the control of the magistrates. The zillahs were divided into police areas each about twenty miles square and each under a daroghah and other officers paid by the Government.

We now reach the great reforms of 1793, but the student will have noticed the experimental character of the organization which preceded them. The Government had taken the control into its own hands in well-marked stages. We must look at the reorganization under two heads, civil and criminal, not forgetting the formation of the regulations into a code, which was the basis of future progress in that direction.

(a) *Civil Justice*.—The great point which seems to have been aimed at in the regulations of 1793 was the establishment of an efficient and independent system of courts of justice. Hence the attempt to separate the executive from the judicial branches of the administration. For as Lord Cornwallis truly observed: "It is obvious that if the regulations for assessing and collecting the public revenue are infringed, the revenue officers themselves must be the aggressors, and that individuals who have

been aggrieved by them in one capacity can never hope to obtain redress from them in another." In the Mal Adawlut, or Revenue Court, the collector was judge as well as collector, and hence these courts were abolished and the Revenue Board ceased to be a court of appeal. The causes which used to come before the revenue officers and which included cases connected with landholding of many different kinds were now to come before the Dewani Adawluts, or city and zillah courts, now established.

The collectors were then made into executive officers in the main, and a system of civil courts of an elaborate kind was set on foot. The lowest grade consisted of the courts of the native commissioners, ameens salisan or munsiffs; these settled cases where the value at issue was not over 50 rupees, and an appeal lay from them to the courts of the city or zillah judges. Then came the registers, who were officials attached to the zillah or city courts, and who could try cases up to 200 rupees, their decisions being subject to revision by the city or zillah judge. Then we have twenty-three zillah and three city (Murshidabad, Dacca, and Patna) courts. Each was to be superintended by one English judge, being a covenanted civil servant of the company, who was to hold his court not less than three days in every week. All natives, and other persons not European British subjects were declared amenable to the jurisdiction of the zillah and city courts; they took cognizance of all suits of a civil nature if the property sought to be recovered, or the defendant against whom the suit was brought, were actually within the limits of the court's jurisdiction. European British subjects, with the exception of the King's and the Company's civil and military servants, were not to be allowed to reside at a greater distance from Calcutta than ten miles, unless they entered into a bond rendering themselves amenable to the civil or zillah court within whose jurisdiction they should be. Europeans not British subjects residing out of the limits of Calcutta were amenable to the civil courts in the same manner as natives.

The decisions of the zillah and city courts could be

appealed from to the Provincial Courts of Appeal, which were four in number, for the divisions of Calcutta, Patna, Dacca, and Murshidabad, each court being superintended by three judges. Their office was to try, in the first instance, such suits as should be transmitted to them for the purpose by the Government or the Sudder Dewani Adawlut, and to order their decrees in such cases to be executed by the judges of the zillah and city courts; to receive original suits or complaints which a judge of a zillah or city court might have refused to receive or proceed in, and to cause such judge to hear and determine the same; to receive charges of corruption against zillah judges and to forward them to the Sudder Dewani Adawlut, and to report to the same court when it should appear to them that any zillah judge had neglected his duty. They were also to receive and try appeals from the zillah and city courts if preferred within three months, thus giving suitors a general right of appeal, whereas formerly only suits involving 1,000 rupees at least could be taken and then only at great expense to the Governor in Council. The decrees of the Provincial Courts of Appeal were final where the amount in dispute was not over 1,000 rupees. In cases involving more than that sum there was an appeal to the Sudder Dewani Adawlut.

The Sudder Dewani Adawlut, established at the presidency, consisted of the Governor-General and the members of the council. They could receive suits which the lower courts had rejected and they could deal, in various ways, with complaints against judges of the zillah, city, or Provincial Courts. They were to hear appeals from the Provincial Courts in cases where the amount at issue was over 1,000 rupees. They could also hear appeals from the Provincial Councils or from the committee or Board of Revenue. Their decisions in civil suits were said to be final, but this was explained in 1797 to refer to India only. By 21 Geo. III. c. 70, appeals to England were possible provided the amount in dispute was over £5,000.

(b) *Criminal Justice*.—The judges of the city and zillah courts were declared magistrates within their respective

jurisdictions and were to qualify by taking an oath of office, but they were not to have jurisdiction within the jurisdiction of the Supreme Court. They were to apprehend disturbers of the peace and persons charged with crimes and misdemeanours. On a sworn complaint a magistrate was to issue a warrant, examine, and if the case was trifling, punish; if serious, commit or hold to bail for the next sessions of the Court of Circuit, for whose sittings they were to make all necessary preparation and to whom they were to give an account of those discharged and punished. Full particulars were also to go to the Nizamut Adawlut. British subjects charged with offences were to be apprehended and sent for trial to the Supreme Court at Calcutta. These rules are an amplification of those of 1790. The courts of circuit were to be as had been declared in 1790, that is, four courts consisting of the judges of the Provincial Courts of Appeal aided by the kazi and mufti. They were courts of half-yearly goal delivery for certain zillahs, and monthly for others, and for the cities of Patna, Dacca, and Murshidabad. They could pass sentence of death or imprisonment for life, but they had to send the proceedings to the Nizamut Adawlut, and when they received the final sentence they had to issue a warrant for execution.

The Nizamut Adawlut held at Calcutta consisted of the Governor-General and members of the council assisted by the kazi and two muftis. It was empowered to take cognizance of all matters relating to criminal justice and policy, and had to propose regulations for the consideration of the Government to be enacted if approved. It was to exercise all the powers with which it had been invested when superintended by the Naib Nazim. Its sentences were to be final, but the Governor-General in Council could pardon or commute the punishment.

Such was the general system. The law administered was the Mohammedan criminal law as modified by the regulations.

Thus, after very considerable experience, was framed a judicial system in continuation of that which had prevailed before the Company acquired sovereign rights. It

will be observed that in Lord Cornwallis's time the old hostility between the Supreme Court and the Company had almost passed away, though traces of it may still be found. On the contrary there are symptoms of a desire to unify the judicial system, as was afterwards done. The regulations which were drawn up in 1793 were soon altered and that division between the executive and judicial functions was soon partially obliterated. We shall trace some of the changes that were made.

(a) *Civil Justice*.—In 1794 the registers were given power to decide finally in suits about property up to 25 rupees in value. If the amount was higher an appeal lay to the Provincial Courts. The decisions of the zillah and city courts were also to be final up to 25 rupees. The zillah and city judges also could refer land rent and revenue accounts to collectors for report, provided the collectors in question or the Government were not concerned. The next year, 1795, appeals from the registrars, to give them their final title, or native commissioners for cases over 25 rupees, were to go for final decision to the city and zillah judges.

The decrees of the Provincial Courts were declared final where the amount in dispute did not exceed 5,000 rupees, in the case of personal property in 1797 and real property in 1798. Beyond that amount an appeal lay to the Sudder Dewani Adawlut. In 1797 also, as we have seen, the appeal to the King in Council was permitted in cases involving at least £5,000.

The handing over of revenue and land accounts to collectors just mentioned constituted a step in the direction of uniting once more executive and judicial functions. A similar provision which was connected with summary suits for rent in 1799 is noted by Mr. Cowell as illustrating the same policy.

In 1800 the zillah judges were allowed to refer cases involving not over 25 rupees to their registrars for final decision. This power was, however, rescinded in 1803.

Regulation 2 of 1801 stated that the Sudder Dewani Adawlut had accumulated a great quantity of arrears. It

laid stress on the importance of the separation of the legislative and judicial functions of the Government, and said that henceforth this court should consist of three judges, the chief being one of the civil members of the Supreme Council and the other two being appointed by the Governor-General in Council from among the covenanted civil servants of the Company not being of the council. In 1803, to deal with the growth of business, a regulation allowed the creation of assistant judges by the Government in the zillah courts. To such the zillah judges could refer appeals from the decisions of the registrars or the native commissioners, or even original suits. At the same time the jurisdiction of the registrars was extended to suits for 500 rupees. The rule as to decisions by registrars laid down in 1800 was rescinded and all decisions in the Registrar's Court were made appealable to the zillah court. If the amount was not over 100 rupees the zillah judge's decision was final; if above that amount it was final if it confirmed the registrar's decision; otherwise there was an appeal to the Provincial Court. The decrees of the zillah judges were to be final on appeal from the native commissioners. In 1805, in order to carry out the general principle of separation, it was declared that the chief justice of the Sudder Dewani Adawlut should be a member of the covenanted civil service not being a member of the supreme Government. And yet, possibly as Harington suggests from motives of economy, in 1807 it was laid down that the Sudder Adawlut should consist of a chief judge who was to be a member of the supreme council and three puisne judges selected from the members of the Company's covenanted civil service. However, in 1811 a regulation stated that it had to consist of a chief judge and as many puisne judges as the Governor-General in Council might consider necessary.

An important regulation of 1808 limited the jurisdiction of zillah and city courts to suits where the amount at stake was not over 5,000 rupees. If it were higher the original jurisdiction belonged to the Provincial Courts.

By a regulation of 1812 certain remedies in regard to

rent were given to the ryot, and as such cases were referred to the collector this again tended to confuse judicial and executive functions. Native commissioners (ameens, arbitrators, and moonsiffs) had been appointed under the regulations of 1793. The matter was put on a new footing as to moonsiffs in 1803 and provision was made for appointing a head commissioner or sudder ameen in each zillah or city, with limited powers of jurisdiction. In 1805 the law officers of the zillah or city were declared to be *ex-officio* sudder ameens. In 1814 the office of native commissioner under the regulations of 1793 was abolished and the judges of the zillah and city courts were directed to submit to the Provincial Courts (which were henceforth to control this matter), new establishments of moonsiffs whose jurisdictions were to correspond with the *thanahs*. They were to try actions referred to them against any native inhabitants of their jurisdiction for money or personal property not exceeding 64 rupees in amount or value. An appeal lay to the zillah or city judge. Questions of account, boundary rights of land, or rent required as evidence could be referred to them.

In 1814 various other important changes were made. The assistant judges of 1803 were abolished. No one was to hold the office of magistrate of a zillah or city court unless he had officiated as registrar or assistant in the judicial department for three years, and registrars were to be properly qualified. The original jurisdiction of zillah and city courts was limited to suits involving not more than 5,000 rupees. A regular appeal was to lie to the zillah and city judges from all decisions by moonsiffs, sudder ameens, and registrars, except in referred cases exceeding 500 rupees. Judges were authorized to refer to the sudder ameens, suits for sums not exceeding 150 rupees. An appeal from their decision lay to the zillah and city judge whose decision was final unless a special appeal was admitted by the Provincial Court. The judges might also refer to the sudder ameens appeals from the decision of the moonsiffs, and the decrees of the sudder ameens were to be final unless the zillah or city judge admitted a special appeal. Power

was given to the zillah and city judges to refer to the registrars original suits where not over 500 rupees were at stake and from their decision an appeal lay to the zillah or city judges, whose decisions were final unless the Provincial Court admitted a special appeal. The Governor-General in Council could invest the registrar of any zillah or city court with special powers where there was pressure of business and where the registrar was duly qualified, and those so appointed might try any appeals from the moonsiffs or sudder ameens which the zillah or city judge might refer to them, and their decision was to be final unless the zillah or city judge admitted a special appeal. The registrar specially appointed might be further empowered to try original suits where more than 500 rupees were involved which might be referred to him by the judge. In such cases an appeal lay from his decisions to the Provincial Courts.

In the same year it was provided that the Provincial Courts, which were now six in number, should consist of four judges each, who were to exercise both civil and criminal jurisdiction. All their decisions could be appealed from to the Sudder Dewani Adawlut. It was also laid down that when advantage would ensue the Sudder Adawlut could order a case involving 1,000 rupees at least to be transferred to the Provincial Court from the zillah and city courts, or to the Sudder Adawlut from the Provincial Court in cases involving at least 50,000 rupees.

The office of Superintendent and Remembrancer of Legal Affairs was constituted in 1816. It was to be held by a covenanted civil servant and to him the Government were to refer for his opinion questions of fact or of law before authorizing recourse to legal process. This post was, however, abolished in 1829.

In 1817 the plaintiff had an option in cases involving between 5,000 and 10,000 rupees to commence them either in the zillah or city or the Provincial Courts (thus the jurisdiction of the former was extended), appeals lying of right to the Provincial Courts and a second or special appeal to the Sudder Adawlut.

In 1819 it was enacted that the Provincial Courts and the Sudder Adawlut could admit a second and special appeal whenever on a perusal of a decree of the court from which the special appeal was desired it appeared that there was strong probable ground for presuming a failure of justice. Zillah and city judges could certify a case also as appealable in case some principle of general importance worthy of reconsideration was involved. The same rule was established as between the Provincial Courts and the Sudder Adawlut. It was also made competent to the Governor-General in Council to authorize registrars of at least six years' standing to try appeals from other registrars in such suits, not exceeding 500 rupees, as were referred to them by the zillah or city judges. The Provincial Courts could admit a special appeal in such cases.

The pressure on the officials continued to increase, and to relieve the zillah and city judges it was decreed in 1821 that the decrees of the Provincial Courts and of the Sudder Adawluts should be carried into execution by the officials of the Provincial Courts and not by those of the lower courts as provided in 1793. The registrars also were given a more important position, and one or more sudder ameens could be appointed where there was a registrar to aid in the judicial work. The Sudder Adawlut could authorize sudder ameens to try original civil suits referred to them by the zillah or city judges up to the value of 500 rupees, an appeal lying to the zillah or city judge if the value was over 150 rupees. Moonsiffs were increased in number and could try cases up to 150 rupees. The Sudder Adawlut could, by a regulation of 1827, invest an ameen with original jurisdiction up to 1,000 rupees and to such might be referred by the zillah and city judges suits in which others than Indians were parties. The appeals from sudder ameens in cases over 500 rupees were not to be referred to registrars, but to be tried by zillah and city judges, whose decision was to be final save on special appeal. The power of increasing the number of sudder ameens was transferred from the Provincial Court to Government. To complete this matter for the moment

we may add that in 1831, when many important changes were made, the jurisdiction of moonsiffs was extended to suits not exceeding 300 rupees. The number of sudder ameens was to be extended at the discretion of Government, and the law officers of the courts were to be no longer *ex officio* sudder ameens but to be eligible for appointment as such. The powers of sudder ameens were to be as follows: zillah and city judges might refer to them original suits for personal or real property not exceeding 1,000 rupees, but no European or American must be a party. The class of principal sudder ameens was also constituted with power to decide referred original suits up to 5,000 rupees, an appeal lying (as in the case of sudder ameens) to the zillah or city judge and a special appeal in their case to the Sudder Dewani Adawlut. Appeal cases could also be referred by permission to the principal sudder ameens. We have noticed the steps by which the division between judicial and executive was once more broken down. In 1824 rent suits were allowed to be referred to collectors for summary process, and in 1825 provision was made for the occasional union of the offices of judge and collector. And in 1831 all jurisdiction over summary suits as to rent was handed over to the collectors, whose decision was to be final, though a regular suit, as contrasted with a summary one, could be brought in the civil courts on the subject.

The Provincial Courts seem to have lost their importance, and in 1833 they were abolished, their place as original courts being taken by the zillah and city courts, and as appeal courts by the Sudder Dewani Adawlut.

In 1836 the old right of British subjects to be tried by the Supreme Court which rested on statute 53 Geo. III. c. 155 was abolished, and no one henceforth was exempt from the jurisdiction of the Company's courts. The years 1838, 1843, 1844, and 1853 all saw slight rearrangements of the subordinate courts.

In 1859 the powers of collectors received an important increase in that all cases of ejectment, cancelment of leases, arrears of rent, enhancement of rent, and the like were

handed over to them. This really established an elaborate series of land courts from that of the deputy collector to the Board of Revenue, and was open to the criticism that it placed a great burden of legal responsibility upon the shoulders of the collectors. Many of them were equal to it; a few, perhaps, were not. This Act of 1859 was abolished as regards certain parts of Bengal in 1869, and the civil authorities in Bengal recovered their authority over suits between landlord and tenant by the Bengal Tenancy Act of 1885, which, as Mr. Cowell shows, satisfactorily closed a long controversy. Such, at some length, was the history up to this point of civil jurisdiction in Bengal.

In 1795 one city and three zillah courts and a Provincial Court of Appeal were established for the division of Benares, and the powers of the Sudder Dewani Adawlut were extended over that province.

In 1803 the system of judicial administration provided by the Company's code was also introduced into the ceded province of Oudh. In 1804 it was introduced in the Doab. To remedy the inconvenience occasioned by the distance from Calcutta a separate court of Sudder Dewani Adawlut was established for the North-Western Provinces at Allahabad in 1831.

When we turn to the other provinces we can speak more briefly. With regard to Madras the system of Lord Cornwallis was practically introduced in 1802. There was the same division between judge and collector. We have native commissioners, registrars, and zillah judges. Four Provincial Courts tried appeals from the zillah courts and suits referred to them by the Sudder Adawlut, their decisions being final in cases up to 5,000 rupees, and above that sum an appeal lying to the Sudder Adawlut. The Sudder Adawlut was the Governor-in-Council, whose decision was final up to 45,000 rupees, and from that limit subject to an appeal to the Governor-General in Council. The course of change in subsequent years was also much on the same lines as in Bengal with regard to the inferior courts. In 1816 the Sudder Adawlut was enabled to call up suits from the Provincial Courts where the amount at

stake was 45,000 rupees and upwards, and in 1818 the Governor-General gave up the power of hearing appeals from the Sudder Adawlut; generally the appeal system was gradually modified as in Bengal.

In 1843 the most important change took place. New zillah courts took the place of the old ones, each presided over by one judge, and the Provincial Courts of Appeal were abolished. The assistant judges in Madras were called subordinate judges and performed important duties. After 1843 they and principal sudder ameens could deal with suits by persons of all nationalities up to 10,000 rupees, an appeal being allowed to the zillah courts. The new zillah courts had no registrars, so that that type of court ceased to exist.

In 1799 a code of regulations was framed for Bombay on the same plan as that for judicial institutions in Bengal. But the whole scheme was revised under Mountstuart Elphinstone in 1827. We then have native commissioners deciding smaller cases, zillah courts presided over by one judge with an appeal to the Sudder Dewani Adawlut. A British-born subject, if a denizen, might appeal to the Supreme Court as under 53 Geo. III. c. 155. This right was abolished in 1836, when all were made subject to the Company's courts. The history of appeals was, as in Bengal and Madras, with variations due to local conditions.

(b) *Criminal Jurisdiction*.—We had best, as in the case of civil justice, follow the course of change rather closely in regard to Bengal and deal with Madras and Bombay more summarily.

In 1796 zillah and city magistrates were declared justices of the peace, and as such could receive complaints against European British subjects. In 1801 the Sudder Nizamut Adawlut was declared to consist of three judges, of whom the chief was to be a civil member of the council and the other two ordinary civilians. Later, as it was the chief court sitting as a criminal court, its composition varied, as may be seen from the history of the Sudder Dewani Adawlut. The chief kazi and two muftis assisted.

The procedure of the magistrates with regard to arrest warrants and bail was regulated in 1807.

In 1810 an important step was taken and power was given to the Governor-General in Council to appoint as joint magistrates persons who were not the civil judges of cities or zillahs and to appoint assistant magistrates in a city or zillah. There was no appeal from the assistant magistrate to the magistrate, but the magistrate had control over the police. In 1813, by 53 Geo. III. c. 155, resident British subjects could be punished by the zillah and city magistrates for assaults against natives of India. The cases, however, could be removed by certiorari to the King's Courts. The functions of the Courts of Circuit have already been dealt with in detail to some extent; in 1814 the number of judges was increased to four; afterwards, in 1826, the Governor-General in Council might appoint any number that seemed expedient. In 1818 magistrates received wider powers to punish so as to relieve the Courts of Circuit, though serious crimes must still be sent there. And the Courts of Circuit had powers of supervision and revision over the magistrates, which were extended in 1820.

But in 1829 the Courts of Circuit were abolished and their place taken by commissioners of circuit who were to be under the authority of the Nizamut Adawlut. In 1831 it was laid down that whenever it seemed advisable, owing to the pressure of business devolving on the commissioners of revenue and circuit, it should be possible for the Governor-General in Council to invest the zillah or city judges with power to conduct the duties of the sessions. The sessions judges so appointed were to try all persons committed by the magistrates of their respective divisions as soon as convenient, and goal deliveries for each district were to be held once at least every month; but they were not to exercise authority over the magistrates nor to interfere in matters of police. The magistrates were allowed to refer a criminal case for inquiry, but not for decision, to a sudder ameen. The powers of principal sudder ameens, sudder ameens, and law officers were extended to the pronouncing of sentence in certain cases in 1832. In 1835 a regulation

provided that the Governors of Bengal might transfer the duties and powers of commissioners of circuit to the sessions judges; and in 1841 a general regulation provided for appeals from the lower to the higher courts. Such were the most important changes. With regard to the added territories:

In Benares City there was a court of justice established in 1781, and there were similar courts at Jaunpore, Mirzapore, and Ghazipore in 1788, where the Mohammedan law was administered. There was also for the country districts the Moolky Adawlut, established in 1786, and divided in 1787 into civil and criminal sides, each with a separate judge. The Resident had powers of control over these courts. In 1795 the judges of the recently established zillah and city courts were made magistrates and the Provincial Court was to have the powers of a Court of Circuit for the division. No Brahmin was to be put to death. The jurisdiction of the Sudder Nizamut Adawlut was also extended to Benares in 1795. Raghmahal and Bhagulpore had a special system of their own, the work of Cleveland originally, confirmed in 1782, and revised in 1796. In the latter year they were brought more under the general law.

In 1803 the ceded provinces of Oudh were divided into seven zillahs, and the judges were made magistrates. A court of circuit with criminal jurisdiction was established the same year, and the jurisdiction of the Sudder Nizamut Adawlut extended to the ceded provinces also. The conquered provinces of the Doab were formed into five zillahs (later four), and attached to the jurisdiction of the Court of Circuit of Bareilly; and Bundelkund formed one zillah under Benares. This was in 1804, and in 1805 the regulations of the Ceded Provinces were with certain modifications introduced there. Dehra Doon and Kumaun were brought under the rule of law in 1817, though Kumaun continued to have special treatment. In 1822 special rules were made for the Garrow Hill tribes. In 1831, when a separate court of Sudder Dewani Adawlut was established at Allahabad, a Sudder Nizamut Adawlut was also placed

there. It had jurisdiction over the Western Provinces and Kumaun and the Saugur and Nerbudda territories were added. Cuttack was ceded in 1804 and brought under the regulations the same year as two zillahs under the Court of Circuit for the Calcutta division.

The modern criminal organization of Madras dates from 1802, when on the Bengal plan Magistrates and Assistant Magistrates were appointed with powers of ordering punishment in less serious cases. British subjects residing in the presidency were to be apprehended and sent to the Supreme Court at Madras when charged with offences. Four Courts of Circuit were established and the judges were to hold half-yearly goal deliveries. Capital sentences had to be confirmed by the Phoujdary Adawlut, the chief criminal court, composed of the Governor and members of the Council. The Mohammedan criminal law as modified by the regulations was, as usual, administered.

In 1806 a change was made as in Bengal by which the Chief Criminal Court consisted of professional judges instead of the Governor and Council. In 1816 the collector and assistant collector became the zillah magistrate and assistant magistrate instead of the judges. The magistrates could punish small offences, but must refer sentence in some cases to the Phoujdary Adawlut. Serious cases they must send for trial by the new zillah criminal judges, who were to be the judges of the zillah courts exercising criminal jurisdiction. In cases of a certain gravity these zillah criminal judges must commit the offender to the Courts of Circuit.

In 1820 zillah magistrates were given a jurisdiction over resident British subjects for certain offences against natives; but the cases could be removed to the Supreme Court by certiorari, a privilege revoked in 1843. The assistant judges who were made joint criminal judges in the zillahs in 1827, and subordinate collectors who were exercising the powers of magistrates received the title, since so well known, of joint magistrates. In this year, too, native judges were appointed, and they were declared to be criminal as well as civil judges with jurisdiction restricted to Indians. Trial by jury was ordered to be introduced gradually in

criminal cases. In 1843 we have the establishment of the new zillah courts, the judges of which were to have the powers of the judges of the Courts of Circuit then abolished.

The lines on which progress was made in Bombay closely followed those in Bengal and Madras. The regulations of Bombay, which were drawn up in 1799, however, differed from those of Bengal in one important respect, in that in Bombay Hindus were tried by their own law and Christians and Parsis were tried by English law in criminal cases. The same course was followed as in Madras in regard to the trials of resident British subjects. Courts of Circuit and the Court of the Governor in Council were also established. In 1818, as in Madras, the collector became zillah magistrate, and the judges of the new zillah courts became criminal judges of the zillahs with similar powers and duties, as in Madras.

According to the great scheme of reorganization of 1827, the magistrates and police officers had to arrest offenders and punish trifling offences. The zillah judges became criminal judges for their zillahs and dealt with important but not serious offences. Graver crimes went before the Court of Circuit. Sentences of more than two years had to be referred to the Sudder Phoujdary Adawlut. The Court of Circuit was held by one of the judges of the Sudder Phoujdary Adawlut half-yearly in each zillah in rotation; sentence of death, transportation, or imprisonment for life had to be confirmed by the Sudder Phoujdary Adawlut, which consisted of the same judges as the Sudder Dewani Adawlut sitting for criminal purposes. It supervised the police as well as performed judicial functions.

In 1830 the Provincial Court of Circuit was abolished and the powers of sessions judges and judges of the Court of Circuit were given to the criminal judges. But visiting commissioners of circuit were appointed who held State trials and trials for serious offences.

It may be well at this point to summarize the various courts which the Company had established as they are described by Morley at the time of the Mutiny.

I. BENGAL.

(a) *Civil Courts.*

1. Moonsiffs' Courts.
2. Sudder Ameens' Courts.
3. Principal Sudder Ameens' Courts.
4. Zillah and City Courts.
5. The Sudder Dewani Adawlut.

(b) *Criminal Courts.*

1. Courts of the Law Officers of the Zillah and City Courts, Sudder Ameens, and Principal Sudder Ameens.
2. Deputy Magistrates' Courts.
3. Assistant Magistrates' Courts.
4. Courts of the Zillah, City and Joint Magistrates.
5. Courts of the Sessions Judges.
6. The Nizamut Adawlut.

II. MADRAS.

(a) *Civil Courts.*

1. Village Moonsiffs' Courts.
2. District Moonsiffs' Courts.
3. Sudder Ameens' Courts.
4. Principal Sudder Ameens' Courts.
5. Subordinate Judges' Courts.
6. Assistant Judges' Courts.
7. Zillah Courts.
8. Sudder Dewani Adawlut.

(b) *Criminal Courts.*

1. District Moonsiffs' Courts.
2. Magistrates', Joint and Assistant Magistrates' Courts.
3. Sudder Ameens' Courts.
4. Courts of Subordinate Judges, Magistrates exercising their powers, and Principal Sudder Ameens.
5. Sessions Judges' Courts.
6. The Sudder Phoujdary Adawlut.

(c) *Police.*

1. Heads of villages in petty cases.
2. Heads of District Police and Tahsildars in small cases.
3. Ameens of Police may be appointed with the same powers as Tahsildars or Heads of villages.

III. BOMBAY.

(a) *Civil Courts.*

1. Moonsiffs' Courts.
2. Sudder Ameens' Courts.
3. Principal Sudder Ameens' Courts.
4. Assistant Judges' Courts.
5. Zillah Courts.
6. The Sudder Dewani Adawlut.

(b) *Criminal Courts.*

1. Assistant Sessions Judges' Courts.
2. Sessions Judges' Courts.
3. Court of the Judicial Commissioners of Circuit.
4. The Sudder Phoujdary Adawlut.

(c) *The Police.*

1. Heads of villages in trivial cases.
2. District Police Officers, Mahalkaris, and Joint Police Officers in petty cases.
3. Assistant Magistrates' Courts.
4. Courts of Zillah Magistrates, Magistrates, and Joint Magistrates.

The right of appeal to the King in Council which since the Tudor days had been conceded to the Channel Islands and which was also enjoyed by the American colonies was first granted to India in 1726, when the Charter establishing the Mayor's Courts gave the right of appeal first to the Governors in Council and then to the King in Council where the amount in dispute was above 1,000 pagodas or 4,000 rupees. The same power was given in the statute of 1773, 13 Geo. III. c. 63, and in the Charter establishing the Supreme Court of Bengal the next year. In 1797, when by 37 Geo. III. c. 142 the King was empowered to establish the Recorder's Courts at Madras and Bombay, the right of appeal was granted. When the supreme courts were established at Madras and Bombay the same was provided; only at Bombay the value in dispute must exceed 3,000 Bombay rupees. In 1781 it was stated by 21 Geo. III. c. 70 that in regard to suits in the courts of the Company, the decision of the Governor-General and Council or some committee on their behalf was to be final, save that appeal might be made in civil suits to His Majesty, provided the amount in dispute was at least £5,000. Regulation 16 of 1797 laid down rules of procedure, placing a time limit of six months and ordering security to be taken for costs, etc. In 1818 the Governor-General, having ceased to hear appeals from Madras, rules were framed for appeals to the Privy Council from that province similar to those under Regulation 16 of 1797, but as no money limit was fixed, suits below the value of £5,000 could be and were appealed.

At Bombay, in 1818, by a regulation, suits of the value of £5,000 could be brought on appeal to the Privy Council from the Sudder Adawlut Court. There was some difficulty as to the matter, but the rules as to appeals to the Privy Council were re-enacted in 1818 without, however, a limit of value. Similar rules were re-enacted in the course of the legal reforms of 1827. On the whole, while the appeals from the Supreme Courts were easy and managed without friction, those from the adawluts were of little use owing to the difficulties of procedure and the ignorance of the native agents of English rules on the subject. There was great delay and sometimes injustice.

Hence in 1833 the statute 3 & 4 Wm. IV. c. 41 was passed establishing the judicial committee of the Privy Council. It consisted of the President of the Council, the Lord Chancellor, and various members who held or had held various high judicial offices, the sovereign having power to add two other privy councillors. Two members of the Council who had held judgeships in the British dominions beyond the sea might also be appointed as members. In this way a court was formed to which was referred the entire jurisdiction on appeal of the Sovereign in Council. Rules and orders detailing the procedure were to be drawn up, and such were soon after introduced. A fresh set were issued in 1838, which stated, amongst other things, that petitions for appeals must be presented within six months of the date of the judgment, and the amount in dispute qualifying for an appeal was reduced from £5,000 to 10,000 rupees. In 1845 a statute, 8 & 9 Vic. c. 30, took the appeals from the Sudder Dewani Adawlut out of the hands of the East India Company, who had till then managed the matter by their agents, and the appellants henceforth appointed their own agents and counsel in England to conduct their cases. The transcript of the proceedings was officially sent to England and registered in the council office, and then the parties had to take action within two years.

Such, then, in rough outline was the state of affairs as regards law courts in India in the middle of the last century. There was a fairly efficient administration of justice, a well-organized system of courts of law, and the whole, such as it was, represented the result of the experienced attempts of thoughtful and patriotic men over a long series of years. The great defect in the Indian legal system was that which Warren Hastings had recognized, and which he would have remedied had he not been prevented by the shortsighted malignity of his enemies. I allude, of course, to the dual system of courts. There was a constant tendency in the direction of reform to be observed throughout the whole history of British dominion in India, and in legal matters perhaps more certainly than in any other department. Events, too, made reform easier because inevitable. After the Mutiny and the assumption of government by the Crown in a more direct manner, it was clear that some change in the law courts must be made. The variety of law—English law, Hindu law, Mohammedan law, law that had been established by regulations, ancient custom, the discretion of the judges—here was the first obstacle in the way. Hence in 1859 we have the Civil Procedure Code, in 1860 the Penal Code, and in 1861 the Criminal Procedure Code. These codes applied to all the courts excepting the supreme courts and those established by royal charter, and they were valid throughout India. It is obvious that they furnished a very strong argument for the further step which was at once taken.

In 1861 the Indian High Courts Act 24 & 25 Vic. c. 104 authorized the Queen to establish high courts of judicature at Calcutta, Madras, and Bombay, and to abolish the supreme courts whose place they were to take. The Sudder Adawlots also disappeared for ever. Power was also given to establish another high court where and if necessary, and this was the authority for the subsequent establishment of the high court at Allahabad in 1866. The necessary charters followed in 1862, with some alterations in 1865. Each of the high courts was to have a chief

justice and not more than fifteen judges. Not less than a third, including the chief justice, were to be barristers, and not less than a third were to be members of the covenanted civil service. The ordinary original jurisdiction on the civil side extended to all suits above a trifling amount where the cause of dispute or the domicile of the defendant was within the local limits of the presidency town. Suits might also be moved to the high courts from courts subject to their superintendence either by agreement or in the interest of justice. They were also courts of civil appeal from the courts of their territorial jurisdiction. Criminally they had jurisdiction over all whom the supreme courts controlled and certain powers of appeal and revision. Other powers, such as those connected with probate and divorce and the estates of infants and lunatics, were given to them. As Mr. Cowell has remarked, the high court, on its original side, is much the same as the old Supreme Court, but the local limits of jurisdiction were strictly confined. All this was inevitable at first, but as time has gone on the process of amalgamation has continued and the presidency town system, as a system, has weakened.

In 1866 a regulation, which was amended in later years, established a chief court for the Punjab much on the same lines as the high courts, though the judges were to be appointed by the Governor-General in Council and not, as in the case of the high courts, by the Crown.

In 1863 Recorder's Courts had been established at Rangoon and Moulmein, in which a barrister or advocate of five years' standing presided, and from which an appeal lay to the High Court of Bengal in civil cases where the amount at issue was between 3,000 and 10,000 rupees in value, and to the Queen in Council where it was over the latter amount. An Act of 1872 practically gave Burma a high court with a judicial commissioner at its head, and various improvements were made in 1875. After the extension of British territory in Burma in 1886 further alterations became necessary, and Act VI

of 1900 established a chief court and regulated the other courts as well. The appeals to the High Court of Bengal were abolished. In the same way various grades of courts were gradually provided for the non-regulation provinces and various territories which had been added to the empire, but the details are beyond the scope of this outline.

The High Courts were further dealt with by the Indian High Courts Act, 1911 (1 & 2 Geo. V. c. 18), which raised the possible number of judges to twenty and enabled new High Courts to be established.

CHAPTER VIII

THE COUNCILS

JUST before the transfer of the possessions and powers of the East India Company to the Crown, the Council of the Governor-General for the purposes of executive government consisted of six members, namely the Governor-General, four ordinary members (three of whom had been servants of the Company in India of at least ten years' standing, and the fourth a person not previously in the service of the Company), and the Commander-in-Chief, who was always admitted as an extraordinary member. For legislative purposes six members were added in 1853. Four were civil servants of ten years' standing in Bombay, Madras, Bengal, and the North-West Provinces respectively, and the other two were the chief justice and one other judge of the Supreme Court of Calcutta. There might, under 16 & 17 Vic. c. 95, have been also two other civilians added, but this power, as we have seen, was never exercised. This constitution came from the Act of 1853 and such as it was represents the beginnings of a parliamentary system in India. Mr. Cowell has pointed out the importance of the changes which it introduced: "Discussion became oral instead of in writing; Bills were referred to select committees instead of to a single member; and legislative business was conducted in public instead of in secret." It was felt that the changes were for the good; but they certainly increased the importance of Bengal as compared with the other provinces; and as it was the only body of a representative character that India possessed, there was danger that the legislative council might encroach upon

the province of the supreme executive Government without having the necessary parliamentary constitution and authority. Hence largely on the advice of Lord Canning and because of certain disputes between the authorities in India, the "Indian Councils Act of 1861," 24 & 25 Vic. c. 67 was passed. It dealt with the executive and the legislative councils of the Governor-General and made important changes with regard to both.

The executive council of the Governor-General had to contain five ordinary members instead of four. Three, who were to be appointed by the Secretary of State in Council, were to have been in the service of the Crown or the Company for ten years at least. The remaining two were to be appointed by the Crown, and one must be a barrister or advocate of at least five years' standing. The Secretary of State in Council might appoint the Commander-in-Chief to be an extraordinary member.

The changes as to the legislative council went further and indicated the desire of the provinces for larger powers and more complete machinery. The legislative council was to consist of the executive council with not less than six or more than twelve added members nominated by the Governor-General for two years. Of these added members at least half were to be non-official persons, that is, persons who at the date of their nomination were not in the civil or military service of the Crown in India; if they accepted such service they were to vacate their seats on the council. The Governor-General in Council was to make suitable rules for the conduct of business in the legislative council, but subject to the consent of the Governor-General the legislative council could alter such rules. The Secretary of State could also disallow any such rule. Section 19 of the Act said :

"No business shall be transacted at any meeting for the purpose of making laws and regulations, except as last hereinbefore provided (referring to the amending of rules and procedure) other than the consideration and enactment of measures introduced into the Council for the purpose of such enactment; and it shall not be lawful for any member or additional member to make or for the Council to entertain any motion, unless such motion be for leave to

introduce some measure as aforesaid into Council or have reference to some measure actually introduced thereinto: Provided always, that it shall not be lawful for any member or additional member to introduce, without the previous sanction of the Governor-General, any measure affecting—

- (i) The Public Debt or public revenues of India, or by which any charge would be imposed on such revenues;
- (ii) The religion or religious rights and usages of any class of Her Majesty's subjects in India;
- (iii) The discipline or maintenance of any part of Her Majesty's Military or Naval Forces;
- (iv) The relations of the Government with foreign Princes or States."

The Governor-General's consent was necessary to give validity to any Act or regulation passed by the council, whether he had been present in council when it was made or not. He could refuse his consent or refer the Act for the pleasure of the Crown, which would be signified through the Secretary of State in Council. The Crown could also disallow any Act or regulation which had been passed.

Section 22, which was of great importance, ran :

"The Governor-General in Council shall have power at meetings for the purpose of making laws and regulations as aforesaid, and subject to the provisions herein contained, to make laws and regulations for repealing, amending, or altering any laws or regulations whatever, now in force or hereafter to be in force in the Indian territories now under the dominion of Her Majesty, and to make laws and regulations for all persons, whether British or Native, foreigners or others, and for all courts of justice whatever, and for all places and things whatever within the said territories, and for all servants of the Government of India * within the dominions of Princes and States in alliance with Her Majesty; and the laws and regulations so to be made by the Governor-General in Council shall control and supersede any laws and regulations in any wise repugnant thereto which shall have been made prior thereto by the Governors of the Presidencies of Fort St. George and Bombay respectively in Council, or the Governor or Lieutenant-Governor in Council of any Presidency or other territory for which a Council may be appointed, with power to make laws and regulations, under and by virtue of this Act: Provided always, that the said Governor-General in Council shall not have the power of making any laws or regulations which shall repeal or in any way affect any of the provisions of this Act:

Or any of the provisions of 3 & 4 Wm. IV. c. 85 and 16 & 17

* Afterwards extended to all British subjects. A later Act, 32 & 33 Vic. c. 98, allowed Acts to be made affecting native Indian subjects in territories outside India.

Vic. c. 95, and of 17 & 18 Vic. c. 77, which after the passing of this Act shall remain in force ;

Or any provisions of the Acts of 21 & 22 Vic. c. 106 or 22 & 23 Vic. c. 41.

Or of any Act enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India ;

Or of the Acts for punishing mutiny and desertion in Her Majesty's Army or in Her Majesty's Indian Forces respectively, but subject to the provision contained in the Act of the third and fourth years of King William the Fourth, chapter eighty-five, section seventy-three, respecting the Indian Articles of War :

Or any provisions of any Act passed in this present session of Parliament, or hereafter to be passed, in any wise affecting Her Majesty's Indian territories, or the inhabitants thereof :

Or which may affect the authority of Parliament, or the constitution and rights of the East India Company, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or the sovereignty or dominion of the Crown over any part of the said territories."

Before the passing of this Act the position as regards legislation in the newly acquired territories has been thus stated by Sir Courtenay Ilbert :

"Doubts had for some time existed as to the proper mode of legislating for newly acquired territories of the Company. When Benares and the territories afterwards known as the North-Western Provinces were annexed, the course adopted was to extend to them, with some variations, the laws and regulations in force in the older provinces of Bengal, Bihar and Orissa. But when the Saugor and Nerbudda territories were acquired from the Marathas by Lord Hastings, and when Assam, Arakan and Tenasserim were conquered in 1824 and Pegu in 1852, these regions were specially exempted from the Bengal Regulations, instructions, however, being given to the officers administering them to conduct their procedure in accordance with the spirit of the regulations, so far as they were suitable to the circumstances of the country. And when the Punjab was annexed the view taken was that the Governor-General in Council had power to make laws for the new territory, not in accordance with the forms prescribed by the Charter Acts for legislation, but by executive orders, corresponding to the Orders in Council made by the Crown for what are called Crown Colonies. Provinces in which this power was exercised were called 'non-regulation provinces' to distinguish them from the 'regulation provinces,' which were governed by regulations formally made under the Charter Acts. A large body of laws had been passed under this power or assumed power, and in order to remove any doubts as to their validity a section was introduced into the Indian Councils Act, 1861,

declaring that no rule, law, or regulation made before the passing of the Act by the Governor-General or certain other authorities should be deemed invalid by reason of not having been made in conformity with the provisions of the Charter Acts." *

Any rules or orders therefore which may have been issued for non-regulation provinces by the executive Government since the Indian Councils Act, had no validity as laws ; but a new machinery for the purpose was created by the Government of India Act, 1870.

To continue with the Indian Councils Act. The Governor-General was empowered (sec. 23) in cases of emergency to make ordinances for the peace and good government of the British Provinces in India. Such were only to have force for six months and might be disallowed by the Crown or replaced by a law of the Governor-General's legislative council. This power is termed by the Montagu-Chelmsford Report "the old executive power of legislation." It was first exercised by Lord Mayo in 1869.

The Act also restored legislative powers to the Presidencies of Bombay and Madras. The Governors in each case were authorized to nominate, for two years, additional members the Advocate-General and not more than eight or less than four persons, of whom at least half are non-official persons, and these together with the ordinary members of the executive council were to form the legislative council for the purpose of making laws and regulations. In certain cases † (sec. 43), the consent of the Governor-General was necessary before the Act was introduced, and in all cases (this was a new feature) the consent of the Governor and the Governor-General was required to give validity ; in all cases also the Crown, through the Secretary of State, could disallow a law or regulation. The functions of the local legislative councils were confined to the introduction, discussion, and enactment of laws or regulations, and

* The delegates of the Clarendon Press, with their usual courteous liberality, allowed me to reprint this passage from Sir Courtenay Ilbert's famous book.

† Laws affecting the Public Debt of India ; the Customs or other taxes imposed by the Government of India ; the Currency ; Posts and Telegraphs ; the Penal Code ; Religion ; Naval and Military matters ; Patents and Copyrights ; Foreign Affairs.

enactments relating to the public services of the presidency or any charge upon them could not be introduced without the previous sanction of the Governor (sec. 38). The legislative councils could not also affect by legislation the provisions of any Act of Parliament in force in the presidency or thereafter to be enforced there. They could of course alter and repeat any laws made before the Indian Councils Act for their presidencies by Indian authority.

The Governor-General was directed to establish a similar legislative council for Bengal, which was done by proclamation of January 18, 1862; he was also given power to act in the same way as regards the North-West Provinces, which received a legislative council in 1886, and the Punjab which received one in 1897. Burma received one in the same year, Behar and Orissa and Assam in 1912, and the Central Provinces in 1913. The power of creating new legislative areas was given to the Governor-General in Council, provided the previous approval of the Secretary of State had been obtained. He had to appoint the Lieutenant-Governor and fix the area of the new province, and then the Lieutenant-Governor and his legislative council could make laws in the manner above described in the cases of Bombay and Madras. Sir Courtenay Ilbert thinks that a new lieutenant-governorship could not be created unless there were also created a local legislature.

The Montagu-Chelmsford Report, in speaking of the Councils Act in general, follows Lord Macdonnell, who, writing in 1888, in turn largely quotes from Mr. Cowell. It says (secs. 64-5):

"The character of the legislative councils established by the Act of 1861 is simply this, that they are committees for the purpose of making laws—committees by means of which the executive Government obtains advice and assistance in their legislation, and the public derive the advantage of full publicity being ensured at every stage of the law-making process. Although the Government enacts the laws through its council, private legislation being unknown, yet the public has a right to make itself heard, and the executive is bound to defend its legislation. And when the laws are once made, the executive is as much bound by them as the public, and the duty of enforcing them belongs to the Courts of Justice. In later years there has been a growing deference to the

opinions of important classes, even when they conflict with the conclusions of the Government, and such conclusions are often modified to meet the wishes of the non-official members. Still it would not be wrong to describe the laws made in the legislative councils as in reality the orders of government; but the laws are made in a manner which ensures publicity and discussion, are enforced by the courts and not by the executive, cannot be changed but by the same deliberate and public process as that by which they were made, and can be enforced against the executive or in favour of individuals when occasion requires.

The councils are not deliberative bodies with respect to any subject, but that of the immediate legislation before them. They cannot inquire into grievances, call for information or examine the conduct of the executive. The acts of the administration cannot be impugned, nor can they be properly defended in such assemblies, except with reference to the particular measure under discussion.

The Act of 1861 thus closes a chapter. Its main interest has lain in the gradual construction and consolidation of the mechanical framework of government. The three separate presidencies have come into a common system; much of the intervening spaces has been brought under British rule; the legislative and administrative authority of the Governor-General in Council has been asserted over all the provinces and extended to all their inhabitants; and the principle of recognizing local needs and welcoming local knowledge has been admitted, so that local councils have been created and re-created, and a few non-official and even Indian members have been introduced for the purposes of advice. But partly at least out of anxiety to prevent the authority of the executive from being impaired (as in Warren Hastings's days) by any other rival institution without administrative responsibility, it has been expressly declared that the councils are a mere legislative committee of the Government and are not the germ of responsible institutions."

There was now a pause. In 1869, by 32 & 33 Vic. c. 97, changes were made in regard to the Council of India, the Secretary of State receiving the right to fill vacancies for ten years. At the same time the right of filling vacancies in the various councils in India was vested in the Crown instead of in the Secretary of State in Council. The Government of India Act of 1870, 33 & 34 Vic. c. 3, was, as has been indicated, of importance, as it gave back the right, which had been taken away by the Act of 1861, of legislating for the more backward parts of India to the Governor-General; it also laid down the procedure to be observed. The approval of the Secretary of State in Council was necessary and the local authority had to propose the

draft of suitable regulations. Section 5 of the same Act gave greater power to the Governor-General to override the opinions of his council, though it did not alter the powers of the Governors of Madras and Bombay in this respect. And section 6 of this Act threw important duties on the Governor-General in Council in another direction. It ran :

"Whereas it is expedient that additional facilities should be given for the employment of natives of India, of proved merit and ability, in the Civil Service of Her Majesty in India : Be it enacted, that nothing in the 'Act for the Government of India,' twenty-one and twenty-two Victoria, chapter one hundred and six, or in the 'Act to confirm certain appointments in India, and to amend the law concerning the Civil Service there,' twenty-four and twenty-five Victoria, chapter fifty-four, or in any other Act of Parliament or other law now in force in India, shall restrain the authorities in India by whom appointments are or may be made to offices, places, and employments in, the Civil Service of Her Majesty in India from appointing any Native of India to any such office, place, or employment, although such Native shall not have been admitted to the said Civil Service of India in manner in section thirty-two of the first-mentioned Act provided, but subject to such rules as may be from time to time prescribed by the Governor-General in Council and sanctioned by the Secretary of State in Council, with the concurrence of a majority of members present ; and that for the purposes of this Act the words 'Natives of India' shall include any person born and domiciled within the dominions of Her Majesty in India, of parents habitually resident in India, and not established there for temporary purposes only ; and that it shall be lawful for the Governor-General in Council to define and limit from time to time the qualification of 'Natives of India' thus expressed ; provided that every resolution made by him for such purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for thirty days before both Houses of Parliament."

The rules made established what were known as "Statutory Civilians." The Indian Councils Act of 1871, 34 & 35 Vic. c. 34, described as "An Act to extend in certain respects the power of local legislatures in India as regards European British subjects," gave power to the local legislatures to confer jurisdiction over European British subjects on magistrates in certain cases ; it provided for their being sent before the High Court where the offence was grave.

The Act of 1874, 37 & 38 Vic. c. 91, allowed the appointment of a sixth ordinary member of the Governor-General's

council in charge of the public works. And an Act of 1876, 39 & 40 Vic. c. 7, allowed the appointment by the Secretary of State of a person having special qualifications as a member of the Council of India during good behaviour. This power exercised in the case of Sir Henry Maine no longer exists.

In 1876 the Queen took the title of Empress of India. In 1889 the Secretary of State was instructed not to appoint any more members of the Council of India until the number had been reduced to ten. About 1888 discussion began with a view to enlarging the possibility of Indian advice and criticism and to the introduction of the elective system. Lord Dufferin's views sum up the official opinions of the time very clearly.

"It now appears to my colleagues and to myself that the time has come for us to take another step in the development of the same liberal policy, and to give, to quote my own words, 'a still wider share in the administration of public affairs, to such Indian gentlemen as by their influence, their acquirements, and the confidence they inspire in their fellow countrymen are marked out as fitted to assist with their counsels the responsible rulers of the country.' But it is necessary that there should be no mistake as to the nature of our aims, or of the real direction in which we propose to move. Our scheme may be briefly described as a plan for the enlargement of our provincial councils, for the enhancement of their status, the multiplication of their functions, the partial introduction into them of the elective principle, and the liberalization of their general character as political institutions. From this it might be concluded that we were contemplating an approach, at all events, as far as the provinces are concerned, to English Parliamentary Government and an English constitutional system. Such a conclusion would be very wide of the mark ; and it would be wrong to leave either the India Office or the Indian public under so erroneous an impression. India is an integral portion, it may be said one of the most important portions, of the mighty British Empire. Its destinies have been confided to the guidance of an alien race, whose function it is to arbitrate between a multitude of conflicting or antagonistic interests and its government is conducted in the name of a monarch whose throne is in England. The executive that represents her *imperium* in India is an executive directly responsible, not to any local authority, but to the sovereign and to the British Parliament. Nor could its members divest themselves of this responsibility as long as Great Britain remains the paramount administrative power in India. But it is of the essence of constitutional government as Englishmen understand the term, that no administration should remain at the head of affairs which does not possess the necessary power to carry out whatever measures or

policy it may consider to be for the public interest. The moment these powers are withheld, either by the Sovereign or Parliament, a constitutional executive resigns its functions and gives way to those whose superior influence with the constituencies has enabled them to overrule its decisions, and who consequently become answerable for whatever line of procedure may be adopted in lieu of that recommended by their predecessors. In India this shifting of responsibility from one set of persons to another is under existing circumstances impossible; for if any measure introduced into a legislative council is vetoed by an adverse majority, the Governor cannot call upon the dissentients to take the place of his own official advisers, who are nominated by the Queen-Empress on the advice of the Secretary of State. Consequently the veto of the opposition in an Indian Council would not be given under the heavy sense of responsibility which attaches to the vote of a dissenting majority in a constitutional country; while no responsible executive could be required to carry on the government unless free to inaugurate whatever measures it considers necessary for the good and safety of the State. It is, therefore, obvious for this and many other reasons, that no matter to what degree the liberalization of the councils may now take place, it will be necessary to leave in the hands of each provincial Government the ultimate decision upon all important questions, and the paramount control of its own policy. It is in this view that we have arranged that the nominated members in the council should outnumber the elected members, at the same time that the Governor has been empowered to overrule his council whenever he feels himself called upon by circumstances to do so.

But though it is out of the question either for the supreme or for the subordinate Governments of India to divest themselves of any essential portion of that Imperial authority which is necessary to their very existence as the ruling power, paramount over a variety of nationalities, most of whom are in a very backward state of civilization and enlightenment, there is no reason why they should not desire to associate with themselves in Council in very considerable numbers such of the natives of India as may be enabled by their acquirements, experience, and ability to assist and enlighten them in the discharge of their difficult duties. Nor can it be doubted that these gentlemen, when endowed with ample and unrestricted powers of criticism, suggestion, remonstrance, and inquiry, will be in a position to exercise a very powerful and useful influence over the conduct of provincial and local public business which alone it is proposed to entrust to them. As inhabitants of the country, as intimately associated with its urban and rural interests, as being in continual contact with large masses of their fellow-countrymen, as the acknowledged representatives of legally constituted bodies, or chosen from amongst influential classes, they will always speak with a great weight of authority; and as their utterances will take place in public, their opinions will be sure to receive at the hands of the press whatever amount of support their intrinsic weight or value may justify. By this means the field of public discussion will be considerably enlarged, and the various administrations concerned will be able to shape their course with the advantage of a

far more distinct knowledge of the wishes and feelings of the communities with whose interests they may be required to deal than has hitherto been the case: for those wishes and feelings will be expressed, not, as at present, through self-constituted, self-nominated and therefore untrustworthy channels, but by the mouths of those who will be the legally constituted representatives of various interests and classes, and who will feel themselves in whatever they do or say responsible to enlightened and increasing sections of their own countrymen."

The Secretary of State was at first unwilling to concede election, which as he said was unfamiliar in the East and had only been tried in the case of local bodies and on a small scale. Lord Lansdowne, however, pressed for the elective principle, and the result was the Councils Act of 1892, 55 & 56 Vic. c. 14, which authorized the enlargement of the legislative councils and empowered the Governor-General in Council, with the approval of the Secretary of State in Council, to make regulations as to the conditions of nomination of the additional members. This (sec. (4)) was the Kimberley clause under which election was guardedly introduced. The rules made under this clause provided technically for recommendation, but practically they allowed the selection of members to be in the hands of the bodies concerned.

The sections authorizing the enlargement of the councils run as follows:

"1. (1) The number of additional Members of Council nominated by the Governor-General under the provisions of section ten of the Indian Councils Act, 1861, shall be such as to him may seem from time to time expedient, but shall not be less than ten nor more than sixteen; and the number of additional Members of Council nominated by the Governors of the Presidencies of Fort St. George and Bombay respectively under the provisions of section twenty-nine of the Indian Councils Act, 1861, shall (besides the Advocate-General of the Presidency or officer acting in that capacity) be such as to the said Governors respectively may seem from time to time expedient, but shall not be less than eight nor more than twenty.

(2) It shall be lawful for the Governor-General in Council by proclamation from time to time to increase the number of councillors whom the Lieutenant-Governors of the Bengal Division of the Presidency of Fort William and of the North-Western Provinces and Oudh respectively may nominate for their assistance in making Laws and Regulations: Provided always that not more than twenty shall be nominated for the Bengal Division, and not more than fifteen for the North-Western Provinces and Oudh."

It also allowed the members of the Councils (sec. 2) to ask questions though not to vote on the Budgets. And it cleared up some doubt as to the powers of the local legislatures and slightly extended them (sec. 5).

In 1904 an Act, 4 Edw. VII. c. 26, allowed the sixth member of the Governor-General's Council to hold any portfolio that was convenient. An Act of 1907, 7 Edw. VII. c. 35, dealt with the Council of India in London. It repealed the Act of 1889 and said that the council should consist of not less than ten or more than fourteen members, who should be appointed for seven instead of ten years, and should have served or resided in British India for at least ten years and not have left British India for more than five years.

The councils continued their work through years of great unrest and difficulty, years which saw the rise of a strong nationalist movement, and the redistribution of territory involving the partition of Bengal.

"Rather more than five years after the regulations had been introduced (says the Montagu-Chelmsford Report), Lord George Hamilton ordered their working to be reviewed with the object of seeing how far they had secured the representation of all important classes. Inquiry showed both in Madras and Bombay that the district boards and municipalities, which constituted the nominating authorities for rural areas, tended to nominate lawyers far too exclusively, but neither Government was disposed to press for any change. In Bengal, however, one seat was transferred from the rural municipalities to the large landowners who had not hitherto been given a right of nomination. The general idea was that the machinery for representation at that time corresponded to the needs of the country; and so for another ten years the elective element in the provincial councils consisted of at the utmost eight members returned by a few large cities, by groups of municipalities and district boards, by chambers of commerce, and by universities."

We are thus led to the group of proposals which ultimately took shape and formed the Minto-Morley Scheme of 1909, 9 Edw. VII. c. 4:

"The problem which Lord Minto's Government set themselves to solve was how to fuse in one single Government the two elements which they discerned in the origins of British power in India. They hoped to blend the principle of autocracy derived from Moghul Emperors and Hindu Kings with the principle of constitutionalism derived from the British Crown and Parliament to create a constitutional autocracy, which differing *toto caelo* from Asiatic despotisms,

should bind itself to govern by rule, should call to its counsels representatives of all interests which were capable of being represented, and should merely reserve to itself in the form of a narrow majority predominant and absolute power. They hoped to create a constitution about which conservative opinion would crystallize and offer substantial opposition to any further change. They anticipated that the aristocratic element in society and the moderate men, for whom there was then no place in Indian politics, would range themselves on the side of the Government, and oppose any further shifting of the balance of power and any attempt to democratize Indian institutions."

It is clear that neither Lord Minto nor Lord Morley wished that the reforms should lead to Parliamentary government, and this is alleged by the authors of the Montagu-Chelmsford Report to be one of the reasons why they did not prove acceptable to Indian opinion. They both thought that the European representative system "could never be akin to the instincts of the many races comprising the population of the Indian Empire." The main provisions of the statute 9 Edw. VII. c. 4, which embodied the scheme, were as follows:

The additional members of legislative councils instead of being all nominated as the Acts of 1861 and 1892 provided were to include members so nominated and also members elected in accordance with regulations which were to be made under this Act.

The numbers of additional members or members so nominated and elected, the quorum necessary, the term of office, and the manner of filling up vacancies, were also to be prescribed by regulation. Provided that the aggregate number of members nominated and elected did not exceed the following:

Legislative council of the Governor-General	60
Legislative councils of Madras, Bombay, Bengal, the United Provinces, Eastern Bengal and Assam, in each case	50
Legislative councils of the Punjab, Burma, and any other Province thereafter to be constituted, in each case	30

The number of ordinary members of the executive councils of Madras and Bombay was to be such, not exceeding four,

as the Secretary of State in Council might from time to time direct: two of them must have been in the service of the Crown in India for at least twelve years. The Governor in each case was to have a casting vote if the votes were equally divided.

Power was given to the Governor-General in Council with the approval of the Secretary of State in Council to create by proclamation a provincial executive council in Bengal. He could also establish one for any other province under a Lieutenant-Governor. But the Proclamation proposed to be made must be laid before Parliament.

Notwithstanding anything in the Indian Councils Act, 1861, the Governor-General in Council, the Governors in Council of Fort St. George and Bombay respectively, and the Lieutenant-Governor or Lieutenant-Governor in Council of every province, were to make rules authorizing at any meeting of their respective legislative councils the discussion of the annual financial statement of the Governor-General in Council or of their respective local governments as the case might be, and of any matter of general public interest, and the asking of questions under such conditions and restrictions as might be prescribed in the rules applicable to the several councils. Such rules were to be subject to the sanction of the Secretary of State in Council or the Governor-General in Council and were not to be subject to alteration or amendment by the legislative councils concerned.

The Governor-General in Council was to make the necessary regulations as to election and nomination to the legislative councils subject to the approval of the Secretary of State, and they were not to be altered by his legislative council.

We have not space to consider the regulations in detail which, issued on November 15, 1909 and subsequently amended in various details, carried out the intentions of the powers of the Act. It will suffice to give (1) the explanation of the salient features of the scheme, and (2) the criticism of its working, contained in the Montagu-Chelmsford Report.

" (1) Its authors agreed that in the immense diversity of interests and opinions in India representation by classes and interests was the only practicable means of embodying the elective principle in the constitution of the councils. For certain limited interests, such as the presidency corporations, universities, chambers of commerce, or the planting community, it was an easy task to frame limited electorates. Difficulties began where it was a question of providing for widespread interests or communities, such as the landholding or professional classes, or for important minorities, such as the Mohammedans in many provinces or the Sikhs in the Punjab. The Mohammedans indeed pressed for and obtained from Lord Minto a promise that they should elect their own members in separate Mohammedan constituencies. It is probable that the far-reaching consequences of this decision and the difficulties which it would create at a later stage were not fully foreseen. We shall have occasion to discuss them later. Similarly to the large land-owning interests a special electorate was conceded based on a high franchise. The residuary constituencies for the provincial councils—which constitute the only means of representation of the people at large—were constructed out of municipalities and district boards voting in groups.

Lord Minto's Government were at first disposed to maintain a bare official majority in the provincial councils, but to summon ordinarily only such number of official members as would be necessary for the transaction of business. But in Bombay it had already been found possible to do without an official majority, and in the year 1906 the local council consisted of ten officials and fourteen non-officials, though to three of the latter seats officials might at any time be appointed. It was decided, therefore, to face the risks of abandoning the official majority in provincial councils; to rely partly on the use of the veto, partly on the statutory restrictions attaching to provincial legislation, to prevent the carrying of undesirable laws; and to trust to the concurrent powers of legislation possessed by the Governor-General's legislative council for the enactment of necessary laws which the provincial council refused. The provincial legislatures were enlarged up to a maximum limit of 50 additional members in the larger provinces, and 30 in the smaller; and the composition was so arranged as to give a combination of officials and nominated non-officials a small majority over the elected members except in Bengal, where there was a clear elected majority.

The Indian Legislative Council was also enlarged. According to the present regulations the number of additional members is ordinarily 60. Not more than 28 may be officials. The Governor-General also nominates three non-officials to represent specified communities, and has at his disposal two other seats to be filled by nomination. In this case also it was found necessary to rely largely on the representation of interests rather than territories. The 27 elected seats are partly shared by certain special constituencies, such as the landowners in seven provinces, the Mohammedans in five provinces, Mohammedan landowners in one province (at alternate elections only) and two chambers of commerce, while the residue of open

seats is filled by election by the non-official members of the nine provincial legislative councils. We may explain that our figures take account of the further changes in the regulations necessitated by the repartition of Bengal and the subsequent constitution of a legislative council for the Central Provinces. On the Governor-General's Legislative Council a small official majority was thus retained. Lord Morley laid it down that the Governor-General's Council in its legislative as well as its executive character should continue to be so constituted as to ensure its constant and uninterrupted power to fulfil the constitutional obligations that it owes and must always owe to His Majesty's Government and to the Imperial Parliament."

The Report then emphasizes the legal recognition of the elective principle and the enlargement of the scope of the councils. The Minto-Morley changes

"admitted the need for increased representation, while reiterating the impossibility of basing it generally on a direct or general franchise. They admitted the desirability of generally securing non-official approval to the government legislation, though they trusted in an emergency to the support of nominated members, to the division of interests between different classes of elected members, and in the last resort to overriding legislation in the Indian legislative council, where an official majority was retained. Frankly abandoning the old conception of the councils as a mere legislative committee of the Government, they did much to make them serve the purpose of an inquest into the doings of government by conceding the very important rights of discussing administrative matters and of cross-examining Government on its replies to questions."

Lord Morley had not the least wish to establish a parliamentary system in India, nevertheless the Minto-Morley Reforms

"constitute a decided step forward on a road leading at no distant period to a stage at which the question of responsible government was bound to present itself."

The general conclusion is as follows :

"But the reforms of 1909 afforded no answer, and could afford no answer, to Indian political problems. Narrow franchises and indirect elections failed to encourage in members a sense of responsibility to the people generally, and made it impossible, except in special constituencies, for those who had votes to use them with perception and effect. Moreover, the responsibility for the administration remained undivided, with the result that while Governments found themselves far more exposed to questions and criticism than hitherto, questions and criticism were uninformed by a real sense of responsibility, such as comes from the prospect of having to assume

office in turn. The conception of a responsible executive, wholly or partially amenable to the elected councils, was not admitted. Power remained with the Government and the councils were left with no functions but criticism. It followed that there was no reason to loosen the bonds of official authority, which subjected local governments to the Government of India, and the latter to the Secretary of State and Parliament. Such a situation, even if it had not been aggravated by external causes, might easily give rise to difficulties : the plan afforded no room for further advance along the same lines. . . . The Morley-Minto reforms in our view are the final outcome of the old conception which made the Government of India a benevolent despotism (tempered by a remote and only occasionally vigilant democracy); which might as it saw fit for purposes of enlightenment consult the wishes of its subjects."

(2) With regard to the actual working of the councils

"the franchise was extremely restricted, and there was usually no connection between the supposed primary voter and the man who sits as his representative. The result of the Morley-Minto scheme was that a very large percentage of those elected were lawyers securing a predominance of men of one calling which was not in the interests of the general community. In the councils the Government *bloc* was strictly maintained, and can in no way be compared with the party discipline in the House of Commons. The effect of this on the Indian members was to prejudice the official members in their view. The Government aspect of a case was often conveyed by one member, the rest of the officials taking no part and then voting down the opposition. Thus the council's decision was the decision of the Government, and the practice tended to accentuate the difference which was already largely one of race. It also took away from the reality of the proceedings because the result was certain beforehand.

The work of the councils was not what would have been expected. In the Indian Legislative Council there was very little legislation, largely because non-official opinion was taken before a Bill was introduced. Hence the constructive work of legislation was largely done by correspondence, which must be the case where there is an official majority, though the influence of that majority is felt more powerfully in the council chamber than in the committee room. The conditions were rather different in the provincial councils, but the tendencies were very similar."

On the whole

"The Morley-Minto constitution ceased in the brief space of ten years' time to satisfy the political hunger of India. The new institutions began with good auspices, and on both sides there was a desire to work them in a conciliatory fashion. But some of the antecedent conditions of success were lacking. There was no general advance in local bodies ; no real setting free of provincial finance ; and in spite of some progress no widespread admission of Indians in greater numbers into the public service. Because the relaxation

of Parliamentary control had not been contemplated, the Government of India could not relax their control over local governments. The sphere in which the councils could affect the Government's action, both in respect of finance and administration, was therefore closely circumscribed. Again and again a local Government could only meet a resolution by saying that the matter was really out of its hands. It could not find the money because of the provincial settlements: it was not administratively free to act because the Government of India were seized of the question: it could therefore only lay the views of the councils before the Government of India. As regards legislation also, the continuance of the idea of official subordination led to so much of the real work being done behind the scenes. The councils were really more effective than they knew; but their triumphs were not won in broad daylight in the dramatic manner which political ardour desired. This was one reason why more interest was often shown in resolutions than in legislation. The carrying of a resolution against Government, apart from the opportunity of recording an opinion which might some day bear fruit, came to be regarded as a great moral victory; and it is evident that topics that are likely to combine all the Indian elements in the council offered the best opportunity. Because the centralization of control limited the effectiveness of the councils, the non-official members were driven to think more of display than they might otherwise have done; and the sense of unreality on both sides deepened. All this time the national consciousness and the desire for political power were growing rapidly in the minds of educated Indians; and the councils with their limited opportunities proved to be an insufficient safety valve. While therefore inside the councils there are signs of hardening opposition and the weariness which comes of sterile efforts, outside the councils the tide of feeling was rising more quickly. For a short time after their inception the Morley-Minto reforms threatened to diminish the importance of the Indian National Congress and the Muslim League. It seemed as if the councils where elected members took a share in the business of government must be a more effective instrument for political purposes than mere self-constituted gatherings. But with the disillusionment about the reformed councils the popular conventions, where speakers were free to attack the Government and give vent to their own aspirations untrammelled by rules of business or the prospect of a reply, naturally regained their ascendancy; and the line taken by prominent speakers in them has been to belittle the utility of the councils, if not to denounce them as a cynical and calculated sham. We cannot now say to what extent improvement might have been effected by gradual changes in the rules of business, by relaxing official discipline, by permitting freer discussion, and by a greater readiness to meet the non-official point of view. However this be, events have proved too strong. The councils have done much better work than might appear to some of their critics. But they have ceased to satisfy Indian opinion, and their continuance can only lead to a further cleavage between the Indian members and the Government and a further cultivation of criticism unchecked by responsibility."

CHAPTER IX

THE MONTAGU-CHELMSFORD REFORMS

THE Morley-Minto scheme came about the same time as the Decentralization Commission, which was an attempt to get rid of the concentration of functions in the hands of the Central Government of the Indian Empire. This concentration was natural enough and really resulted from various reforms that were made in the administration; as such reforms could only be made by the central authority there was a tendency for that authority to keep a certain amount of control when new conditions were introduced. The ideas of the time fitted in with the oriental dependence upon government and possibly the Royal Titles Act of 1876, under which the Queen assumed the title of Empress of India told in the same direction. The result of the labours of the commission was to relax the control of the Central Government over the local authorities in many matters of detail, to free local bodies to some extent from official interference, and give greater powers both in the government of India and in provincial Governments to the heads of departments. Before, however, we consider the more important changes which followed, we must mention the Government of India Act, 1912, which dealt with the new arrangements made necessary by the recent Delhi Durbar proclamations, and the great consolidating statute passed in 1915, and known as the Government of India Act, 1915 (5 & 6 Geo. V. c. 61). The latter substituted one general enactment for nearly all of those which went before, and which dealt with the Indian constitution of India. It was slightly amended in 1916, and is with the amending Act printed in the Appendix.

On August 20, 1917 (says the Montagu-Chelmsford Report), the Secretary of State for India made the following announcement in the House of Commons :

" The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration, and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible, and that it is of the highest importance as a preliminary to considering what these steps should be that there should be a free and informal exchange of opinion between those in authority at home and in India. His Majesty's Government have accordingly decided, with His Majesty's approval, that I should accept the Viceroy's invitation to proceed to India to discuss these matters with the Viceroy and the Government of India, to consider with the Viceroy the views of local Governments, and to receive with him the suggestions of representative bodies and others.

I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the time and measure of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility.

Ample opportunity will be afforded for public discussion of the proposals which will be submitted in due course to Parliament."

As a result of this announcement the Secretary of State, Mr. Montagu, went to India, and after lengthy consideration with the Viceroy, Lord Chelmsford, the Montagu-Chelmsford Report on Indian Constitutional Reforms was made public in 1918. It was much more than a mere advance on the old lines of council government. It suggested practically the rapid introduction of Western methods of representative government into India, and the development of institutions with that end in view.

The authors of the Report laid down four formulæ :

- " (1) There should be, as far as possible, complete popular control in local bodies and the largest possible independence for them of outside control.

- (2) The provinces are the domain in which the earlier steps towards the progressive realization of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit. This involves at once giving the provinces the largest measure of independence, legislative, administrative, and financial, of the government of India, which is compatible with the due discharge by the latter of its own responsibilities.
- (3) The Government of India must remain wholly responsible to Parliament, and saving such responsibility, its authority in essential matters must remain indisputable, pending experience of the effect of the changes now to be introduced in the provinces. In the meantime, the Indian Legislative Council should be enlarged and made more representative, and its opportunities of influencing Government increased.
- (4) In proportion as the foregoing changes take effect, the control of Parliament and the Secretary of State over the Government of India and provincial Governments must be relaxed."

The Report, of which these were the basic propositions, contained various important recommendations. They were largely general in nature and had to be completed in detail before legislation could carry them into action. The best plan, perhaps, will be to give in the first place, with some expansion, the summary which the authors of the Report gave of their own proposals ; we can then draw attention to the extent to which they were carried out. The numbers in brackets refer to the paragraphs in the Report.

PARLIAMENT AND THE INDIA OFFICE.

" 1. The control of Parliament and the Secretary of State to be modified.

" It now remains for us to examine the effect of our proposals upon the position of the Secretary of State for India in Council and the control which Parliament exercises through him over all the

Governments in India. We have already explained how the Act of 1858, which brought the East India Company to an end, set up the Secretary of State with the Council of India to assist him, as the Minister of State responsible for Indian Affairs. In the language of the existing law the Secretary of State has power to 'superintend, direct, and control all acts, operations, and concerns which relate to the government or revenue of India and all grants of salaries, gratuities, and allowances, and all other payments and charges, out of or on the revenues of India.' Again, section 21 of the Government of India Act, 1915, reads as follows: 'The expenditure of the revenues of India, both in British India and elsewhere, shall be subject to the control of the Secretary of State in Council; and no grant or appropriation of any part of those revenues, or any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, or this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council of India. (290.)' *"

"It has been of course impossible in practice that the affairs of a vast and remote Asiatic dependency should be administered directly from Whitehall; and, as we have seen, large powers and responsibilities have always been left by the Secretary of State to the Government of India and again by the Government of India to local Governments. At the same time the Secretary of State's responsibility to Parliament has set very practical limits to the extent of the delegation which he can be expected to sanction. Now that His Majesty's Government have declared their policy of developing responsible institutions in India we are satisfied that Parliament must be asked to assent to set certain bounds to its own responsibility for the internal administration of that country. It must, we think, be laid down broadly that in respect of all matters in which responsibility is entrusted to representative bodies in India, Parliament must be prepared to forego the exercise of its own power of control, and that this process must continue *pari passu* with the development of responsible government in the provinces and eventually in the government of India. The process should, we think, begin with the conclusions arrived at on the report of the Committee which will consider the question of the transferred subjects. Having taken their report and the views of the Government of India upon it into consideration the Secretary of State would, we imagine, ask Parliament's assent to his declaring by statutory orders which he would be empowered to make under the Act that such and such subjects in the various provinces had been transferred; and when Parliament had assented to such orders, the Secretary of State would cease to control the administration of the subjects which they covered. The discussion of such matters by Parliament in future would be governed by the fact of their transfer. We appreciate the difficulties of the situation; but it must be recognized that it will be impossible for Parliament to retain control of matters which it has deliberately delegated to representative bodies in India. At the same time it will be necessary to ensure that the Secretary of State is in a position to furnish Parliament with any

* The numbers in brackets refer to paragraphs in the body of the Report.

information upon Indian affairs that it desires; and nothing in our proposals should be taken as intended to impair the liability of the Government of India and the provincial Governments to furnish such information to the India Office at any time. (291.)"

"So far we have had in mind only the transferred subjects. But even as regards reserved subjects while there cannot be any abandonment by Parliament of ultimate powers of control, there should, as we have indicated already, be such delegation of financial and administrative authority as will leave the Government of India free, and enable them to leave the provincial Governments free, to work with the expedition that is desirable. On the purely financial side this delegation will involve an examination of the various codes and other regulations and orders, which we have already described as limiting too straitly the power of the authorities in India. This matter is already being examined in India and the Government of India will make proposals to the Secretary of State in Council. On the purely administrative side there are as we have seen no general orders, like those embodied in the financial codes, prescribing the matters for which the Secretary of State's sanction is required. But in an earlier chapter we gave an illustrative list of the subjects regarded as falling within that category; and generally speaking it is well understood that all important new departures require his previous approval. The drawing of the line between the important and unimportant can only be left to the common sense of the authorities in India and at home. But we are agreed that a wider discretion ought henceforth to be left to the Governor-General in Council; and that certain matters which are now referred home for sanction might in future be referred merely for the information of the Secretary of State in Council. The exact definition of these particular matters must also be pursued at greater leisure, and the Government of India will take this question in hand. It will follow in such cases in future that when the policy of the executive Government in India is challenged, Parliament must be asked to accept the explanation that in accordance with deliberate policy the Government of India have been given discretion in respect of the topic in question and that for this reason the Secretary of State is not prepared to interfere with what has been settled in India. It is not part of our plan to make the official Governments in India less amenable to the control of Parliament than hitherto. It must be for Parliament itself to determine the limits which it will set to the exercise of its own powers. On the other hand intervention by Parliament may involve intervention by the Government of India in matters which otherwise would be recognized as of provincial concern. It will be distracting both to the Government of India and the provincial Governments if the operation of this principle of discretionary delegation is left either to the idiosyncrasies of Secretaries of State, or to the disposition of party forces in Parliament. We hope therefore that Parliament will assent to facilitate the working of our reforms by a provision authorizing the Secretary of State, by rules to be laid before Parliament, to divest himself of control of the Government of India in some specified matters even although these continue to be the concern of the official Governments,

and to empower the Government of India to do likewise in relation to provincial Governments. On large matters of policy in reserved subjects there can of course be no question of such delegation. (292.)"

"2. The salary of the Secretary of State for India to be transferred to the Home Estimates. (294.)"

"3. The House of Commons to be asked to appoint a Select Committee on Indian affairs at the beginning of every Session. (295.)"

"4. A committee to be appointed to examine and report on the present constitution of the Council of India and on the India Office establishment. (293.)"

The Government of India.

"5. The Government of India to preserve indisputable authority on matters adjudged by it to be essential in the discharge of its responsibilities for peace, order, and good government. (266.)"

"6. We would ask that His Majesty may be graciously pleased to approve the institution of a Privy Council for India. From time to time projects of this kind have been mooted and laid aside; but with the changed conditions we believe that such a body would serve a valuable purpose and do useful work. India, for all its changing ideas, is still ready to look up with pride and affection to any authority clothed with attributes that it can respect and admire. Appointments to the Privy Council should be made by the King-Emperor and for life, which would ensure that they would be valued as a high personal distinction. Officials and non-officials, both from British India and the Native States, would be eligible; but it would be necessary to confine appointment to those who had won real distinction, or had held or were holding the highest offices such as Members of the Governments, Ruling Princes, Members of the Council of State, and High Court Judges. Indian Privy Counsellors should enjoy the title of 'Honourable' for life. The Privy Council's office would be to advise the Governor-General when he saw fit to consult it on questions of policy and administration. It is our hope that for one purpose or another committees of the Privy Council comparable to those of the Privy Council in England, which have done such valuable work in connection with industrial and scientific research and education, will be appointed. (287.)"

The Executive.

"7. To increase the Indian element in the Governor-General's Executive Council. (272.)"

"8. To abolish the present statutory maximum for the Executive Council and the statutory qualification for seats. (271.)"

"9. To take power to appoint a limited number of members of the legislature to a position analogous to that of Parliamentary Under Secretaries in Great Britain. (275.)"

The Legislature.

"10. To replace the present Legislative Council of the Governor-General by a Council of State and a Legislative Assembly. (273-8.)"

"11. The Council of State to consist of 50 members (exclusive of the Governor-General, who would be President, with power to

appoint a Vice-President who would normally take his place). Of the members there would be 21 elected members of whom 15 would be returned by the non-official members of the provincial legislative councils, each council returning two members, other than those of Burma, the Central Provinces and Assam which would return one member each. Elected members returned to the Council of State would vacate any seats they occupied on the Provincial Council or the Legislative Assembly. The remaining six members are intended to supplement the representation which the Mohammedans and the landed classes would otherwise secure; and also to provide for the representation of chambers of commerce. Each of these three interests should, we suggest, return two members directly to the Council of State. Of the 29 nominated members, four to be non-officials and not more than twenty-five to be officials including the members of the Executive Council. (277.)"

"The life of each Council of State to be five years. (278.)"

"The Governor-General in Council to frame regulations as to the qualifications for membership of the Council of State. (278.)"

"12. We recommend that the strength of the legislative council, to be known in future as the Legislative Assembly of India, should be raised to a total strength of about 100 members, so as to be far more truly representative of British India. We propose that two-thirds of this total should be returned by election; and that one-third should be nominated by the Governor-General, of which not less than a third again should be non-officials selected with the object of representing minority or special interests. We have decided not to present to His Majesty's Government a complete scheme for the election of the elected representatives; our discussions have shown us that we have not the data on which to arrive at any sound conclusions. Some special representation, we think, there must be, as for European and Indian commerce, and also for the large landlords. There should be also communal representation for Mohammedans in most provinces and also for Sikhs in the Punjab. There is no difficulty about direct election in the case of special constituencies. It is in respect of the general or residuary electorate, including therein the communal electorates for Mohammedans and Sikhs, that complexities present themselves. Our decided preference is for a system of direct electorates, but the immensity of the country makes it difficult, it may be impossible, to form constituencies of reasonable size in which candidates will be able to get into direct touch with the electorate. (273.)"

"The suggestion we have made for the number of elected members is based on the calculation that the three presidencies would be represented by 11 members each—the United Provinces by 10, the Punjab and Bihar and Orissa by 7 each, the Central Provinces by 5, Burma by 3 and Assam by 2. We also think that in view of the importance of the Delhi province as the Imperial enclave and the seat of the Central Government, it should be represented by a member. (274.)"

"The life of each Legislative Assembly to be three years."

"The President of the Assembly to be nominated by the Governor-General. (275.)"

"13. Official members of the Council of State to be eligible also nomination to the Legislative Assembly. (277.)"

"14. The Governor-General to have power to dissolve either the Council of State or the Legislative Assembly. (283.)"

"15. The following procedure to be adopted for legislation. (279-282.)"

(a) Government bills: ordinarily to be introduced and carried through the usual stages in the Assembly, and if passed by the Assembly to be sent to the Council of State. If the Council of State amend the bill in a manner which is unacceptable to the Assembly, the bill to be submitted to a joint session of both houses, unless the Governor-General in Council is prepared to certify that the amendments introduced by the Council are essential to the interests of peace and order or good government (including in this term sound financial administration), in which case the Assembly not to have power to reject or modify such amendments. But in the event of leave to introduce being refused or the bill being thrown out at any stage the Governor-General in Council to have the power, on certifying that the bill is within the formula cited above, to refer it *de novo*, to the Council of State. The Governor-General in Council also to have the power in cases of emergency so certified to introduce the bill in the first instance in and to pass it through the Council of State, merely reporting it to the Assembly.

(b) Private bills: to be introduced in the chamber of which the mover is a member and on being passed by that chamber to be submitted to the other. Differences of opinion between the chambers to be settled by means of joint sessions. If, however, a bill emerge from the Assembly in a form which the Government think prejudicial to good administration, the Governor-General in Council to have power to certify it in the terms already cited and to submit or re-submit it to the Council of State: the bill only to become law in the form given it by the Council. (280.)"

"16. Resolutions to have effect only as recommendations. (284.)"

"17. The Governor-General and the Crown to retain their respective powers of assent, reservation, or disallowance. (283.)"

"18. The Governor-General to retain his existing power of making Ordinances and the Governor-General in Council his power of making Regulations. (276 and 283.)"

"19. Nominated official members of the Council of State or the Legislative Assembly to have freedom of speech and vote except when Government otherwise directs. (275.)"

"20. Any member of the Council of State or the Legislative Assembly to be entitled to ask supplementary questions. The Governor-General not to disallow a question on the ground that it cannot be answered consistently with the public interest, but power to be retained to disallow a question on the ground that the putting of it is inconsistent with the public interest. (286 and 236.)"

"21. Rules governing the procedure for the transaction of business in the Council of State and the Legislative Assembly to be made in the first instance by the Governor-General in Council. The Legislative Assembly and the Council of State to be entitled to modify their rules, subject to the sanction of the Governor-General.

In each case such modifications not to require the sanction of the Secretary of State in Council and not to be laid before Parliament. (286.)"

"22. Joint Standing Committees of the Council of State and the Legislative Assembly to be associated with as many departments of Government as possible. The Governor-General in Council to decide with which departments Standing Committees can be associated and the head of the department concerned to decide what matters shall be referred to the Standing Committee. Two-thirds of each Standing Committee to be elected by ballot by the non-official members of the Legislative Assembly and the Council of State, one-third to be nominated by the Governor-General in Council. (285.)"

The Provinces.

"23. The Provincial Governments to be given the widest independence from superior control in legislative, administrative, and financial matters which is compatible with the due discharge of their own responsibilities by the Government of India. (189.)"

"24. Responsible government in the provinces to be attained first by the devolution of responsibility in certain subjects called hereafter the transferred subjects (all other subjects being called reserved subjects), and then by gradually increasing this devolution by successive stages until complete responsibility is reached. (215, etc.)"

Provincial Executives.

"25-29. We propose therefore that in each province the executive Government should consist of two parts. One part would comprise the head of the province and an executive council of two members. In all provinces the head of the Government would be known as Governor, though this common designation would not imply any equality of emoluments or status, both of which would continue to be regulated by the existing distinctions, which seem to us generally suitable. One of the two executive councillors would in practice be a European qualified by long official experience, and the other would be an Indian. It has been urged that the latter should be an elected member of the provincial Legislative Council. It is unreasonable that choice should be so limited. It should be open to the Governor to recommend whom he wishes. In making his nominations, the Governor should be free to take into consideration the names of persons who had won distinction whether in the Legislative Council of any other field. The Governor in Council would have charge of the reserved subjects. The other part of the Government would consist of one member or more than one member, according to the number and importance of the transferred subjects, chosen by the Governor from the elected members of the Legislative Council. They would be known as ministers. They would be members of the executive Government but not members of the executive council; and they would be appointed for the life-time of the Legislative Council, and if re-elected to that body would be re-eligible for appointment as members of the executive. As we have said, they would not hold office at the will of the

legislature but at that of their constituents. We make no recommendation in regard to pay. This is a matter which may be disposed of subsequently. (218.)"

"The portfolios dealing with the transferred subjects would be committed to the ministers, and on these subjects the ministers together with the Governor would form the administration. On such subjects their decisions would be final, subject only to the Governor's advice and control. We do not contemplate that from the outset the Governor should occupy the position of a purely constitutional Governor who is bound to accept the decisions of his ministers. Our hope and intention is that the ministers will gladly avail themselves of the Governor's trained advice upon administrative questions, while on his part he will be willing to meet their wishes to the furthest possible extent, in cases where he realizes that they have the support of popular opinion. We reserve to him a power of control, because we regard him as generally responsible for his administration, but we should expect him to refuse assent to the proposals of his ministers only when the consequences of acquiescence would clearly be serious. Also we do not think that he should accept without hesitation and discussion proposals which are clearly seen to be the result of inexperience. But we do not intend that he should be in a position to refuse assent at discretion to all his ministers' proposals. We recommend that for the guidance of Governors in relation to their ministers, and indeed on other matters also, an Instrument of Instructions be issued to them on appointment by the Secretary of State in Council. (219.)"

"There is another provision which we wish to make. The Governor may be himself unfamiliar with Indian conditions; and his Government, constituted as we have proposed, will contain only one European member. He will thus normally have only one member with official experience. In some provinces where the Governor is himself an official and thoroughly familiar with the requirements of the province, the advice and assistance of one official colleague may suffice. But in other cases this will not be so. We propose therefore that the Governor should appoint, if he chooses, one or two additional members of his Government as members without portfolio for purposes of consultation and advice. It is true that it is always open to the Governor to seek the advice of any of his officials; but that is not the same thing as appointing them to be members of the Government with the status and authority attaching to such office. The additional members would still discharge the functions of, and draw the pay attached to, their substantive appointments. (220.)"

"It is our intention that the Government thus composed and with this distribution of functions shall discharge them as one Government. It is highly desirable that the executive should cultivate the habit of associated deliberation and essential that it should present a united front to the outside. We would therefore suggest that, as a general rule, it should deliberate as a whole, but there must certainly be occasions upon which the Governor will prefer to discuss a particular question with that part of his Government directly responsible. It would therefore rest with him to decide, whether to call a meeting of his whole Government or of either

part of it, though he would doubtless pay special attention to the advice of the particular member or minister in charge of the subjects under discussion. The actual decision on a transferred subject would be taken, after general discussion, by the Governor and his ministers; the action to be taken on a reserved subject would be taken, after similar discussion, by the Governor and the other members of his Executive Council, who would arrive at their decision in the manner provided in the existing statute. The additional members, if present, would take their share in the discussion, but would in no case take a part in the decision. At a meeting of the whole Government there would never be, in fact, any question of voting, for the decision would be left, as we have stated, to that part of the Government responsible for the particular subject involved. But there are questions upon which the functions of the two portions of the Government will touch or overlap, such for instance as decisions on the budget or on many matters of administration. On these questions, in case of a difference of opinion between the ministers and the Executive Council it will be the Governor who decides. (221.)"

"30. Power to be taken to appoint a limited number of members of the Legislative Council to a position analogous to that of Parliamentary Under Secretaries in Great Britain. (224.)"

Provincial Legislatures.

"31. In each province an enlarged Legislative Council with a substantial elected majority to be established. The Council to consist of (1) Members elected on as broad a franchise as possible, (2) nominated (a) official and (b) non-official members, (3) *ex officio* members. The franchise and the composition of the Legislative Council to be determined by regulations to be made on the advice of the committee described in paragraph 53 (later) by the Governor-General in Council, with the sanction of the Secretary of State, and laid before Parliament. (225, 232, 233.)"

"With regard to the system of election and the franchise the following suggestions are made: (1) That the system of indirect elections should be swept away. (2) That the limitations of the franchise, which it is obviously desirable to make as broad as possible, should be determined rather with reference to practical difficulties than to any *a priori* considerations as to the degree of education or amount of income which may be held to constitute a qualification. (3) That any system of communal electorates is a very serious hindrance to the development of the self-governing principle. It is opposed to the teaching of history; it perpetuates class divisions; and it stereotypes existing relations. But that communal electorates should be maintained for Mohammedans in provinces where they are in the minority. The same system may be extended to the Sikhs of the Punjab. For other minorities the method of nomination may suffice. (226, 227, 228, 229, 230, 231, 232.)"

"32. The Governor to be President of the Legislative Council with power to appoint a Vice-President. (236.)"

"33. The Governor to have power to dissolve the Legislative Council. (254.)"

"34. Resolutions (except on the budget) to have effect only as recommendations. (237.)"

"35. Nominated official members to have freedom of speech and vote except when Government otherwise directs. (233.)"

"36. Any members of the Legislative Council to be entitled to ask supplementary questions. (236.)"

"37. The existing rules governing the procedure for the transaction of business to continue, but the Legislative Council to have power to modify them with the sanction of the Governor. (236.)"

"38. Standing Committees of the Legislative Council to be formed and attached to each department, or to groups of departments. These Committees to consist of members elected by the Legislative Council, of the heads of the departments concerned, and the Member or Minister, who would preside. (235.)"

"39. Legislation on all subjects normally to be passed in the Legislative Council. Exceptional procedure is provided in the succeeding paragraphs. (252.)"

"40. The Governor to have power to certify that a bill dealing with reserved subjects is essential either for the discharge of his responsibility for the peace or tranquillity of the province or of any part thereof, or for the discharge of his responsibility for reserved subjects. The bill will then, with this certificate, be published in the Gazette. It will be introduced and read in the Legislative Council, and, after discussion on its general principles, will be referred to a grand committee: but the Legislative Council may require the Governor to refer to the Government of India, whose decision shall be final, the question whether he has rightly decided that the bill which he has certified was concerned with a reserved subject.

The Governor not to certify a bill if he is of opinion that the question of the enactment of the legislation may safely be left to the Legislative Council. (252.)"

"41. The grand committee (the composition of which may vary according to the subject-matter of the bill) to comprise from 40 to 50 per cent. of the Legislative Council. The members to be chosen partly by election by ballot, partly by nomination. The Governor to have power to nominate a bare majority (in addition to himself), but not more than two-thirds of the nominated members to be officials. (252.)"

"42. The bill as passed in grand committee to be reported to the Legislative Council, which may again discuss it generally within such time limits as may be laid down, but may not amend it except on the motion of a Member of the Executive Council or reject it. After such discussion the bill to pass automatically, but during such discussion the Legislative Council may record by resolution any objection felt to the principle or details and any such resolution to be transmitted with the Act to the Governor-General and the Secretary of State. (253.)"

"43. Any Member of the Executive Council to have the right to challenge the whole or any part of a bill on its introduction, or any amendment when moved, on the ground that it trenches on the reserved field of legislation. The Governor to have the choice then either of allowing the bill to proceed in the Legislative Council, or of certifying the bill, clause, or amendment. If he certifies the

bill, clause, or amendment the Governor may either decline to allow it to be discussed, or suggest to the Legislative Council an amended bill or clause, or at the request of the Legislative Council refer the bill to a grand committee. (254.)"

"44. All provincial legislation to require the assent of the Governor and the Governor-General and to be subject to disallowance by His Majesty. (254.)"

"45. The veto of the Governor to include power of return for amendment. (254.)"

"46. The Governor-General to have power to reserve provincial Acts. (254.)"

Finance.

"47. A complete separation to be made between Indian and provincial heads of revenue. (200, 201.)"

"48. Provincial contributions to the Government of India to be the first charge on provincial revenues. (206 and 256.)"

"49. Provincial Governments to have certain powers of taxation and of borrowing. (210, 211.)"

"50. The budget to be laid before the Legislative Council. If the Legislative Council refuses to accept the budget proposals for reserved subjects the Governor in Council to have power to restore the whole or any part of the original allotment, on the Governor's certifying that, for reasons to be stated, such restoration is in his opinion essential either to the peace or tranquillity of the province or any part thereof, or to the discharge of his responsibility for reserved subjects. Except in so far as he exercises this power, the budget to be altered so as to give effect to resolutions of the Legislative Council. (256.)"

Local Self-Government.

"51. Complete popular control in local bodies to be established as far as possible. (188.)"

Modification of Provincial Constitutions.

"52. Five years after the first meeting of the new Councils the Government of India to consider any applications addressed to it by a provincial Government or a provincial Legislative Council for the modification of the list of reserved and transferred subjects. In such cases the Government of India with the sanction of the Secretary of State to have power to transfer any reserved subject, or in case of serious maladministration to remove to the reserved list any subjects already transferred and to have power also to order that the salary of the Ministers shall be specifically voted each year by the Legislative Council. The Legislative Council to have the right of deciding at the same or any subsequent time by resolution that such salary be specifically voted yearly. (260.)"

Preliminary Action.

"53. A Committee to be appointed consisting of a Chairman appointed from England, an official, and an Indian non-official. This Committee to advise on the question of the separation of

Indian from provincial functions, and to recommend which of the functions assigned to the province should be transferred subjects. An official and an Indian non-official in each province which it is at the time examining to be added to the Committee. (238.)"

"54. A second Committee to be appointed, consisting of a Chairman appointed from England, two officials, and two Indian non-officials, to examine constituencies, franchises, and the composition of the Legislative Council in each province, and of the Legislative Assembly. An official and an Indian non-official in each province which it is at the time examining to be added to the Committee. (225.)"

"55. The two Committees to have power to meet and confer. (238.)"

Commission of Inquiry.

"56. A Commission to be appointed ten years after the first meeting of the new legislative bodies to review the constitutional position both as regards the Government of India and the provinces. The names of the commissioners to be submitted for the approval of Parliament. Similar commissions to be appointed at intervals of not more than twelve years. (261.)"

The Native States.

"57. To establish a Council of Princes. (306.)"

"58. The Council of Princes to appoint a standing committee. (307.)"

"59. The Viceroy in his discretion to appoint a Commission, composed of a High Court Judge and one nominee of each of the parties, to advise in case of disputes between States, or between a State and a Local Government or the Government of India. (308.)"

"60. Should the necessity arise of considering the question of depriving a Ruler of a State of any of his rights, dignities, or powers, or of debarring from succession any member of his family, the Viceroy to appoint a Commission to advise consisting of a High Court Judge, two Ruling Princes, and two persons of high standing nominated by him. (309.)"

"61. All States possessing full internal powers to have direct relations with the Government of India. (310.)"

"62. Relations with Native States to be excluded from transfer to the control of provincial Legislative Councils. (310.)"

"63. Arrangements to be made for joint deliberation and discussion between the Council of Princes and the Council of State on matters of common interest. (287, 311.)"

The Public Services.

"64. Any racial bars that still exist in regulations for appointment to the public services to be abolished. (315.)"

"65. In addition to recruitment in England, where such exists, a system of appointment to all the public services to be established in India. (316.)"

"66. Percentages of recruitment in India, with definite rate of increase, to be fixed for all these services. (316, 317.)"

"67. In the Indian Civil Service the percentage to be 33 per cent. of the superior posts, increasing annually by $1\frac{1}{2}$ per cent. until the position is reviewed by the Commission (paragraph 56). (317.)"

"68. Rates of pay to be reconsidered with reference to the rise

in the cost of living and the need for maintaining the standard of recruitment. Incremental time-scales to be introduced generally and increments to continue until the superior grade is attained. The maximum of ordinary pension to be raised to Rs. 6,000 payable at the rate of 1s. 9d. to the rupee, with special pensions for certain high appointments. Indian Civil Service annuities to be made non-contributory, but contributions to continue to be funded. Leave rules to be reconsidered with a view to greater elasticity, reduction of excessive amounts of leave admissible, and concession of reduced leave on full pay. The accumulation of privilege leave up to four months to be considered. (318-321.)"

"69. A rate of pay based on recruitment in India to be fixed for all public services, but a suitable allowance to be granted to persons recruited in Europe or on account of qualifications obtained in Europe, and the converse principle to be applied to Indians employed in Europe. (322.)"

The main features of the scheme were obviously the handing over a large part of the executive government to the Indians and the gradual Indianization of the services. In the Provincial governments it also introduced the new principle of "Dyarchy" (pp. 175-6). As it dealt with principles which required working out in detail, three committees were constituted, which took evidence and duly reported.

The Franchise Committee.—This was presided over by Lord Southborough and its recommendations are summarized as follows :

COMPOSITION OF THE PROVINCIAL LEGISLATIVE COUNCILS.

I. MADRAS.

Non-Mohammedan urban seats	9	
Non-Mohammedan rural seats	52	
	—	61
Mohammedan urban seats	2	
Mohammedan rural seats	11	
	—	13
European seat	1	
Anglo-Indian seat	1	
Indian Christian seats	3	
University seat	1	
Zemindars' seats	4	
Landholders' (other than zemindars) seats	3	
Planting seat	1	
Commerce and industry seats—		
Madras Chamber of Commerce	1	
Other European Chambers of Commerce	1	
Southern India Chamber of Commerce	2	
Madras Trades Association	1	
	—	5

Carried forward 93

MADRAS (<i>continued</i>)	Brought forward	93
Representatives appointed by nomination—		
(1) Depressed classes	2	
(2) Excluded tracts	2	
(3) Others	2	
Official seats—	—	6
Ex-officio	4	
Nominated	15	
	—	19
Total		118
To which may be added by the Governor not more than 2 experts (official or non-official)	2	
	—	120

The ex-officio members will be the Governor, two members of the Executive Council, and the Advocate-General.

II. BOMBAY.

Non-Mohammedan urban seats	11	
Non-Mohammedan rural seats	35	
	—	46
Mohammedan urban seats	5	
Mohammedan rural seats	22	
	—	27
European seats	2	
Landholders' seats	3	
University seat	1	
Commerce and industry seats—		
Bombay Chamber of Commerce	2	
Karachi Chamber of Commerce	1	
Bombay Trades Association	1	
Bombay Millowners' Association	1	
Ahmadabad Millowners' Association	1	
Indian Merchants' Chamber and Bureau	1	
Cotton Trade	1	
Representatives appointed by nomination—	—	8
(1) Anglo-Indians	1	
(2) Indian Christians	1	
(3) Depressed classes	1	
(4) Labour	1	
(5) Others	2	
Official seats—	—	6
Ex-officio	4	
Nominated	14	
	—	18
Total		111
To which may be added by the Governor not more than two experts (official or non-official)	2	
	—	113

The ex-officio members will be the Governor, two members of the Executive Council, and the Advocate-General.

III. BENGAL.

Non-Mohammedan urban seats	11	
Non-Mohammedan rural seats	30	
	—	41
Mohammedan urban seats	6	
Mohammedan rural seats	28	
	—	34
Landholders' seats	5	
University seats	2	
European seats	2	
Anglo-Indian seat	1	
Commerce and industry seats—		
Bengal Chamber of Commerce	4	
Jute interests	2	
Indian Mining Association	1	
Indian Tea Association	1	
Tea Planters	1	
Calcutta Trades Association	2	
Inland Water Transport Board	1	
Bengal National Chamber of Commerce	1	
Marwari Association of Calcutta	1	
Mahajana Sabha of Calcutta	1	
Representatives appointed by nomination—	—	15
(1) Labour	1	
(2) Indian Christians	1	
(3) Depressed classes	1	
(4) Others	2	
Official seats—		
Ex-officio	4	
Nominated	16	
	—	20
Total		125
To which may be added by the Governor not more than two experts (official or non-official)	2	
	—	127

IV. UNITED PROVINCES.

Non-Mohammedan urban seats	8	
Non-Mohammedan rural seats	49	
	—	57
Mohammedan urban seats	4	
Mohammedan rural seats	23	
	—	27
European seat	1	
Taluqdars' seats	5	
Agra landholders' seat	1	
University seat	1	
Commerce and industry seats—		
Upper India Chamber of Commerce	2	
United Provinces Chamber of Commerce	1	
	—	3
		95

Carried forward

UNITED PROVINCES (<i>continued</i>)	<i>Brought forward</i>	95
Representatives appointed by nomination—		
(1) Depressed classes	1	
(2) Anglo-Indians	1	
(3) Indian Christians	1	
(4) Others	2	
	—	5
Official seats—		
Ex-officio	4	
Nominated	14	
	—	18
Total		118
To which may be added by the Governor not more than two experts (official or non-official)	2	
	—	120

The ex-officio members will be the Governor, two members of the Executive Council, and the Legal Remembrancer.

V. THE PUNJAB.

General urban seats	4	
General rural seats	14	
	—	18
Mohammedan urban seats	6	
Mohammedan rural seats	22	
	—	28
Sikh seats		8
Landholders' seats—		
General	1	
Mohammedan	2	
Sikh	1	
	—	4
University seat	1	
Commerce and industry seats	2	
Representatives appointed by nomination—		
(1) Military interests	1	
(2) Europeans and Anglo-Indians	2	
(3) Indian Christians	1	
(4) Others	2	
	—	6
Official seats—		
Ex-officio	4	
Nominated	12	
	—	16
Total		83
To which may be added by the Governor not more than two experts (official or non-official)	2	
	—	85

The ex-officio members will be the Governor, two members of the Executive Council, and the Legal Remembrancer.

VI. BIHAR AND ORISSA.

Non-Mohammedan urban seats	6	
Non-Mohammedan rural seats	40	
	—	46
Mohammedan urban seats	3	
Mohammedan rural seats	14	
	—	17
European seat	1	
Landholders' seats	5	
University seat	1	
Planting seat	1	
Mining seats—		
Indian Mining Association	1	
Indian Mining Federation	1	
Representatives appointed by nomination—		2
(1) Industrial interests other than planting and mining	1	
(2) Aborigines	1	
(3) Depressed classes	1	
(4) Domiciled Bengalis	1	
(5) Anglo-Indians	1	
(6) Indian Christians	1	
(7) Labour	1	
(8) Others	2	
Official seats—		9
Ex-officio	4	
Nominated	12	
	—	16
Total		98
To which may be added by the Governor not more than two experts (official or non-official)	2	
	—	100

The ex-officio members will be the Governor, two members of the Executive Council, and the Legal Remembrancer.

VII. CENTRAL PROVINCES AND BERAR.

Non-Mohammedan urban seats	9	
Non-Mohammedan rural seats	31	
	—	40
Mohammedan urban seat	1	
Mohammedan rural seats	6	
	—	7
Landholders' seats	3	
University seat	1	
Mining seat	1	
Commerce and industry seat	1	
Representatives appointed by nomination—		
(1) Mandla district, excluding Mandla town	1	
(2) Excluded zemindaris	1	
(3) Depressed classes	1	
(4) Europeans and Anglo-Indians	1	
(5) Others	1	
	—	5
		58

Carried forward

CENTRAL PROVINCES AND BERAR (<i>continued</i>)	<i>Brought forward</i>	58
Official seats—		
Ex-officio	4	
Nominated	8	
	—	12
Total		70
To which may be added by the Governor not more than two experts (official or non-official)	2	
	—	72
The ex-officio members will be the Governor, two members of the Executive Council, and the Legal Remembrancer.		

VIII. ASSAM.

Urban seat	1
Non-Mohammedan rural seats	18
Mohammedan rural seats	12
Landholders' seats	2
Planting seats	5
Commerce and industry seat	1
Representatives appointed by nomination—	
European and Anglo-Indian	1
Indian Christian	1
Labour	1
Excluded tracts.	1
Others	1
Official seats—	—
Ex-officio	4
Nominated	5
	—
	9
To which may be added by the Governor one expert (official or non-official)	1
	—
	54
The ex-officio members will be the Governor, two members of the Executive Council, and the Legal Remembrancer.	

FRANCHISE.

The general disqualifications exclude the following :

- (1) Women.
- (2) Persons of unsound mind.
- (3) Persons under 21 years of age.
- (4) Subjects of any foreign State (but not of a Native State of India).

The general proposals for the franchise are based upon the principle of residence within the constituency and the possession of certain

property qualifications as evidenced by the payment of land revenue, rent, or local rates in rural areas, and of municipal rates in urban areas, and of income tax generally. In tracts where the land revenue is subject to periodical revision, land revenue has been adopted as the best measure of property qualification, but in tracts where the land revenue is permanently settled, the payment of local rates, which are based upon a periodical rental valuation, has been substituted. In only rare cases, in the absence of a suitable basis of taxation, has recourse been had to a qualification based on the possession of immovable property. These principles have been departed from in that the committee recommend the enfranchisement of all retired and pensioned officers of the Indian Army, whether commissioned or non-commissioned.

The electorates will be as follows :

Province.	Total Population.	Urban Electors.	Rural Electors.	Total Electors.
Madras	39,827,885	32,000	510,000	542,000
Bombay	19,580,312	149,000	504,000	653,000
Bengal	45,063,697	106,000	1,122,000	1,228,000
United Provinces	47,182,044	64,500	1,419,000	1,483,500
Punjab	19,565,013	77,000	160,000	237,000
Bihar and Orissa	32,446,461	58,500	517,500	576,000
Central Provinces	12,269,638	39,500	120,000	159,500
Assam	6,000,000	—	—	300,000

The qualifications for candidates :

No person will be eligible for election as a Member of a Council, if such person

- (a) is not a British subject or a subject of any State in India, or
- (b) is an official, or
- (c) is a female, or
- (d) has been adjudged by a competent court to be of unsound mind, or
- (e) is under 25 years of age, or
- (f) is an uncertified bankrupt or an undischarged insolvent, or
- (g) has, in circumstances which, in the opinion of the Governor in Council, involve moral turpitude, been (1) dismissed from the service of Government, or (2) sentenced by a criminal court to imprisonment (such sentence not having subsequently been reversed or remitted, or the offender pardoned), or
- (h) has been dismissed or is under suspension from practising as a legal practitioner by order of any competent court.

Provided that in cases (g) and (h) the disqualification may be removed by an order of the Governor in Council in this behalf.

1. In the case of Madras the candidate for an urban or rural constituency must be registered as an elector in an urban or rural

constituency within the presidency; a candidate for a European, Anglo-Indian, Indian Christian, zemindars', landholders' (other than zemindars'), university, planting or commerce and industry constituency must be registered as an elector in the constituency for which he seeks election.

2. In the case of Bombay, the Central Provinces, and the Punjab, the candidate must be registered as an elector in the constituency for which he seeks election.

3. In the case of Bengal, the candidate for an urban or rural constituency must be registered as an elector in an urban or rural constituency within the presidency; a candidate for a European, Anglo-Indian, landholders', or commerce and industry constituency must be registered as an elector for the constituency for which he seeks election.

4. In the case of the United Provinces, the candidate for an urban or rural constituency must be registered as an elector in an urban or rural constituency within the province; the candidate for a European, talugdars', Agra landholders', university or commerce and industry constituency, must be registered as an elector in the constituency for which he seeks election.

5. In the case of Bihar and Orissa, the candidate for an urban or rural constituency must be registered as an elector in an urban or rural constituency within the province; the candidate for a European, landholders', university, planting or mining constituency must be registered as an elector in the constituency for which he seeks election.

6. In the case of Assam, a candidate for an urban or rural constituency must be registered as an elector in an urban or rural constituency within the province; a candidate for a landholders', planting or commerce, and industry certificate must be registered as an elector in the constituency for which he seeks election.

The composition of the provincial Legislative Councils may be put in tabular form thus:

Provinces.	General.	Communal.	Landholders.	University.	Commerce, Industry and Planting.	Representatives by Nomination.	Officials.	Totals.
Madras	61	18	7	1	6	6	19	118
Bombay	46	29	3	1	8	6	18	111
Bengal	41	37	5	2	15	5	20	125
United Provinces	57	28	6	1	3	5	18	118
Punjab	18	36	4	1	2	6	16	83
Bihar and Orissa	46	18	5	1	3	9	16	98
Central Provinces	40	7	3	1	2	5	12	70
Assam	19	12	2	0	6	5	9	53

THE INDIAN LEGISLATIVE ASSEMBLY.

The Assembly will be constituted as follows:

Elected Members	80
Representatives appointed by nomination	14
Officials—	
Ex-officio	7
Nominated	19
	26
Total	120
Or, including the Governor-General	121

DETAILS OF ELECTED SEATS.

Provinces.	Non-Mohammedan Seats.	Mohammedan Seats.	Sikh Seat.	Landholders.			European Commerce.	Indian Commerce.	Total.
				Non-Mohammedan.	Mohammedan.	Sikh.			
Madras	7	2	—	1	—	—	1	1	12
Bombay	4	3	—	1	1	—	1	2	12
Bengal	5	3	—	1	1	—	2	1	13
United Provinces	6	3	—	1	1	—	1	—	12
Punjab	2	4	1	—	1	1	—	—	9
Bihar and Orissa	6	2	—	1	—	—	—	—	9
Central Provinces	4	1	—	—	—	—	—	—	5
Assam	1	1	—	—	—	—	1	—	3
Delhi	1	—	—	—	—	—	—	—	1
Total	36	19	1	5	4	1	6	4	76

Reserved for Burma 4

Total 80

METHOD OF REPRESENTATION.

I. General Constituencies—36 seats.

With the exception of the member for Delhi Province these representatives will be elected by the non-official members, other

than Mohammedans and (in the case of the Punjab) Sikhs, of the respective provincial Legislative Councils. One representative will be elected for Delhi Province by persons who have a place of residence in the province and possess qualifications corresponding to those prescribed in urban or rural areas for electors to the provincial Legislative Council of the Punjab.

II. Mohammedan Constituencies (general)—19 seats.

These representatives will be elected by the Mohammedan non-official members of the respective provincial Legislative Councils.

III. Sikh Constituency—1 seat.

The member will be elected by the Sikh non-official members of the Punjab provincial Legislative Council.

IV. Landholders' Constituencies—10 seats.

Bengal—2 seats.—One representative will be elected by the non-Mohammedan and one by the Mohammedan landholders of the presidency entered in the electoral roll for the provincial Legislative Council.

Madras—1 seat.—The representative will be elected by the zemindars and landholders of the presidency entered in the electoral roll for the provincial Legislative Council.

Bombay—2 seats.—One representative will be elected by the Mohammedan zemindars and jagidars of Sind, and one by the sardars of the Deccan and Gujarat entered in the electoral roll for the provincial Legislative Council.

United Provinces—2 seats.—One representative will be elected by the non-Mohammedan and one by the Mohammedan taluqdars of Oudh and landholders of Agra entered in the electoral roll for the provincial Legislative Council.

Punjab—2 seats.—One representative will be elected by the Mohammedan and one by the Sikh landholders of the Punjab entered in the electoral roll for the provincial Legislative Council.

Bihar and Orissa—1 seat.—The representative will be elected by the landholders of Bihar and Orissa entered in the electoral roll for the provincial Legislative Council.

V. European Commerce Constituencies—6 seats.

One representative will be elected by each of the Chambers of Commerce of Madras, Bombay, and the United Provinces; two by the Bengal Chamber of Commerce, and one by the Assam Valley and Surma Valley branches of the Indian Tea Association.

VI. Indian Commerce Constituencies—4 seats.

One representative will be elected by the Southern India Chamber of Commerce; one by the Bombay Millowners' Association and

the Ahmedabad Millowners' Association; one by the Indian Merchants' Chamber and Bureau; one by the Bengal National Chamber of Commerce, the Marwari Association, and the Mahajana Sabha.

The voting in all cases to be in accordance with regulations to be approved by the Governor-General in Council.

QUALIFICATIONS OF CANDIDATES.

Where the election is made by members of a provincial Legislative Council the candidate must have the qualifications which would entitle him to stand for that council. But if registration as an elector is required registration for any constituency in the province will suffice.

THE COUNCIL OF STATE.

The Proposed Constitution of the Council of State.

ELECTED MEMBERS.

PROVINCES.	Total Population (millions).	Mohammedan Population (millions).	Sikh Population (millions).	DISTRIBUTION PROPOSED.				Total.
				General.	Mohammedans.	Sikhs.	Landholders.	
Madras	40	3	—	2	1	—	—	3
Bombay	19½	4	—	2	1	—	—	3
Bengal	45	24	—	2	1	—	1½	3½
United Provinces	47	6½	—	1	1	—	1	3
Punjab	19½	11	2	1	1	1	—	3
Bihar and Orissa	32½	3½	—	1	1	—	1½	2½
Central Provinces	12	1½	—	1	—	—	—	1½
Assam	6	2	—	1	—	—	—	1½
Total ..	—	—	—	11	7	1	2	21

Representatives of European Chambers of Commerce ..	2
Reserved for Burma	1

Total ..	24
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SUMMARY OF PROPOSED COUNCIL.

Elected members—	
General	11
Mohammedan	7
Sikh	1
Landholders	2
European Commerce	23
Reserved for Burma	1
Representatives appointed by nomination	4
Officials—	
Ex-officio	7
Nominated	21
	28
Total	56
Or, including the Governor-General	57

METHODS OF REPRESENTATION.

(i) The 11 representatives of general constituencies will be elected by the non-official members other than Mohammedans and (in the case of the Punjab) Sikhs, of the respective provincial Legislative Councils.

(ii) The 7 Mohammedan representatives will be elected by the Mohammedan non-official members of the respective provincial Legislative Councils, Assam and the Central Provinces now having alternative right to representation.

(iii) The Sikh representative will be elected by the Sikh non-official members of the Punjab Legislative Council.

(iv) The 2 landholders' representatives will be elected one by the members representing landholders' constituencies in the Bengal and Bihar and Orissa Legislative Councils voting jointly; and one by the members representing the taluqdars of Oudh and Agra landholders' constituencies voting jointly.

(v) The 2 representatives of European Commerce will be elected, one by the members of the Bengal, Burma and Upper India Chambers of Commerce voting jointly, and one by the members of the Bombay, Karachi and Madras Chambers of Commerce voting jointly.

QUALIFICATIONS OF CANDIDATES.

In the case of a seat for which election is made by members of a provincial Legislative Council, the candidate if not already a member of the Indian Legislative Assembly or of a provincial Legislative Council, shall have the qualifications which would entitle him to stand as a candidate for election to some provincial Legislative Council in India.

The official statement of the first elections held under the new scheme may be inserted here by way of illustration; it runs as follows:

THE LEGISLATIVE ASSEMBLY (EXCLUDING THE PRESIDENT).

	ELECTED MEMBERS.						NOMINATED MEMBERS.			GRAND TOTAL.
	General.	Muslim.	Sikh.	Land-owners.	European.	Indian Commerce.	Total.	Non-officials.	Officials.	
Government of India	—	—	—	—	—	—	—	—	12	12
Madras	10	3	—	1	1	—	—	2	2	20
Bombay	7	4	—	1	2	1	—	4	2	16
Bengal	6	6	—	1	3	—	—	3	2	17
United Provinces	8	6	—	1	1	—	—	1	2	22
Punjab	3	6	2	1	—	—	—	1	1	19
Bihar and Orissa	8	3	—	1	—	—	—	1	1	14
Central Provinces	4*	1	—	1	—	—	—	—	1	14
Assam	2	1	—	—	1	—	—	—	1	7
Burma	3	—	—	—	1	—	—	—	1	5
Benar (Central Provinces)	—	—	—	—	—	—	—	2	—	5
Ajmer	—	—	—	—	—	—	—	1	—	2
Total	51	30	2	7	9	4	103	15	25	143

* Including one technically nominated seat to be filled by nomination as the result of an election held in Benar.

All the information given as to the reforms, the reports of the committees, and the results of the first elections have been taken from Government publications. The *Statements as to the Moral and Material Progress of India*, which appear yearly, should be particularly mentioned.

COUNCIL OF STATE (EXCLUDING THE PRESIDENT).

	NOMINATED MEMBERS.			ELECTED MEMBERS.					GRAND TOTAL.
	Officials.	Non-officials.	Total.	General.	Muslim.	Sikh.	European Commerce.	Total.	
Government of India	12	—	12	—	—	—	—	—	12
Madras	1	1	2	4	1	—	—	5	7
Bombay	1	1	2	3	2	—	1	6	8
Bengal	1	1	2	3	2	—	1	6	8
United Provinces	1	1	2	3	1 $\frac{1}{2}$	—	—	5 $\frac{1}{2}$	7
Punjab	1	2	3	2 $\frac{1}{2}$	1	1	—	3 $\frac{1}{2}$	6 $\frac{1}{2}$
Bihar and Orissa	1	—	1	1	—	—	1	2	4 $\frac{1}{2}$
Burma	—	—	—	2	—	—	—	2	2
Central Provinces	—	—	—	1 $\frac{1}{2}$	—	—	—	1	1
Assam	—	—	—	—	—	—	—	—	1
Delhi	1	—	1	—	—	—	—	—	1
Total	19	6	25	20	10	1	3	34	59

PROVINCIAL LEGISLATIVE COUNCILS.

PROVINCES.	NOMINATED.			Total (Elected).	ELECTED.																		
	Total (Ex-officio, Nominated, and Elected).	Total (Nominated and Ex-officio).	Officials (Nominated and Ex-officio).*		Non-officials.	By Special Electorates.				By Communal Electorates.				By General Electorates.									
						Total.	University.	Landholders.	Commerce and Industry, Mining and Planting.	Total.	Mohammedans.	Rural.	Mohammedans.	Urban.	Europeans.	Anglo-Indians.	Indian Christians.	Sikhs.	Total.	Non-Mohammedans.	Rural.	Non-Mohammedans.	Urban.
1. Madras ..	127	29	23	6	98	13	1	6	6	20	11	2	1	1	5	—	—	65	56	9	—		
2. Bombay ..	111	25	20	5	86	11	1	3	7	29	22	5	2	—	—	—	—	46	35	11	—		
3. Bengal ..	139†	26	20	6	131†	21†	1†	5	15	46	33	6	5	2	—	—	—	46	35	11	—		
4. United Provinces ..	123	23	18	5	100	10	1	6	3	30	25	4	1	—	—	—	—	60	52	8	—		
5. Punjab ..	93	22	16	7	71	7	1	1	2	44	27	5	5	—	—	—	—	12	13	7	—		
6. Bihar and Orissa ..	103	27	20	7	76	9	1	4	3	19	15	3	1	—	—	—	—	48	42	6	—		
7. Central Provinces ..	70‡	16	10	6	54	7	1§	3	3	7	6	1	1	—	—	—	—	40	31	9	—		
8. Assam ..	53	14	9	5	39	9	—	3	0	12	7	0	—	—	—	—	—	21	20	1	—		

* This column shows the maximum number of officials who may be nominated under the rules. It is open to the Governor to nominate fewer officials, with a corresponding increase in the number of nominated non-officials shown in the next column.

† There will later be an additional elected seat for Dacca University, with consequent increases of one in the figures shown in these columns.

* Members to be nominated as the result of elections held in Berar have been shown as elected. Vide section 7 (2) (c) of the Act.

§ Pending constitution of the Nagpur University, this seat will be in abeyance, and an additional nominated seat will be reserved for the interests of University education.

|| This seat (Shillong) is filled by a general electorate, there being no separate Mohammedan urban constituency.

The second or Functions Committee, which was appointed by the Secretary of State to inquire into questions connected with the division of functions between the central and provincial Governments, and in the provincial Governments between the Executive Councils and the Ministers, also reported in 1919. It put forward two lists showing what ought to be all-India subjects and what ought to be provincial subjects.

The two run as follows :

I. ALL-INDIA SUBJECTS.

1. His Majesty's Naval, Military and Air Forces in India, including volunteers but excluding military police, maintained by provincial Governments. Naval and military works and cantonments.

2. External relations including naturalization and aliens.

3. Relations with Native States.

4. Any territory in British India other than the eight provinces to which the reform scheme applies.

5. Excluded areas mentioned as backward in the Montagu-Chelmsford Report.

6. Communications :

(a) Railways and tramways with certain exceptions.

(b) Roads, bridges or ferries of military importance.

(c) Aircraft.

(d) Indian waterways.

7. Shipping and navigation.

8. Lighthouses, beacons and buoys.

9. Port quarantine and marine hospitals.

10. Ports declared to be major ports by or under Indian legislation.

11. Posts, telegraphs and telephones.

12. Sources of imperial revenue, including

13. Currency and coinage.

14. Public debt of India.

15. Savings banks.

16. Department of Comptroller and Auditor-General.

17. Civil law.

18. Commerce, including banking and insurance.

19. Trading companies and other associations.

20. Control of production and supply of certain articles.

21. Control of petroleum and explosives.

22. Geological survey.

23. Control of mineral development and regulation of mines.

24. Inventions and designs.

25. Copyright.

26. Emigration and immigration and inter-provincial migration.

27. Criminal law and procedure.

28. Central police organization and railway police.

29. Control of possession and use of arms.

30. Central institutions of scientific and industrial research.

31. Ecclesiastical administration.

32. Survey of India.

33. Archæology.

34. Zoological survey.

35. Meteorology.

36. Census and statistics.

37. All-India services.

38. Legislation in regard to any provincial subject where power is reserved.

39. All matters expressly excepted from inclusion in the provincial list.

40. All other matters not in the list of provincial subjects.

II. PROVINCIAL SUBJECTS.

1. Local self-government.

2. Medical administration.

3. Public health and sanitation and vital statistics.

4. Education (excluding (1) the Benares Hindu University, (2) chiefs colleges) subject to Indian legislation : (a) controlling the establishment, and regulating the constitution and functions of new universities ; and (b) defining the jurisdiction of any university outside its own province ; and in the case of Bengal, for a period of five years from the date when the reforms scheme comes into operation, subject to Indian legislation with regard to the Calcutta University and the control and organization of secondary education.

5. Public works included under the following heads :
 - (a) Provincial buildings ;
 - (b) Roads, bridges and ferries, other than those declared of military importance ;
 - (c) Tramways within municipal areas ;
 - (d) Light railways and tramways in certain cases.
6. Irrigation and canals drainage and embankment, and water storage, subject to control where provided by Indian legislation.
7. Land revenue administration, as described under the following heads :
 - (a) Assessment and collection of land revenue ;
 - (b) Maintenance of land records, surveys for revenue purposes, records of rights ;
 - (c) Laws regarding land tenures, relations of landlords and tenants, collection of rent ;
 - (d) Court of wards, encumbered and attached estates ;
 - (e) Land improvement and agricultural loans ;
 - (f) Colonization and disposal of Crown lands and alienation of land revenue.
8. Famine relief.
9. Agriculture.
10. Civil veterinary department.
11. Fisheries.
12. Co-operative societies, subject to Indian legislation.
13. Forests.
14. Land acquisition, subject to Indian legislation as regards acquisition of land for public purposes.
15. Excise.
16. Administration of justice, including constitution, maintenance and organization of courts of justice in the province, both of civil and criminal jurisdiction, but exclusive of matters relating to constitution and powers of high courts and subject to Indian legislation as regards the constitution and powers of courts of criminal jurisdiction.
17. Provincial law reports.
18. Administrator-General and Official Trustee, subject to Indian legislation.

19. Judicial stamps, with limitations.
20. Registration of deeds and documents, subject to Indian legislation.
21. Registration of births, deaths and marriages, subject to Indian legislation.
22. Religious and charitable endowments.
23. Development of mineral resources which are Government property, subject to rules made or sanctioned by the Secretary of State, but not including the regulation of mines.
24. Development of industries.
25. Industrial matters included under the following heads :
 - (a) Factories ;
 - (b) Settlement of labour disputes ;
 - (c) Electricity ;
 - (d) Boilers ;
 - (e) Gas ;
 - (f) Smoke nuisances ; and
 - (g) Welfare of labour, including provident funds, industrial insurance and housing.

Subject as to (a), (b), (c) and (d) to Indian legislation.
26. Adulteration of foodstuffs and other articles, subject to Indian legislation as regards export trade.
27. Weights and measures, subject to Indian legislation as regards standards.
28. Ports, excepting major ports.
29. Inland waterways, with limitations.
30. Police other than railway police.
31. Miscellaneous matters : (a) regulation of betting and gambling ; (b) prevention of cruelty to animals ; (c) protection of wild birds and animals ; (d) control of poisons ; (e) control of motor vehicles, with limitations ; (f) control of dramatic performances and cinematographs.
32. Control of newspapers and printing presses, subject to Indian legislation.
33. Coroners.
34. Criminal tribes, subject to Indian legislation.
35. European vagrancy, subject to Indian legislation.
36. Prisons and reformatories, subject to Indian legislation.

37. Pounds.
38. Treasure trove.
39. Museums (except the Indian Museum and the Victoria Memorial, Calcutta) and zoological gardens.
40. Government press.
41. Franchise and elections for Indian and provincial legislatures, subject to Indian legislation.
42. Regulation of medical and other professional qualifications and standards, subject to Indian legislation.
43. Control, subject to Indian legislation, of members of all-India services serving within the province, and of other public services within the province.
44. New provincial taxes.
45. Borrowing money on the sole credit of the province, subject to Indian legislation.
46. Imposition of punishments by fine, penalty or imprisonment, for enforcing any law of the province relating to any provincial subject, but subject to Indian legislation where that limitation otherwise applies to such subject.
47. Any matter which, though falling within an all-India subject, is declared by the Governor-General in Council to be of a merely local or private nature within the province.

III. The third section of the Report dealt with the transfer of functions to the charge of ministers, and to the powers of a Governor in Council in relation to transferred subjects.

The recommendations as to transferred subjects are summarized as follows :

The following are to be transferred in all provinces :

1. Local self-government.
2. Medical administration.
3. Public health and sanitation and vital statistics.
4. Education, other than European and Anglo-Indian education (excluding (1) the Benares Hindu University, and (2) chiefs' colleges), subject to Indian legislation : (a) controlling of the establishment, and regulating the constitutions and functions of new universities ; and (b) defining the jurisdiction of any university outside its own province ; and,

in the case of Bengal, for a period of five years from the date when the reforms scheme comes into operation, subject to Indian legislation with regard to the Calcutta University and the control and organization of secondary education.

5. Agriculture.
6. Civil veterinary department.
7. Co-operative Societies, subject to Indian legislation.
8. Registration of deeds and documents, subject to Indian legislation.
9. Registration of births, deaths and marriages, subject to Indian legislation.
10. Religious and charitable endowments.
11. Development of industries, including industrial research and technical education.
12. Adulteration of foodstuffs, etc., subject to Indian legislation as regards export trade.
13. Weights and measures, subject to Indian legislation as regards standards.
14. Museums (except the Indian Museum and the Victoria Memorial, Calcutta) and zoological gardens.

Not in all provinces :

1. Public works (as defined) in all provinces save Assam.
2. Fisheries, in all provinces save Assam.
3. Forests, in Bombay only.
4. Excise, in all provinces save Assam.

The Report also contained suggestions as to the procedure in regard to reserved, transferred and mixed subjects which the student who wishes to follow out the matter in detail should carefully consult.

The attitude of the Government of India towards the Joint Report and the Reports of the Franchise and Functions Committees is thus concisely summarized in the Moral and Material progress statement for 1920.

"On the main Report itself, the Government of India in its dispatch of March 5, 1919, recommended : first, that in the five provinces whose heads had hitherto been chosen from the Indian Civil Service, no change should be made in this plan.

"Secondly, where the Governor was a stranger to the country he should have two English members in his executive council and not one as previously proposed in the Joint Report.

"In the third place, the Government of India wished to make it perfectly clear that each half of the Executive should have its own resources of revenue. Each half of the provincial Government would take all receipts accruing within its own field of administration. Each half of the Government would thus have the natural stimulus to develop its own resources. If the resources on either side happened to be insufficient for its normal expenditure, there would be an adjustment by which it would be given a subsidy from the other side. If need arose, each side would have the right to propose new taxation or the raising of a loan ; but no such proposal would be pursued unless the Governor, after formal consultation with his whole Government, was satisfied of its propriety. This system may be described as the 'separate purse' in distinction to the rival idea of a common exchequer, from which each side of the Government would extract its funds at the risk of disputes, confusion and friction.

"Fourthly, joint deliberations between the two halves of the Government should be left to the discretion of the Governor, association being desirable between them so far as it can be obtained without obscuring the responsibility of each half for taking its own decisions and for standing by the consequences.

"Fifthly, each half of the Government should have a legislative organ in harmony with it. For this purpose the procedure by Grand Committee in the Joint Report was, with certain modifications, approved.

"Of the recommendations of the Franchise Committee, the Government of India dissented from the following :

"In the first place they did not agree to the inclusion of subjects of Native States as electors or candidates for councils.

"Next they objected to franchise qualifications other than those based on property, and recommended that the franchise should be so varied as to result in a slight enlargement of

the Punjab electorate and a considerable enlargement of the Madras electorate ; that the large electorates proposed for Bengal and the United Provinces should be reduced by something like one-third ; and that Assam should be reduced in a somewhat similar manner. They considered that the proposed provision for representation of depressed classes was inadequate, and did not approve of the proposed University constituencies.

"In the matter of communal representation, the Government of India accepted the principle recommended by the Committee, in favour of the Mohammedans, as well as the strength of the representation proposed, except as regards Bengal, where it was thought that the representation was insufficient. In the case of the non-Brahmins the Government disagreed with the Committee in the latter's rejection of their claims. Doubts were also expressed as to the wisdom of the Franchise Committee's recommendations in the distribution of representation between urban and rural constituencies. The proposal for the elections of the members of the Legislative Assembly by the non-official members of the provincial Legislative Councils was accepted, but with regret and as a temporary measure. The Government of India also suggested 'direct' election for the Council of State.

"The attitude of the Government of India towards the recommendations of the Functions Committee, which it mostly accepted, may be summarized as follows :

- (1) They considered that the proposals of the Committee as regards legislation were too complicated and they emphasized the need for maintaining the concurrent powers of legislation of the Indian legislature.
- (2) They advised against the transfer to Ministers of University and secondary education or of industries, and suggested that industries should remain a provincial and reserved subject with concurrent powers to the Government of India, and suggested certain additions to the list of central subjects.

- (3) They considered that a provision should be made for re-transfer of a transferred subject in case of insoluble difficulties arising between the Ministers and the Governor.
- (4) They generally concurred in the proposals relating to the services."

The third committee, Lord Crewe's Committee, dealt with the home administration of Indian Affairs. Its recommendations were summarized in its report as follows :

" Relations between the Home and Indian administrations.

(i) Save in the case of absolute necessity, legislation should not be certified for enactment by the Council of State without previous approval of its substance by the Secretary of State on the ground that its enactment is essential in the interests of the peace, order and good government of India.

(ii) Where the Government of India are in agreement with a majority of the non-official members of the Legislative Assembly, either in regard to legislation or in regard to the resolutions on the Budget or on matters of general administration, assent to their joint decision should only be withheld in cases in which the Secretary of State feels that his responsibility to Parliament for the peace, order and good government of India, or paramount considerations of imperial policy, require him to secure reconsideration of the matter at issue by the Legislative Assembly.

(iii) As a basis of delegation, the principle of previous consultation between the Secretary of State and the Government of India should be substituted in all cases in which the previous sanction of the Secretary of State in Council has hitherto been required.

(iv) In the relations between the Secretary of State and local Governments, the principle should, as far as possible, be applied, that where the Governments are in agreement with a conclusion of the legislature their joint decision should ordinarily be allowed to prevail.

(v) Assent to, or disallowance of, Indian legislation by the Crown should be signified by His Majesty in Council."

" The Home administration of India.

(vi) The powers and authority now vested in the Secretary of State for India in Council should be transferred to the Secretary of State.

(vii) The Secretary of State should be assisted by an Advisory Committee, to which he shall refer such matters as he may determine ; and he may provide by regulations for the conduct of business of the Committee.

(viii) The Advisory Committee should consist of not more than twelve and not less than six members, appointed by the Secretary of State.

(ix) Not less than one-third of the members of the Committee should be persons domiciled in India selected by the Secretary of State from a panel of names submitted by the non-official members of the Indian Legislature.

(x) The tenure of office of members of the Committee should be five years.

(xi) Members of either House of Parliament should be ineligible for appointment to the Committee.

(xii) The salary of members of the Committee should be £1,200 a year.

(xiii) Indian members of the Committee should receive a subsistence allowance of £600 a year in addition to salary, in respect of their domicile.

(xiv) Statutory provision should be made for recommendations (xii) to (xiii) inclusive.

(xv) The Secretary of State should regulate by executive orders the conduct of correspondence between the India Office and the Governments in India."

" The organization of the India Office establishment.

(xvi) Action should be taken with a view to the transfer of the agency work of the India Office to a High Commissioner for India or some similar Indian Governmental representative in London.

(xvii) No formal system of interchange of appointments between members of the India Office and the Indian Services

can be recommended; but deputation between the two countries should be encouraged.

(xviii) Occasion should be taken now and then to appoint an Indian to one of the posts intermediary between the Secretary of State and heads of departments."

"The apportionment of the charges of the India Office between Home and Indian Revenues.

(xix) The charges on account of the political and administrative work of the office should be placed on the estimates, those on account of the agency work of the Office being defrayed from Indian revenues; the apportionment to be determined by agreement between the India Office and the Treasury.

(xx) The Committee are not in favour of the proposal to establish a Select Committee of the House of Commons on Indian affairs."

CHAPTER X

THE GOVERNMENT OF INDIA BILL

THE authorities decided to proceed with the Montagu-Chelmsford scheme, though it did not meet with anything like general approval. Many of the English in India feared that it would result in inefficiency, disorder, and corruption, that it would destroy the administrative system without putting anything solid in its place, and that it would fail as being entirely opposed to the traditions of the Indian people. The Indians were generally of three minds on the subject. Some thought that it did not go far enough; others thought that it went too far; a third party objected to the artificial system of dyarchy altogether, foreseeing the confusion and difficulty which it was bound to introduce.

These views were, however, disregarded, and many hoping for the best were glad to stand aside and allow things to take their course even though they could not give active support. The next step was the introduction of a Bill in Parliament which was to embody the results of the Joint Report and of the work of the committees to which allusion has been made. This Bill was submitted to a Joint Select Committee of both Houses and the Statement of Moral and Material Progress for 1920 thus summarizes their report:

"The members of the Joint Select Committee considered it an essential feature of the policy of His Majesty's Government that except in so far as the Secretary of State should be relieved from responsibility by the changes proposed in the Bill he should remain responsible to Parliament. They accepted the plan proposed by the Bill as the best way of giving effect to the declared policy of His Majesty's Government as contained in the announcement

of August 20, 1917. They recommended that the new ministers should have the fullest opportunity of managing the field of Government entrusted to their care; and with this end in view free consultation was advocated between the two halves of the Government—that is—the Executive Council and the Ministers. On the question of finance the Committee gave much attention to the principle on which the provincial revenues and balances should be distributed between the two sides of the provincial Governments. They felt confident that the problem could be readily solved by the simple process of common sense and reasonable give-and-take, but they apprehended that it might, in certain circumstances, become the cause of much friction in the provincial Government, and they were of opinion that the rules governing the allocation of these revenues and balances should be so framed as to make the existence of such friction impossible. They therefore advised that if the Governor, in the course of preparing either his first or subsequent budget, found that there was likely to be a serious or protracted difference of opinion between the Executive Council and his Ministers on this subject, he should be empowered at once to make an allocation of revenue and balances between the reserved and transferred subjects, which should continue for at least the whole life of the existing Legislative Council. The Committee did not endorse the suggestion that certain sources of revenue should be allocated to reserved, and certain sources to transferred subjects, but they recommended that the Governor should allocate a definite proportion of the revenue, and similarly a proportion, though not necessarily the same fraction, of the balances. If the Governor desired assistance in making the allocation, he should be allowed at his discretion to refer the question to be decided to such authority as the Governor-General should appoint. Further, the Committee were of opinion that it should be laid down from the first that, until an agreement which both sides of the Government would equally support had been reached, or until an allocation had been made by the Governor, the total provisions of

the different expenditure heads in the budget of the province for the preceding financial year should hold good.

“The Joint Committee approved generally of the proposals of the Southborough Committee, but thought that the detailed arrangements would require re-consideration in certain respects, more particularly as regards the disparity in the size of the electorates, the distribution of seats between urban and rural areas, the representation of landlords and the depressed classes, non-Brahmins and Mahrattas, and of Europeans in Bengal.

“The Committee rejected the plan of the Grand Committee as drafted originally in the Bill, because they considered that it did not give the Governor the power of securing legislation in a crisis in respect of those matters for which he is held responsible, and because in respect of ordinary legislation it perpetuated the system of the ‘official bloc,’ which has been the cause of great friction and heart-burning. The Committee considered it much better that there should be no attempt to conceal the fact that the responsibility was with the Governor in Council, and they recommended a process by which the Governor should be empowered to pass an Act necessary for the proper fulfilment of his responsibility to Parliament. If he failed to get it through his Legislative Council, he should have the power to proceed on his own responsibility; but Acts passed on his own responsibility should be reserved by the Governor-General for His Majesty’s pleasure and be laid before Parliament. The responsibility for the advice of His Majesty, the Committee thought, would no doubt rest with the Secretary of State; and they considered that the Standing Committee of Parliament, the establishment of which on an advisory and consultative basis they recommended, should be specially consulted about Acts of this character. In case of emergency, however, the Governor-General should have the power to give his assent to the Act without reserving it. But this course would not prevent subsequent disallowance by His Majesty in Council.

“The Joint Committee further proposed that the Council of State should be reconstituted from the commencement

as a true second Chamber, and they rejected the plan of the Franchise Committee for the election of the Legislative Assembly by the non-official members of the provincial Councils, and endorsed the views expressed by the Government of India in paragraph 39 of their 5th dispatch.*

"Equally important were the proposals of the Joint Committee regarding the relations between the Home and the Indian Governments, and between the Secretary of State and his Council. These relations had been investigated by the Committee presided over by Lord Crewe, whose report was available to the Joint Committee. . . .

"In dealing with the recommendations of the Crewe Committee, the Joint Committee accepted the salary and the conditions of tenure proposed for members of the Council of Secretary of State; but rejected the proposed method of their appointments and the substitution of an advisory body for the Council of India as at present constituted. The Joint Committee did not object to a readjustment of the work designed to introduce the portfolio system among the members of the Secretary of State's Council, and strongly emphasized the necessity of increasing the Indian element in it. The Joint Committee further accepted the suggested financial adjustment between the Indian revenues and British estimates as well as the appointment of a High Commissioner for India.

"As regards the relations of the Secretary of State with the Governor-General in Council, the Committee were not of opinion that any statutory change could be made, so long as the Governor-General remained responsible to Parliament, but in practice they considered that the conventions governing these relations might wisely be modified to meet fresh circumstances. In the exercise of his responsibility to Parliament, the Secretary of State might reasonably consider that only in exceptional circumstances should he be called upon to intervene in matters of purely Indian interest where the Government and the Legislature of India were in agreement.

"The relations of the Secretary of State and of the Government of India with provincial Governments should,

* See page 203.

the Committee felt, be regulated by similar principles, so far as the reserved subjects were concerned. It followed, therefore, that in purely provincial matters, which were reserved, where the provincial Government and Legislature were in agreement, their view should ordinarily be allowed to prevail, though it was necessary to bear in mind the fact that some reserved subjects covered matters in which the central Government was closely concerned. Over transferred subjects, on the other hand, the control of the Governor-General in Council, and thus of the Secretary of State, should be restricted within the narrowest possible limits, which would be defined by rules under sub-clause 3 of clause 1 of the Bill.

"The Joint Committee recommended the appointment of three Indians to the Viceroy's Executive Council. It further recommended that with a view to removing the belief that India's fiscal policy was dictated from Whitehall in the interests of the trade of Great Britain a convention should be instituted by which the Secretary of State was to refrain from interfering with fiscal measures upon which the Indian legislatures and executive were in agreement, and his intervention, the Joint Committee advised, 'should be limited to safeguarding the international obligations of the Empire or any fiscal arrangements within the Empire to which His Majesty's Government is a party.'

"In the next place, the Committee recommended that the Statutory Commission to consider the advisability of further advance be appointed at the expiration of ten years and that no changes of substance should be made in the interval.

"The Joint Committee also considered that the President of the Legislative Assembly should be a person appointed by the Governor-General and qualified by experience in the House of Commons and they thought it would be a great advantage if persons could be found for the posts of Presidents of the provincial councils who had Parliamentary experience. The Vice-Presidents of the Legislative Assembly as well as the provincial councils from the beginning and the President after the expiry of four years should be elected. The Joint Committee also recommended that the Indian Budget be voted upon in the Legislative Assembly, subject to necessary safeguards. They considered the

enactment of a Corrupt Practices Act essential before the first elections to the various legislative bodies. Finally the Committee recommended the adoption by the Government of India of a machinery to make their views known more expeditiously and in a more business-like manner to the people in order to avoid mischief which is not infrequently done by uninformed criticism in the absence of more accurate information from the Government itself. The report of the Committee, when complete, was presented to Parliament, and after the suggested modification had been made, the Bill was finally passed into law in December 1919."

Such was the official summary.* The final text of the Government of India Bill, 1919, runs as follows. It must, as will be noticed, be read in conjunction with the Government of India Bill, 1915, as amended in 1916, which is printed in the Appendix.

Government of India Act, 1919 (9 & 10 Geo. V. c. 101).

AN ACT TO MAKE FURTHER PROVISION WITH RESPECT TO THE GOVERNMENT OF INDIA.

[23rd December, 1919.]

WHEREAS it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in British India as an integral part of the empire :

And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken :

And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples :

And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility :

And whereas concurrently with the gradual development of self-governing institutions in the Provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independence of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities :

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

* Which the authorities concerned have very courteously allowed me to reproduce.

PART I.

LOCAL GOVERNMENTS.

1. (1) Provision may be made by rules under the Government of India Act, of 1915, as amended by the Government of India (Amendment) Act, 1916 (which Act, as so amended, is in this Act referred to as "the principal Act")—

Classification of central and provincial subjects. 5 & 6 Geo. V. c. 61. 6 & 7 Geo. V. c. 37.

- (a) for the classification of subjects, in relation to the functions of government, as central and provincial subjects, for the purpose of distinguishing the functions of local governments and local legislatures from the functions of the Governor-General in Council and the Indian legislature ;
 - (b) for the devolution of authority in respect of provincial subjects to local governments, and for the allocation of revenues or other moneys to those governments ;
 - (c) for the use under the authority of the Governor-General in Council of the agency of local governments in relation to central subjects, in so far as such agency may be found convenient, and for determining the financial conditions of such agency ; and
 - (d) for the transfer from among the provincial subjects of subjects (in this Act referred to as "transferred subjects.") to the administration of the governor acting with ministers appointed under this Act, and for the allocation of revenues or moneys for the purpose of such administration.
- (2) Without prejudice to the generality of the foregoing powers, rules made for the above-mentioned purposes may—
- (i) regulate the extent and conditions of such devolution, allocation, and transfer ;
 - (ii) provide for fixing the contributions payable by local governments to the Governor-General in Council, and making such contributions a first charge on allocated revenues or moneys ;
 - (iii) provide for constituting a finance department in any province, and regulating the functions of that department ;
 - (iv) provide for regulating the exercise of the authority vested in the local government of a province over members of the public services therein ;

- (v) provide for the settlement of doubts arising as to whether any matter does or does not relate to a provincial subject or a transferred subject and for the treatment of matters which affect both a transferred subject and a subject which is not transferred; and
- (vi) make such consequential and supplemental provisions as appear necessary or expedient:

Provided that, without prejudice to any general power of revoking or altering rules under the principal Act, the rules shall not authorize the revocation or suspension of the transfer of any subject except with the sanction of the Secretary of State in Council.

(3) The powers of superintendence, direction, and control over local governments vested in the Governor-General in Council under the principal Act shall, in relation to transferred subjects, be exercised only for such purposes as may be specified in rules made under that Act, but the Governor-General in Council shall be the sole judge as to whether the purpose of the exercise of such powers in any particular case comes within the purposes so specified.

(4) The expressions "central subjects" and "provincial subjects" as used in this Act mean subjects so classified under the rules.

Provincial subjects, other than transferred subjects, are in this Act referred to as "reserved subjects."

2. (1) The provision in sub-section (1) of section thirty of the principal Act, which gives power to local governments to raise money on real or personal estate within the limits of their respective governments by way of mortgage or otherwise, shall have effect as though that provision conferred a power on local governments to raise money on the security of their allocated revenues, and to make proper assurances for that purpose.

(2) Provision may be made by rules under the principal Act as to the conditions under which the power to raise loans on the security of allocated revenues shall be exercised.

(3) The provision in sub-section (1) of section thirty of the principal Act, which enables the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council of India to prescribe provisions or conditions limiting the power to raise money, shall cease to have effect as regards the power to raise money on the security of allocated revenues.

3. (1) The presidencies of Fort William in Bengal, Fort St. George, and Bombay, and the provinces known as the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, and Assam, shall each be governed, in relation to reserved subjects, by a governor in council, and in relation to transferred subjects (save as

Borrowing
powers of
local govern-
ments.

Revised
system of local
government
in certain
provinces.

otherwise provided by this Act) by the governor acting with ministers appointed under this Act.

The said presidencies and provinces are in this Act referred to as "governor's provinces" and the two first-named presidencies are in this Act referred to as the presidencies of Bengal and Madras.

(2) The provisions of sections forty-six to fifty-one of the principal Act, as amended by this Act, shall apply to the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, and Assam, as they apply to the presidencies of Bengal, Madras, and Bombay: Provided that the governors of the said provinces shall be appointed after consultation with the Governor-General.

4. (1) The governor of a governor's province may, by notification, appoint ministers, not being members of his executive council or other officials, to administer transferred subjects, and any ministers so appointed shall hold office during his pleasure.

Appointment
of ministers
and council
secretaries.

There may be paid to any minister so appointed in any province the same salary as is payable to a member of the executive council in that province, unless a smaller salary is provided by vote of the legislative council of the province.

(2) No minister shall hold office for a longer period than six months, unless he is or becomes an elected member of the local legislature.

(3) In relation to transferred subjects, the governor shall be guided by the advice of his ministers, unless he sees sufficient cause to dissent from their opinion, in which case he may require action to be taken otherwise than in accordance with that advice: Provided that rules may be made under the principal Act for the temporary administration of a transferred subject where, in cases of emergency, owing to a vacancy, there is no minister in charge of the subject, by such authority and in such manner as may be prescribed by the rules.

(4) The governor of a governor's province may at his discretion appoint from among the non-official members of the local legislature council secretaries, who shall hold office during his pleasure, and discharge such duties in assisting members of the executive council and ministers, as he may assign to them.

There shall be paid to council secretaries so appointed such salary as may be provided by vote of the legislative council.

A council secretary shall cease to hold office if he ceases for more than six months to be a member of the legislative council.

5. (1) The provision in section forty-seven of the principal Act, that two of the members of the executive council of the governor of a province must have been for at least twelve years in the service of the Crown in India,

Qualification
of members
of local
executive
councils.

shall have effect as though "one" were substituted for "two," and the provision in that section that the Commander-in-Chief of His Majesty's Forces in India, if resident at Calcutta, Madras, or Bombay, shall, during his continuance there, be a member of the governor's council, shall cease to have effect.

(2) Provision may be made by rules under the principal Act as to the qualifications to be required in respect of members of the executive council of the governor of a province in any case where such provision is not made by section forty-seven of the principal Act as amended by this section.

6. (1) All orders and other proceedings of the government of a governor's province shall be expressed to be made by the government of the province, and shall be authenticated as the governor may by rule direct, so, however, that provision shall be made by rule for distinguishing orders and other proceedings relating to transferred subjects from other orders and proceedings.

Orders and proceedings authenticated as aforesaid shall not be called into question in any legal proceeding on the ground that they were not duly made by the government of the province.

(2) The governor may make rules and orders for the more convenient transaction of business in his executive council and with his ministers, and every order made or act done in accordance with those rules and orders shall be treated as being the order or the act of the government of the province.

The governor may also make rules and orders for regulating the relations between his executive council and his ministers for the purpose of the transaction of the business of the local government:

Provided that any rules or orders made for the purposes specified in this section which are repugnant to the provisions of any rules made under the principal Act as amended by this Act shall, to the extent of that repugnancy, but not otherwise, be void.

7. (1) There shall be a legislative council in every governor's province, which shall consist of the members of the executive council and of the members nominated or elected as provided by this Act.

The governor shall not be a member of the legislative council, but shall have the right of addressing the council, and may for that purpose require the attendance of its members.

(2) The number of members of the governors' legislative councils shall be in accordance with the table set out in the First Schedule to this Act; and of the members of each council not more than twenty per cent. shall be official members, and at least seventy per cent. shall be elected members:

Business of
governor in
council and
governor with
ministers.

Composition
of governors'
legislative
councils.

Provided that—

- (a) subject to the maintenance of the above proportions, rules under the principal Act may provide for increasing the number of members of any council, as specified in that schedule; and
- (b) the governor may, for the purposes of any Bill introduced or proposed to be introduced in his legislative council, nominate, in the case of Assam one person, and in the case of other provinces not more than two persons, having special knowledge or experience of the subject-matter of the Bill, and those persons shall, in relation to the Bill, have for the period for which they are nominated all the rights of members of the council, and shall be in addition to the numbers above referred to; and
- (c) members nominated to the legislative council of the Central Provinces by the governor as the result of elections held in the Assigned Districts of Berar shall be deemed to be elected members of the legislative council of the Central Provinces.
- (3) The powers of a governor's legislative council may be exercised notwithstanding any vacancy in the council.
- (4) Subject as aforesaid, provision may be made by rules under the principal Act as to—
 - (a) the term of office of nominated members of governors' legislative councils, and the manner of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, resignation duly accepted, or otherwise; and
 - (b) the conditions under which and manner in which persons may be nominated as members of governors' legislative councils; and
 - (c) the qualification of electors, the constitution of constituencies, and the method of election for governors' legislative councils, including the number of members to be elected by communal and other electorates, and any matters incidental or ancillary thereto; and
 - (d) the qualifications for being and for being nominated or elected a member of any such council; and
 - (e) the final decision of doubts or disputes as to the validity of any election; and
 - (f) the manner in which the rules are to be carried into effect:

Provided that rules as to any such matters as aforesaid may provide for delegating to the local government such power as may be specified in the rules of making subsidiary regulations affecting the same matters.

- (5) Subject to any such rules any person who is a ruler or subject of any State in India may be nominated as a member of a governor's legislative council.

Sessions and
duration of
governors'
legislative
councils.

8. (1) Every governor's legislative council shall continue for three years from its first meeting :

Provided that—

- (a) the council may be sooner dissolved by the governor ; and
- (b) the said period may be extended by the governor for a period not exceeding one year, by notification in the official gazette of the province, if in special circumstances (to be specified in the notification) he so think fit ; and
- (c) after the dissolution of the council the governor shall appoint a date not more than six months or, with the sanction of the Secretary of State, not more than nine months from the date of dissolution for the next session of the council.

(2) A governor may appoint such times and places for holding the sessions of his legislative council as he thinks fit, and may also, by notification or otherwise, prorogue the council.

(3) Any meeting of a governor's legislative council may be adjourned by the person presiding.

(4) All questions in a governor's legislative council shall be determined by a majority of votes of the members present other than the person presiding, who shall, however, have and exercise a casting vote in the case of an equality of votes.

Presidents of
governors'
legislative
councils.

9. (1) There shall be a president of a governor's legislative council, who shall, until the expiration of a period of four years from the first meeting of the council as constituted under this Act, be a person appointed by the governor, and shall thereafter be a member of the council elected by the council and approved by the governor :

Provided that if at the expiration of such period of four years the council is in session, the president then in office shall continue in office until the end of the current session, and the first election of a president shall take place at the commencement of the next ensuing session.

(2) There shall be a deputy-president of a governor's legislative council who shall preside at meetings of the council in the absence of the president, and who shall be a member of the council elected by the council and approved by the governor.

(3) The appointed president of a council shall hold office until the date of the first election of a president by the council under this section, but he may resign office by writing under his hand addressed to the governor,

or may be removed from office by order of the governor, and any vacancy occurring before the expiration of the term of office of an appointed president shall be filled by a similar appointment for the remainder of such term.

(4) An elected president and a deputy-president shall cease to hold office on ceasing to be members of the council. They may resign office by writing under their hands addressed to the governor, and may be removed from office by a vote of the council with the concurrence of the governor.

(5) The president and the deputy-president shall receive such salaries as may be determined, in the case of an appointed president, by the governor, and in the case of an elected president or deputy-president, by an Act of the local legislature.

10. (1) The local legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province. Powers of local legislatures.

(2) The local legislature of any province may, subject to the provisions of the sub-section next following, repeal or alter as to that province any law made either before or after the commencement of this Act by any authority in British India other than that local legislature.

(3) The local legislature of any province may not, without the previous sanction of the Governor-General, make or take into consideration any law—

- (a) imposing or authorizing the imposition of any new tax unless the tax is a tax scheduled as exempted from this provision by rules made under the principal Act ; or
- (b) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the General purposes of the government of India, provided that the imposition or alteration of a tax scheduled as aforesaid shall not be deemed to affect any such tax or duty ; or
- (c) affecting the discipline or maintenance of any part of His Majesty's naval, military, or air forces ; or
- (d) affecting the relations of the government with foreign princes or states ; or
- (e) regulating any central subject ; or
- (f) regulating any provincial subject which has been declared by rules under the principal Act to be, either in whole or in part, subject to legislation by the Indian legislature, in respect of any matter to which such declaration applies ; or

- (g) affecting any power expressly reserved to the Governor-General in Council by any law for the time being in force ; or
- (h) altering or repealing the provisions of any law which, having been made before the commencement of this Act by any authority in British India other than that local legislature, is declared by rules under the principal Act to be a law which cannot be repealed or altered by the local legislature without previous sanction ; or
- (i) altering or repealing any provision of an Act of the Indian legislature made after the commencement of this Act, which by the provisions of that Act may not be repealed or altered by the local legislature without previous sanction :

Provided that an Act or a provision of an Act made by a local legislature, and subsequently assented to by the Governor-General in pursuance of this Act, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under this Act.

(4) The local legislature of any province has not power to make any law affecting any Act of Parliament.

11. (1) Sub-sections (1) and (3) of section eighty of the principal Act (which relate to the classes of business which may be transacted at meetings of local legislative councils) shall cease to apply to a governor's legislative council, but the business and procedure in any such council shall be regulated in accordance with the provisions of this section.

(2) The estimated annual expenditure and revenue of the province shall be laid in the form of a statement before the council in each year, and the proposals of the local government for the appropriation of provincial revenues and other moneys in any year shall be submitted to the vote of the council in the form of demands for grants. The council may assent, or refuse its assent, to a demand, or may reduce the amount therein referred to either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed :

Provided that—

- (a) the local government shall have power, in relation to any such demand, to act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, if the demand relates to a reserved subject, and the governor certifies that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject ; and

- (b) the governor shall have power in cases of emergency to authorize such expenditure as may be in his opinion necessary for the safety or tranquillity of the province, or for the carrying on of any department ; and
 - (c) no proposal for the appropriation of any such revenues or other moneys for any purpose shall be made except on the recommendation of the governor, communicated to the council.
- (3) Nothing in the foregoing sub-section shall require proposals to be submitted to the council relating to the following heads of expenditure :
- (i) contributions payable by the local government to the Governor-General in Council ; and
 - (ii) interest and sinking fund charges on loans ; and
 - (iii) expenditure of which the amount is prescribed by or under any law ; and
 - (iv) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council ; and
 - (v) salaries of judges of the High Court of the province and of the Advocate-General.

If any question arises whether any proposed appropriation of moneys does or does not relate to the above heads of expenditure, the decision of the governor shall be final.

(4) Where any Bill has been introduced or is proposed to be introduced, or any amendment to a Bill is moved or proposed to be moved, the governor may certify that the Bill or any clause of it or the amendment affects the safety or tranquillity of his province or any part of it or of another province, and may direct that no proceedings or no further proceedings shall be taken by the council in relation to the Bill, clause or amendment, and effect shall be given to any such direction.

(5) Provision may be made by rules under the principal Act for the purpose of carrying into effect the foregoing provisions of this section and for regulating the course of business in the council, and as to the persons to preside over meetings thereof in the absence of the president and deputy-president, and the preservation of order at meetings ; and the rules may provide for the number of members required to constitute a quorum, and for prohibiting or regulating the asking of questions on and the discussion of any subject specified in the rules.

(6) Standing orders may be made providing for the conduct of business and the procedure to be followed in the council, in so far as these matters are not provided for by rules made under the principal Act. The first standing orders shall be made by the governor in council,

but may, subject to the assent of the governor, be altered by the local legislatures. Any standing order made as aforesaid which is repugnant to the provisions of any rules made under the principal Act, shall, to the extent of that repugnancy but not otherwise, be void.

(7) Subject to the rules and standing orders affecting the council, there shall be freedom of speech in the governors' legislative councils. No person shall be liable to any proceedings in any court by reason of his speech or vote in any such council or by reason of any thing contained in any official report of the proceedings of any such council.

Return and
reservation of
Bills.

12. (1) Where a Bill has been passed by a local legislative council the governor, lieutenant-governor or chief commissioner may, instead of declaring that he assents to or withholds his assent from the Bill, return the Bill to the council for reconsideration, either in whole or in part, together with any amendments which he may recommend, or, in cases prescribed by rules under the principal Act may, and if the rules so require shall, reserve the Bill for the consideration of the Governor-General.

(2) Where a Bill is reserved for the consideration of the Governor-General, the following provisions shall apply :

- (a) The governor, lieutenant-governor or chief commissioner may, at any time within six months from the date of the reservation of the Bill with the consent of the Governor-General, return the Bill for further consideration by the council with a recommendation that the council shall consider amendments thereto :
- (b) After any Bill so returned has been further considered by the council, together with any recommendations made by the governor, lieutenant-governor or chief commissioner relating thereto, the Bill, if re-affirmed with or without amendment, may be again presented to the governor, lieutenant-governor, or chief commissioner :
- (c) Any Bill reserved for the consideration of the Governor-General shall, if assented to by the Governor-General within a period of six months from the date of such reservation, become law on due publication of such assent, in the same way as a Bill assented to by the governor, lieutenant-governor or chief commissioner but, if not assented to by the Governor-General within such period of six months, shall lapse and be of no effect unless before the expiration of that period either—
 - (i) the Bill has been returned by the governor, lieutenant-governor or chief commissioner, for further consideration by the council ; or

- (ii) in the case of the council not being in session, a notification has been published of an intention so to return the Bill at the commencement of the next session.

(3) The Governor-General may (except where the Bill has been reserved for his consideration), instead of assenting to or withholding his assent from any Act passed by a local legislature, declare that he reserves the Act for the signification of His Majesty's pleasure thereon, and in such case the Act shall not have validity until His Majesty in Council has signified his assent and his assent has been notified by the Governor-General.

13. (1) Where a governor's legislative council has refused leave to introduce, or has failed to pass in a form recommended by the governor, any Bill relating to a reserved subject the governor may certify that the passage of the Bill is essential for the discharge of his responsibility for the subject, and thereupon the Bill shall, notwithstanding that the council have not consented thereto, be deemed to have passed, and shall, on signature by the governor, become an Act of the local legislature in the form of the Bill as originally introduced or proposed to be introduced in the council or (as the case may be) in the form recommended to the council by the governor.

Provision for
case of failure
to pass legisla-
tion in gover-
nors' legisla-
tive councils.

(2) Every such Act shall be expressed to be made by the governor, and the governor shall forthwith send an authentic copy thereof to the Governor-General, who shall reserve the Act for the signification of His Majesty's pleasure, and upon the signification of such assent by His Majesty in Council, and the notification thereof by the Governor-General, the Act shall have the same force and effect as an Act passed by the local legislature and duly assented to :

Provided that where, in the opinion of the Governor-General a state of emergency exists which justifies such action, he may, instead of reserving such Act, signify his assent thereto, and thereupon the Act shall have such force and effect as aforesaid, subject however to disallowance by His Majesty in Council.

(3) An Act made under this section shall, as soon as practicable after being made, be laid before each House of Parliament, and an Act which is required to be presented for His Majesty's assent shall not be so presented until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat.

14. An official shall not be qualified for election as a member of a local legislative council, and if any non-official member of a local legislative council, whether elected or nominated, accepts any office in the service of the Crown in India, his seat on the council shall become vacant :

Vacation of
seats in local
legislative
councils.

Provided that for the purposes of this provision a minister shall not be deemed to be an official and a person shall not be deemed to accept office on appointment as a minister.

Constitution of new provinces, etc., and provision as to backward tracts.

15. (1) The Governor-General in Council may, after obtaining an expression of opinion from the local government and the local legislature affected, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute a new governor's province, or place part of a governor's province under the administration of a deputy-governor to be appointed by the Governor-General, and may in any such case apply, with such modifications as appear necessary or desirable, all or any of the provisions of the principal Act or this Act relating to governors' provinces, or provinces under a lieutenant-governor or chief commissioner, to any such new province or part of a province.

(2) The Governor-General in Council may declare any territory in British India to be a "backward tract," and may, by notification, with such sanction as aforesaid, direct that the principal Act and this Act shall apply to that territory subject to such exceptions and modifications as may be prescribed in the notification. Where the Governor-General in Council has, by notification, directed as aforesaid, he may, by the same or subsequent notification, direct that any Act of the Indian legislature shall not apply to the territory in question or any part thereof, or shall apply to the territory or any part thereof subject to such exceptions or modifications as the Governor-General thinks fit, or may authorize the governor in council to give similar directions as respects any Act of the local legislature.

Saving.

16. (1) The validity of any order made or action taken after the commencement of this Act by the Governor-General in Council or by a local government which would have been within the powers of the Governor-General in Council or of such local government if this Act had not been passed, shall not be open to question in any legal proceedings on the ground that by reason of any provision of this Act or of any rule made by virtue of any such provision such order or action has ceased to be within the powers of the Governor-General in Council or of the government concerned.

(2) Nothing in this Act, or in any rule made thereunder, shall be construed as diminishing in any respect the powers of the Indian legislature as laid down in section sixty-five of the principal Act, and the validity of any Act of the Indian legislature or any local legislature shall not be open to question in any legal proceedings on the ground that the Act affects a provincial subject or a central subject as the case may be, and the validity of any Act made by the governor of a province shall not

be so open to question on the ground that it does not relate to a reserved subject.

(3) The validity of any order made or action taken by a governor in council, or by a governor acting with his ministers, shall not be open to question in any legal proceedings on the ground that such order or action relates or does not relate to a transferred subject, or relates to a transferred subject of which the minister is not in charge.

PART II.

GOVERNMENT OF INDIA.

17. Subject to the provisions of this Act, the Indian legislature shall consist of the Governor-General and two chambers, namely the Council of State and the Legislative Assembly. Indian legislature.

Except as otherwise provided by or under this Act a Bill shall not be deemed to have been passed by the Indian legislature unless it has been agreed to by both chambers, either without amendment or with such amendments only as may be agreed to by both chambers.

18. (1) The Council of State shall consist of not more than sixty members nominated or elected in accordance with rules made under the principal Act, of whom not more than twenty shall be official members. Council of State.

(2) The Governor-General shall have power to appoint, from among the members of the Council of State, a president and other persons to preside in such circumstances as he may direct.

(3) The Governor-General shall have the right of addressing the Council of State, and may for that purpose require the attendance of its members.

19. (1) The Legislative Assembly shall consist of members nominated or elected in accordance with rules made under the principal Act. Legislative Assembly.

(2) The total number of members of the Legislative Assembly shall be one hundred and forty. The number of non-elected members shall be forty, of whom twenty-six shall be official members. The number of elected members shall be one hundred :

Provided that rules made under the principal Act may provide for increasing the number of members of the Legislative Assembly as fixed by this section, and may vary the proportion which the classes of members bear one to another, so, however, that at least five-sevenths of the members of the Legislative Assembly shall be elected members, at least one-third of the other members shall be non-official members.

President of
Legislative
Assembly.

(3) The Governor-General shall have the right of addressing the Legislative Assembly, and may for that purpose require the attendance of its members.

20. (r) There shall be a president of the Legislative Assembly, who shall, until the expiration of four years from the first meeting thereof, be a person appointed by the Governor-General, and shall thereafter be a member of the Assembly elected by the Assembly and approved by the Governor-General:

Provided that, if at the expiration of such period of four years the Assembly is in session, the president then in office shall continue in office until the end of the current session, and the first election of a president shall take place at the commencement of the ensuing session.

(2) There shall be a deputy-president of the Legislative Assembly, who shall preside at meetings of the Assembly in the absence of the president, and who shall be a member of the Assembly elected by the Assembly and approved by the Governor-General.

(3) The appointed president shall hold office until the date of the election of a president under this section, but he may resign his office by writing under his hand addressed to the Governor-General, or may be removed from office by order of the Governor-General, and any vacancy occurring before the expiration of his term of office shall be filled by a similar appointment for the remainder of such term.

(4) An elected president and a deputy-president shall cease to hold office if they cease to be members of the Assembly. They may resign office by writing under their hands addressed to the Governor-General, and may be removed from office by a vote of the Assembly with the concurrence of the Governor-General.

(5) A president and deputy-president shall receive such salaries as may be determined, in the case of an appointed president by the Governor-General, and in the case of an elected president and a deputy-president by Act of the Indian legislature.

Duration and
sessions of
Legislative
Assembly and
Council of
State.

21. (r) Every Council of State shall continue for five years, and every Legislative Assembly for three years, from its first meeting:

Provided that—

- (a) either chamber of the legislature may be sooner dissolved by the Governor-General; and
- (b) any such period may be extended by the Governor-General if in special circumstances he so thinks fit; and
- (c) after the dissolution of either chamber the Governor-General shall appoint a date not more than six months, or, with the sanction of the Secretary of State, not more than nine months after the date of dissolution for the next session of that chamber.

(2) The Governor-General may appoint such times and places for holding the sessions of either chamber of the Indian legislature as he thinks fit, and may also from time to time, by notification or otherwise, prorogue such sessions.

(3) Any meeting of either chamber of the Indian legislature may be adjourned by the person presiding.

(4) All questions in either chamber shall be determined by a majority of votes of members present other than the presiding member, who shall, however, have and exercise a casting vote in the case of an equality of votes.

(5) The powers of either chamber of the Indian legislature may be exercised notwithstanding any vacancy in the chamber.

22. (r) An official shall not be qualified for election as a member of either chamber of the Indian legislature, and, if any non-official member of either chamber accepts office in the service of the Crown in India, his seat in that chamber shall become vacant.

Membership
of both
chambers.

(2) If an elected member of either chamber of the Indian legislature becomes a member of the other chamber, his seat in such first-mentioned chamber shall thereupon become vacant.

(3) If any person is elected a member of both chambers of the Indian legislature, he shall, before he takes his seat in either chamber, signify in writing the chamber of which he desires to be a member, and thereupon his seat in the other chamber shall become vacant.

(4) Every member of the Governor-General's Executive Council shall be nominated as a member of one chamber of the Indian legislature, and shall have the right of attending in and addressing the other chamber, but shall not be a member of both chambers.

23. (r) Subject to the provisions of this Act, provision may be made by rules under the principal Act as to—

- (a) the term of office of nominated members of the Council of State and the Legislative Assembly, and the manner of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise; and
- (b) the conditions under which and the manner in which persons may be nominated as members of the Council of State or the Legislative Assembly; and
- (c) the qualification of electors, the constitution of constituencies, and the method of election for the Council of State and the Legislative Assembly (including the number of members to be elected by communal and other electorates) and any matters incidental or ancillary thereto; and

Supplemen-
tary pro-
visions as to
composition
of Legislative
Assembly and
Council of
State.

- (d) the qualifications for being or for being nominated or elected as members of the Council of State or the Legislative Assembly; and
- (e) the final decision of doubts or disputes as to the validity of an election; and
- (f) the manner in which the rules are to be carried into effect.

(2) Subject to any such rules, any person who is a ruler or subject of any State in India may be nominated as a member of the Council of State or the Legislative Assembly.

Business and
proceedings in
Indian legisla-
ture.

24. (1) Sub-sections (2) and (3) of section sixty-seven of the principal Act (which relate to the classes of business which may be transacted by the Indian legislative council) shall cease to have effect.

(2) Provision may be made by rules under the principal Act for regulating the course of business and the preservation of order in the chambers of the Indian legislature, and as to the persons to preside at the meetings of the Legislative Assembly in the absence of the president and the deputy-president; and the rules may provide for the number of members required to constitute a quorum, and for prohibiting or regulating the asking of questions on, and the discussion of, any subject specified in the rules.

(3) If any Bill which has been passed by one chamber is not, within six months after the passage of the Bill by that chamber, passed by the other chamber either without amendments or with such amendments as may be agreed to by the two chambers, the Governor-General may in his discretion refer the matter for decision to a joint sitting of both chambers: Provided that standing orders made under this section may provide for meetings of members of both chambers appointed for the purpose, in order to discuss any difference of opinion which has arisen between the two chambers.

(4) Without prejudice to the powers of the Governor-General under section sixty-eight of the principal Act, the Governor-General may, where a Bill has been passed by both chambers of the Indian legislature, return the Bill for reconsideration by either chamber.

(5) Rules made for the purpose of this section may contain such general and supplemental provisions as appear necessary for the purpose of giving full effect to this section.

(6) Standing orders may be made providing for the conduct of business and the procedure to be followed in either chamber of the Indian legislature in so far as these matters are not provided for by rules made under the principal Act. The first standing orders shall be made by the Governor-General in Council, but may,

with the consent of the Governor-General, be altered by the chamber to which they relate.

Any standing order made as aforesaid which is repugnant to the provisions of any rules made under the principal Act shall, to the extent of that repugnancy but not otherwise, be void.

(7) Subject to the rules and standing orders affecting the chamber, there shall be freedom of speech in both chambers of the Indian legislature. No person shall be liable to any proceedings in any court by reason of his speech or vote in either chamber, or by reason of anything contained in any official report of the proceedings of either chamber.

25. (1) The estimated annual expenditure and revenue of the Governor-General in Council shall be laid in the form of a statement before both chambers of the Indian legislature in each year.

Indian
Budget.

(2) No proposal for the appropriation of any revenue or moneys for any purpose shall be made except on the recommendation of the Governor-General.

(3) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly, nor shall they be open to discussion by either chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs—

- (i) interest and sinking fund charges on loans; and
- (ii) expenditure of which the amount is prescribed by or under any law; and
- (iii) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council; and
- (iv) salaries of chief commissioners and judicial commissioners; and
- (v) expenditure classified by the order of the Governor-General in Council as—
 - (a) ecclesiastical;
 - (b) political;
 - (c) defence.

(4) If any question arises whether any proposed appropriation of revenue or moneys does or does not relate to the above heads, the decision of the Governor-General on the question shall be final.

(5) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to heads of expenditure not specified in the above heads shall be submitted to the vote of the Legislative Assembly in the form of demands for grants.

(6) The Legislative Assembly may assent or refuse its assent to any demand or may reduce the amount

referred to in any demand by a reduction of the whole grant.

(7) The demands as voted by the Legislative Assembly shall be submitted to the Governor-General in Council, who shall, if he declares that he is satisfied that any demand which has been refused by the Legislative Assembly is essential to the discharge of his responsibilities, act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, by the Legislative Assembly.

(8) Notwithstanding anything in this section the Governor-General shall have power, in cases of emergency, to authorize such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India or any part thereof.

Provision for
case of failure
to pass legisla-
tion.

26. (1) Where either chamber of the Indian legislature refuses leave to introduce or fails to pass in a form recommended by the Governor-General, any Bill, the Governor-General may certify that the passage of the Bill is essential for the safety, tranquillity or interests of British India or any part thereof, and thereupon—

(a) if the Bill has already been passed by the other chamber, the Bill shall, on signature by the Governor-General, notwithstanding that it has not been consented to by both chambers, forthwith become an Act of the Indian legislature in the form of the Bill as originally introduced or proposed to be introduced in the Indian legislature, or (as the case may be) in the form recommended by the Governor-General; and

(b) if the Bill has not already been so passed, the Bill shall be laid before the other chamber, and, if consented to by that chamber in the form recommended by the Governor-General, shall become an Act as aforesaid on the signification of the Governor-General's assent, or, if not so consented to, shall, on signature by the Governor-General, become an Act as aforesaid.

(2) Every such Act shall be expressed to be made by the Governor-General and shall, as soon as practicable after being made, be laid before both Houses of Parliament, and shall not have effect until it has received His Majesty's assent, and shall not be presented for His Majesty's assent until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat; and upon the signification of such assent by His Majesty in Council and the notification thereof by the Governor-General, the Act shall have the same force and effect as an Act passed by the Indian legislature and duly assented to:

Provided that, where in the opinion of the Governor-General a state of emergency exists which justifies such action, the Governor-General may direct that any such Act shall come into operation forthwith, and thereupon the Act shall have such force and effect as aforesaid, subject, however, to disallowance by His Majesty in Council.

27. (1) In addition to the measures referred to in sub-section (2) of section sixty-seven of the principal Act, as requiring the previous sanction of the Governor-General, it shall not be lawful without such previous sanction to introduce at any meeting of either chamber of the Indian legislature any measure—

Supple-
mental pro-
visions as to
powers of
Indian
legislature.

(a) regulating any provincial subject, or any part of a provincial subject, which has not been declared by rules under the principal Act to be subject to legislation by the Indian legislature;

(b) repealing or amending any Act of a local legislature;

(c) repealing or amending any Act or ordinance made by the Governor-General.

(2) Where in either chamber of the Indian legislature any Bill has been introduced, or is proposed to be introduced, or any amendment to a Bill is moved, or proposed to be moved, the Governor-General may certify that the Bill, or any clause of it, or the amendment, affects the safety or tranquillity of British India, or any part thereof, and may direct that no proceedings, or that no further proceedings, shall be taken by the chamber in relation to the Bill, clause, or amendment, and effect shall be given to such direction.

28. (1) The provision in section thirty-six of the principal Act, imposing a limit on the number of members of the Governor-General's executive council, shall cease to have effect.

Composition
of Governor-
General's
executive
council.

(2) The provision in section thirty-six of the principal Act as to the qualification of members of the council shall have effect as though the words "at the time of their appointment" were omitted, and as though after the word "Scotland" there were inserted the words "or a pleader of the High Court" and as though "ten years" were substituted for "five years."

(3) Provision may be made by rules under the principal Act as to the qualifications to be required in respect of members of the Governor-General's executive council, in any case where such provision is not made by section thirty-six of the principal Act as amended by this section.

(4) Sub-section (2) of section thirty-seven of the principal Act (which provides that when and so long as the Governor-General's executive council assembles in a province having a governor the governor shall be an

extraordinary member of the council) shall cease to have effect.

Appointment
of council
secretaries.

29. (1) The Governor-General may at his discretion appoint, from among the members of the Legislative Assembly, council secretaries who shall hold office during his pleasure and discharge such duties in assisting the members of his executive council as he may assign to them.

(2) There shall be paid to council secretaries so appointed such salary as may be provided by the Indian legislature.

(3) A council secretary shall cease to hold office if he ceases for more than six months to be a member of the Legislative Assembly.

PART III.

SECRETARY OF STATE IN COUNCIL.

Payment of
salary of
Secretary of
State, etc., out
of moneys
provided by
Parliament.

30. The salary of the Secretary of State, the salaries of his under-secretaries, and any other expenses of his department may, notwithstanding anything in the principal Act, instead of being paid out of the revenues of India, be paid out of moneys provided by Parliament, and the salary of the Secretary of State shall be so paid.

Council of
India.

31. The following amendments shall be made in section three of the principal Act in relation to the composition of the Council of India, the qualification, term of office, and remuneration of its members:—

(1) The provisions of sub-section (1) shall have effect as though "eight" and "twelve" were substituted for "ten" and "fourteen" respectively, as the minimum and maximum number of members, provided that the council as constituted at the time of the passing of this Act shall not be affected by this provision, but no fresh appointment or reappointment thereto shall be made in excess of the maximum prescribed by this provision.

(2) The provisions of sub-section (3) shall have effect as if "one-half" were substituted for "nine" and "India" were substituted for "British India."

(3) In sub-section (4) "five years" shall be substituted for "seven years" as the term of office of members of the council, provided that the tenure of office of any person who is a member of the council at the time of the passing of this Act shall not be effected by this provision.

(4) The provisions of sub-section (8) shall cease to have effect and in lieu thereof the following provisions shall be inserted:

"There shall be paid to each member of the Council of India the annual salary of twelve hundred pounds: provided that any member of the council who was at the time of his appointment domiciled in India shall receive, in addition to the salary hereby provided, an annual subsistence allowance of six hundred pounds.

Such salaries and allowances may be paid out of the revenues of India or out of moneys provided by Parliament."

(5) Notwithstanding anything in any Act or rules, where any person in the service of the Crown in India is appointed a member of the council before completion of the period of such service required to entitle him to a pension or annuity, his service as such member shall, for the purpose of any pension or annuity which would be payable to him on completion of such period, be reckoned as service under the Crown in India whilst resident in India.

32. (1) The provision in section six of the principal Act which prescribes the quorum for meetings of the Council of India shall cease to have effect, and the Secretary of State shall provide for a quorum by directions to be issued in this behalf.

Further pro-
visions as to
Council of
India.

(2) The provision in section eight of the principal Act relating to meetings of the Council of India shall have effect as though "month" were substituted for "week."

(3) Section ten of the principal Act shall have effect as though the words "all business of the council or committees thereof is to be transacted" were omitted, and the words "the business of the Secretary of State in Council or the Council of India shall be transacted, and any order made or act done in accordance with such direction shall, subject to the provisions of this Act, be treated as being an order of the Secretary of State in Council" were inserted in lieu thereof.

33. The Secretary of State in Council may, notwithstanding anything in the principal Act, by rule regulate and restrict the exercise of the powers of superintendence, direction, and control, vested in the Secretary of State and the Secretary of State in Council, by the principal Act, or otherwise, in such manner as may appear necessary or expedient in order to give effect to the purposes of this Act.

Relaxation of
control of
Secretary of
State.

Before any rules are made under this section relating to subjects other than transferred subjects, the rules proposed to be made shall be laid in draft before both

Houses of Parliament, and such rules shall not be made unless both Houses by resolution approve the draft either without modification or addition, or with modifications or additions to which both Houses agree, but upon such approval being given the Secretary of State in Council may make such rules in the form in which they have been approved, and such rules on being so made shall be of full force and effect.

Any rules relating to transferred subjects made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and, if an Address is presented to His Majesty by either House of Parliament within the next thirty days on which that House has sat after the rules are laid before it praying that the rules or any of them may be annulled, His Majesty in Council may annul the rules or any of them, and those rules shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

Correspondence between Secretary of State and India.

34. So much of section five of the principal Act as relates to orders and communications sent to India from the United Kingdom and to orders made in the United Kingdom, and sections eleven, twelve, thirteen, and fourteen of the principal Act, shall cease to have effect, and the procedure for the sending of orders and communications to India and in general for correspondence between the Secretary of State and the Governor-General in Council or any local government shall be such as may be prescribed by order of the Secretary of State in Council.

High Commissioner for India.

35. His Majesty may by Order in Council make provision for the appointment of a High Commissioner for India in the United Kingdom, and for the pay, pension, powers, duties, and conditions of employment of the High Commissioner and of his assistants; and the Order may further provide for delegating to the High Commissioner any of the powers previously exercised by the Secretary of State or the Secretary of State in Council, whether under the principal Act or otherwise in relation to making contracts, and may prescribe the conditions under which he shall act on behalf of the Governor-General in Council or any local government.

PART IV.

THE CIVIL SERVICES IN INDIA.

The civil services in India.

36. (1) Subject to the provisions of the principal Act and of rules made thereunder, every person in the civil service of the Crown in India holds office during

His Majesty's pleasure, and may be employed in any manner required by a proper authority within the scope of his duty, but no person in that service may be dismissed by any authority subordinate to that by which he was appointed, and the Secretary of State in Council may (except so far as he may provide by rules to the contrary) reinstate any person in that service who has been dismissed.

If any such person appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in a governor's province, and on due application made to that superior does not receive the redress to which he may consider himself entitled, he may, without prejudice to any other right of redress, complain to the governor of the province in order to obtain justice, and the governor is hereby directed to examine complaint and require such action to be taken thereon as may appear to him to be just and equitable.

(2) The Secretary of State in Council may make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct. Such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor-General in Council or to local governments, or authorize the Indian legislature or local legislatures to make laws regulating the public services:

Provided that every person appointed before the commencement of this Act by the Secretary of State in Council to the civil service of the Crown in India shall retain all his existing or accruing rights, or shall receive such compensation for the loss of any of them as the Secretary of State in Council may consider just and equitable.

(3) The right to pensions and the scale and conditions of pensions of all persons in the civil service of the Crown in India appointed by the Secretary of State in Council shall be regulated in accordance with the rules in force at the time of the passing of this Act. Any such rules may be varied or added to by the Secretary of State in Council and shall have effect as so varied or added to, but any such variation or addition shall not adversely affect the pension of any member of the service appointed before the date thereof.

Nothing in this section or in any rule thereunder shall prejudice the rights to which any person may, or may have, become entitled under the provisions in relation to pensions contained in the East India Annuity Funds Act, 1874.

(4) For the removal of doubts it is hereby declared that all rules or other provisions in operation at the

37 & 38
Vict. c. 12.

time of the passing of this Act, whether made by the Secretary of State in Council or by any other authority, relating to the civil service of the Crown in India, were duly made in accordance with the powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied, or added to by rules or laws made under this section.

Appointments
to the Indian
Civil Service.

37. (1) Notwithstanding anything in section ninety-seven of the principal Act the Secretary of State may make appointments to the Indian Civil Service of persons domiciled in India, in accordance with such rules as may be prescribed by the Secretary of State in Council with the concurrence of the majority of votes at a meeting of the Council of India.

Any rules made under this section shall not have force until they have been laid for thirty days before both Houses of Parliament.

5 & 6 Geo. V.
c. 87.

(2) The Indian Civil Service (Temporary Provisions) Act, 1915 (which confers power during the war and for a period of two years thereafter to make appointments to the Indian Civil Service without examination), shall have effect as though "three years" were substituted for "two years."

Public service
commission.

38. (1) There shall be established in India a public service commission, consisting of not more than five members, of whom one shall be chairman, appointed by the Secretary of State in Council. Each member shall hold office for five years, and may be re-appointed. No member shall be removed before the expiry of his term of office, except by order of the Secretary of State in Council. The qualifications for appointment, and the pay and pension (if any) attaching to the office of chairman and member, shall be prescribed by rules made by the Secretary of State in Council.

(2) The public service commission shall discharge, in regard to recruitment and control of the public services in India, such functions as may be assigned thereto by rules made by the Secretary of State in Council.

Financial
control.

39. (1) An auditor-general in India shall be appointed by the Secretary of State in Council, and shall hold office during His Majesty's pleasure. The Secretary of State in Council shall, by rules, make provision for his pay, powers, duties, and conditions of employment, or for the discharge of his duties in the case of a temporary vacancy or absence from duty.

(2) Subject to any rules made by the Secretary of State in Council, no office may be added to or withdrawn from the public service, and the emoluments of no post may be varied, except after consultation with such finance authority as may be designated in the rules, being an authority of the province or of the Government

of India, according as the post is or is not under the control of a local government.

40. Rules made under this Part of this Act shall not be made except with the concurrence of the majority of votes at a meeting of the Council of India. Rules under
Part IV.

PART V.

STATUTORY COMMISSION.

41. (1) At the expiration of ten years after the passing of this Act the Secretary of State, with the concurrence of both Houses of Parliament, shall submit for the approval of His Majesty the names of persons to act as a commission for the purposes of this section. Statutory
commission.

(2) The persons whose names are so submitted, if approved by His Majesty, shall be a commission for the purpose of inquiring into the working of the system of government, the growth of education, and the development of representative institutions, in British India, and matters connected therewith, and the commission shall report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify, or restrict the degree of responsible government then existing therein, including the question whether the establishment of second chambers of the local legislatures is or is not desirable.

(3) The commission shall also inquire into and report on any other matter affecting British India and the provinces, which may be referred to the commission by His Majesty.

PART VI.

GENERAL.

42. Notwithstanding anything in section one hundred and twenty-four of the principal Act, if any member of the Governor-General's executive Council or any member of any local government was at the time of his appointment concerned or engaged in any trade or business, he may, during the term of his office, with the sanction in writing of the Governor-General, or, in the case of ministers, of the governor of the province, and in any case subject to such general conditions and restrictions as the Governor-General in Council may prescribe, retain his concern or interest in that trade or business, but shall not, during that term, take part in the direction or management of that trade or business. Modification
of s. 124 of
principal Act.

Signification
of Royal
Assent.

Power to
make rules.

43. Any assent or disallowance by His Majesty, which under the principal Act is required to be signified through the Secretary of State in Council, shall, as from the passing of this Act, be signified by His Majesty in Council.

44. (1) Where any matter is required to be prescribed or regulated by rules under the principal Act and no special provision is made as to the authority by whom the rules are to be made, the rules shall be made by the Governor-General in Council, with the sanction of the Secretary of State in Council, and shall not be subject to repeal or alteration by the Indian legislature or by any local legislature.

(2) Any rules made under this Act or under the principal Act may be so framed as to make different provision for different provinces.

(3) Any rules to which sub-section (1) of this section applies shall be laid before both Houses of Parliament as soon as may be after they are made, and, if an Address is presented to His Majesty by either House of Parliament within the next thirty days on which that House has sat after the rules are laid before it praying that the rules or any of them may be annulled, His Majesty in Council may annul the rules or any of them, and those rules shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder :

Provided that the Secretary of State may direct that any rules to which this section applies shall be laid in draft before both Houses of Parliament, and in such case the rules shall not be made unless both Houses by resolution approve the draft either without modification or addition, or with modifications or additions to which both Houses agree, but, upon such approval being given, the rules may be made in the form in which they have been approved, and such rules on being so made shall be of full force and effect, and shall not require to be further laid before Parliament.

Amendments
of principal
Act to carry
Act into
effect, etc.

45. (1) The amendments set out in Parts I and II of the Second Schedule to this Act, being amendments to incorporate the provisions of this Act in the principal Act, and further amendments consequential on or arising out of those provisions, shall be made in the principal Act, and any question of interpretation shall be settled by reference to the principal Act as so amended. The provisions of the principal Act specified in Part III of that schedule, being provisions which are obsolete or unnecessary, or which require amendment in detail, are hereby repealed or modified, and shall be dealt with, in the manner shown in the second column of that schedule.

(2) Every enactment and word which is directed by the Government of India (Amendment) Act, 1916, or by this section and the Second Schedule to this Act, to be substituted for or added to any portion of the Government

of India Act, 1915, shall form part of the Government of India Act, 1915, in the place assigned to it by the Government of India (Amendment) Act, 1916, or that schedule; and the Government of India Act, 1915, and all Acts, including this Act, which refer thereto shall, after the commencement of this Act, be construed as if the said enactment or word had been enacted in the Government of India Act, 1915, in the place so assigned, and, where it is substituted for another enactment or word, had been so enacted in lieu of that enactment or word.

A copy of the Government of India Act, 1915, with the amendments, whether by way of substitution, addition or omission, required by the Government of India (Amendment) Act, 1916, and by this section and the Second Schedule to this Act, shall be prepared and certified by the Clerk of the Parliaments, and deposited with the Rolls of Parliament, and His Majesty's printer shall print, in accordance with the copy so certified, all copies of the Government of India Act, 1915, which are printed after the passing of this Act, and the Government of India Act, 1915, as so amended, may be cited as "The Government of India Act."

Sub-section (3) of section eight of the Government of India (Amendment) Act, 1916 is hereby repealed.

46. In this Act the expressions "official" and "non-official," where used in relation to any person, mean respectively a person who is or is not in the civil or military service of the Crown in India :

Definition of
official.

Provided that rules under the principal Act may provide for the holders of such offices as may be specified in the rules not being treated for the purposes of the principal Act or this Act, or any of them, as officials.

47. (1) This Act may be cited as the Government of India Act, 1919, and the principal Act, as amended by any Act for the time being in force, may be cited as the Government of India Act.

Short title,
commence-
ment, inter-
pretation, and
transitory
provisions

(2) This Act shall come into operation on such date or dates as the Governor-General in Council, with the approval of the Secretary of State in Council, may appoint, and different dates may be appointed for different provisions of this Act, and for different parts of India.

On the dates appointed for the coming into operation of the provisions of this Act as respects any executive or legislative council all the members of the council then in office shall go out of office, but may, if otherwise qualified, be reappointed, renominated, or re-elected, as the case may be, in accordance with the provisions of the principal Act as amended by this Act.

(3) Any reference in any enactment, whether an Act of Parliament or made by any authority in British

India, or in any rules, regulations, or orders made under any such enactment, or in any letters patent or other document, to any enactment repealed by the principal Act, shall for all purposes be construed as references to the principal Act as amended by this Act, or to the corresponding provision thereof.

(4) Any reference in any enactment in force in India, whether an Act of Parliament or made by any authority in British India, or in any rules, regulations, or orders made under any such enactment, or in any letters patent or other document, to any Indian legislative authority, shall for all purposes be construed as references to the corresponding authority constituted by the principal Act as amended by this Act.

(5) If any difficulty arises as to the first establishment of the Indian legislature or any legislative council after the commencement of this Act or otherwise in first giving effect to the provisions of this Act, the Secretary of State in Council or the Governor-General in Council, as occasion may require, may by order do anything which appears to them necessary for the purpose of removing the difficulty.

SCHEDULES.

* FIRST SCHEDULE.

NUMBER OF MEMBERS OF LEGISLATIVE COUNCILS.

Legislative Council.	Number of Members.
Madras	118
Bombay.	111
Bengal	125
United Provinces	118
Punjab	83
Bihar and Orissa	98
Central Provinces	70
Assam	53

† SECOND SCHEDULE.

PART I.

The provisions of this Act set out in the first column of the following table shall be incorporated in the principal Act in the manner

• Section 7.

† Section 54.

shown in the second column of that table, subject to the modifications specified in the third column of that table :—

TABLE.

Provision of Act.	Place and Method of Incorporation in the Principal Act.	Modifications.
Section 1 . . .	To be inserted as a new section (45A) after s. 45.	"this Act" to be substituted for "the Government of India Act, 1915, . . . "principal Act)," for "the principal Act," and for "that Act."
Section 3 (1) . .	To be substituted for s. 46 (1).	—
Section 4 . . .	To be substituted for s. 52.	"this Act" to be substituted for "the principal Act."
Section 6 . . .	To be substituted for s. 49.	"any other rules made under this Act" to be substituted for "any rules made under the principal Act as amended by this Act."
Sections 7, 8, 9	To be inserted as new sections (72A, 72B, and 72C), after s. 72.	"this Act" to be substituted for "the principal Act."
Section 10 . . .	To be inserted as a new section (80A) after s. 80.	"this Act" to be substituted for "the principal Act;" "the commencement of the Government of India Act, 1919," to be substituted for "the commencement of this Act" and "such first mentioned Act" to be substituted for "that Act" in sub-section (3).
Section 11 . . .	To be inserted as a new section (72D) after s. 72C.	The following sub-section to be substituted for sub-section (1) :— " (1) The provisions contained in this section shall have effect with respect to business and procedure in governors' legislative councils." "this Act" to be substituted for "the principal Act."
Section 12 . . .	To be inserted as a new section (81A) after s. 81.	"this Act" to be substituted for "the principal Act."
Section 13 . . .	To be inserted as a new section (72E) after s. 72D.	—

Provision of Act.	Place and Method of Incorporation in the Principal Act.	Modifications.
Section 14	To be inserted as a new section (80B) after s. 80A.	The following new section to be inserted at the end thereof:— " Soc. It shall not be lawful for any member of any local legislative council to introduce, without the previous sanction of the governor, lieutenant-governor or chief commissioner, any measure affecting the public revenues of a province or imposing any charge on those revenues."
Section 15	To be inserted as a new section (52A) after s. 52.	" this Act " to be substituted for " the principal Act or this Act " and for " the principal Act and this Act."
Section 16 (1) and (3)	To be inserted as a new section (52B) after s. 52A.	" the Government of India Act, 1919," to be substituted for " this Act," where those words first occur, and " that Act " to be substituted for " this Act," where those words secondly occur, and " that Act or this Act " to be substituted for " this Act," where those words thirdly occur.
Section 16 (2).	To be inserted as a new sub-section (2) of s. 84.	" Nothing in the Government of India Act, 1919, or this Act " to be substituted for " Nothing in this Act " and " this Act " to be substituted elsewhere for " the principal Act."
Sections 17-23 inclusive	To be inserted as new sections in lieu of ss. 63 and 64, and numbered 63, 63A, 63B, 63C, 63D, 63E, and 64.	" this Act " to be substituted for " the principal Act."
Section 24 (2).	To be inserted as sub-section (1) of section 67 in lieu of the existing sub-section (1).	" this Act " to be substituted for " the principal Act."
Section 24 (3)-(7).	To be inserted as sub-sections (3)-(7) of section 67 in lieu of the existing sub-section (3).	" this Act " to be substituted for " the principal Act."

Provision of Act.	Place and Method of Incorporation in the Principal Act.	Modifications.
Sections 25 and 26	To be inserted as new sections (67A and 67B) after s. 67.	—
Section 29	To be inserted as a new section (43A) after s. 43.	—
Section 33	To be inserted as a new section (19A) after s. 19.	" this Act " to be substituted for " the principal Act " and " the Government of India Act, 1919," to be substituted for " this Act."
Section 34	To be inserted as a new section (11) in lieu of sections 1 to 14 inclusive.	For the words from the beginning of the section down to and including the words " effect and " there shall be substituted the words " Subject to the provisions of this Act."
Section 35	To be inserted as a new section (29A) after s. 29.	" this Act " to be substituted for " the principal Act."
Sections 36, 38, 39, and 40	To be inserted as new sections (96B, 96C, 96D, and 96E) after section 96A, constituting a new Part (VIIA) after Part VII.	" this Act " to be substituted for " the principal Act," and " the Government of India Act, 1919," to be substituted for " this Act," except in section 40.
Section 37 (1).	To be inserted as a new sub-section (6) of s. 97.	" this section " to be substituted for " section ninety-seven of the principal Act," and " any rules made under this sub-section " to be substituted for " any rules made under this section."
Section 41	To be inserted as a new section (84A) after s. 84, constituting a new Part (VIA) after Part VI.	" the Government of India Act, 1919 " to be substituted for " this Act."
Section 42	To be inserted as a proviso to s. 124.	" Provided that notwithstanding anything in this Act " to be substituted for " Notwithstanding anything in section one hundred and twenty-four of the principal Act."
Section 44	To be inserted as a new section (129A) at the beginning of Part XII.	" this Act " to be substituted for " the principal Act " and for " this Act or under the principal Act."

Provision of Act.	Place and Method of Incorporation in the Principal Act.	Modifications.
Section 46	To be inserted as a new paragraph at the end of s. 134.	"in this Act" to be omitted, and "this Act" to be substituted for "the Principal Act" and for "the principal Act or this Act."
Section 47 (3) and (4)	To be inserted as new paragraphs at the end of s. 130.	"this Act" to be substituted for "the principal Act" and for "the principal Act as amended by this Act."
First Schedule.	To be inserted in lieu of Schedule I.	—

PART II.

The provisions of the principal Act specified in the first column of this table shall be amended in the manner shown in the second column.

TABLE.

Section of Act.	Amendment.
2	In sub-section (2) "or rules made thereunder" shall be inserted after "this Act." The following sub-section shall be substituted for sub-section (3):— " (3) The salary of the Secretary of State shall be paid out of moneys provided by Parliament, and the salaries of his under-secretaries and any other expenses of his department may be paid out of the revenues of India or out of moneys provided by Parliament."
3 (1)	"eight" shall be substituted for "ten," and "twelve" shall be substituted for "fourteen," and the following words shall be inserted at the end of the sub-section:— " Provided that the Council as constituted at the time of the passing of the Government of India Act, 1919, shall not be affected by this provision, but no fresh appointment or re-appointment thereto shall be made in excess of the maximum prescribed by this provision."
3 (3)	"one-half" shall be substituted for "nine," and "India" shall be substituted for "British India."
3 (4)	"five years" shall be substituted for "seven years," and the following words shall be inserted at the end of the sub-section:— " Provided that the tenure of office of any person who is a member of the Council at the time of the passing of the Government of India Act, 1919, shall be the same as though that Act had not been passed."

Section of Act.	Amendment.
3 (8)	The following sub-sections shall be substituted for this sub-section:— " (8) There shall be paid to each member of the Council of India the annual salary of twelve hundred pounds: Provided that any member of the Council who was at the time of his appointment domiciled in India shall receive, in addition to the salary hereby provided, an annual subsistence allowance of six hundred pounds. Such salaries and allowances may be paid out of the revenues of India or out of moneys provided by Parliament. (9) Notwithstanding anything in any Act or rule, where any person in the service of the Crown in India is appointed a member of the Council before the completion of the period of such service required to entitle him to a pension or annuity, his service as such member shall, for the purpose of any pension or annuity which would have been payable to him on completion of such period be reckoned as service under the Crown in India whilst resident in India."
5	The words of this section from and including the words "but every order" to the end of the section shall be omitted.
6	For "not less than five members are present" there shall be substituted "such number of members are present as may be prescribed by general directions of the Secretary of State."
8	For "week" there shall be substituted "month."
10	For "all business of the Council or committees thereof is to be transacted" there shall be substituted "the business of the Secretary of State in Council or the Council of India shall be transacted, and any order made or act done in accordance with such direction shall, subject to the provisions of this Act, be treated as being an order of the Secretary of State in Council."
19	The words of this section from the beginning down to and including "Provided that" shall be omitted.
20 (2) (d)	After "under this Act" there shall be inserted "except so far as is otherwise provided under this Act."
21	At the beginning of this section there shall be inserted "Subject to the provisions of this Act and rules made thereunder."
27 (9)	After "revenues of India" there shall be inserted "or out of moneys provided by Parliament."
29	In sub-section (1) at the beginning there shall be inserted the words:— " Subject to the provisions of this Act regarding the appointment of a High Commissioner for India."

Section of Act.	Amendment.
30	After sub-section (1) the following sub-section shall be inserted :— “(1A) A local Government may on behalf and in the name of the Secretary of State in Council raise money on the security of revenues allocated to it under this Act, and make proper assurances for that purpose, and rules made under this Act may provide for the conditions under which this power shall be exercisable.” In sub-section (2) “sub-section (1) of this section” shall be substituted for “this section.”
31	“Indian legislature” shall be substituted for “Governor-General in Legislative Council.”
33	At the beginning of the section there shall be inserted “Subject to the provisions of this Act and rules made thereunder.”
35	This section shall be omitted.
36	“ordinary” in sub-sections (1) and (2) shall be omitted. In sub-section (2) for the words from and including “five or” to the end of the sub-section there shall be substituted “such as His Majesty thinks fit to appoint.” In sub-section (3) “at the time of their appointment” shall be omitted, after “Scotland” there shall be inserted “or a pleader of a High Court,” and “ten” shall be substituted for “five.” In sub-section (4) for “person appointed an ordinary member of the council” there shall be substituted “member of the council (other than the Commander-in-Chief for the time being of His Majesty’s forces in India).” At the end of the section the following new sub-section shall be inserted :— “(5) Provision may be made by rules under this Act as to the qualifications to be required in respect of the members of the Governor-General’s executive Council in any case where such provision is not made by the foregoing provisions of this section.”
37	The following section shall be substituted for section thirty-seven :— “37. If the Commander-in-Chief for the time being of His Majesty’s forces in India is a member of the Governor-General’s executive Council he shall, subject to the provisions of this Act, have rank and precedence in the Council next after the Governor-General.”
39	In sub-section (2) for “one ordinary member of the council” there shall be substituted “one member of the council (other than the Commander-in-Chief).”
40	At the end of sub-section (1) there shall be inserted—“and when so signed shall not be called into question in any legal proceedings on the ground that they were not duly made by the Governor-General in Council.”

Section of Act.	Amendment.
42	For “ordinary member” there shall be substituted “member (other than the Commander-in-Chief).”
45	At the beginning of the section there shall be inserted “Subject to the provisions of this Act and rules made thereunder.”
46	The following sub-section shall be substituted for sub-section (2) :— “(2) The governors of the said presidencies are appointed by His Majesty by warrant under the Royal Sign Manual, and the governors of the said provinces shall be so appointed after consultation with the Governor-General.”
	In sub-section (3) “the governors’ provinces” shall be substituted for “those presidencies” and “province” shall be substituted for “presidency.”
47	In sub-section (2) “One at least of them must be a person who at the time of his appointment has been” shall be substituted for “Two at least of them must be persons who at the time of their appointment have been.” The following sub-section shall be substituted for sub-section (3) :— “(3) Provision may be made by rules under this Act as to the qualifications to be required in respect of members of the executive council of the governor of a province in any case where such provision is not made by the foregoing provisions of this section.”
48	“province” shall be substituted for “presidency.”
50 (2)	“province” shall be substituted for “presidency.”
53 (1)	For the words from the beginning down to “the Punjab and” inclusive there shall be substituted “The province of,” and the words “with or without an executive council” shall be omitted.
57	At the end of the section there shall be inserted “An order made as aforesaid shall not be called into question in any legal proceedings on the ground that it was not duly made by the lieutenant-governor in council.”
58	“Assam, the Central Provinces,” shall be omitted.
65	For “Governor-General in Legislative Council” there shall be substituted “Indian legislature.”
67	“either chamber of the Indian legislature” shall be substituted for “the council.” At the end of sub-section (2) the following shall be inserted— “or any measure— (i) regulating any provincial subject, or any part of a provincial subject, which has not been declared by rules under this Act to be subject to legislation by the Indian legislature ; or (ii) repealing or amending any Act of a local legislature ; or (iii) repealing or amending any Act or ordinance made by the Governor-General.

Section of Act.	Amendment.
	(2A) Where in either chamber of the Indian legislature any Bill has been introduced, or is proposed to be introduced, or any amendment to a Bill is moved, or proposed to be moved, the Governor-General may certify that the Bill, or any clause of it, or the amendment, affects the safety or tranquillity of British India, or any part thereof, and may direct that no proceedings, or that no further proceedings, shall be taken by the chamber in relation to the Bill, clause, or amendment; and effect shall be given to such direction."
68	" Bill " shall be substituted for " Act " and " a Bill " for " an Act ; " " by both chambers of the Indian legislature " shall be substituted for " at a meeting of the Indian Legislative Council," and " whether he was or was not present in council at the passing thereof " shall be omitted. " A Bill passed by both chambers of the Indian legislature shall not become an Act " shall be substituted for " An Act of the Governor-General in Legislative Council has not validity." " in Council " shall be inserted after " His Majesty " and " to the Governor-General through the Secretary of State in Council " shall be omitted.
69	" Indian legislature " shall be substituted for " Governor-General in Legislative Council ; " " in Council ; " shall be inserted after " His Majesty," and " through the Secretary of State in Council " shall be omitted.
70	This section shall be omitted.
71 (2)	" Indian legislature " shall be substituted for " Governor-General in Legislative Council."
72	" Indian legislature " shall be substituted for " Governor-General in Legislative Council."
73	In sub-section (1) " a governor or of " shall be omitted, and " and of members nominated or elected as hereinafter provided " shall be substituted for " with the addition of members nominated or elected in accordance with rules made under this Act." In sub-section (3) " as hereinafter provided " shall be substituted for " in accordance with rules made under this Act." Sub-section (4) shall be omitted.
74	This section shall be omitted.
75	This section shall be omitted.
76	In sub-section (1) " section " shall be substituted for " Act " and the following proviso shall be substituted for the existing proviso :— " Provided that the number of members so nominated or elected shall not, in the case of the legislative council of a lieutenant-governor, exceed one hundred." In sub-section (2) " Non-officials " shall be substituted for " persons not in the civil or military service of the Crown in India." In sub-section (4) " Indian legislature or the local legislature " shall be substituted for " Governor-General in Legislative Council."

Section of Act.	Amendment.
78	The following provision shall be inserted at the beginning of sub-section (1) :— " A lieutenant-governor or a chief commissioner who has a legislative council may appoint such times and places for holding the sessions of his legislative council as he thinks fit, and may also, by notification or otherwise, prorogue the council, and any meeting of the legislative council of a lieutenant-governor or a chief commissioner may be adjourned by the person presiding." In sub-section (2) " in accordance with rules made under this Act " shall be omitted. For sub-section (3) the following sub-sections shall be substituted :— " (3) All questions at a meeting of the legislative council of a lieutenant-governor or chief commissioner shall be determined by a majority of votes of the members present other than the lieutenant-governor, chief commissioner, or presiding member, who shall, however, have and exercise a casting vote in case of an equality of votes. (4) Subject to rules affecting the council, there shall be freedom of speech in the legislative councils of lieutenant-governors and chief commissioners. No person shall be liable to any proceedings in any court by reason of his speech or vote in those councils, or by reason of anything contained in any official report of the proceedings of those councils."
79	This section shall be omitted.
80	In sub-section (1) after " local legislative council," there shall be inserted " (other than a governor's legislative council)." Sub-section (2) shall be omitted. In sub-section (3) after " local government " there shall be inserted " of a province other than a governor's province," the word " Governor," where it occurs immediately before the word " Lieutenant-Governor," shall be omitted, and " Indian legislature " shall be substituted for " Governor-General in Legislative Council." At the end of the section the following new sub-sections shall be inserted :— " (4) The local Government of any province (other than a governor's province) for which a local legislative council is hereafter constituted under this Act shall, before the first meeting of that council, and with the sanction of the Governor-General in Council, make rules for the conduct of legislative business in that council (including rules for prescribing the mode of promulgation and authentication of laws passed by that council).

Section of Act.	Amendment.
	(5) The local legislature of any such province may, subject to the assent of the lieutenant-governor or chief commissioner, alter the rules for the conduct of legislative business in the local council (including rules prescribing the mode of promulgation and authentication of laws passed by the council) but any alteration so made may be disallowed by the Governor-General in Council, and if so disallowed shall have no effect."
81	Throughout sub-sections (1) and (2) and in sub-section (3) where it first occurs, for " Act," there shall be substituted " Bill " and in sub-section (1) " by " shall be substituted for " at a meeting of." For " an Act " there shall be substituted " a Bill," and for " has no effect " there shall be substituted " shall not become an Act."
82	For " any such Act " where those words occur for the first and third times, there shall be substituted " an Act," and for those words where they occur for the second time there shall be substituted " the Act." In sub-section (1) after " His Majesty " there shall be inserted " in Council " and the words " through the Secretary of State in Council " shall be omitted.
83	This section shall be omitted.
84	" an Act of the Indian legislature " shall be substituted for " a law made by the Governor-General in Legislative Council," and " non-official members " shall be substituted for " members not holding office under the Crown in India." In paragraph (c) " an Act of " shall be substituted for " a law made by."
86	In sub-section (1) " ordinary " shall be omitted, and after the words " Executive Council " where they first occur there shall be inserted the words " (other than the Commander-in-Chief)."
87	" ordinary " shall be omitted, and after " Governor-General," where it occurs for the second time, there shall be inserted " (other than the Commander-in-Chief)."
89	In sub-section (4) for " ordinary member of the council " there shall be substituted " member of the council (other than the Commander-in-Chief)."
90	In sub-section (1) after " Governor " there shall be inserted " of a presidency." In sub-section (4) " ordinary " shall be omitted, and after " executive council " there shall be inserted " (other than the Commander-in-Chief)."
92	" a member " shall be substituted for " an ordinary member " and for " any ordinary member," and after " executive council of the Governor-General " there shall be inserted " (other than the Commander-in-Chief)." In sub-section (5) (a) " under this Act " shall be omitted.

Section of Act.	Amendment.								
93 (1)	" either chamber of the Indian legislature " shall be substituted for " the Indian Legislative Council."								
95	Before " offices " wherever that word occurs, before " officers," and before " promotions " where it occurs for the second time, there shall be inserted " military."								
97	" Section 96 A of this Act " shall be substituted for " the last foregoing section."								
110	In sub-section (1) after " Governor or Lieutenant-Governor " there shall be inserted " and a minister appointed under this Act."								
124	In sub-section (4) after " Lieutenant-Governor " where it secondly occurs, there shall be inserted " or being a minister appointed under this Act."								
131	" Indian legislature " shall be substituted for " Governor-General in Legislative Council."								
134 (4)	The following paragraph shall be substituted for paragraph (4) :— " (4) ' Local Government ' means, in the case of a governor's province, governor in council or the governor acting with ministers (as the case may require), and, in the case of a province other than a governor's province, a lieutenant-governor in council, lieutenant-governor or chief commissioner. ' Local legislative council ' includes the legislative council in any governor's province, and any other legislative council constituted in accordance with this Act. ' Local legislature ' means, in the case of a governor's province, the governor and the legislative council of the province, and, in the case of any other province, the lieutenant-governor or chief commissioner in legislative council."								
135	The following section shall be substituted for section 135 :— " 135. This Act may be cited as the Government of India Act."								
Second Schedule.	The following Schedule shall be substituted for the Second Schedule :— SECOND SCHEDULE. OFFICIAL SALARIES, ETC. <table> <tr> <th>Officer.</th><th>Maximum Annual Salary.</th></tr> <tr> <td>Governor-General of India . . .</td><td>Two hundred and fifty-six thousand rupees.</td></tr> <tr> <td>Governor of Bengal, Madras, Bombay, and the United Provinces</td><td>One hundred and twenty-eight thousand rupees.</td></tr> <tr> <td>Commander-in-Chief of His Majesty's forces in India.</td><td>One hundred thousand rupees.</td></tr> </table>	Officer.	Maximum Annual Salary.	Governor-General of India . . .	Two hundred and fifty-six thousand rupees.	Governor of Bengal, Madras, Bombay, and the United Provinces	One hundred and twenty-eight thousand rupees.	Commander-in-Chief of His Majesty's forces in India.	One hundred thousand rupees.
Officer.	Maximum Annual Salary.								
Governor-General of India . . .	Two hundred and fifty-six thousand rupees.								
Governor of Bengal, Madras, Bombay, and the United Provinces	One hundred and twenty-eight thousand rupees.								
Commander-in-Chief of His Majesty's forces in India.	One hundred thousand rupees.								

Section of Act.	Amendment.
Second Schedule (continued).	Governor of the Punjab and Bihar and Orissa. One hundred thousand rupees. Governor of the Central Provinces. Seventy-two thousand rupees. Governor of Assam Sixty - six thousand rupees. Lieutenant-governor One hundred thousand rupees. Member of the Governor-General's executive Council (other than the Commander-in-Chief). Eighty thousand rupees. Member of the executive council of the Governor of Bengal, Madras, Bombay, and the United Provinces. Sixty - four thousand rupees. Member of the executive council of the Governor of the Punjab and Bihar and Orissa. Sixty thousand rupees. Member of the executive council of the Governor of the Central Provinces. Forty - eight thousand rupees. Member of the executive council of the Governor of Assam. Forty - two thousand rupees.
Third Schedule.	The following Schedule shall be substituted for the Third Schedule * :—

THIRD SCHEDULE.

OFFICES RESERVED TO THE INDIAN CIVIL SERVICE.

A.—Offices under the Governor-General in Council.

1. The offices of secretary, joint secretary, and deputy secretary in every department except the Army, Marine, Education, Foreign, Political, and Public Works Departments: Provided that if the office of secretary or deputy secretary in the Legislative Department is filled from among the members of the Indian Civil Service, then the office of deputy secretary or secretary in that department, as the case may be, need not be so filled.
2. Three offices of Accountants General.

B.—Offices in the provinces which were known in the year 1861 as "Regulation Provinces."

The following offices, namely :—

1. Member of the Board of Revenue.
2. Financial Commissioner.
3. Commissioner of Revenue.
4. Commissioner of Customs.
5. Opium Agent.

* Section 98.

Section of Act.	Amendment.
Third Schedule (continued).	6. Secretary in every department except the Public Works or Marine Department. 7. Secretary to the Board of Revenue. 8. District or sessions judge. 9. Additional district or sessions judge. 10. District magistrate. 11. Collector of Revenue or Chief Revenue Officer of a district.
Fifth Schedule.	" Indian legislature " shall be substituted in the heading for " Governor-General in Legislative Council."

NOTE.—In parts I and II of the Second Schedule to this Act references to any word or expression in any provision of the principal Act or this Act apply, unless the contrary is stated, to that word or expression wherever the word or expression occurs in that provision.

PART III.

Section of Act.	How dealt with.
16	To be omitted.
42	" and signifies his intended absence to the Council " shall be omitted.
45 (2)	To be omitted.
51	" and signifies his intended absence to the Council " and " civil " shall be omitted.
54 (3)	To be omitted.
55 (1)	In paragraph (b) after " illness or otherwise " there shall be inserted " and for supplying a vacancy until it is permanently filled."
65	In sub-section (1) (d) " airmen " shall be inserted after " soldiers " and " or the Air Force Act " shall be inserted after " the Army Act."
	In sub-section (2) (i) " the Air Force Act " shall be inserted after " the Army Act."
67	" naval, or air " shall be substituted for " or naval."
73 (2)	To be omitted.
81	In sub-section (1) " whether he was or was not present in Council at the passing of the Act " shall be omitted.
85	The following proviso shall be inserted at the end of sub-section (3) :— " Provided that nothing in this sub-section shall apply to the allowances or other forms of profit and advantage which may have been sanctioned for such persons by the Secretary of State in Council."

Section of Act.	How dealt with.
87	For "subject to the foregoing provisions of this Act as to leave of absence" there shall be substituted "save in the case of absence on special duty or on leave under a medical certificate." After "council of a governor" there shall be inserted "or of a lieutenant-governor."
88	To be omitted.
89	"entitled under a conditional appointment to succeed to the office of Governor-General, or" and "absolutely" shall be omitted, and for "that office" there shall be substituted "the office of Governor-General."
90	In sub-section (1) "conditional or other" shall be omitted. In sub-section (3) for "this Act" there shall be substituted "section eighty-nine of this Act," and "respecting the assumption of the office by a person conditionally appointed to succeed thereto" shall be omitted. In sub-section (4) "conditional or other" shall be omitted.
91	In sub-section (1) "conditional or other" shall be omitted.
92	In sub-section (1) "conditional or other" shall be omitted. In sub-section (3) "then, if any person has been conditionally appointed to succeed to his office and is on the spot, the place of that member shall be supplied by that person, and if no person conditionally appointed to succeed to the office is on the spot" shall be omitted. In sub-section (4) "conditionally or" shall be omitted.
115	At the end of sub-section (1) the following shall be inserted:— "His Majesty may also by letters patent make such provision as may be deemed expedient for the exercise of the episcopal functions and ecclesiastical jurisdiction of the bishop during a vacancy of any of the said sees or the absence of the bishop thereof." At the end of sub-section (2) the following shall be inserted:— "and as metropolitan shall have, enjoy, and exercise such ecclesiastical jurisdiction and functions as His Majesty may by letters patent direct. His Majesty may also by letters patent make such provision as may be deemed expedient for the exercise of such jurisdiction and functions during a vacancy of the See of Calcutta or the absence of the bishop."
118	In sub-section (1) "and archdeacons" shall be omitted, and after "letters patent" there shall be inserted "and the archdeacons of those dioceses by their respective diocesan bishops."

The Act received the Royal Assent on December 23, 1919, and the King-Emperor at the same time issued the following magnanimous proclamation.

BY THE KING-EMPEROR.

ROYAL PROCLAMATION.

George V, by the grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the seas, King, Defender of the Faith, Emperor of India. To my Viceroy and Governor-General, to the Princes of Indian States, and to all my subjects in India, of whatsoever race or creed, greeting.

1. Another epoch has been reached to-day in the annals of India. I have given my Royal Assent to an Act which will take its place among the great historic measures passed by the Parliament of this Realm for the better government of India and for the greater contentment of her people. The Acts of 1773 and 1784, were designed to establish a regular system of administration and justice under the Honourable East India Company. The Act of 1833 opened the door for Indians to public office and employment. The Act of 1858 transferred the administration from the Company to the Crown and laid the foundations of public life which exists in India to-day. The Act of 1861 sowed the seed of representative institutions, and the seed was quickened into life by the Act of 1909. The Act which has now become law entrusts the elected representatives of the people with a definite share in the Government and points the way to full responsible Government hereafter. If, as I confidently hope, the policy which this Act inaugurates should achieve its purpose, the results will be momentous in the story of human progress; and it is timely and fitting that I should invite you to-day to consider the past and to join me in my hopes of the future.

2. Ever since the welfare of India was confided to us, it has been held as a sacred trust by Our Royal House and Line. In 1858 Queen Victoria of revered memory solemnly declared herself bound to her Indian subjects by the same obligations of duty as to all her other subjects; and she assured to them religious freedom and the equal and impartial protection of the law. In his message to the Indian people in 1903 my dear father, King Edward VII,

announced his determination to maintain unimpaired the same principles of humane and equitable administration. Again in his Proclamation of 1908 he renewed the assurances which had been given 5 years before and surveyed the progress which they had inspired. On my accession to the throne in 1910 I sent a message to the Princes and peoples of India acknowledging their loyalty and homage and promising that the prosperity and happiness of India should always be to me of the highest interest and concern. In the following year I visited India with the Queen-Empress and testified my sympathy for her people and my desire for their well-being.

3. While these are the sentiments of affection and devotion by which I and my predecessors have been animated, the Parliament and the people of this Realm and my officers in India have been equally zealous for the moral and material advancement of India. We have endeavoured to give to her people the many blessings which Providence has bestowed upon ourselves. But there is one gift which yet remains and without which the progress of a country cannot be consummated—the right of her people to direct her affairs and safeguard her interests. The defence of India against foreign aggression is a duty of common Imperial interest and pride. The control of her domestic concerns is a burden which India may legitimately aspire to take upon her own shoulders. The burden is too heavy to be borne in full until time and experience have brought the necessary strength; but opportunity will now be given for experience to grow, and for responsibility to increase with the capacity for its fulfilment.

4. I have watched with understanding and sympathy the growing desire of my Indian people for representative institutions. Starting from small beginnings this ambition has steadily strengthened its hold upon the intelligence of the country. It has pursued its course along constitutional channels with sincerity and courage. It has survived the discredit which at times and in places lawless men sought to cast upon it by acts of violence committed under the guise of patriotism. It has been stirred to more

vigorous life by the ideals for which the British Commonwealth fought in the Great War, and it claims support in the part which India has taken in our common struggles, anxiety and victories. In truth, the desire after political responsibility has its source at the roots of the British connection with India. It has sprung inevitably from the deeper and wider studies of human thought and history which that connection has opened to the Indian people. Without it the work of the British in India would have been incomplete. It was therefore with a wise judgment that the beginnings of representative institutions were laid many years ago. Their scope has been extended stage by stage until there now lies before us a definite step on the road to responsible Government.

5. With the same sympathy and with redoubled interest I shall watch the progress along this road. The path will not be easy and in the march towards the goal there will be need of perseverance and of mutual forbearance between all sections and races of my people in India. I am confident that those high qualities will be forthcoming. I rely on the new popular assemblies to interpret wisely the wishes of those whom they represent and not to forget the interests of the masses who cannot yet be admitted to franchise. I rely on the leaders of the people, the Ministers of the future, to face responsibility and endure misrepresentation, to sacrifice much for the common interest of the State, remembering that true patriotism transcends party and communal boundaries and, while retaining the confidence of the legislatures, to co-operate with my officers for the common good in sinking unessential differences and in maintaining the essential standards of a just and generous government. Equally do I rely upon my officers to respect their new colleagues and to work with them in harmony and kindness; to assist the people and their representatives in an orderly advance towards free institutions; and to find in these new tasks a fresh opportunity to fulfil, as in the past, their highest purpose of faithful service to my people.

6. It is my earnest desire at this time that so far as possible any trace of bitterness between my people and

those who are responsible for my government should be obliterated. Let those who in their eagerness for political progress have broken the law in the past respect it in the future. Let it become possible for those who are charged with the maintenance of peaceful and orderly government to forget the extravagances which they have had to curb. A new era is opening. Let it begin with a common determination among my people and my officers to work together for a common purpose. I therefore direct my Viceroy to exercise in my name and on my behalf my Royal clemency to political offenders in the fullest measure which in his judgment is compatible with the public safety. I desire him to extend it on this condition to persons who for offences against the State or under any special or emergency legislation are suffering imprisonment or restrictions upon their liberty. I trust that this leniency will be justified by the future conduct of those whom it benefits, and that all my subjects will so demean themselves as to render it unnecessary to enforce the laws for such offences hereafter.

7. Simultaneously with the new constitutions in British India I have gladly assented to the establishment of a Chamber of Princes. I trust that its counsel may be fruitful of lasting good to the Princes and the States themselves, may advance the interests which are common to their territories and to British India, and may be to the advantage of the Empire as a whole. I take the occasion again to assure the Princes of India of my determination ever to maintain unimpaired their privileges, rights and dignities.

8. It is my intention to send my dear son, the Prince of Wales, to India next winter to inaugurate on my behalf the new Chamber of Princes and the new constitutions in British India. May he find mutual good will and confidence prevailing among those on whom will rest the future service of the country, so that success may crown their labours, and progressive enlightenment attend their administration. And, with all my people, I pray to Almighty God that by His Wisdom and under His guidance India may be led to greater prosperity and contentment, and may grow to the fullness of political freedom.

APPENDICES

APPENDIX I

CHARTERS AND LETTERS PATENT GRANTED TO THE EAST INDIA COMPANY FROM ITS FOUNDATION TO THE REGULATING ACT.

Dec. 31, 1600.	Charter of Incorporation.
Feb. 23, 1604.	Licence to transport money.
Jan. 5, 1607.	Licence to transport money.
Feb. 8, 1608.	Licence to transport money.
May 31, 1609.	Charter of Incorporation.
May 22, 1610.	Licence to sell spices ungarbled.
Dec. 4, 1611.	Charter of Privilege.
Dec. 14, 1616.	Charter of Confirmation for transporting money and other privileges.
July 11, 1617.	Charter of licence and pardon.
Jan. 16, 1618.	Licence to transport money.
Feb. 4, 1622.	A Charter or Letters Patent of Privilege for the Governor and Company to chastise and correct all English persons residing in the East Indies and committing any misdemeanour, either with martial law or otherwise.
Oct. 11, 1624.	Pardon and grant of money and merchandise.
Mar. 28, 1626.	Licence to transport money.
Aug. 17, 1626.	Charter empowering the Company to erect houses to make the saltpetre they imported into gunpowder.
Feb. 13, 1626.	Licence to transport money.
Mar. 22, 1626.	Licence to transport money.
Feb. 18, 1627.	Licence to transport money.
Mar. 24, 1628.	Licence to transport money.
Mar. 10, 1629.	Licence to transport money.
Oct. 17, 1629.	Licence to transport money.
Nov. 9, 1630.	Licence to transport money.
Nov. 21, 1631.	Licence to transport money.
Mar. 3, 1631.	Licence to transport money.
Sept. 25, 1632.	Licence to transport money.
Oct. 8, 1633.	Licence to transport money.
Mar. 1, 1634.	Licence to transport money.
Mar. 12, 1634.	Licence to transport money.
Nov. 30, 1635.	Licence to transport money.
Mar. 21, 1638.	Licence to transport money.

- Aug. 10, 1655. Warrant for repayment of money lent by the Company to the Commonwealth.
- Oct. 19, 1657. Charter of Privileges [no copy known, but the contents described by Hunter].
- Jan. 11, 1660. A Charter or Letters Patents of Licence for the Governor and Company to enter upon, take and possess the Island of Roone, alias Pula Roone, and to regain the same from the Netherlands East India Company, and to plant, husband, manage, retain and keep the same.
- Dec. 18, 1660. Licence to transport money.
- April 3, 1661. A Charter or Letters Patents to the Governor and Company, of divers privileges to them and their successors.
- Feb. 6, 1668. A Charter or Letters Patents of Discharge as to the sale of prizes.
- Mar. 27, 1669. A Charter or Letters Patents of Grant, to the Governor and Company, of all that Island and Port of Bombay, to them and their successors.
- Oct. 7, 1673. A Charter or Letters Patents of Release as to Covenants between the Company and the Commissioners of the Navy.
- Oct. 27, 1674. Confirmation of Articles concerning the Sale of Dutch prizes.
- Dec. 16, 1674. A Charter or Letters Patents of Grant, to the Governor and Company, of all that Island of St. Helena, to them and their successors.
- Mar. 13, 1674. A Charter or Letters Patents of a Discharge as to the sale of prizes.
- Oct. 5, 1677. A Charter or Letters Patents to the Governor and Company, of Confirmation of their privileges.
- Oct. 21, 1677. Warrant to receive money.
- Jan. 24, 1677. Warrant to receive money.
- Nov. 22, 1678. Warrant to receive money.
- July 5, 1683. A Charter as to payment to the Company.
- Aug. 1, 1683. A Charter or Letters Patents, authorizing the Commissioners of the Admiralty, to grant and give out Commissions, to such as the Governors and Company should name and recommend, to aid and assist them, against the King of Bantam.
- Aug. 9, 1683. A Charter or Letters Patents of Privileges, for the said Governor and Company, rendering their Charter of April 3rd, 13th of his reign, more effectual and compleat.
- Sept. 14, 1683. A Charter or Letters Patents of a Warrant to the Commissioners of the Admiralty, to assist the Governor and Company, against the King of Bantam.
1684. A Charter or Letters Patents of Proclamation, restraining all his Majesty's subjects, but the Governor and Company, and their Agents, from trading to the East Indies.

- April 12, 1686. A Charter or Letters Patents of Confirmation, to the Governor and Company, of their former charters and privileges.
- Oct. 3, 1689. A Warrant for payment.
- Oct. 7, 1693. A Charter or Letters Patents of Confirmation, to the Governor and Company, of their privileges.
- Oct. 26, 1693. A discharge for the tenth part of prizes due.
- Nov. 11, 1693. A Charter or Letters Patents, prescribing orders and directions for the Governor and Company.
- Sept. 28, 1694. A Charter or Letters Patents, prescribing Orders and Directions for the Governor and Company.
- April 13, 1698. A Charter or Letters Patents, declaring what number of votes each member of the Company shall have, which is according to his or her proportion of stock.
- July 14, 1698. A Charter or Letters Patents appointing Hugh Boscawen, and Others, to take subscriptions for a General Society, to have liberty and power to trade to the East Indies.
1698. A Charter or Letters Patents of a Schedule, marked A, containing the Draught of a Charter for the said General Society.
1698. A Charter or Letters Patents of the Schedule, marked B, containing the Draught of a Charter for the aforesaid English Company.
- Sept. 3, 1698. A Charter or Letters Patents of Incorporation, empowering certain persons to trade to the East Indies, by the name of the General Society, entitled to the advantages given by an Act of Parliament, for raising £2,000,000, for the service of the Crown.
- Sept. 5, 1698. A Charter or Letters Patents of Incorporation of Merchants, by the name of the English Company, trading to the East Indies.
- July 22, 1702. A Charter or Letters Patents of an Indenture Tripartite, between the Queen of the first part; the Governor and Company of Merchants of London, trading into the East Indies, of the second part; and the English Company, trading to the East Indies, of the third part; thereby granting the said two Companies power to trade with a joint stock, and divers other privileges.
- July 22, 1702. A Charter or Letters Patents of an Indenture Quinquupartite, of the conveyance of the dead stock of the two East India Companies.
1706. A Charter of Indemnification for the Governor and Company of Merchants of London, trading into the East Indies.
- Sept. 29, 1708. The Earl of Godolphin's Award, between the Old and New East India Companies.

- April 22, 1709. A Charter or Letters Patents of Grant, to the English Company, trading to the East Indies, of all debts and sums of money, due to the Governor and Company of Merchants of London, trading into the East Indies.
- May 7, 1709. A Charter or Letters Patents of Acceptance of a Surrender, made by the Governor and Company of Merchants of London, trading to the East Indies, of the Charters, etc.
- Aug. 15, 1710. A Charter or Letters Patents of Grant to Sir Jonathan Andrews, and Others, of all debts, etc., due to the Governor or Company, before the surrender of their Charters; a schedule of which debts is mentioned in an Indenture, dated March 21st last, between the Governor and Company and Her Majesty.
- Sept. 24, 1726. A Charter or Letters Patents of Grant to the United Company of Merchants of England, trading to the East Indies, of Incorporation of Mayor and Aldermen, at Madraspatnam, at Bombay, and at Calcutta, with divers privileges to them and their successors.
- Nov. 17, 1727. A Grant of Fines in connection with the preceding.
- Nov. 4, 1728. A Charter or Letters Patents empowering the Commissioners of the Admiralty, at the request of the United Company, to give ample powers to the commanders of ships belonging to the Company, to take, seize and destroy any foreign ships, trading from the Austrian Netherlands to the East Indies, for six years, from May 20th last.
- Jan. 8, 1753. A Charter or Letters Patents of Grant, to the United Company, of Incorporation of Mayor and Aldermen, at Madraspatnam, at Bombay, and at Calcutta, with divers privileges, to them and their successors.
- Sept. 19, 1757. A Charter or Letters Patents of Grant, to the United Company, of plunder and booty.
- Jan. 14, 1758. A Charter or Letters Patents of Grant, to the United Company, of plunder and booty.
- Dec. 20, 1760. A Charter or Letters Patents for Establishing Courts of Judicature at Fort Marlborough.
- Jan. 27, 1761. A Charter or Letters Patents of Commission to the United Company, for the trying of Pirates at Fort St. George.
- Jan. 27, 1761. The same at Fort Marlborough.
- Jan. 27, 1761. The same at Bombay.
- Mar. 13, 1761. The same at Fort William.
- Mar. 26, 1774. Letters Patent establishing a Supreme Court of Judicature, at Fort William in Bengal.

APPENDIX II

EXTRACTS FROM THE SEVENTH REPORT FROM THE COMMITTEE OF SECRECY APPOINTED TO INQUIRE INTO THE STATE OF THE EAST INDIA COMPANY. DATED MAY 6TH, 1773.

"Your Committee find, from the General Account given by the Gentlemen examined before them, and also from that contained in the Books and Correspondence of the Company, that according to the ancient Constitution of Bengal, the Administration of Justice, both in the capital and in the several districts, was distributed into different branches of judicature, for the exercise of Criminal Civil Religious and Revenue Jurisdiction.

The Criminal Court, in every district, was generally known by the name of the Phousdary: the zemindar, or raja of the district, was the Judge in this Court. His jurisdiction extended to all criminal cases; but it appears to your Committee, that in such as were of a capital nature, the sentence was not to be executed until a Report of the case was made to the Government at Moorsshedabad, and their orders received upon it. The Proceedings in this Court were summary; the most frequent mode of punishment, particularly where the accused was a man of wealth, was by fine; and every fine, imposed by the authority of the Court, was a perquisite of the zemindar himself, by virtue of his tenure of the lands; the natural effects of this circumstance upon the fair administration of criminal Justice, appear to your Committee to have been severely felt, under the ancient Constitution of Bengal.

The Court of Civil Jurisdiction, in every district, was generally known by the name of the Adawlut: the zemindar, or raja of the Province, was the Judge also in this Court. Its judicature extended to all causes between party and party: the Judge, as a perquisite of his office was entitled to a chout, or share, of whatever was recovered in his Court, which as your Committee have been informed amounted to a fourth or fifth of the whole value.

It appears to your Committee, that this extraordinary circumstance in the constitution of that judicature, greatly affected the confidence of the people in its justice: that parties were very reluctant to resort to this tribunal; and that hence it has long been a prevailing practice in Bengal to refer matters of controversy to arbitrators chosen by the parties.

It appears to your Committee, that these judicatures were not guided by any regular system of law; that the *Khoran* was the only code, and its commentators the only authorities, allowed in

that country; that where these afforded no Rule of Decision, the customs and usage of the country, if applicable to the case, were the proper guide; but that the rules derived from these sources were in general very loose and uncertain; and that the necessary consequence of so imperfect a system of law, rendered the exercise of criminal and civil judicature in Bengal, in a great measure discretionary.

The witnesses examined by your Committee did not entirely agree, with respect to the Right of Appeal from the Provincial Courts of Phousdary and Adawlut to the respective Courts of the same nature at the capital; but most of the gentlemen informed your Committee, that such appeal certainly lay: they all concurred in informing your Committee, that the power of the Government often interfered in the proceedings of the Courts of Justice; that the general course of application for redress, against any proceedings of the Courts of Justice, was to the power of the Government, especially where the party found himself in a situation to expect its favour and protection; and that the Government, upon such occasions, not only exercised a discretionary power over the proceedings of the Courts, but frequently gave such remedy, or inflicted such punishment, as they thought proper, without the interposition of any judicature.

It appears to your Committee that the want of subordinate jurisdiction in different parts of the zemindary districts, was attended with much hardship to the lower class of the people; that such of them only as lived in the neighbourhood of the seat of judicature could have access to these tribunals, and that even to these, the expenses attending suits in the Courts were almost an entire exclusion of the possibility of attaining justice by law. That, on the other hand, the principal persons in the several districts could seldom be brought under the authority of the Courts, and when they submitted to them, were able to defeat their justice by means of their influence with government.

Your Committee found it the general sense of all the accounts they have received respecting these Courts, that the administration of justice, during the vigour of the ancient constitution, was liable to great abuse and oppression; that the judges generally lay under the influence of interest, and often under that of corruption; and that the interposition of Government, from motives of favour or displeasure, was another frequent cause of the perversion of justice.

One material circumstance, that must have greatly tended to encourage the abuse of this judicature in these Courts, appears to your Committee to have been the want of any judicial register of their proceedings; so that there could not exist any authentic document of their proceedings to be the subject of review by any superior authority.

Causes respecting religion appear to have been distinguished from the ordinary course of judicature; questions of this nature were not trusted to the judgment or discretion of the temporal judges; in every such case the judge before whom the question depended was obliged to call in the assistance of the Cazee of the district, and even to submit to his authority in the decision of the cause. And

your Committee find that the Gentoo subjects enjoyed a similar privilege with respect to all cases of a religious nature, in which persons of that persuasion were parties; for that, in every such case, it was necessary that the temporal judge should be assisted by a Brahmin of the Cast, particularly where the cause was of such a nature as might be attended with the consequence of forfeiture of cast.

Your Committee find that all causes respecting the revenue, or the rents of the lands, were under the cognisance of a peculiar court in every district. It appears that formerly the zemindar or raja held the authority of this judicature also; but Mr. Sykes informed your Committee that for some years before the acquisition of the Dewannee this jurisdiction of the zemindar had gone into disuse, and had since been exercised by the Naib Duan, appointed in every district by the principal Duan at Moorsheadabad; that this officer decided in all causes of revenue, but that appeal lay from his decisions to the principal Duan."

The Committee then refer to the letter, already in great part printed, of the Governor and Council to the Directors dated November 3, 1772. They continue:

"Such appears to your Committee to have been the system of judicature established by the ancient constitution of Bengal; but your Committee cannot conclude this part of the subject without observing that, so far as they are able to judge from all the information laid before them, the subjects of the Mogul Empire in that province derived little protection or security from any of these courts; and that in general, though forms of judicature were established and preserved, the despotic principles of the Government rendered them the instruments of power rather than of justice, not only unavailing to protect the people, but often the means of the most grievous oppressions, under the cloak of the judicial character."

Then follows a paragraph which throws a good deal of light on the state of the country at the time:

"Your Committee having inquired in what manner the English Company or its servants used to proceed, during the ancient government, to compel payment of their debts from any of the natives not residing under the British flag, they were informed by several of the witnesses that where the debtor was a person dependent on, or connected with, the Company in the course of commerce, and residing (as these persons generally did) in the neighbourhood of any of the Company's settlements, the general practice was to lay hold of his person by their own authority, without applying to any court or officer of the Government; that they sometimes ventured to exercise the same right, even where the debtor did not fall under that description, but that this was an abuse, though generally overlooked by the Government; that, in the former case, the Government tacitly allowed and countenanced the practice of

seizing and detaining the debtor, it being much the disposition of the Government to give all possible encouragement to the Europeans, from whose commerce their country then derived such considerable advantages. In cases where it was not thought prudent to proceed in this manner, the only remedy was by application to the Government. But your Committee were informed that there was seldom occasion to make use of either of these ways to compel payment of any debt to the Company or its servants, for that the persons dealing with them reaped so much benefit from that connection that there seldom arose any dispute between them.

Your Committee were further informed that the French and Dutch exercised the same privilege of seizing their debtors, and had even continued the practice after the Company's acquisition of the Dewannee.

Your Committee find by the secret consultations lately received by the Lapwing that this practice having been lately prohibited by the President and Council, the French in very strong terms remonstrated against this Order as a violation of a right which they had always held and exercised under the country Government, but that the President and Council denied this pretension, and insisted that the French should have recourse to the Courts of Justice to compel payment of their debts. But your Committee do not find that this dispute had been brought to a conclusion. . . .

"Mr. Sykes (who from the time of his residence and his different situations in Bengal had the best opportunities of information on this subject) informed your Committee that in his opinion, during the first period of Meer Jaffier's Government, although he had been raised to the Nabobship by the power and influence of the English, the administration of justice continued in its former course, without any interruption or alteration from that power, which had made the revolution; that, during the Government of Cossim Ally Cawn, the English influence began to operate, not only in consequence of the revolution itself, accomplished by their power, but because from that time many English, with or without the consent of the Presidency, dispersed themselves over the country, and engaged in its interior commerce, which often led them to interfere with the judicature and government of the country. . . . That besides, Cossim's attention was so much turned to the increase of his revenue that he gave very little regard to the administration of justice or to the maintenance of that part of his authority against the encroachments of the English subjects residing in his territories further than was necessary for securing the collection of his revenues.

The third revolution made by the English, in restoring Meer Jaffier, necessarily added to their power and influence in the whole administration of government in Bengal, and of course rendered the administration of justice in the judicatures of the country very liable to be swayed or influenced by any servant of the Company, whose situation gave him an opportunity, and whose interest afforded him incitement, to interfere in any of their judicial proceedings.

Mr. Keir informed your Committee that since the establishment of the English power in Bengal on its present footing, the Banyans of English gentlemen, wherever they reside, entirely govern the

Courts of Judicature, and that they even frequently sit as judges in these courts.

Mr. Jekyl, upon the same subject, said, that whilst he was at Patna in 1771, the members of the Company's Council sat alternately in the Revenue Court at that place, together with the rajah.

But though these successive revolutions, entirely accomplished by the English power in Bengal, necessarily rendered their influence very operative in the affairs of the Government, and although it appears to your Committee . . . that the Gomastahs of the servants of the Company frequently assumed to themselves the exercise of judicature, yet it does not appear that any alteration in the legal constitution of the judicatures of the country was made before the acquisition of the Dewannee.

But your Committee find that, since the acquisition of the Dewannee, some alterations have been made, and a variety of regulations proposed, respecting the administration of justice; but as to the effect, your Committee are not able to give the House any satisfactory information.

Mr. Sykes, who was appointed Resident at the Durbar in October 1765, informed your Committee that immediately upon entering into that office he applied to the Government for the establishment of some new courts of Judicature, but without proposing any alterations in those already established; that having observed that the poor inhabitants were, in general, unable to obtain justice in the ancient courts, he recommended to the Ministers at Moorshedabad to establish there, and in each of the provinces, a court for the decision of all causes not exceeding the value of 500 rupees; that this was accordingly carried into execution, the court at Moorshedabad consisting of twelve persons of the best character, appointed by the administration with adequate salaries; and the Provincial Courts constituted in the same manner, but consisting only of six judges; that all these judges were bound by the most solemn oath to administer justice uprightly, and not to receive, directly or indirectly, any emolument whatsoever, beside their salary, in the exercise of their judicial function; that they sat by rotation, three at a time, and appeal lay from these courts in the provinces to that at Moorshedabad.

Mr. Becher informed your Committee that he found such a court existing at the time of his appointment to be Resident at the Durbar in January 1769; but your Committee cannot help observing that no notice is taken in the dispatches lately received from the President and Council at Fort William of any court now existing at Moorshedabad, which was established since the acquisition of the Dewannee.

Mr. Sykes added that, during the time of his continuing Resident at the Durbar, no other alteration was made respecting the Courts of Judicature; for that it had been determined and directed by the Company that, whilst they made necessary reformatations, they should adhere as much as possible to the forms of the established Government.

Mr. Becher . . . informed your Committee that he allotted one day in every week to inspect the proceedings of the Supreme Courts

at Moorshedabad; he added that as Resident at the Durbar, he possessed a very extensive authority, but that he could safely aver he had always used it to promote justice and protect the natives from injury.

Mr. Verelst, who resided for some years as the principal servant of the Company in the provinces of Chittagong and Burdwan (ceded by Cossim Ally Cawn) before he became President of Bengal, in his evidence upon this subject observed to your Committee that before the acquisition of the Dewannee it had been found by experience that it was very possible to maintain the forms of the ancient country judicatures and at the same time correct many abuses which had crept into the administration of justice; for that the Company had followed this plan and seen its efficacy in those provinces which had been ceded to them in the year 1760 by Cossim Ally Cawn; and that therefore the Select Committee at Calcutta had resolved to pursue the same course with respect to all the other provinces upon the acquisition of the Dewannee. . . .

In a general letter to the Select Committee at Bengal, March 16, 1768, the Court of Directors recommends to them 'to endeavour to introduce Laws of Inheritance, and as near as possible to the spirit of the laws of this country; particularly to endeavour to abolish the power of seizing the effects of those who die without children, and to introduce the right of bequeathing by will, referring to their judgment how far this could be done consistent with the claims of the rajahs and landholders and the established customs of the country.'

Your Committee find that in the following year superintending Commissioners were appointed to the several districts of the province, not only to watch over the actual administration of justice in the courts, but also to inquire into all the defects and abuses in their constitution or practice, and to report their observations thereon.

The instructions of the President and Council, communicated by the Resident at the Durbar to the Supervisors of the several districts, after observing the degree of corruption to which the Courts of Judicature were degenerated, and particularly the mischievous consequences of allowing arbitrary fines and the compromise of offences, direct the Supervisors 'to check every such composition and in matters of property to recommend arbitration as much as possible, and to inculcate into the minds of the people that their only object is to provide for their relief and happiness; that in capital cases the sentence should be referred to the Resident at the Durbar, and by him to the Minister, to approve or mitigate it according to the nature of the case; that they should establish registers of all causes and determinations, to be lodged in the principal cutcherry of the province, and that an authenticated copy be transmitted to Moorshedabad; that they endeavour to reform all the corruptions, which have encroached on the primitive rights of the Mohammedans and Hindus, particularly in respect of the arbitrary impositions of fines; that all persons claiming any judicial or religious authority should be summoned to produce their sunnods, and that registers of these sunnods be kept in order to prevent any from exercising a judicial, because a lucrative, function who is not

appointed by Government, if a Mohammedan, or elected by his cast if a Hindu; that the forfeiture of cast should never be inflicted in any case but by sentence of the Bramin, in a regular process and upon clear proof of the offence; but that, as the policy of the Mohammedan Government had provided, that where a Hindu has legally forfeited his cast, he cannot be restored to it without the sanction of the Government; that this principle should be kept up, as a direct assertion of the subordination of the Hindus, who are a very considerable majority of the subjects.

The Court of Directors also sent out Orders to these Commissioners, dated September 15, 1769, directing 'That they should make strict and speedy inquiry into the proceedings of the Courts of Justice throughout their settlements, and that if any extraordinary powers have interfered to interrupt the course and administration of justice, they should, without delay, correct all such abuses; and in particular directing that they should procure the entire abolition of the ancient custom of withholding, under the name of Chout, a large share of all the property recovered in the courts; and that if they should find the established courts so imperfectly constituted as not to be adequate to the right administration of justice, they should apply to the Government and obtain Firmauns for erecting such new judicatures as should appear most adequate to that purpose.'

Your Committee find that these Commissioners accordingly assumed and exercised the right of superintending and reviewing the proceedings of the Courts of Justice in their several districts; that where any case of difficulty or peculiar importance occurred, they reported a state of the proceedings to the Resident at Moorshedabad, in order that he might lay it before the Government, and return such orders as the Nabob, or his ministers with his approbation, should direct. This practice accordingly has prevailed throughout Bengal, and appears to your Committee to be the strongest evidence of the absolute sway and control to which the whole administration of Government, and particularly the Courts of Justice, have submitted since the Company's accession to the Dewannee."

The Report then notices the Regulations of August 21, 1772, and proceeds to deal with the judicatures existing at Calcutta. It says:

"Until the Charter of Justice granted to the Company, in the thirteenth year of his late Majesty, the only Courts of Justice that existed in Calcutta were derived out of the constitution of the country and nearly similar to those that have been explained above.

Soon after the establishment of the settlement at Calcutta, near the end of the last century, the English Company obtained from the then Nabob, the zemindary rights of the district around that settlement, by which they became the zemindar of that district, with all the rights incident to that office, amongst which, as stated above, is the criminal, civil, and religious jurisdiction of the district. . . . The Zemindary Courts established in Calcutta are the Foudary for the trial of crimes, the Court of Cutcherry for civil causes, and the Collectors' Court for matters of revenue. . . .

The Criminal Court tries all crimes committed by the natives, and in this respect has a concurrent jurisdiction with the Court of Oyer and Terminer, established by the Charter of Justice; one judge only sits in that court, appointed by the Governor and Council.

Mr. Russell informed your Committee that formerly one of the Council was always appointed to this office, but that since the increase of other business in the Council, this duty has been entrusted to junior servants, one of the Council being appointed monthly to superintend.

In capital cases, three members of the Board sit as judges in this court, and before execution of the sentence the proceedings must be laid before the Governor and Council.

The Civil Court consists of several judges, also appointed by the Governor and Council, out of the junior servants, but seldom more than one actually sits. This court has jurisdiction of all causes between natives and also (as Mr. Whittall informed your Committee) in causes between a native and a European, where the latter is plaintiff; but in this case the native may remove the case into the Mayor's Court.

The Rule of Judgment in these courts is supposed to be the custom and usage of the country; and when no custom or usage applies, it is the discretion of the judge. Formerly the Chout (the fourth part of everything recovered) was an allowed perquisite in the Civil Court, but on a representation to the President and Council it was abolished.

Appeal lies from the Civil Court to the Governor and Council. The custom of sending causes to arbitration prevails in this court, as in the other districts of Bengal, and, as Mr. Whittall informed your Committee, is often done without the consent of either party."

The Committee then deal with the courts established by Charter and other matters, and continue:

"Your Committee having concluded their state of the Calcutta Judicatures, beg leave to submit to the consideration of the House some very singular circumstances in the constitution of the Civil and Criminal Courts, which seem materially to affect their independence and their efficacy.

First, that although the Mayor's Court is intended not only to try causes between party and party, and the Court of Oyer and Terminer and Gaol Delivery to punish the crimes of private individuals, but the former also to try causes in which the Company itself is a party, and the latter to punish the offence of any of its principal servants, yet the judges of these courts are removable from those offices, by virtue of which they exercise their judicial functions, at the pleasure of the President and Council, and that such sentence cannot be reviewed but by the tedious mode of an appeal to His Majesty in Council.

Your Committee submit whether courts thus constituted can be considered as free and independent judicatures, in any case where the Company is a party, or where any member of the Council is prosecuted on a criminal charge.

Secondly, that although these courts, at least with respect to Europeans, are bound to judge according to the laws of England, yet the judges of these courts are not required to be, and in fact have never been, persons educated in the knowledge of those laws by which they must decide; but that any junior servants of the Company are selected for these important trusts, affecting the property, the liberty, and the lives of His Majesty's subjects in Bengal.

It appears to your Committee that the judges of these courts are justly sensible of their own deficiency of knowledge in the laws of England, and that therefore they, as well as the President and Council, have frequently applied to the Court of Directors to lay particular points, respecting their jurisdiction, before counsel, and to transmit the opinions of such counsel to be the guide of their conduct. Some instances of this kind have been laid before your Committee upon doubts respecting their ecclesiastical, and also their criminal, jurisdiction, particularly whether the Charter allows them to take cognisance of murders, robberies and other crimes committed by Europeans not immediately under the Company's flag.

Mr. Russell informed your Committee that he believed there are one or two persons now in confinement upon the charge of offences committed beyond the limits described in the Charter of Justice whose trial is prevented from doubts arising with respect to the powers conveyed by the Charters.

Thirdly, that whatever doubts may have been entertained in Bengal on this subject, it is clear, by the very terms of the Charter of Justice, that the jurisdiction of the Court of Oyer and Terminer and Gaol Delivery is restrained to offences committed within the town or district of Calcutta and its subordinate factories. The consequence of this, in the present situation of Bengal, is that there are many of His Majesty's subjects, residing in Bengal, neither under the protection or control of the laws of England or amenable to the criminal judicatures of the country."

APPENDIX III

WITH REFERENCE TO CHAPTER VII.

The obscurities and difficulties connected with the Supreme Courts were admirably dealt with in a letter from Sir Charles Grey and Sir Edward Ryan which is printed in the Fifth Appendix to the Third Report of 1831 and bears date October 16, 1830. After a careful historical summary of the power and jurisdiction of the Supreme Court of Fort William they proceed :

" 28. The Court was founded with views which have never been accomplished, and many of the original provisions are necessarily ill suited to the state of things which has ensued, so different from that for which they were intended. It appears to have been thought by those who framed the statute of 13 Geo. III. c. 63, that by opening a Court of British Law, and by giving to Government and the Court together a power of making regulations, all the British possessions and system of Government and the whole people might have been gradually brought to range themselves in subordination to that Court and Government in a state of union ; but from a train of circumstances which need not be discussed here, the Court and Government were very soon placed in a state of opposition, and the inhabitants were studiously divided. The jurisdiction which the Court has subsequently exercised has always been essentially of a very peculiar character, and has had many difficulties inseparably connected with it. It is an exclusive personal jurisdiction as to a particular class, thinly scattered over a wide extent of country, amongst a dense population, who are considered to be themselves, for the most part, exempt from the jurisdiction and to live under a very different system of law. In every part of these territories, nevertheless, the process of the Court must be enforced, and even lands must occasionally be seized and divided or sold, although there is an absolute prohibition against the jurisdiction being exercised in any matter of revenue, which revenue is, in fact, a share, and a very large one, in every parcel of land throughout the Presidency.

29. These difficulties are aggravated by an obscurity which has been permitted to hang about the relations in which the Indian territories and the Company stand to the Crown and Parliament.

Our own view is plainly and simply that the bulk of the Indian territories must be considered as having been annexed by conquest and cession to the Crown of the United Kingdom, but subject, of course, to the observance of all treaties, capitulations and agreements, according to the real intent and meaning of them, which have attended any cession, and which still continue in force ; that to a certain extent British law has been introduced, but that, on the other hand, a very large portion of the old laws of the country have been left standing, though under the administration of British persons, the leading distinction being that British law and British courts have been introduced for British persons, and Mohammedan courts and laws permitted to remain for Mohammedan and Hindu persons ; and these Mohammedan laws and courts have been subsequently modified by a certain legislative or regulating power, which itself also has been a continuation of the old legislative powers of the native Government, permitted, and in some instances recognized, by Parliament. The sovereignty of the Crown of the United Kingdom we hold to be established throughout all the provinces which have been formally annexed to the Presidencies, and as an incident of the sovereignty, that the King in Council has in some cases the actual exercise, and in all the right, whenever the Crown may see fit to exercise it, of deciding upon appeals in the last resort, and superintending the administration of justice ; that the Imperial Parliament has as absolute a right of legislating for all purposes as in the United Kingdom itself ; but that the East India Company, in consequence of a long chain of events, being the most convenient depository and organ of the powers which it is necessary should be in action upon the spot, have had the Government principally entrusted to them ; and being thus put in the place of those parts of the old Governments, by which the ancient and still subsisting laws and legislation of the country were wont formerly to be carried on, they exercise, through the Governors in Council and their officers, not only the functions specifically assigned to them by the Crown and Parliament, but some powers also in the administration of justice and in legislation which, as we have already explained, are not, strictly speaking, derived from the Crown or Parliament as their origin, but are portions of the old institutions, which have been permitted by the Crown and Parliament to continue, and have been by Parliament entrusted for limited periods to the management of the Company, and recognized as subsisting in their hands. Excepting any formal questions which may arise out of the titular honours or nominal authority enjoyed by any native Princes within the Presidencies, there are only two points on which, as far as we are aware, any positively different opinion exists. It seems to have been thought by some that the Company's powers of political government rest at present, not only upon the statutes by which they have latterly been entrusted or continued to them for limited periods, but also on those parts of the Charters of 1698 and 1726 by which they were authorized to coin money, and maintain troops, and do other acts which belong purely to political government ; whereas we should be of opinion that such powers of political government as were given by the Charter for the maintenance and

protection of the exclusive trade have been merged and extinguished in the larger powers which have been given by statute for the purposes of dominion, and that there cannot now be any occasion upon which those minor powers would revive, although the Charters are not on that account the less valid and effectual to secure to the Company, at all events, their corporate capacity, their property of every sort, and their right to trade in common with other British subjects. Secondly, there is a notion which, we are inclined to think, has arisen merely from the indistinct use of a particular term; and in adverting to it, we are anxious to guard against the supposition of our having experienced any difficulty from any expression of it by those with whom our duties have brought us into intercourse. But amongst those who have treated of the subject, some certainly speak of the Company as having 'succeeded' to the powers of the old native Governments, and seem to found a certain claim of right upon this notion of succession; whereas we apprehend that, although to a certain extent the Company does hold the place of the old Governments, it is not by any succession, as distinguished from acquisition, but that, having been the instrument and agents of conquests, or the means through which cessions have been obtained, and having come into possession in that way, they have been permitted to retain it for a certain term by the enactments of Parliament. We may, perhaps, be in error in supposing that any consequence is attached to this distinction; the subject, however, has been so little brought forward that the circumstance of the Crown and Parliament having exercised little or no control over some parts of these judicial and legislative powers, which have survived the old Government, has been followed by an indistinctness of apprehension as to the real nature of them. The President and Board will remember that it has heretofore been made a question whether the Company had not, what has been called in terms not very easy to be understood, a delegated sovereignty; at other times it has been alleged that the Mogul Emperor still retained a nominal and formal sovereignty. Some have suggested doubts whether the continuing possession of the Company, notwithstanding its being a creation of the British Crown and Parliament, is not a mark that the Indian territories have never yet been reduced into possession by the British Crown. It cannot be necessary to show, in detail, that any doubts upon points such as these, wherever they exist or upon whatever occasions they may be stated, must be a source of embarrassment to judges who have to issue process and execute judgment in the King's name in all parts of the provinces, who may at any time be called upon to ascertain the rights in India, not only of British persons, but of the subjects of the Christian powers in amity with the British Crown, and who, in law, are supposed to have control throughout all parts of the Presidency of the Commission of the Peace. Questions arising out of the most important statutes, such as the Navigation and Registry Acts, the Meeting Acts and others, exist in an undecided state, and are scarcely prevented, but by management, from being brought forward for decision, which, whenever it is called for, must turn mainly upon the species of relation in which the Indian

territories and the Company stand to the United Kingdom. Some of the most important regulations of the Indian Government have been made without the direct or express authority of Parliament, and are most easily justified, as being the exercise of the old legislative powers of the former Governments not superseded, and therefore continuing to subsist. Some of the regulations, about 1793, were of this description. The imposition of taxes in the provinces is perhaps an instance, and it is a power which might come to be a subject of serious discussion, and, if British persons are to be admitted to hold lands throughout India, of vital importance.

30. An offspring of the uncertainty alluded to in the last section is the peculiar use which has been affixed to the terms 'British subjects' in the Statutes and Charters relating to India, a source of difficulties to the Court which does and will increase. The corruption of the legal signification of these important terms seems to have originated in the difficulty which was felt in getting over the provisions of 13 Geo. III. c. 63, and of the Charter of Justice, by which the English laws were, in words, extended in these provinces to all His Majesty's subjects. The Directors, in their letter of November 19, 1777, to Lord Weymouth, asserted that the natives were not British subjects; but notwithstanding all the difficulties of the times, and that the Ministers were pressed by the calamities of the American war, this point was not acknowledged even in the statute of 21 Geo. III. c. 70, though expressions and clauses were allowed to be introduced in the statute, from which the result has been that it is impossible to say who were and who were not meant to be designated by those terms. Subsequently, as the British Governments in India proceeded in organizing the judicial system for the provinces, including criminal courts, it became necessary that they should describe the natives as subjects, at least, of the British Government, and as owing allegiance to it. Under all these circumstances, if the question had been raised in any English court of law, there would have been some difficulty in maintaining that the natives did not at any rate fall under the terms 'subjects of His Majesty,' wherever those words occurred in statutes relating to India. A direct decision upon that question, however, has been avoided; and to meet the difficulty, and with a view, perhaps, to other consequences, a distinction has been set up between 'British subjects,' and 'subjects of the British Government,' and it is maintained that generally where the term 'subjects' occurs in the Indian statutes, it means 'British subjects,' and does not include those who are only subjects of the British Government. There is no stable nor sufficient foundation provided for this construction at present; for whatever restriction the Parliament may think it right at any time to put upon their rights as subjects, it is certain that if the case of the *post nati* of Scotland, and that of *Campbell v. Hall*, are of any authority, and if any of the Indian provinces have become British dominions, all who are born within them are British subjects according to English common law, even though the Indian territories should be so far a distant realm as to have a separate but subordinate right of legislation, and of holding Courts for the administration of justice. The distinction between British subjects

and subjects of the British Governments in India has never, we believe, been formally declared in any Act of Parliament, but depends upon an ill-defined supposition of the continuance of the Mohammedan laws, and upon inferences to be drawn from the use of the term 'British subjects,' in several Statutes and Charters relating to India, especially the 21 Geo. III. c. 70, and the Charters of the Madras and Bombay Courts, and upon a fluctuating usage, so that it is quite impossible to say with any just confidence who they are who belong to the one class and who to the other. It seems to be agreed, indeed, that the terms 'British subjects,' as they must necessarily include all persons born in Great Britain, or whose fathers or paternal grandfathers have been born there, so they do not include any Mohammedan or Hindu natives of the Indian provinces who are not inhabitants or natives of Calcutta, Madras or Bombay, or any other place distinctly recognized as a British settlement or factory; but between these two extremes there are many doubtful classes. Even the natives of Ireland would not necessarily fall under the terms 'British subjects,' as used in 21 Geo. III. c. 70, s. 10. It is understood that the lawyers of the East India Company have been of opinion that persons born in the British Colonies are not, according to the use of the term in the Indian Statutes, 'British subjects' by reason of their birthplace, nor unless they are descended from a British-born father or paternal grandfather. The natives of Jersey and Guernsey have not so strong a claim as those Christian persons born in Calcutta, Madras and Bombay, but not resident there; and Hindus and Mohammedans, under similar circumstances, are liable to still more cogent doubts. Do either Hindus or Mohammedans, or Indian Christians born in the provinces, or Christian foreigners, become temporarily British subjects while domiciled in Calcutta, Madras or Bombay, so that for offences committed beyond the boundaries they would still be amenable only to the Supreme Court? Are the native Christians or the subjects of Christian Princes in amity with the Crown, who may reside in the provinces, to be classed with Mohammedans and Hindus, or with British subjects? What is the effect of the subsisting treaties with France and other Christian States in this respect? These and many similar questions do every now and then arise, and it is only by perpetual contrivance that they are prevented from becoming more troublesome. The Statutes and Charters relating to India present various applications of the terms in question, and in several important instances the term 'subjects' is used by itself, and it is mere speculation and controversy whether the adjunct 'British' is to be understood or not. These distinctions are the more embarrassing because the continuance of the Nizamut, which afforded some sort of explanation of them in Bengal, Bihar and Orissa, cannot be alleged in respect of other parts of India, many of which have come under the sovereignty of the British Crown by a course of circumstances which have left no shadow of any former sovereignty lingering behind, and which present no alternative but that persons born there must be subjects of His Majesty in right of the British Crown or subjects of nobody at all.

31. The circumstance which perhaps more than any other has contributed to make the jurisdiction of the Supreme Court inconvenient,

and which is perpetually brought forward as marking its unsuitness for the duties assigned to it, is not a vice of its original constitution, but the extension of its legal authority over the immense territories which have been subsequently added to the Presidency of Fort William. It was not, perhaps, impossible that the Court might have been made competent to exercise an effectual and salutary jurisdiction throughout all Bengal, Bihar and Orissa, which comprise the whole space to which its powers at first extended, but it never could have been made convenient by any ingenuity of legislation, that its powers of original jurisdiction should be exercised even as to British persons throughout the present Presidency of Bengal, of which some parts are nearly a thousand miles distant from it, and where the means of communication are not so easy as in England; and as there has been an inclination rather to clog the powers of the Court than to invigorate them, it may easily be conceived that when called into exercise in a weak and shackled state upon so vast an area, they are at once ridiculously important, and yet very weak in the way.

32. It appears to us to be matter of regret that there has never been any plan avowed and distinctly laid down for the gradual assimilation and union of the two systems which it has been thought necessary, and which to a great extent it seems to be still necessary, to maintain, for the British and the natives respectively. In 1773 there seems to have been at most only a temporary obligation to preserve any of the Mohammedan forms of Government, and they have by degree been almost obliterated, but what has come in place of them rests partly on the old basis, and there are still two systems scarcely less averse in principle than at first, working with discordant action and within the same space. Nothing would be more unreasonable than to attempt to impose upon India generally the British laws as they exist in the United Kingdom, or even in Calcutta; but we are confident that before this time, if there had been a hearty co-operation of all parts of the Indian Governments, one uniform system, not English, yet not adverse to the Constitution of the United Kingdom, might have been established in some provinces, to which both British persons and natives might have accommodated themselves and which would have been fitted at future opportunities to be extended to other districts. This would have been done, if the whole legislative and judicial powers of Government had been under one control; but this has never been the case. The regulations for the Government for the provinces, and civil causes tried in the Provincial Courts, where the matter in dispute is of a certain value, are nominally subjected to the control of the King in Council as much as regulations which are registered in the Supreme Court, or causes heard there; but it is scarcely more than in name that this exists, and, with the exceptions of a few appeals in civil cases, it may be said that the legislative and judicial functions of the Indian Government in the provinces, extensive and active as they are, and including the whole process of criminal law, are exercised under no other control than that of the Directors and the Commissioners for the affairs of India, whilst the administration of law for British persons in India is in theory independent both of the Indian

Governments, the Directors and the Board, and British subjects who choose to abide at the seats of Government cannot be directly subjected to any legislation but that of Parliament, or regulations registered in the Supreme Courts. In these circumstances it has naturally been the inclination of those who have had the principal influence in Indian affairs to build separately upon the foundations of that system which is the most subjected to themselves, and as it were belongs to them, rather than to bring the remains of the old institutions of the country into any subordination to Courts established upon the basis of Parliamentary enactment, and in many respects certainly ill-adapted to the circumstances of the country. Thus two principles of government have been maintained in a sort of antagonism which thwarts and weakens each, and it is not in any way advantageous to either. If the one was to prevail even to the exclusion of the other, the result must be an interference of the Imperial Legislative to reduce the Indian territories to their true relation with the United Kingdom, that of distinct but entirely dependent dominions, with peculiar though not adverse laws, separate but entirely subordinate powers of internal legislation, and an administration of justice always liable in all its branches if not actually subject to the superintendence and control of the King in Council, or some other Court of the United Kingdom, or at least of some Court constituted by the Crown. Why should not the most convenient district that can be named in these vast territories be set apart for the purpose of forming upon this basis one harmonious system suited to all classes of persons, and compounded of the two jarring ones which at present divide the people, debilitate the administration of justice, and harass the Government? It has been said that this would be like breaking off a part of the mass for the purpose of making experiments upon it; but everybody seems to be agreed that something must be done. We disclaim all thought of proceeding otherwise than with the utmost caution, and we seem to differ from those who are adverse to the selection of one province principally in this respect, that we think it wiser to attempt the introduction of a better system upon a small scale at first, and in that place only where all the force of Government may be most readily applied in its support, and where its progress would be most immediately subjected to the presence and inspection of those who must direct it.

33. The next head of difficulties is one of which we feel considerable difficulty in speaking. But our motives, and the necessity of exhibiting the whole of the case, must be our apology for saying, that some of the inconvenience to which the Court is subjected, and some of which it is the apparent cause, are attributable to the imperfections of the Acts of Parliament and Letters Patent under which it has to act, or by which it is affected. It would seem as if, either from the intricacy of the subject, or an apprehension that difficulties would be encountered in Parliament when modifications of the powers of the Supreme Court have been desired, they have been sought not by positive and plain enactment, but by the introduction of something in the Act or Charter which, without being likely to excite too much discussion at the time, might be available

afterwards as showing an intention on the part of the legislating power to make the required provision. Nothing can be more vague in most respects than the important statute of 21 Geo. III. c. 70; it provided that persons should not be subject to the jurisdiction of the Court for this or for that reason, but it left it nearly as open to argument as it was before, whether all those must not be held liable who could be shown to be subjects of His Majesty; it left in the hands of the Government powers of general legislation, and of life and death, which it did not notice, while it specifically imparted to them limited powers of making regulations and inflicting in certain cases punishment short of death. It employed the terms 'British subjects' and 'European British subjects' in such a manner that it is impossible to say what was really meant by them; it expressly left to the Supreme Court the determination of all suits respecting the lands of certain classes of the natives, yet forbade it to exercise jurisdiction in any matters connected with the revenue, which is a part of all land throughout all India; and, finally, it made certain provisions for registration which were probably impracticable from the first, and were scarcely attempted to be carried into execution. We would rather not go through the insidious task of pointing out the indirect and inconclusive, but not therefore ineffectual provisions of later statutes; but we can scarcely avoid to notice some of the variations which have been introduced in the Charters of the Supreme Courts at Madras and Bombay, and the doubts and difficulty which arise out of them. The Acts of Parliament which directed the issuing of these Letters Patent provided that they should confer the same powers on the new Courts as those which were possessed by the Court at Fort William; but, notwithstanding this, the powers granted are materially different. To pass over the differences as to the appointment of sheriffs, and the admission of barristers and attorneys, it will be found that, in the definition of the jurisdiction of the more recent Courts, there are words which purport to restrict their powers generally to such persons as have heretofore been described and distinguished by the appellation of 'British subjects'; whereas, as it would have seemed to us the powers which the Justices of the Peace and the Courts were to possess in the provinces as Conservators of the Peace, and as presiding over the Commission of the Peace, whether the criterion of their extent was to be the extent of those granted to the Court at Fort William, or the possibility of their being used to any good purpose, must be exercised, if exercised at all, without distinction of persons. Again, the Bombay Court is prohibited from interfering in any matter concerning the revenue even within the town of Bombay, which is directly opposed to the 53 Geo. III. c. 155, ss. 99, 100. Then all natives are exempted from the Courts at Madras and Bombay, unless the circumstances be altogether such as that they might be compelled to appear in the same manner in what is called a Native Court. This would for many purposes place the Court entirely at the disposal of the Government, who regulate the usages of the Country Courts as they please, and whether any suit arising beyond the limits of the towns of Madras and Bombay should be determined at all, or whether any offence

committed there should be punished by the Court, or whether it should be able to collect evidence in aid of any proceedings in England, would come to depend entirely upon the pleasure of the Government. Whether this would be right or not is not the question; it is inconsistent with the duties assigned to the Courts by subsisting statutes. In the clause which purports to define the Admiralty jurisdiction of the Court at Bombay in criminal cases, its powers are restricted to such persons as would be amenable to it in its ordinary jurisdiction, which is again at variance with the 53 Geo. III. c. 155, s. 110, if it is to be understood from this passage in the Charter that the jurisdiction was meant to be limited to such persons as have been usually described as British subjects; but it is not very clear what is to be understood by ordinary, as opposed to any extraordinary, jurisdiction of the Court, and this indeed is another species of the defects which we are noticing—namely, that limitations of the jurisdiction have been thus introduced by allusion rather than plain declaration. In one way or another: sometimes by the mention of some qualification of the powers of the Court occurring in an Act or Charter, which has been afterwards insisted upon as a recognition; sometimes by a vague recognition of counter institutions, which have been already set on foot without any express authority, and which afterwards, upon the strength of the recognition are amplified and extended; sometimes by the jurisdiction of the Supreme Court being stated in such a way as to leave it to be inferred that the *expressio unius* is the *exclusio alterius*; sometimes by provisions, which to persons unacquainted with India may have appeared to be of little consequence, but which in reality involve a great deal; sometimes when Parliament has provided that new Courts should be established upon the same footing as the old one, by something finding its way into the constitution of the new Courts, which is essentially different from the old, and would be destructive of their efficiency. In some or all of these ways the Supreme Courts have come to stand at last, in circumstances in which it is a very hard matter to say what are their rights, their duties or their use."

APPENDIX IV

GOVERNMENT OF INDIA ACT, 1915 (5 & 6 Geo. V. c. 61).

An Act to consolidate enactments relating to the government of India. A.D. 1915.
[29th July, 1915.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.

HOME GOVERNMENT.

The Crown.

1. The territories for the time being vested in His Majesty in India are governed by and in the name of His Majesty the King, Emperor of India, and all rights which, if the Government of India Act, 1858, had not been passed, might have been exercised by the East India Company in relation to any territories, may be exercised by and in the name of His Majesty as rights incidental to the government of India.

Government
of India by
the Crown.

The Secretary of State.

2. (1) Subject to the provisions of this Act, the Secretary of State has and performs all such or the like powers and duties relating to the government or revenues of India, and has all such or the like powers over all officers appointed or continued under this Act, as, if the Government of India Act, 1858, had not been passed, might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of that Company, either alone or by the direction or with the sanction or approbation of the Commissioners for the Affairs of India, in relation to that government or those revenues and the officers and servants of that Company, and also all such powers as might have been exercised by the said Commissioners alone.

The Secretary
of State.

21 & 22 Vic.
c. 106.

(2) In particular, the Secretary of State may, subject to the provisions of this Act, superintend, direct and control all acts, operations and concerns which relate to the government or revenues of India, and all grants of salaries, gratuities and allowances, and all other payments and charges, out of or on the revenues of India.

(3) There shall be paid out of the revenues of India to the Secretary of State and to his under secretaries respectively the like yearly salaries as may for the time being be paid to any other Secretary of State and his under secretaries respectively.

The Council of India.

The Council of India.

3. (1) The Council of India shall consist of such number of members, not less than ten and not more than fourteen, as the Secretary of State may determine.

(2) The right of filling any vacancy in the council shall be vested in the Secretary of State.

(3) Unless at the time of an appointment to fill a vacancy in the council nine of the then existing members of the council are persons who have served or resided in British India for at least ten years, and have not last left British India more than five years before the date of their appointment, the person appointed to fill the vacancy must be so qualified.

(4) Every member of the council shall hold office, except as by this section provided, for a term of seven years.

(5) The Secretary of State may, for special reasons of public advantage, re-appoint for a further term of five years any member of the council whose term of office has expired. In any such case the reasons for the re-appointment shall be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament. Save as aforesaid, a member of the council shall not be capable of re-appointment.

(6) Any member of the council may, by writing signed by him, resign his office. The instrument of resignation shall be recorded in the minutes of the council.

(7) Any member of the council may be removed by His Majesty from his office on an address of both Houses of Parliament.

(8) There shall be paid to each member of the council out of the revenues of India the annual salary of one thousand pounds.

4. No member of the Council of India shall be capable of sitting or voting in Parliament.

5. The Council of India shall, under the direction of the Secretary of State, and subject to the provisions of

Seat in council
disqualification
for Parliament
Duties of
council.

this Act, conduct the business transacted in the United Kingdom in relation to the government of India and the correspondence with India; but every order or communication sent to India, and every order made in the United Kingdom in relation to the government of India under this Act, shall be signed by the Secretary of State.

6 (1) All powers required to be exercised by the Secretary of State in Council, and all powers of the Council of India, shall be exercised at meetings of the council at which not less than five members are present.

Powers of council.

(2) The council may act notwithstanding any vacancy in their number.

7. (1) The Secretary of State shall be the president of the Council of India, with power to vote.

President and vice-president of council.

(2) The Secretary of State in Council may appoint any member of the council to be vice-president thereof, and the Secretary of State may at any time remove any person so appointed.

(3) At every meeting of the council the Secretary of State, or, in his absence, the vice-president, if present, or, in the absence of both of them, one of the members of the council, chosen by the members present at the meeting, shall preside.

8. Meetings of the Council of India shall be convened and held as and when the Secretary of State directs, but one such meeting at least shall be held in every week.

Meetings of council.

9. (1) At any meeting of the Council of India at which the Secretary of State is present, if there is a difference of opinion on any question, except a question with respect to which a majority of votes at a meeting is by this Act declared to be necessary, the determination of the Secretary of State shall be final.

Procedure at meetings.

(2) In case of an equality of votes at any meeting of the council, the person presiding at the meeting shall have a second or casting vote.

(3) All acts done at a meeting of the council in the absence of the Secretary of State shall require the approval in writing of the Secretary of State.

(4) In case of difference of opinion on any question decided at a meeting of the council, the Secretary of State may require that his opinion and the reasons for it be entered in the minutes of the proceedings, and any member of the council, who has been present at the meeting, may require that his opinion, and any reasons for it that he has stated at the meeting, be also entered in like manner.

10. The Secretary of State may constitute committees of the Council of India for the more convenient transaction of business, and direct what departments of business are to be under those committees respectively, and generally direct the manner in which all business of the council or committees thereof is to be transacted.

Committees of council.

Orders and Communications.

Submission of proposed orders and communications to council.

11. (1) Subject to the provisions of this Act, every order or communication proposed to be sent to India, and every order proposed to be made in the United Kingdom by the Secretary of State under this Act, shall, unless it has been submitted to a meeting of the Council of India, be deposited in the council room for the perusal of all members of the council during seven days before the sending or making thereof.

(2) Any member of the council may record, in a minute book kept for that purpose, his opinion with respect to any such order or communication, and a copy of every opinion so recorded shall be sent forthwith to the Secretary of State.

(3) If a majority of the council so record their opinions against any act proposed to be done, the Secretary of State shall, unless he defers to the opinion of the majority, record his reasons for acting in opposition thereto.

Exception as to cases of urgency.

12. (1) Where it appears to the Secretary of State that the dispatch of any communication or the making, of any order, not being an order for which a majority of votes at a meeting of the Council of India is by this Act declared to be necessary, is urgently required, the communication may be sent or order made, although it has not been submitted to a meeting of the council or deposited for the perusal of the members of the council.

(2) In any such case the Secretary of State shall, except as by this Act provided, record the urgent reasons for sending the communication or making the order, and give notice thereof to every member of the council.

Exception as to secret orders and dispatches.

13. (1) Where an order concerns the levying of war or the making of peace, or the treating or negotiating with any prince or state, or the policy to be observed with respect to any prince or state, and is not an order for which a majority of votes at a meeting of the Council of India is by this Act declared to be necessary, and is an order which, in the opinion of the Secretary of State, is of a nature to require secrecy, the Secretary of State may send the order to the Governor-General in Council or to any Governor in Council or officer or servant in India without having submitted the order to a meeting of the council or deposited it for the perusal of the members of the council, and without recording or giving notice of the reasons for making the order.

(2) Where any dispatch to the Secretary of State from the Governor-General in Council or a Governor in Council concerns the government of India or of any part thereof, or the levying of war, or the making of

peace, or negotiations or treaties with any prince or state, and is, in the opinion of the authority sending it, of a nature to require secrecy, it may be marked " Secret " by that authority ; and a dispatch so marked shall not be communicated to the members of the Council of India unless the Secretary of State so directs.

14. Every dispatch to the United Kingdom from the Governor-General in Council or a Governor in Council shall be addressed to the Secretary of State.

Address of dispatches from India.

15. When any order is sent to India directing the actual commencement of hostilities by His Majesty's forces in India, the fact of the order having been sent shall, unless the order has in the meantime been revoked or suspended, be communicated to both Houses of Parliament within three months after the sending of the order, or, if Parliament is not sitting at the expiration of those three months, then within one month after the next meeting of Parliament.

Communication to Parliament as to orders for commencing hostilities.

16. It is the duty of the Governor-General in Council to transmit to the Secretary of State constantly and diligently an exact particular of all advices or intelligence, and of all transactions and matters, coming to the knowledge of the Governor-General in Council and relating to the government, commerce, revenues or affairs of India.

Correspondence by Governor-General with Secretary of State.

Establishment of Secretary of State.

17. (1) No addition may be made to the establishment of the Secretary of State in Council, nor to the salaries of the persons on that establishment, except by an Order of His Majesty in Council, to be laid before both Houses of Parliament within fourteen days after the making thereof, or, if Parliament is not then sitting, then within fourteen days after the next meeting of Parliament.

Establishment of Secretary of State.

(2) The rules made by His Majesty for examinations, certificates, probation or other tests of fitness, in relation to appointments to junior situations in the civil service, shall apply to such appointments on the said establishment.

(3) The Secretary of State in Council may, subject to the foregoing provisions of this section, make all appointments to and promotions in the said establishment, and may remove any officer or servant belonging to the establishment.

18. His Majesty may, by warrant under the Royal Sign Manual, countersigned by the Chancellor of the Exchequer, grant to any secretary, officer or servant appointed on the establishment of the Secretary of State in Council, such compensation, superannuation or retiring allowance, or to his legal personal representative

Pensions and gratuities.

such gratuity, as may respectively be granted to persons on the establishment of a Secretary of State, or to the personal representatives of such persons, under the laws for the time being in force concerning superannuations and other allowances to persons having held civil offices in the public service or to personal representatives of such persons.

Indian Appointments.

Indian appointments.

19. Except as otherwise provided by this Act, all powers of making rules in relation to appointments and admissions to service and other matters connected therewith, and of altering or revoking such rules, which, if the Government of India Act, 1858, had not been passed, might have been exercised by the Court of Directors of the East India Company or the Commissioners for the Affairs of India, may be exercised by the Secretary of State in Council:

Provided that in the appointment of officers to His Majesty's army the same provision as heretofore, or equal provision, shall be made for the appointment of sons of persons who have served in India in the military or civil service of the Crown or of the East India Company.

PART II.

THE REVENUES OF INDIA.

Application of revenues.

20. (1) The revenues of India shall be received for and in the name of His Majesty, and shall, subject to the provisions of this Act, be applied for the purposes of the government of India alone.

(2) There shall be charged on the revenues of India alone—

- (a) all the debts of the East India Company; and
- (b) all sums of money, costs, charges and expenses which, if the Government of India Act, 1858, had not been passed, would have been payable by the East India Company out of the revenues of India in respect of any treaties, covenants, contracts, grants or liabilities existing at the commencement of that Act; and
- (c) all expenses, debts and liabilities lawfully contracted and incurred on account of the government of India; and
- (d) all payments under this Act.

(3) The expression "the revenues of India" in this Act shall include all the territorial and other revenues of or arising in British India, and, in particular,—

- (i) all tributes and other payments in respect of any territories which would have been receivable by or in the name of the East India Company if the Government of India Act, 1858, had not been passed; and
- (ii) all fines and penalties incurred by the sentence or order of any court of justice in British India, and all forfeitures for crimes of any movable or immovable property in British India; and
- (iii) All movable or immovable property in British India escheating or lapsing for want of an heir or successor, and all property in British India devolving as bona vacantia for want of a rightful owner.

(4) All property vested in, or arising or accruing from property or rights vested in, His Majesty under the Government of India Act, 1858, or this Act, or to be received or disposed of by the Secretary of State in Council under this Act, shall be applied in aid of the revenues of India.

21. The expenditure of the revenues of India, both in British India and elsewhere, shall be subject to the control of the Secretary of State in Council; and no grant or appropriation of any part of those revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, or this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council of India.

Control of Secretary of State over expenditure of revenues.

22. Except for preventing or repelling actual invasion of His Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India shall not, without the consent of both Houses of Parliament, be applicable to defraying the expenses of any military operation carried on beyond the external frontiers of those possessions by His Majesty's forces charged upon those revenues.

Application of revenues to military operations beyond the frontier.

23. (1) Such parts of the revenues of India as are remitted to the United Kingdom, and all money arising or accruing in the United Kingdom from any property or rights vested in His Majesty for the purposes of the government of India, or from the sale or disposal thereof, shall be paid to the Secretary of State in Council, to be applied for the purposes of this Act.

Accounts of Secretary of State with Bank.

(2) All such revenues and money shall, except as by this section is provided, be paid into the Bank of England to the credit of an account entitled "The Account of the Secretary of State in Council of India."

(3) The money placed to the credit of that account shall be paid out on drafts or orders, either signed by two members of the Council of India and countersigned

by the Secretary of State or one of his under secretaries or his assistant under secretary, or signed by the accountant-general on the establishment of the Secretary of State in Council or by one of the two senior clerks in the department of that accountant-general and countersigned in such manner as the Secretary of State in Council directs; and any draft or order so signed and countersigned shall effectually discharge the Bank of England for all money paid thereon.

(4) The Secretary of State in Council may, for the payment of current demands, keep at the Bank of England such accounts as he deems expedient; and every such account shall be kept in such name and be drawn upon by such person, and in such manner, as the Secretary of State in Council directs.

(5) There shall be raised in the books of the Bank of England such accounts as may be necessary in respect of stock vested in the Secretary of State in Council; and every such account shall be entitled "The Stock Account of the Secretary of State in Council of India."

(6) Every account referred to in this section shall be a public account.

24. The Secretary of State in Council, by power of attorney executed by two members of the Council of India and countersigned by the Secretary of State or one of his under secretaries or his assistant under secretary, may authorize all or any of the cashiers of the Bank of England—

- (a) to sell and transfer all or any part of any stock standing in the books of the Bank to the account of the Secretary of State in Council; and
- (b) to purchase and accept stock for any such account; and
- (c) to receive dividends on any stock standing to any such account;

and, by any writing signed by two members of the Council of India and countersigned as aforesaid, may direct the application of the money to be received in respect of any such sale or dividend:

Provided that stock shall not be purchased or sold and transferred under the authority of any such general power of attorney, except on an order in writing directed to the chief cashier and chief accountant of the Bank of England, and signed and countersigned as aforesaid.

25. All securities held by or lodged with the Bank of England in trust for or on account or on behalf of the Secretary of State in Council may be disposed of, and the proceeds thereof may be applied, as may be authorized by order in writing signed by two members of the Council of India and countersigned by the Secretary of State or one of his under secretaries or his assistant

Powers of attorney for sale or purchase of stock and receipt of dividends.

Provision as to securities.

under secretary, and directed to the chief cashier and chief accountant of the Bank of England.

26. (1) The Secretary of State in Council shall, within the first fourteen days during which Parliament is sitting next after the first day of May in every year, lay before both Houses of Parliament—

Accounts to be annually laid before Parliament.

- (a) an account, for the financial year preceding that last completed, of the annual produce of the revenues of India, distinguishing the same under the respective heads thereof, in each of the several provinces; and of all the annual receipts and disbursements at home and abroad for the purposes of the government of India, distinguishing the same under the respective heads thereof;
- (b) the latest estimate of the same for the financial year last completed;
- (c) accounts of all stocks, loans, debts and liabilities chargeable on the revenues of India, at home and abroad, at the commencement and close of the financial year preceding that last completed, the loans, debts and liabilities raised or incurred within that year, the amounts paid off or discharged during that year, the rates of interest borne by those loans, debts and liabilities respectively, and the annual amount of that interest;
- (d) an account of the state of the effects and credits in each province, and in England or elsewhere, applicable to the purposes of the government of India, according to the latest advices which have been received thereof; and
- (e) a list of the establishment of the Secretary of State in Council, and the salaries and allowances payable in respect thereof.

(2) If any new or increased salary or pension of fifty pounds a year or upwards has been granted or created within any year in respect of the said establishment, the particulars thereof shall be specially stated and explained at the foot of the account for that year.

(3) The account shall be accompanied by a statement, prepared from detailed reports from each province, in such form as best exhibits the moral and material progress and condition of India.

27. (1) His Majesty may, by warrant under His Royal Sign Manual, countersigned by the Chancellor of the Exchequer, appoint a fit person to be auditor of the accounts of the Secretary of State in Council, and authorize that auditor to appoint and remove such assistants as may be specified in the warrant.

(2) The auditor shall examine and audit the accounts of the receipt, expenditure and disposal in the United

Audit of Indian accounts in United Kingdom.

Kingdom of all money, stores and property applicable for the purposes of this Act.

(3) The Secretary of State in Council shall, by the officers and servants of his establishment, produce and lay before the auditor all such accounts, accompanied by proper vouchers for their support, and submit to his inspection all books, papers and writings having relation thereto.

(4) The auditor may examine all such officers and servants of that establishment, being in the United Kingdom, as he thinks fit, in relation to such accounts and the receipt, expenditure or disposal of such money, stores and property, and may for that purpose, by writing signed by him, summon before him any such officer or servant.

(5) The auditor shall report to the Secretary of State in Council his approval or disapproval of the accounts aforesaid, with such remarks and observations in relation thereto as he thinks fit, specially noting cases (if any) in which it appears to him that any money arising out of the revenues of India has been appropriated to purposes other than those to which they are applicable.

(6) The auditor shall specify in detail in his reports all sums of money, stores and property which ought to be accounted for, and are not brought into account, or have not been appropriated in conformity with the provisions of the law, or which have been expended or disposed of without due authority, and shall also specify any defects, inaccuracies or irregularities which may appear in the accounts, or in the authorities, vouchers or documents having relation thereto.

(7) The auditor shall lay all his reports before both Houses of Parliament, with the accounts of the year to which the reports relate.

(8) The auditor shall hold office during good behaviour.

(9) There shall be paid to the auditor and his assistants, out of the revenues of India, such salaries as His Majesty, by warrant signed and countersigned as aforesaid, may direct.

(10) The auditor and his assistants (notwithstanding that some of them do not hold certificates from the Civil Service Commissioners) shall, for the purposes of superannuation allowance, be in the same position as if they were on the establishment of the Secretary of State in Council.

PART III.

PROPERTY, CONTRACTS AND LIABILITIES.

28. (1) The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, sell and dispose of any real or personal estate for the time being vested in His Majesty for the purposes of the government of India, and raise money on any such real estate by way of mortgage, and make the proper assurances for any of those purposes, and purchase and acquire any property.

Power of Secretary of State to sell, mortgage and buy property.

(2) Any assurance relating to real estate, made by the authority of the Secretary of State in Council, may be made under the hands and seals of three members of the Council of India.

(3) All property acquired in pursuance of this section shall vest in His Majesty for the purposes of the government of India.

29. (1) The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make any contract for the purposes of this Act.

Contracts of Secretary of State.

(2) Any contract so made may be expressed to be made by the Secretary of State in Council.

(3) Any contract so made which, if it were made between private persons, would be by law required to be under seal, may be made, varied or discharged under the hands and seals of two members of the Council of India.

(4) Any contract so made which, if it were made between private persons, would be by law required to be signed by the party to be charged therewith, may be made, varied or discharged under the hands of two members of the Council of India.

(5) Provided that any contract for or relating to the manufacture, sale, purchase or supply of goods, or for or relating to affreightment or the carriage of goods, or to insurance, may, subject to such rules and restrictions as the Secretary of State in Council prescribes, be made and signed on behalf of the Secretary of State in Council by any person upon the permanent establishment of the Secretary of State in Council who is duly empowered by the Secretary of State in Council in this behalf. Contracts so made and signed shall be as valid and effectual as if made as prescribed by the foregoing provisions of this section. Particulars of all contracts so made and signed shall be laid before the Secretary of State in Council in such manner and form and within such times as the Secretary of State in Council prescribes.

(6) The benefit and liability of every contract made in pursuance of this section shall pass to the Secretary of State in Council for the time being.

Power to
execute assur-
ances, etc., in
India.

30. (1) The Governor-General in Council and any local Government may, on behalf and in the name of the Secretary of State in Council, and subject to such provisions or restrictions as the Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council of India, prescribes, sell and dispose of any real or personal estate whatsoever in British India, within the limit of their respective governments, for the time being vested in His Majesty for the purposes of the government of India, or raise money on any such real estate by way of mortgage, and make proper assurances for any of those purposes, and purchase or acquire any property in British India within the said respective limits, and make any contract for the purposes of this Act.

(2) Every assurance and contract made for the purposes of this section shall be executed by such person and in such manner as the Governor-General in Council by resolution directs or authorizes, and if so executed may be enforced by or against the Secretary of State in Council for the time being.

(3) All property acquired in pursuance of this section shall vest in His Majesty for the purposes of the government of India.

Power to
dispose of
escheated
property, etc.

31. The Governor-General in Council, and any other person authorized by any Act passed in that behalf by the Governor-General in Legislative Council, may make any grant or disposition of any property in British India accruing to His Majesty by forfeiture, escheat or lapse, or by devolution as bona vacantia, to or in favour of any relative or connection of the person from whom the property has accrued, or to or in favour of any other person.

Rights and
liabilities of
Secretary of
State in
Council.

32. (1) The Secretary of State in Council may sue and be sued by the name of the Secretary of State in Council, as a body corporate.

(2) Every person shall have the same remedies against the Secretary of State in Council as he might have had against the East India Company if the Government of India Act, 1858, and this Act had not been passed.

(3) The property for the time being vested in His Majesty for the purposes of the government of India shall be liable to the same judgments and executions as it would have been liable to in respect of liabilities lawfully incurred by the East India Company if the Government of India Act, 1858, and this Act had not been passed.

(4) Neither the Secretary of State nor any member of the Council of India shall be personally liable in respect of any assurance or contract made by or on behalf of the Secretary of State in Council, or any other

liability incurred by the Secretary of State or the Secretary of State in Council in his or their official capacity, nor in respect of any contract, covenant or engagement of the East India Company; nor shall any person executing any assurance or contract on behalf of the Secretary of State in Council be personally liable in respect thereof; but all such liabilities, and all costs and damages in respect thereof, shall be borne by the revenues of India.

PART IV.

THE GOVERNOR-GENERAL IN COUNCIL.

General Powers and Duties of Governor-General in Council.

33. The superintendence, direction and control of the civil and military government of India is vested in the Governor-General in Council, who is required to pay due obedience to all such orders as he may receive from the Secretary of State.

General
powers and
duties of
Governor-
General in
Council.

The Governor-General.

34. The Governor-General of India is appointed by His Majesty by warrant under the Royal Sign Manual.

The
Governor-
General.

The Governor-General's Executive Council.

35. The governor-general's executive council consists of the ordinary members and the extraordinary members (if any) thereof.

Constitution
of governor-
general's exe-
cutive council.

36. (1) The ordinary members of the governor-general's executive council shall be appointed by His Majesty by warrant under the Royal Sign Manual.

Ordinary
members of
council.

(2) The number of the ordinary members of the council shall be five, or, if His Majesty thinks fit to appoint a sixth member, six.

(3) Three at least of them must be persons who at the time of their appointment have been for at least ten years in the service of the Crown in India, and one must be a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, of not less than five years' standing.

(4) If any person appointed an ordinary member of the council is at the time of his appointment in the military service of the Crown, he shall not, during his continuance in office as such member, hold any military command or be employed in actual military duties.

37. (1) The Secretary of State in Council may, if he thinks fit, appoint the commander-in-chief for the time being of His Majesty's forces in India to be an extra-

Extraordinary
Members of
Council.

ordinary member of the governor-general's executive council, and in that case the commander-in-chief shall, subject to the provisions of this Act, have rank and precedence in the council next after the governor-general.

(2) When and so long as the council assembles in any province having a governor, he shall be an extraordinary member of the council.

Vice-president
of council.

38. The governor-general shall appoint a member of his executive council to be vice-president thereof.

Meetings.

39. (1) The governor-general's executive council shall assemble at such places in India as the Governor-General in Council appoints.

(2) At any meeting of the council the governor-general or other person presiding and one ordinary member of the council may exercise all the functions of the Governor-General in Council.

Business of
Governor-
General in
Council.

40. (1) All orders and other proceedings of the Governor-General in Council shall be expressed to be made by the Governor-General in Council, and shall be signed by a secretary to the Government of India, or otherwise, as the Governor-General in Council may direct.

(2) The governor-general may make rules and orders for the more convenient transaction of business in his executive council, and every order made, or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the Governor-General in Council.

Procedure
in case of
difference
of opinion.

41. (1) If any difference of opinion arises on any question brought before a meeting of the governor-general's executive council, the Governor-General in Council shall be bound by the opinion and decision of the majority of those present, and, if they are equally divided, the governor-general or other person presiding shall have a second or casting vote.

(2) Provided that whenever any measure is proposed before the Governor-General in Council whereby the safety, tranquillity or interests of British India, or of any part thereof, are or may be, in the judgment of the governor-general, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the council dissent from that opinion, the governor-general may, on his own authority and responsibility, adopt, suspend or reject the measure, in whole or in part.

(3) In every such case any two members of the dissentient majority may require that the adoption, suspension or rejection of the measure, and the fact of their dissent, be reported to the Secretary of State,

and the report shall be accompanied by copies of any minutes which the members of the council have recorded on the subject.

(4) Nothing in this section shall empower the governor-general to do anything which he could not lawfully have done with the concurrence of his council.

42. If the governor-general is obliged to absent himself from any meeting of the council, by indisposition or any other cause, and signifies his intended absence to the council, the vice-president, or, if he is absent, the senior ordinary member present at the meeting, shall preside thereat, with the like powers as the governor-general would have had if present :

Provision for
absence of
governor-
general from
meetings of
council.

Provided that if the governor-general is at the time resident at the place where the meeting is assembled, and is not prevented by indisposition from signing any act of council made at the meeting, the act shall require his signature ; but, if he declines or refuses to sign it, the like provisions shall have effect as in cases where the governor-general, when present, dissents from the majority at a meeting of the council.

43. (1) Whenever the Governor-General in Council declares that it is expedient that the governor-general should visit any part of India unaccompanied by his executive council, the Governor-General in Council may, by order, authorize the governor-general alone to exercise, in his discretion, all or any of the powers which might be exercised by the Governor-General in Council at meetings of the council.

Powers of
governor-
general in
absence from
Council.

(2) The governor-general during absence from his executive council may, if he thinks it necessary, issue, on his own authority and responsibility, any order, which might have been issued by the Governor-General in Council, to any local Government, or to any officers or servants of the Crown acting under the authority of any local Government without previously communicating the order to the local Government ; and any such order shall have the same force as if made by the Governor-General in Council ; but a copy of the order shall be sent forthwith to the Secretary of State and to the local Government, with reasons for making the order.

(3) The Secretary of State in Council may, by order, suspend until further order all or any of the powers of the governor-general under the last foregoing subsection ; and those powers shall accordingly be suspended as from the time of the receipt by the governor-general of the order of the Secretary of State in Council.

War and Treaties.

Restriction
on power of
Governor-
General in
Council to
make war or
treaty.

44. (1) The Governor-General in Council may not, without the express order of the Secretary of State in Council, in any case (except where hostilities have been actually commenced, or preparations for the commencement of hostilities have been actually made against the British Government in India or against any prince or state dependent thereon, or against any prince or state whose territories His Majesty is bound by any subsisting treaty to defend or guarantee), either declare war or commence hostilities or enter into any treaty for making war against any prince or state in India, or enter into any treaty for guaranteeing the possessions of any such prince or state.

(2) In any such excepted case the Governor-General in Council may not declare war, or commence hostilities, or enter into any treaty for making war, against any other prince or state than such as is actually committing hostilities or making preparations as aforesaid, and may not make any treaty for guaranteeing the possessions of any prince or state except on the consideration of that prince or state actually engaging to assist His Majesty against such hostilities commenced or preparations made as aforesaid.

(3) When the Governor-General in Council commences any hostilities or makes any treaty, he shall forthwith communicate the same, with the reasons therefor, to the Secretary of State.

PART V.

LOCAL GOVERNMENTS.

General.

Relation of
local
Governments
to Governor-
General in
Council.

45. (1) Every local Government shall obey the orders of the Governor-General in Council, and keep him constantly and diligently informed of its proceedings and of all matters which ought, in its opinion, to be reported to him, or as to which he requires information, and is under his superintendence, direction and control in all matters relating to the government of its province.

(2) No local Government may make or issue any order for commencing hostilities or levying war, or negotiate or conclude any treaty of peace or other treaty with any Indian prince or state (except in cases of sudden emergency or imminent danger when it appears dangerous to postpone such hostilities or treaty), unless in pursuance of express orders from the Governor-General in Council or from the Secretary of State; and every

such treaty shall, if possible, contain a clause subjecting the same to the ratification or rejection of the Governor-General in Council. If any governor, lieutenant-governor or chief commissioner, or any member of a governor's or lieutenant-governor's executive council, wilfully disobeys any order received from the Governor-General in Council under this sub-section, he may be suspended or removed and sent to England by the Governor-General in Council, and shall be subject to such further pains and penalties as are provided by law in that behalf.

(3) The authority of a local Government is not superseded by the presence in its province of the governor-general.

Governorships.

46. (1) The presidencies of Fort William in Bengal, Fort St. George and Bombay are, subject to the provisions of this Act, governed by the Governors in Council of these presidencies respectively, and the two former presidencies are in this Act referred to as the presidencies of Bengal and of Madras.

Governments
of Bengal,
Madras and
Bombay.

(2) The Governors of Bengal, Madras and Bombay are appointed by His Majesty by warrant under the Royal Sign Manual.

(3) The Secretary of State may, if he thinks fit, by order, revoke or suspend, for such period as he may direct, the appointment of a council for any or all of those presidencies; and whilst any such order is in force the governor of the presidency to which the order refers shall have all the powers of the Governor thereof in Council.

47. (1) The members of a governor's executive council shall be appointed by His Majesty by warrant under the Royal Sign Manual, and shall be of such number, not exceeding four, as the Secretary of State in Council directs.

Members of
executive
councils.

(2) Two at least of them must be persons who at the time of their appointment have been for at least twelve years in the service of the Crown in India.

(3) Provided that, if the commander-in-chief of His Majesty's forces in India (not being likewise governor-general) happens to be resident at Calcutta, Madras or Bombay, he shall, during his continuance there, be a member of the governor's council.

48. Every governor of a presidency shall appoint a member of his executive council to be vice-president thereof.

Vice-president
of council.

49. (1) All orders and other proceedings of the Governor in Council of any presidency shall be expressed to be made by the Governor in Council, and shall be signed by a secretary to the Government of the

Business of
Governor in
Council.

presidency, or otherwise, as the Governor in Council may direct.

(2) A governor may make rules and orders for the more convenient transaction of business in his executive council, and every order made or act done in accordance with those rules and orders shall be treated as being the order or the act of the Governor in Council.

Procedure in case of difference of opinion.

50. (1) If any difference of opinion arises on any question brought before a meeting of a governor's executive council, the Governor in Council shall be bound by the opinion and decision of the majority of those present, and if they are equally divided the governor or other person presiding shall have a second or casting vote.

(2) Provided that, whenever any measure is proposed before a Governor in Council whereby the safety, tranquillity or interests of his presidency, or of any part thereof, are or may be, in the judgment of the governor, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the council dissent from that opinion, the governor may, on his own authority and responsibility, by order in writing, adopt, suspend or reject the measure, in whole or in part.

(3) In every such case the governor and the members of the council present at the meeting shall mutually exchange written communications (to be recorded at large in their secret proceedings) stating the grounds of their respective opinions, and the order of the governor shall be signed by the governor and by those members.

(4) Nothing in this section shall empower a governor to do anything which he could not lawfully have done with the concurrence of his council.

Provision for absence of governor from meetings of council.

51. If a governor is obliged to absent himself from any meeting of his executive council, by indisposition or any other cause, and signifies his intended absence to the council, the vice-president, or, if he is absent, the senior civil member present at the meeting, shall preside thereat, with the like powers as the governor would have had if present:

Provided that if the governor is at the time resident at the place where the meeting is assembled, and is not prevented by indisposition from signing any act of council made at the meeting, the act shall require his signature; but, if he declines or refuses to sign it, the like provisions shall have effect as in cases where the governor, when present, dissents from the majority at a meeting of the council.

The province of Agra.

52. The Secretary of State in Council may, if he thinks fit, direct that the province of Agra be constituted a

presidency under a Governor in Council, and, if that direction is given, the presidency shall be constituted on the terms and under the conditions mentioned in section nineteen of the Government of India Act, 1853, and section four of the Government of India Act, 1854.

16 & 17 Vic.
c. 95.
17 & 18 Vic.
c. 77.

Lieutenant-Governorships and other Provinces.

*53. (1) Each of the following provinces, namely, those known as Bihar and Orissa, the United Provinces of Agra and Oudh, the Punjab, and Burma, is, subject to the provisions of this Act, governed by a lieutenant-governor, with or without an executive council.

Lieutenant-governorships.

(2) The Governor-General in Council may, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute a new province under a lieutenant-governor.

*54. (1) A lieutenant-governor is appointed by the governor-general with the approval of His Majesty.

Lieutenant-governors.

(2) A lieutenant-governor must have been, at the time of his appointment, at least ten years in the service of the Crown in India.

(3) The Governor-General in Council may, with the sanction of His Majesty previously signified by the Secretary of State in Council, declare and limit the extent of the authority of any lieutenant-governor.

55. (1) The Governor-General in Council, with the approval of the Secretary of State in Council, may, by notification, create a council in any province under a lieutenant-governor, for the purpose of assisting the lieutenant-governor in the executive government of the province, and by such notification—

Power to create executive councils for lieutenant-governors.

(a) make provision for determining what shall be the number (not exceeding four) and qualifications of the members of the council; and

(b) make provision for the appointment of temporary or acting members of the council during the absence of any member from illness or otherwise, and for the procedure to be adopted in case of a difference of opinion between a lieutenant-governor and his council, and in the case of equality of votes, and in the case of a lieutenant-governor being obliged to absent himself from his council by indisposition or any other cause:

Provided that, before any such notification is published a draft thereof shall be laid before each House of Parliament for not less than sixty days during the session of Parliament, and if, before the expiration of that time, an address is presented to His Majesty by either House of Parliament against the draft or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft.

(2) Every notification under this section shall be laid before both Houses of Parliament as soon as may be after it is made.

(3) Every member of a lieutenant-governor's executive council shall be appointed by the governor-general, with the approval of His Majesty.

Vice-president of council.

56. A lieutenant-governor who has an executive council shall appoint a member of the council to be vice-president thereof, and that vice-president shall preside at meetings of the council in the absence of the lieutenant-governor.

Business of Lieutenant-Governor in council.

57. A lieutenant-governor who has an executive council may, with the consent of the Governor-General in Council, make rules and orders for more convenient transaction of business in the council, and every order made, or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the Lieutenant-Governor in Council.

Chief Commissioners.

58. Each of the following provinces, namely, those known as Assam, the Central Provinces, the North-West Frontier Province, British Baluchistan, Delhi, Ajmer-Merwara, Coorg, and the Andaman and Nicobar Islands, is, subject to the provisions of this Act, administered by a chief commissioner.

Power to place territory under authority of Governor-General in Council.

59. The Governor-General in Council may, with the approval of the Secretary of State, and by notification, take any part of British India under the immediate authority and management of the Governor-General in Council, and thereupon give all necessary orders and directions respecting the administration of that part, by placing it under a chief commissioner or by otherwise providing for its administration.

Boundaries.

Power to declare and alter boundaries of provinces.

60. The Governor-General in Council may, by notification, declare, appoint or alter the boundaries of any of the provinces into which British India is for the time being divided, and distribute the territories of British India among the several provinces thereof in such manner as may seem expedient, subject to these qualifications, namely:—

- (1) an entire district may not be transferred from one province to another without the previous sanction of the Crown, signified by the Secretary of State in Council; and
- (2) any notification under this section may be disallowed by the Secretary of State in Council.

Saving as to laws.

61. An alteration in pursuance of the foregoing provisions of the mode of administration of any part of British India, or of the boundaries of any part of British India, shall not affect the law for the time being in force in that part.

62. The Governor of Bengal in Council, the Governor of Madras in Council, and the Governor of Bombay in Council may, with the approval of the Secretary of State in Council, and by notification, extend the limits of the towns of Calcutta, Madras and Bombay, respectively; and any Act of Parliament, letters patent, charter, law or usage conferring jurisdiction, power or authority within the limits of those towns respectively shall have effect within the limits as so extended.

Power to extend boundaries of presidency towns.

PART VI.

INDIAN LEGISLATION.

The Governor-General in Legislative Council.

63. (1) For purposes of legislation the governor-general's council shall consist of the members of his executive council with the addition of members nominated or elected in accordance with rules made under this Act. The council so constituted is in this Act referred to as the Indian Legislative Council.

Constitution of the Indian Legislative Council.

(2) The number of additional members so nominated or elected, the number of such members required to constitute a quorum, the term of office of such members, and the manner of filling casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise, shall be such as may be prescribed by rules made under this Act:

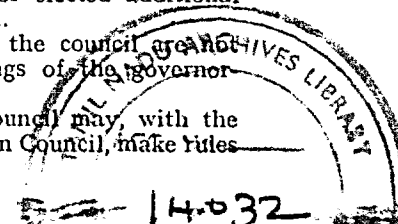
Provided that the aggregate number of members so nominated or elected shall not exceed the number specified in that behalf in the second column of the First Schedule to this Act.

(3) At least one-half of the additional members of the council must be persons not in the civil or military service of the Crown in India; and, if any additional member accepts office under the Crown in India, his seat as an additional member shall thereupon become vacant.

(4) When and so long as the Indian Legislative Council assembles in a province having a lieutenant-governor or chief commissioner, he shall be an additional member of the council, in excess, if necessary, of the aggregate number of nominated or elected additional members prescribed by this section.

(5) The additional members of the council shall be entitled to be present at meetings of the governor-general's executive council.

(6) The Governor-General in Council may, with the approval of the Secretary of State in Council, make rules



as to the conditions under which and manner in which persons resident in India may be nominated or elected as additional members of the Indian Legislative Council, and as to the qualifications for being, and for being nominated or elected, an additional member of that council, and as to any other matter for which rules are authorized to be made under this section, and also as to the manner in which those rules are to be carried into effect.

(7) All rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and those rules shall not be subject to repeal or alteration by the Governor-General in Legislative Council.

Meetings.

64. (1) The Indian Legislative Council shall assemble at such times and places as the Governor-General in Council appoints.

(2) Any meeting of the council may be adjourned, under the authority of the Governor-General in Council, by the governor-general or other person presiding.

(3) In the absence of the governor-general from any meeting of the council the person to preside thereat shall be the vice-president of the council, or, in his absence, the senior ordinary member of the council present at the meeting, or, during the discussion of the annual financial statement or of any matter of general public interest, the vice-president or the member appointed to preside in accordance with rules made under this Act.

(4) If any difference of opinion arises on any question brought before a meeting of the council, the person presiding shall have a second or casting vote.

Legislative powers.

65. (1) The Governor-General in Legislative Council has power to make laws—

- (a) for all persons, for all courts, and for all places and things, within British India; and
- (b) for all subjects of His Majesty and servants of the Crown within other parts of India; and
- (c) for all native Indian subjects of His Majesty, without and beyond as well as within British India; and
- (d) for the government of officers, soldiers and followers in His Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the Army Act; and
- (e) for all persons employed or serving in or belonging to the Royal Indian Marine Service; and
- (f) for repealing or altering any laws which for the time being are in force in any part of British India or apply to persons for whom the Governor-General in Legislative Council has power to make laws.

(2) Provided that the Governor-General in Legislative Council has not, unless expressly so authorized by Act of Parliament, power to make any law repealing or affecting—

(i) any Act of Parliament passed after the year one thousand eight hundred and sixty and extending to British India (including the Army Act and any Act amending the same); or

(ii) any Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom for the government of India;

and has not power to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or dominion of the Crown over any part of British India.

(3) The Governor-General in Legislative Council has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any court, other than a high court, to sentence to the punishment of death any of His Majesty's subjects born in Europe, or the children of such subjects, or abolishing any high court.

66. (1) A law made under this Act for the Royal Indian Marine Service shall not apply to any offence unless the vessel to which the offender belongs is at the time of the commission of the offence within the limits of Indian waters, that is to say, the high seas between the Cape of Good Hope on the West and the Straits of Magellan on the East, and any territorial waters between those limits.

Laws for the Royal Indian Marine Service.

(2) The punishments imposed by any such law for offences shall be similar in character to, and not in excess of, the punishments which may, at the time of making the law, be imposed for similar offences under the Acts relating to His Majesty's Navy, except that, in the case of persons other than Europeans or Americans, imprisonment for any term not exceeding fourteen years, or transportation for life or any less term, may be substituted for penal servitude.

67. (1) At a meeting of the Indian Legislative Council no motion shall be entertained other than a motion for leave to introduce a measure into the council for the purpose of enactment, or having reference to a measure introduced or proposed to be introduced into the council for that purpose, or having reference to some rule for the conduct of business in the council, and no business shall be transacted other than the consideration of those motions or the alteration of those rules.

Business at meetings.

(2) It shall not be lawful, without the previous sanction of the governor-general, to introduce at any meeting of the council any measure affecting—

- (a) the public debt or public revenues of India, or imposing any charge on the revenues of India ; or
- (b) the religion or religious rites and usages of any class of British subjects in India ; or
- (c) the discipline or maintenance of any part of His Majesty's military or naval forces ; or
- (d) the relations of the Government with foreign princes or states.

(3) Notwithstanding anything in the foregoing provisions of this section, the Governor-General in Council may, with the sanction of the Secretary of State in Council, make rules authorizing at any meeting of the Indian Legislative Council the discussion of the annual financial statement of the Governor-General in Council and of any matter of general public interest and the asking of questions, under such conditions and restrictions as may be prescribed in the rules. Rules made under this sub-section may provide for the appointment of a member of the council to preside at any such discussion in the place of the governor-general and of the vice-president, and shall be laid before both Houses of Parliament as soon as may be after they are made, and shall not be subject to repeal or alteration by the Governor-General in Legislative Council.

Assent of
governor-
general to
Acts.

68. (1) When an Act has been passed at a meeting of the Indian Legislative Council, the governor-general, whether he was or was not present in council at the passing thereof, may declare that he assents to the Act, or that he withholds assent from the Act, or that he reserves the Act for the signification of His Majesty's pleasure thereon.

(2) An Act of the Governor-General in Legislative Council has not validity until the governor-general has declared his assent thereto, or, in the case of an Act reserved for the signification of His Majesty's pleasure, until His Majesty has signified his assent to the governor-general through the Secretary of State in Council, and that assent has been notified by the governor-general.

Power of
Crown to
disallow Acts.

69. (1) When an Act of the Governor-General in Legislative Council has been assented to by the governor-general, he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for His Majesty to signify, through the Secretary of State in Council, his disallowance of any such Act.

(2) Where the disallowance of any such Act has been so signified, the governor-general shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

70. The Governor-General in Legislative Council may, subject to the assent of the governor-general, alter the rules for the conduct of legislative business in the Indian Legislative Council (including rules prescribing the mode of promulgation and authentication of Acts passed by that council) ; but any alteration so made may be disallowed by the Secretary of State in Council, and if so disallowed shall have no effect.

Rules for
conduct of
legislative
business.

Regulations and Ordinances.

71. (1) The local Government of any part of British India to which this section for the time being applies may propose to the Governor-General in Council the draft of any regulation for the peace and good government of that part, with the reasons for proposing the regulation.

Power to
make regu-
lations.

(2) Thereupon the Governor-General in Council may take any such draft and reasons into consideration ; and, when any such draft has been approved by the Governor-General in Council and assented to by the governor-general, it shall be published in the Gazette of India and in the local official gazette, if any, and shall thereupon have the like force of law and be subject to the like disallowance as if it were an Act of the Governor-General in Legislative Council.

(3) The governor-general shall send to the Secretary of State in Council an authentic copy of every regulation to which he has assented under this section.

(4) The Secretary of State may, by resolution in council, apply this section to any part of British India, as from a date to be fixed in the resolution, and withdraw the application of this section from any part to which it has been applied.

72. The governor-general may, in cases of emergency, make and promulgate ordinances for the peace and good government of British India or any part thereof, and any ordinance so made shall, for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Governor-General in Legislative Council ; but the power of making ordinances under this section is subject to the like restrictions as the power of the Governor-General in Legislative Council to make laws ; and any ordinance made under this section is subject to the like disallowance as an Act passed by the Governor-General in Legislative Council, and may be controlled or superseded by any such Act.

Power to
make ordi-
nances in
cases of
emergency.

Local Legislatures.

73. (1) For purposes of legislation, the council of a governor, or of a lieutenant-governor having an executive council, shall consist of the members of his executive

Local legis-
latures.

council with the addition of members nominated or elected in accordance with rules made under this Act.

(2) In the case of the councils of the governors of Madras and Bombay (and, if so ordered by the governor of Bengal, in the case of his council), the advocate-general or acting advocate-general for the time being of the presidency shall be one of the members so nominated.

(3) The legislative council of a lieutenant-governor not having an executive council, or of a chief commissioner, shall consist of members nominated or elected in accordance with rules made under this Act.

(4) Councils constituted as provided by this section are in this Act referred to as local legislative councils, and Governors, Lieutenant-Governors and Chief Commissioners in Legislative Council are in this Act referred to as local legislatures.

Constitution of legislative councils in Bengal, Madras and Bombay.

74. (1) The number of additional members nominated or elected to the legislative council of the Governor of Bengal, Madras or Bombay, the number of such members required to constitute a quorum, the term of office of such members, and the manner of filling casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise, shall, in the case of each such council, be such as may be prescribed by rules made under this Act:

Provided that the aggregate number of members so nominated or elected shall not exceed the number specified in that behalf in the second column of the First Schedule to this Act.

(2) At least one-half of the additional members nominated or elected to any of those councils must be persons not in the civil or military service of the Crown in India; and if any such person accepts office under the Crown in India his seat as a member shall thereupon become vacant.

(3) An additional member of any of those councils is not entitled to be present at meetings of the governor's executive council.

(4) The Governor-General in Council may, with the approval of the Secretary of State in Council, make rules as to the conditions under which and manner in which persons resident in India may be nominated or elected additional members of any of those legislative councils, and as to the qualifications for being, and for being nominated or elected, an additional member of any of those councils, and as to any other matter for which rules are authorized to be made under this section, and also as to the manner in which those rules are to be carried into effect.

(5) All rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and those rules shall not be subject to repeal or alteration by the Governor-General in Legislative Council.

75. (1) The legislative council of the Governor of Bengal, Madras or Bombay shall assemble at such times and places as the governor appoints.

Meetings of legislative councils of Bengal, Madras and Bombay.

(2) Any meeting of the council may be adjourned by the governor, or, under his authority, by the other person presiding.

(3) In the absence of the governor from any meeting of the council the person to preside thereat shall be the vice-president of the council, or, in his absence, the senior civil member of the executive council present at the meeting, or, during the discussion of the annual financial statement or of any matter of general public interest, the vice-president or the member appointed to preside in accordance with rules made under this Act.

(4) If any difference of opinion arises on any question brought before a meeting of the council, the person presiding shall have a second or casting vote.

76. (1) The number of members nominated or elected to the legislative council of a lieutenant-governor or chief commissioner, the number of such members required to constitute a quorum, the term of office of such members, and the manner of filling casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise, shall, in the case of each such council, be such as may be prescribed by rules made under this Act:

Constitution of legislative councils of lieutenant governors and chief commissioners.

Provided that the aggregate number of members so nominated or elected shall not, in the case of any legislative council mentioned in the first column of the First Schedule to this Act, exceed the number specified in that behalf in the second column of that Schedule.

(2) At least one-third of the persons so nominated or elected to the legislative council of a lieutenant-governor or chief commissioner must be persons not in the civil or military service of the Crown in India.

(3) The Governor-General in Council may, with the approval of the Secretary of State in Council, make rules as to the conditions under which and manner in which persons resident in India may be nominated or elected members of any of those legislative councils, and as to the qualifications for being, and for being nominated or elected, a member of any of those councils, and as to any other matter for which rules are authorized to be made under this section, and as to the manner in which those rules are to be carried into effect.

(4) All rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and those rules shall not be subject to repeal or alteration by the Governor-General in Legislative Council.

Power to
constitute
new local
legislatures.

77. (1) When a new lieutenant-governorship is constituted under this Act, the Governor-General in Council may, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute the Lieutenant-Governor in Legislative Council of the province, as from a date specified in the notification, a local legislature for that province, and define the limits of the province for which the Lieutenant-Governor in Legislative Council is to exercise legislative powers.

(2) The Governor-General in Council may, by notification, extend the provisions of this Act relating to legislative councils of lieutenant-governors, subject to such modifications and adaptations as he may consider necessary, to any province for the time being under a chief commissioner.

Meetings of
legislative
councils of
lieutenant-
governors or
chief com-
missioners.

78. (1) Every lieutenant-governor who has no executive council, and every chief commissioner who has a legislative council, shall appoint a member of his legislative council to be vice-president thereof.

(2) In the absence of the lieutenant-governor or chief commissioner from any meeting of his legislative council the person to preside thereat shall be the vice-president of the council, or, in his absence, the member of the council who is highest in official rank among those holding office under the Crown who are present at the meeting, or, during the discussion of the annual financial statement or of any matter of general public interest, the vice-president or the member appointed to preside in accordance with rules made under this Act.

(3) If any difference of opinion arises on any question brought before a meeting of the council, the person presiding shall have a second or casting vote.

Powers of
local legis-
latures.

79. (1) The local legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province.

(2) The local legislature of any province may, with the previous sanction of the governor-general, but not otherwise, repeal or alter as to that province any law made either before or after the commencement of this Act by any authority in British India other than that local legislature.

(3) The local legislature of any province may not, without the previous sanction of the governor-general, make or take into consideration any law—

(a) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the government of India; or

(b) regulating any of the current coin, or the issue of any bills, notes or other paper currency; or

(c) regulating the conveyance of letters by the post office or messages by the electric telegraph; or

(d) altering in any way the Indian Penal Code; or

(e) affecting the religion or religious rites and usages of any class of British subjects in India; or

(f) affecting the discipline or maintenance of any part of His Majesty's naval or military forces; or

(g) regulating patents or copyright; or

(h) affecting the relations of the Government with foreign princes or states.

(4) The local legislature of any province has not power to make any law affecting any Act of Parliament.

(5) Provided that an Act or a provision of an Act made by a local legislature, and subsequently assented to by the governor-general in pursuance of this Act, shall not be deemed invalid by reason only of its requiring the previous sanction of the governor-general under this Act.

80. (1) At a meeting of a local legislative council no motion shall be entertained other than a motion for leave to introduce a measure into the council for the purpose of enactment, or having reference to a measure introduced or proposed to be introduced into the council for that purpose, or having reference to some rule for the conduct of business in the council, and no business shall be transacted other than the consideration of those motions or the alteration of those rules.

Business at
meetings.

(2) It shall not be lawful for any member of any local legislative council to introduce, without the previous sanction of the governor, lieutenant-governor or chief commissioner, any measure affecting the public revenues of the province or imposing any charge on those revenues.

(3) Notwithstanding anything in the foregoing provisions of this section, the local Government may, with the sanction of the Governor-General in Council, make rules authorizing, at any meeting of the local legislative council, the discussion of the annual financial statement of the local Government, and of any matter of general public interest, and the asking of questions, under such conditions and restrictions as may be prescribed in the rules. Rules made under this sub-section for any council may provide for the appointment of a member of the council to preside at any such discussion in the place of the governor, lieutenant-governor or chief

commissioner, as the case may be, and of the vice-president, and shall be laid before both Houses of Parliament as soon as may be after they are made, and shall not be subject to repeal or alteration by the Governor-General in Legislative Council or the local legislature.

Assent to
Acts of local
legislatures.

81. (1) When an Act has been passed at a meeting of a local legislative council, the governor, lieutenant-governor or chief commissioner, whether he was or was not present in council at the passing of the Act, may declare that he assents to or withholds his assent from the Act.

(2) If the governor, lieutenant-governor or chief commissioner withholds his assent from any such Act, the Act has no effect.

(3) If the governor, lieutenant-governor or chief commissioner assents to any such Act, he shall forthwith send an authentic copy of the Act to the governor-general, and the Act shall not have validity until the governor-general has assented thereto and that assent has been signified by the governor-general to, and published by, the governor, lieutenant-governor or chief commissioner.

(4) Where the governor-general withholds his assent from any such Act, he shall signify to the governor, lieutenant-governor or chief commissioner in writing his reason for so withholding his assent.

Power of
Crown to
disallow Acts
of local
legislatures.

82. (1) When any such Act has been assented to by the governor-general, he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for His Majesty to signify, through the Secretary of State in Council, his disallowance of any such Act.

(2) Where the disallowance of any such Act has been so signified, the governor, lieutenant-governor or chief commissioner shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

Rules for
conduct of
legislative
business.

83. (1) The local Government of any province for which a local legislative council is hereafter constituted under this Act shall, before the first meeting of that council, and with the sanction of the Governor-General in Council, make rules for the conduct of legislative business in that council (including rules for prescribing the mode of promulgation and authentication of laws passed by that council).

(2) A local legislature may, subject to the assent of the governor, lieutenant-governor or chief commissioner, alter the rules for the conduct of legislative business in the local legislative council (including rules prescribing the mode of promulgation and authentication of laws passed by the council); but any alteration so made may be disallowed by the Governor-General in Council, and if so disallowed shall have no effect.

Validity of Indian Laws.

84. A law made by any authority in British India shall not be deemed invalid solely on account of any one or more of the following reasons:—

Removal of
doubts as to
validity of
certain
Indian laws.

- (a) in the case of a law made by the Governor-General in Legislative Council, because it affects the prerogative of the Crown; or
- (b) in the case of any law, because the requisite proportion of members not holding office under the Crown in India was not complete at the date of its introduction into the council or its enactment; or
- (c) in the case of a law made by a local legislature, because it confers on magistrates, being justices of the peace, the same jurisdiction over European British subjects as that legislature, by Acts duly made, could lawfully confer on magistrates in the exercise of authority over other British subjects in the like cases.

PART VII.

SALARIES, LEAVE OF ABSENCE, VACATION OF OFFICE, APPOINTMENTS, ETC.

85. (1) There shall be paid to the Governor-General of India, and to the other persons mentioned in the Second Schedule to this Act, out of the revenues of India, such salaries, not exceeding in any case the maximum specified in that behalf in that Schedule, and such allowances (if any) for equipment and voyage, as the Secretary of State in Council may by order fix in that behalf, and, subject to or in default of any such order, as are payable at the commencement of this Act:

Salaries and
allowances of
Governor-
General and
certain other
officials in
India.

(2) Provided as follows:—

- (a) an order affecting salaries of members of the governor-general's executive council may not be made without the concurrence of a majority of votes at a meeting of the Council of India;
- (b) if, any person to whom this section applies holds or enjoys any pension or salary, or any office of profit under the Crown or under any public office, his salary under this section shall be reduced by the amount of the pension, salary or profits of office so held or enjoyed by him;
- (c) nothing in the provisions of this section with respect to allowances shall authorize the imposition of any additional charge on the revenues of India.

(3) The remuneration payable to a person under this section shall commence on his taking upon himself the execution of his office, and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein.

Leave of absence to members of executive councils.

86. (1) The Governor-General in Council may grant to any of the ordinary members of his executive council, and a Governor in Council may grant to any member of his executive council, leave of absence under medical certificate for a period not exceeding six months.

(2) Where a member of council obtains leave of absence in pursuance of this section, he shall retain his office during his absence, and shall on his return and resumption of his duties be entitled to receive half his salary for the period of his absence; but if his absence exceeds six months his office shall become vacant.

Provisions as to absence from India or presidency.

87. (1) If the governor-general, or a governor, or the commander-in-chief of His Majesty's forces in India, and, subject to the foregoing provisions of this Act as to leave of absence, if any ordinary member of the executive council of the governor-general, or any member of the executive council of a governor departs from India, intending to return to Europe, his office shall thereupon become vacant.

(2) No act or declaration of the governor-general or a governor or a member of an executive council, other than as aforesaid, except a declaration in writing under hand and seal, delivered to a secretary to the Government of India or to the chief secretary of the presidency wherein he is, in order to its being recorded, shall be deemed or held as a resignation or surrender of his office.

(3) If the governor-general, or any ordinary member of the governor-general's executive council, leaves India otherwise than in the known actual service of the Crown, and if any governor, lieutenant-governor or member of a governor's executive council leaves the province to which he belongs, otherwise than as aforesaid, his salary and allowances shall not be payable during his absence to any person for his use.

(4) If any such officer, not having proceeded or intended to proceed to Europe, dies during his absence and whilst intending to return to India or to his province, his salary and allowances shall, subject to any rules in that behalf made by the Secretary of State in Council, be paid to his personal representatives.

(5) If any such officer does not return to India or his province, or returns to Europe, his salary and allowances shall be deemed to have ceased on the day of his leaving India or his province.

Conditional appointments.

88. (1) His Majesty may, by warrant under His Royal Sign Manual, appoint any person conditionally to

succeed to any of the offices of governor-general, governor, ordinary member of the executive council of the governor-general, or member of the executive council of a governor, in the event of the office becoming vacant, or in any other event or contingency expressed in the appointment, and revoke any such conditional appointment.

(2) A person so conditionally appointed shall not be entitled to any authority, salary or emolument appertaining to the office to which he is appointed, until he is in the actual possession of the office.

89. (1) If any person entitled under a conditional appointment to succeed to the office of governor-general, or appointed absolutely to that office, is in India on or after the event on which he is to succeed, and thinks it necessary to exercise the powers of governor-general before he takes his seat in council, he may make known by notification his appointment and his intention to assume the office of governor-general.

Power for governor-general to exercise powers before taking seat.

(2) After the notification, and thenceforth until he repairs to the place where the council may assemble, he may exercise alone all or any of the powers which might be exercised by the Governor-General in Council.

(3) All acts done in the council after the date of the notification, but before the communication thereof to the council, shall be valid, subject, nevertheless, to revocation or alteration by the person who has so assumed the office of governor-general.

(4) When the office of governor-general is assumed under the foregoing provision, the vice-president, or, if he is absent, the senior ordinary member of the council then present, shall preside therein, with the same powers as the governor-general would have had if present.

90. (1) If a vacancy occurs in the office of governor-general when there is no conditional or other successor in India to supply the vacancy, the governor who was first appointed to the office of governor by His Majesty shall hold and execute the office of governor-general until a successor arrives or until some person in India is duly appointed thereto.

Temporary vacancy in office of governor-general.

(2) Every such acting governor-general, while acting as such, shall have and may exercise all the rights and powers of the office of governor-general, and shall be entitled to receive the emoluments and advantages appertaining to the office, forgoing the salary and allowances appertaining to his office of governor; and his office of governor shall be supplied, for the time during which he acts as governor-general, in the manner directed by this Act with respect to vacancies in the office of governor.

(3) If, on the vacancy occurring, it appears to the governor, who by virtue of this section holds and executes

the office of governor-general, necessary to exercise the powers thereof before he takes his seat in council, he may make known by notification his appointment, and his intention to assume the office of governor-general, and thereupon the provisions of this Act respecting the assumption of the office by a person conditionally appointed to succeed thereto shall apply.

(4) Until such a governor has assumed the office of governor-general, if no conditional or other successor is on the spot to supply such vacancy, the vice-president, or, if he is absent, the senior ordinary member of the executive council, shall hold and execute the office of governor-general until the vacancy is filled in accordance with the provisions of this Act.

(5) Every vice-president or other member of council so acting as governor-general, while so acting, shall have and may exercise all the rights and powers of the office of governor-general, and shall be entitled to receive the emoluments and advantages appertaining to the office, forgoing his salary and allowances as member of council for that period.

Temporary
vacancy in
office of
governor.

91. (1) If a vacancy occurs in the office of governor when no conditional or other successor is on the spot to supply the vacancy, the vice-president, or, if he is absent, the senior member of the governor's executive council, or, if there is no council, the chief secretary to the local Government, shall hold and execute the office of governor until a successor arrives, or until some other person on the spot is duly appointed thereto.

(2) Every such acting governor shall, while acting as such, be entitled to receive the emoluments and advantages appertaining to the office of governor, forgoing the salary and allowances appertaining to his office of member of council or secretary.

Temporary
vacancy in
office of
member of
an executive
council.

92. (1) If a vacancy occurs in the office of an ordinary member of the executive council of the governor-general or a member of the executive council of a governor, and there is no conditional or other successor present on the spot, the Governor-General in Council or Governor in Council, as the case may be, shall supply the vacancy by appointing a temporary member of council.

(2) Until a successor arrives the person so appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive the emoluments and advantages appertaining to the office, forgoing all emoluments and advantages to which he was entitled at the time of his being appointed to that office.

(3) If any ordinary member of the executive council of the governor-general or any member of the executive council of a governor is, by infirmity or otherwise,

rendered incapable of acting or of attending to act as such, or is absent on leave, then, if any person has been conditionally appointed to succeed to his office and is on the spot, the place of that member shall be supplied by that person, and, if no person conditionally appointed to succeed to the office is on the spot, the Governor-General in Council or Governor in Council, as the case may be, shall appoint some person to be a temporary member of council.

(4) Until the return to duty of the member so incapable or absent, the person conditionally or temporarily appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive half the salary of the member of council whose place he fills, and also half the salary of any other office which he may hold, if he hold any such office, the remaining half of such last-named salary being at the disposal of the Governor-General in Council or Governor in Council, as the case may be.

(5) Provided as follows:—

(a) no person may be appointed a temporary member of council who might not have been appointed under this Act to fill the vacancy supplied by the temporary appointment; and

(b) if the Secretary of State informs the governor-general that it is not the intention of His Majesty to fill a vacancy in the governor-general's executive council, no temporary appointment may be made under this section to fill the vacancy, and if any such temporary appointment has been made before the date of the receipt of the information by the governor-general, the tenure of the person temporarily appointed shall cease from that date.

93. (1) A nominated or elected member of the Indian Legislative Council or of a local legislative council may resign his office to the governor-general or to the governor, lieutenant-governor or chief commissioner, as the case may be, and on the acceptance of the resignation the office shall become vacant.

Vacancies in
legislative
councils.

(2) If for a period of two consecutive months any such member is absent from India or unable to attend to the duties of his office, the governor-general, governor, lieutenant-governor or chief commissioner, as the case may be, may, by notification published in the Government Gazette, declare that the seat in council of that member has become vacant.

94. Subject to the provisions of this Act, the Secretary of State in Council may, with the concurrence of

Leave.

a majority of votes at a meeting of the Council of India, make rules as to the absence on leave of persons in the service of the Crown in India, and the terms as to continuance, variation or cessation of pay, salary and allowances on which any such leave may be granted.

Power to make rules as to Indian appointments.

95. (1) The Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council of India, may make rules for distributing between the several authorities in India the power of making appointments to and promotions in offices under the Crown in India, and may reinstate officers and servants suspended or removed by any of those authorities.

(2) Subject to such rules, all appointments to offices and commands in India, and all promotions, which, by law, or under any regulations, usage or custom, are, at the commencement of this Act, made by any authority in India, shall, subject to the qualifications, conditions and restrictions then affecting such appointments and promotions, respectively, continue to be made in India by the like authority.

No disabilities in respect of religion, colour, or place of birth.

96. No native of British India, nor any subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any office under the Crown in India.

PART VIII.

THE INDIAN CIVIL SERVICE.

Rules for admission to the Indian Civil Service.

97. (1) The Secretary of State in Council may, with the advice and assistance of the Civil Service Commissioners, make rules for the examination, under the superintendence of those Commissioners, of British subjects desirous of becoming candidates for appointment to the Indian Civil Service.

(2) The rules shall prescribe the age and qualifications of the candidates, and the subjects of examination.

(3) All rules made in pursuance of this section shall be laid before Parliament within fourteen days after the making thereof, or, if Parliament is not then sitting, then within fourteen days after the next meeting of Parliament.

(4) The candidates certified to be entitled under the rules shall be recommended for appointment according to the order of their proficiency as shown by their examination.

(5) Such persons only as are so certified may be appointed or admitted to the Indian Civil Service by the Secretary of State in Council.

Offices reserved to the Indian Civil Service.

98. Subject to the provisions of this Act, all vacancies happening in any of the offices specified or referred to in the Third Schedule to this Act, and all such offices

which may be created hereafter, shall be filled from amongst the members of the Indian Civil Service.

99. (1) The authorities in India, by whom appointments are made to offices in the Indian Civil Service, may appoint to any such office any person of proved merit and ability domiciled in British India and born in British India of parents habitually resident in India and not established there for temporary purposes only, although the person so appointed has not been admitted to that service in accordance with the foregoing provisions of this Act.

Power to appoint certain persons to reserved offices.

(2) Every such appointment shall be made subject to such rules as may be prescribed by the Governor-General in Council and sanctioned by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council of India.

(3) The Governor-General in Council may, by resolution, define and limit the qualification of persons who may be appointed under this section, but every resolution made for that purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for thirty days before both Houses of Parliament.

100. (1) Where it appears to the authority in India by whom an appointment is to be made to any office reserved to members of the Indian Civil Service, that a person not being a member of that service ought, under the special circumstances of the case, to be appointed thereto, the authority may appoint thereto any person who has resided for at least seven years in India and who has, before his appointment, fulfilled all the tests (if any) which would be imposed in the like case on a member of that service.

Power to make provisional appointments in certain cases.

(2) Every such appointment shall be provisional only, and shall forthwith be reported to the Secretary of State, with the special reasons for making it; and, unless the Secretary of State in Council approves the appointment, with the concurrence of a majority of votes at a meeting of the Council of India, and within twelve months from the date of the appointment intimates such approval to the authority by whom the appointment was made, the appointment shall be cancelled.

PART IX.

THE INDIAN HIGH COURTS.

Constitution.

101. (1) The high courts referred to in this Act are the high courts of judicature for the time being established in British India by letters patent.

Constitution of high courts.

(2) Each high court shall consist of a chief justice and as many other judges as His Majesty may think fit to appoint: Provided as follows:—

- (i) the Governor-General in Council may appoint persons to act as additional judges of any high court, for such period, not exceeding two years, as may be required; and the judges so appointed shall, whilst so acting, have all the powers of a judge of the high court appointed by His Majesty under this Act;
- (ii) the maximum number of judges of a high court, including the chief justice and additional judges, shall be twenty.
- (3) A judge of a high court must be—
 - (a) a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland, of not less than five years' standing; or
 - (b) a member of the Indian Civil Service of not less than ten years' standing, and having for at least three years served as, or exercised the powers of, a district judge; or
 - (c) a person having held judicial office, not inferior to that of a subordinate judge or a judge of a small cause court, for a period of not less than five years; or
 - (d) a person having been a pleader of a high court for a period of not less than ten years.

(4) Provided that not less than one-third of the judges of a high court, including the chief justice but excluding additional judges, must be such barristers or advocates as aforesaid, and that not less than one-third must be members of the Indian Civil Service.

(5) The high court for the North-Western Provinces may be styled the high court of judicature at Allahabad, and the high court at Fort William in Bengal is in this Act referred to as the high court at Calcutta.

102. (1) Every judge of a high court shall hold his office during His Majesty's pleasure.

(2) Any such judge may resign his office, in the case of the high court at Calcutta, to the Governor-General in Council, and in other cases to the local Government.

103. (1) The chief justice of a high court shall have rank and precedence before the other judges of the same court.

(2) All the other judges of a high court shall have rank and precedence according to the seniority of their appointments, unless otherwise provided in their patents.

104. (1) The Secretary of State in Council may fix the salaries, allowances, furloughs, retiring pensions, and (where necessary) expenses for equipment and voyage, of the chief justices and other judges of the several

Tenure of office of judges of high courts.

Precedence of judges of high courts.

Salaries, etc., of judges of high courts.

high courts, and may alter them, but any such alteration shall not affect the salary of any judge appointed before the date thereof.

(2) The remuneration fixed for a judge under this section shall commence on his taking upon himself the execution of his office, and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein.

(3) If a judge of a high court dies during his voyage to India, or within six months after his arrival there, for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, such a sum of money as will, with the amount received by or due to him at the time of his death on account of salary, make up the amount of one year's salary.

(4) If a judge of a high court dies while in possession of his office and after the expiration of six months from his arrival in India for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, over and above the sum due to him at the time of his death, a sum equal to six months' salary.

105. (1) On the occurrence of a vacancy in the office of chief justice of a high court, and during any absence of such a chief justice, the Governor-General in Council in the case of the high court at Calcutta, and the local Government in other cases, shall appoint one of the other judges of the same high court to perform the duties of chief justice of the court, until some person has been appointed by His Majesty to the office of chief justice of the court, and has entered on the discharge of the duties of that office, or until the chief justice has returned from his absence, as the case requires.

(2) On the occurrence of a vacancy in the office of any other judge of a high court, and during any absence of any such judge, or on the appointment of any such judge to act as chief justice, the Governor-General in Council in the case of the high court at Calcutta, and the local Government in other cases, may appoint a person, with such qualifications as are required in persons to be appointed to the high court, to act as a judge of the court; and the person so appointed may sit and perform the duties of a judge of the court, until some person has been appointed by His Majesty to the office of judge of the court, and has entered on the discharge of the duties of the office, or until the absent judge has returned from his absence, or until the Governor-General in Council or the local Government, as the case may be, sees cause to cancel the appointment of the acting judge.

Provision for vacancy in the office of chief justice or other judge

Jurisdiction.

Jurisdiction of high courts.

106. (1) The several high courts are courts of record and have such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in them by letters patent, and, subject to the provisions of any such letters patent, all such jurisdiction, powers and authority as are vested in those courts respectively at the commencement of this Act.

(2) The high courts have not and may not exercise any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

Powers of high court with respect to subordinate courts.

107. Each of the high courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,—

- (a) call for returns ;
- (b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction ;
- (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts ;
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts ; and
- (e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts ;

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any Act for the time being in force, and shall require the previous approval, in the case of the high court at Calcutta, of the Governor-General in Council, and in other cases of the local Government.

Exercise of jurisdiction by single judges or division courts.

108. (1) Each high court may by its own rules provide as it thinks fit for the exercise, by one or more judges, or by division courts constituted by two or more judges, of the high court, of the original and appellate jurisdiction vested in the court.

(2) The chief justice of each high court shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the chief justice, are to constitute the several division courts.

109. (1) The Governor-General in Council may, by order, transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the high courts, and authorize any high court to exercise all or any portion of its jurisdiction in any part of British India not included within the limits for which the high court was established, and also to exercise any such jurisdiction in respect of Christian subjects of His Majesty resident in any part of India outside British India.

Power for Governor-General in Council to alter local limits of jurisdiction of high courts.

(2) The Governor-General in Council shall transmit to the Secretary of State an authentic copy of every order made under this section.

(3) His Majesty may signify, through the Secretary of State in Council, his disallowance of any such order, and such disallowance shall make void and annul the order as from the day on which the governor-general notifies that he has received intimation of the disallowance, but no act done by any high court before such notification shall be deemed invalid by reason only of such disallowance.

110. (1) The governor-general, each governor, and each of the members of their respective executive councils, shall not—

Exemption from jurisdiction of high court

- (a) be subject to the original jurisdiction of any high court by reason of anything counselled, ordered or done by any of them in his public capacity only ; nor
- (b) be liable to be arrested or imprisoned in any suit or proceeding in any high court acting in the exercise of its original jurisdiction ; nor
- (c) be subject to the original criminal jurisdiction of any high court in respect of any offence not being treason or felony.

(2) The exemption under this section from liability to arrest and imprisonment shall extend also to the chief justices and other judges of the several high courts.

111. The order in writing of the Governor-General in Council for any act shall, in any proceeding, civil or criminal, in any high court acting in the exercise of its original jurisdiction, be a full justification of the act, except so far as the order extends to any European British subject ; but nothing in this section shall exempt the governor-general, or any member of his executive council, or any person acting under their orders, from any proceedings in respect of any such act before any competent Court in England.

Written order by governor-general justification for act in any court in India.

Law to be administered.

112. The high courts at Calcutta, Madras and Bombay, in the exercise of their original jurisdiction in suits against inhabitants of Calcutta, Madras or Bombay, as the case may be, shall, in matters of inheritance and

Law to be administered in cases of inheritance and succession.

succession to lands, rents and goods, and in matters of contract and dealing between party and party, when both parties are subject to the same personal law or custom having the force of law, decide according to that personal law or custom, and when the parties are subject to different personal laws or customs having the force of law, decide according to the law or custom to which the defendant is subject.

Additional High Courts.

Power to establish additional high courts.

113. His Majesty may, if he sees fit, by letters patent, establish a high court of judicature in any territory in British India, whether or not included within the limits of the local jurisdiction of another high court, and confer on any high court so established any such jurisdiction, powers and authority as are vested in or may be conferred on any high court existing at the commencement of this Act; and, where a high court is so established in any area included within the limits of the local jurisdiction of another high court, His Majesty may, by letters patent, alter those limits, and make such incidental, consequential and supplemental provisions as may appear to be necessary by reason of the alteration.

Advocate-General.

Appointment and powers of advocate-general.

114. (1) His Majesty may, by warrant under His Royal Sign Manual, appoint an advocate-general for each of the presidencies of Bengal, Madras and Bombay.

(2) The advocate-general for each of those presidencies may take on behalf of His Majesty such proceedings as may be taken by His Majesty's Attorney-General in England.

PART X.

ECCLESIASTICAL ESTABLISHMENT.

Jurisdiction of Indian bishops.

115. (1) The bishops of Calcutta, Madras and Bombay have and may exercise within their respective dioceses such episcopal functions, and such ecclesiastical jurisdiction for the superintendence and good government of the ministers of the Church of England therein, as His Majesty may, by letters patent, direct.

(2) The Bishop of Calcutta is the Metropolitan Bishop in India, subject nevertheless to the general superintendence and revision of the Archbishop of Canterbury.

(3) Each of the bishops of Madras and Bombay is subject to the Bishop of Calcutta as such Metropolitan, and must at the time of his appointment to his bishopric, or at the time of his consecration as bishop, take an oath of obedience to the Bishop of Calcutta, in such

manner as His Majesty, by letters patent, may be pleased to direct.

(4) His Majesty may, by letters patent, vary the limits of the dioceses of Calcutta, Madras and Bombay.

(5) Nothing in this Act or in any such letters patent as aforesaid shall prevent any person who is or has been bishop of any diocese in India from performing episcopal functions, not extending to the exercise of jurisdiction, in any diocese or reputed diocese at the request of the bishop thereof.

116. (1) The Bishop of Calcutta may admit into the holy orders of deacon or priest any person whom he, on examination, deems duly qualified specially for the purpose of taking on himself the cure of souls, or officiating in any spiritual capacity, within the limits of the diocese of Calcutta, and residing therein.

Power to admit to holy orders.

(2) The deposit with the bishop of a declaration of such a purpose, and a written engagement to perform the same, signed by the person seeking ordination, shall be a sufficient title with a view to his ordination.

(3) It must be distinctly stated in the letters of ordination of every person so admitted to holy orders that he has been ordained for the cure of souls within the limits of the diocese of Calcutta only.

(4) Unless a person so admitted is a British subject of or belonging to the United Kingdom, he shall not be required to take the oaths and make the subscriptions which persons ordained in England are required to take and make.

(5) Nothing in this section shall affect any letters patent issued by His Majesty.

117. If any person under the degree of bishop is appointed to the bishopric of Calcutta, Madras or Bombay, being at the time of his appointment resident in India, the Archbishop of Canterbury, if so required to do by His Majesty by letters patent, may issue a commission under his hand and seal, directed to the two remaining bishops, authorizing and charging them to perform all requisite ceremonies for the consecration of the person so to be appointed.

Consecration of person resident in India appointed to bishopric.

118. (1) The bishops and archdeacons of Calcutta, Madras and Bombay are appointed by His Majesty by letters patent, and there may be paid to them, or to any of them, out of the revenues of India, such salaries and allowances as may be fixed by the Secretary of State in Council; but any power of alteration under this enactment shall not be exercised so as to impose any additional charge on the revenues of India.

Salaries and allowances of bishops and archdeacons.

(2) The remuneration fixed for a bishop or archdeacon under this section shall commence on his taking upon himself the execution of his office, and be the whole profit or advantage which he shall enjoy from his office

during his continuance therein, and continue so long as he exercises the functions of his office.

(3) There shall be paid out of the revenues of India the expenses of visitations of the said bishops, but no greater sum may be issued on account of those expenses than is allowed by the Secretary of State in Council.

Payments to representatives of bishops.

119. (1) If the Bishop of Calcutta dies during his voyage to India for the purpose of taking upon himself the execution of his office, or if the Bishop of Calcutta, Madras or Bombay dies within six months after his arrival there for that purpose, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, such a sum of money as will, with the amount received by or due to him at the time of his death on account of salary, make up the amount of one year's salary.

(2) If the Bishop of Calcutta, Madras or Bombay dies while in possession of his office and after the expiration of six months from his arrival in India for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal representatives, out of the revenues of India, over and above the sum due to him at the time of his death, a sum equal to six months' salary.

Pensions to bishops.

120. His Majesty may, by warrant under the Royal Sign Manual, countersigned by the Chancellor of the Exchequer, grant, out of the revenues of India, to any Bishop of Calcutta a pension not exceeding fifteen hundred pounds per annum if he has resided in India as Bishop of Calcutta, Madras or Bombay or arch-deacon for ten years, or one thousand pounds per annum if he has resided in India as Bishop of Calcutta for seven years, or seven hundred and fifty pounds per annum if he has resided in India as Bishop of Calcutta for five years, or to any Bishop of Madras or Bombay a pension not exceeding eight hundred pounds per annum, to be paid quarterly, if he has resided in British India as such bishop for fifteen years.

Furlough rules.

121. His Majesty may make such rules as to the leave of absence of the Bishops of Calcutta, Madras and Bombay on furlough or medical certificate as seem to His Majesty expedient.

Establishment of chaplains of Church of Scotland.

122. (1) Two members of the establishment of chaplains maintained in each of the presidencies of Bengal, Madras and Bombay must always be ministers of the Church of Scotland, and shall be entitled to have, out of the revenues of India, such salary as is from time to time allotted to the military chaplains in the several presidencies.

(2) The ministers so appointed chaplains must be ordained and inducted by the presbytery of Edinburgh according to the forms and solemnities used in the

Church of Scotland, and shall be subject to the spiritual and ecclesiastical jurisdiction in all things of the presbytery of Edinburgh, whose judgments shall be subject to dissent, protest and appeal to the Provincial Synod of Lothian and Tweeddale and to the General Assembly of the Church of Scotland.

123. Nothing in this Act shall prevent the Governor-General in Council from granting, with the sanction of the Secretary of State in Council, to any sect, persuasion or community of Christians, not being of the Church of England or Church of Scotland, such sums of money as may be expedient for the purpose of instruction or for the maintenance of places of worship.

Saving as to grants to Christians.

PART XI.

OFFENCES, PROCEDURE AND PENALTIES.

124. If any person holding office under the Crown in India does any of the following things, that is to say,—

(1) if he oppresses any British subject within his jurisdiction or in the exercise of his authority; or

Certain acts to be misdemeanours. Oppression.

(2) if (except in case of necessity, the burden of proving which shall be on him) he wilfully disobeys, or wilfully omits, forbears or neglects to execute, any orders or instructions of the Secretary of State; or

Wilful disobedience.

(3) if he is guilty of any wilful breach of the trust and duty of his office; or

Breach of duty.

(4) if, being the governor-general, or a governor, lieutenant-governor or chief commissioner, or a member of the executive council of the governor-general or of a governor or lieutenant-governor, or being a person employed or concerned in the collection of revenue or the administration of justice, he is concerned in, or has any dealings or transactions by way of, trade or business in any part of India, for the benefit either of himself or of any other person, otherwise than as a shareholder in any joint stock company or trading corporation; or

Trading.

(5) if he demands, accepts or receives, by himself or another, in the discharge of his office, any gift, gratuity or reward, pecuniary or otherwise, or any promise of the same, except in accordance with such rules as may be made by the Secretary of State as to the receipt of presents, and except in the case of fees paid or payable to barristers, physicians, surgeons and chaplains in the way of their respective professions,

Receiving presents.

he shall be guilty of a misdemeanour; and if he is

convicted of having demanded, accepted or received any such gift, gratuity or reward, the same, or the full value thereof, shall be forfeited to the Crown, and the court may order that the gift, gratuity or reward, or any part thereof, be restored to the person who gave it, or be given to the prosecutor or informer, and that the whole or any part of any fine imposed on the offender be paid or given to the prosecutor or informer, as the court may direct.

125. (1) If any European British subject, without the previous consent in writing of the Secretary of State in Council or of the Governor-General in Council or of a local Government, by himself or another,—

- (a) lends any money or other valuable thing to any prince or chief in India; or
- (b) is concerned in lending money to, or raising or procuring money for, any such prince or chief, or becomes security for the repayment of any such money; or
- (c) lends any money or other valuable thing to any other person for the purpose of being lent to any such prince or chief; or
- (d) takes, holds, or is concerned in any bond, note or other security granted by any such prince or chief for the repayment of any loan or money herein-before referred to,

he shall be guilty of a misdemeanour.

(2) Every bond, note, or security for money, of what kind or nature soever, taken, held or enjoyed, either directly or indirectly, for the use and benefit of any European British subject, contrary to the intent of this section, shall be void.

126. (1) If any person carries on, mediately or immediately, any illicit correspondence, dangerous to the peace or safety of any part of British India, with any prince, chief, landholder or other person having authority in India, or with the commander, governor, or president of any foreign European settlement in India, or any correspondence, contrary to the rules and orders of the Secretary of State or of the Governor-General in Council or a Governor in Council, he shall be guilty of a misdemeanour; and the governor-general or governor may issue a warrant for securing and detaining in custody any person suspected of carrying on any such correspondence.

(2) If, on examination taken on oath in writing of any credible witness before the Governor-General in Council or the Governor in Council, there appear reasonable grounds for the charge, the governor-general or governor may commit the person suspected or accused to safe custody, and shall within a reasonable time, not exceeding five days, cause to be delivered to him a copy of the charge on which he is committed.

Leans to
princes or
chiefs.

Carrying on
dangerous
correspon-
dence.

(3) The person charged may deliver his defence in writing, with a list of such witnesses as he may desire to be examined in support thereof.

(4) The witnesses in support of the charge and of the defence shall be examined and cross-examined on oath in the presence of the person charged, and their depositions and examination shall be taken down in writing.

(5) If, notwithstanding the defence, there appear to the Governor-General in Council or Governor in Council reasonable grounds for the charge and for continuing the confinement, the person charged shall remain in custody until he is brought to trial in India or sent to England for trial.

(6) All such examinations and proceedings, or attested copies thereof under the seal of the high court, shall be sent to the Secretary of State as soon as may be, in order to their being produced in evidence on the trial of the person charged in the event of his being sent for trial to England.

(7) If any such person is to be sent to England, the governor-general or governor, as the case may be, shall cause him to be so sent at the first convenient opportunity, unless he is disabled by illness from undertaking the voyage, in which case he shall be so sent as soon as his state of health will safely admit thereof.

(8) The examinations and proceedings transmitted in pursuance of this section shall be received as evidence in all courts of law, subject to any just exceptions as to the competency of the witnesses.

127. (1) If any person holding office under the Crown in India commits any offence under this Act, or any offence against any person within his jurisdiction or subject to his authority, the offence may, without prejudice to any other jurisdiction, be inquired of, heard, tried and determined before His Majesty's High Court of Justice, and be dealt with as if committed in the county of Middlesex.

(2) Every British subject shall be amenable to all courts of justice in the United Kingdom, of competent jurisdiction to try offences committed in India, for any offence committed within India and outside British India, as if the offence had been committed within British India.

128. Every prosecution before a high court in British India in respect of any offence referred to in the last foregoing section must be commenced within six years after the commission of the offence.

129. If any person commits any offence referred to in this Act he shall be liable to such fine or imprisonment or both as the court thinks fit, and shall be liable, at the discretion of the court, to be adjudged to be incapable of serving the Crown in India in any office, civil or military; and, if he is convicted in British India by a high court, the court may order that he be sent to Great Britain.

Prosecution
of offences in
England.

Limitation
for prosecu-
tions in
British India.

Penalties.

PART XII.
SUPPLEMENTAL.

Repeal of Acts.

Repeal. 130. The Acts specified in the Fourth Schedule to this Act are hereby repealed, to the extent mentioned in the third column of that Schedule:

Provided that this repeal shall not affect—

- (a) the validity of any law, charter, letters patent, Order in Council, warrant, proclamation, notification, rule, resolution, order, regulation, direction or contract made, or form prescribed, or table settled, under any enactment hereby repealed and in force at the commencement of this Act, or
- (b) the validity of any appointment, or any grant or appropriation of money or property, made under any enactment hereby repealed, or
- (c) the tenure of office, conditions of service, terms of remuneration or right to pension of any officer appointed before the commencement of this Act.

Savings.

Saving as to certain rights and powers.

131. (1) Nothing in this Act shall derogate from any rights vested in His Majesty, or any powers of the Secretary of State in Council, in relation to the government of India.

(2) Nothing in this Act shall affect the power of Parliament to control the proceedings of the Governor-General in Council, or to repeal or alter any law made by any authority in British India, or to legislate for British India and the inhabitants thereof.

(3) Nothing in this Act shall affect the power of the Governor-General in Legislative Council to repeal or alter any of the provisions mentioned in the Fifth Schedule to this Act, or the validity of any previous exercise of this power.

Treaties, contracts and liabilities of East India Company.

132. All treaties made by the East India Company, so far as they are in force at the commencement of this Act, are binding on His Majesty, and all contracts made and liabilities incurred by the East India Company may, so far as they are outstanding at the commencement of this Act, be enforced by and against the Secretary of State in Council.

Orders of East India Company.

133. All orders, regulations and directions lawfully made or given by the Court of Directors of the East India Company, or by the Commissioners for the Affairs of India, are, so far as they are in force at the commencement of this Act, deemed to be orders, rules and directions made or given by the Secretary of State under this Act.

Definitions, Short Title and Commencement.

134. In this Act, unless the context otherwise requires,— Definitions.

- (1) "Governor-General in Council" means the governor-general in executive council;
- (2) "Governor in Council" means a governor in executive council;
- (3) "Lieutenant-Governor in Council" means a lieutenant-governor in executive council;
- (4) "local Government" means a Governor in Council, Lieutenant-Governor in Council, lieutenant-governor or chief commissioner;
- (5) "office" includes place and employment;
- (6) "province" includes a presidency; and
- (7) references to rules made under this Act include rules or regulations made under any enactment hereby repealed, until they are altered under this Act.

135. This Act may be cited as the Government of India Act, 1915, and shall come into operation on the first day of January one thousand nine hundred and sixteen.

Short title and commencement.

SCHEDULES.

FIRST SCHEDULE.

MAXIMUM NUMBER OF NOMINATED OR ELECTED MEMBERS OF LEGISLATIVE COUNCILS.

Sections 63 (2), 74 (1), 76 (1).

Legislative Council,	Maximum Number.
Indian Legislative Council	Sixty.
Local Legislative Councils—	
Bengal Legislative Council	Fifty.
Madras Legislative Council	Fifty.
Bombay Legislative Council	Fifty.
Bihar and Orissa Legislative Council	Fifty.
United Provinces Legislative Council	Fifty.
Punjab Legislative Council	Thirty.
Burma Legislative Council	Thirty.
Assam Legislative Council	Thirty.
Central Provinces Legislative Council	Thirty.
Legislative Council of the lieutenant-governor of any province hereafter constituted	Thirty.

Section 85.

SECOND SCHEDULE.

OFFICIAL SALARIES, ETC.

Officer.	Maximum Annual Salary.
Governor-General of India	Two hundred and fifty-six thousand rupees.
Governor	One hundred and twenty-eight thousand rupees.
Commander-in-Chief of His Majesty's forces in India.	One hundred thousand rupees.
Lieutenant-Governor ..	One hundred thousand rupees.
Ordinary member of the governor-general's executive council.	*
Member of a governor's executive council.	Sixty-four thousand rupees.

* No statutory maximum has been fixed.

Section 98.

THIRD SCHEDULE.

OFFICES RESERVED TO THE INDIAN CIVIL SERVICE.

Part I.—General.

1. Secretaries, joint secretaries, deputy secretaries and under secretaries to the several Governments in India, except the secretaries, joint secretaries, deputy secretaries and under secretaries in the Army, Marine and Public Works Departments.

2. Accountants-general.

3. Members of the Board of Revenue in the presidencies of Bengal and Madras, the United Provinces of Agra and Oudh and the Province of Bihar and Orissa.

4. Secretaries to those Boards of Revenue.

5. Commissioners of customs, salt, excise and opium.

6. Opium agent.

Part II.—Offices in the provinces which were known in the year 1861 as "Regulation Provinces."

7. District and sessions judges.

8. Additional district or sessions judges and assistant sessions judges.

9. District magistrates.

10. Joint magistrates.

11. Assistant magistrates,

12. Commissioners of revenue.
 13. Collectors of revenue, or chief revenue officers of districts.
 14. Assistant collectors.

FOURTH SCHEDULE.

Section 139.

ACTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
10 Geo. 3. c. 47.	The East India Company Act, 1770.	The whole Act.
13 Geo. 3. c. 63.	The East India Company Act, 1772.	The whole Act, except sections forty-two, forty-three and forty-five.
21 Geo. 3. c. 70.	The East India Company Act, 1780.	The whole Act, except section eighteen.
26 Geo. 3. c. 57.	The East India Company Act, 1786.	Section thirty-eight.
33 Geo. 3. c. 52.	The East India Company Act, 1793.	The whole Act.
37 Geo. 3. c. 142.	The East India Act, 1797.	The whole Act, except section twelve.
39 & 40 Geo. 3. c. 79.	The Government of India Act, 1800.	The whole Act.
53 Geo. 3. c. 155.	The East India Company Act, 1813.	The whole Act.
55 Geo. 3. c. 84.	The Indian Presidency Towns Act, 1815.	The whole Act.
4 Geo. 4. c. 71.	The Indian Bishops and Courts Act, 1823.	The whole Act.
6 Geo. 4. c. 85.	The Indian Salaries and Pensions Act, 1825.	The whole Act.
7 Geo. 4. c. 56.	The East India Officers' Act, 1826.	The whole Act.
3 & 4 Will. 4. c. 85.	The Government of India Act, 1833.	The whole Act, except section one hundred and twelve.
5 & 6 Will. 4. c. 52.	The India (North-West Provinces) Act, 1835.	The whole Act.
7 Will. 4 and 1 Vict., c. 47.	The India Officers' Salaries Act, 1837.	The whole Act.

Session and Chapter.	Short Title.	Extent of Repeal.
5 & 6 Vict., c. 119.	The Indian Bishops Act, 1842.	The whole Act.
16 & 17 Vict., c. 95.	The Government of India Act, 1853.	The whole Act.
17 & 18 Vict., c. 77.	The Government of India Act, 1854.	The whole Act.
21 & 22 Vict., c. 106.	The Government of India Act, 1858.	The whole Act, except section four.
22 & 23 Vict., c. 41.	The Government of India Act, 1859.	The whole Act.
23 & 24 Vict., c. 100.	The European Forces (India) Act, 1860.	The whole Act.
23 & 24 Vict., c. 102.	The East India Stock Act, 1860.	The whole Act, except section six.
24 & 25 Vict., c. 54.	The Indian Civil Service Act, 1861.	The whole Act.
24 & 25 Vict., c. 67.	The Indian Councils Act, 1861.	The whole Act.
24 & 25 Vict., c. 104.	The Indian High Courts Act, 1861.	The whole Act.
28 & 29 Vict., c. 15.	The Indian High Courts Act, 1865.	The whole Act.
28 & 29 Vict., c. 17.	The Government of India Act, 1865.	The whole Act.
32 & 33 Vict., c. 97.	The Government of India Act, 1869.	The whole Act.
32 & 33 Vict., c. 98.	The Indian Councils Act, 1869.	The whole Act.
33 & 34 Vict., c. 3.	The Government of India Act, 1870.	The whole Act.
33 & 34 Vict., c. 59.	The East India Contracts Act, 1870.	The whole Act.
34 & 35 Vict., c. 34.	The Indian Councils Act, 1871.	The whole Act.
34 & 35 Vict., c. 62.	The Indian Bishops Act, 1871.	The whole Act.
37 & 38 Vict., c. 3.	The East India Loan Act, 1874.	Section fifteen.
37 & 38 Vict., c. 77.	The Colonial Clergy Act, 1874.	Section thirteen.
37 & 38 Vict., c. 91.	The Indian Councils Act, 1874.	The whole Act.
43 Vict., c. 3.	The Indian Salaries and Allowances Act, 1880.	The whole Act.
44 & 45 Vict., c. 63.	The India Office Auditor Act, 1881.	The whole Act.

Session and Chapter.	Short Title.	Extent of Repeal.
47 & 48 Vict., c. 38.	The Indian Marine Service Act, 1884.	Sections two, three, four and five.
55 & 56 Vict., c. 14.	The Indian Councils Act, 1892.	The whole Act.
3 Edw. 7, c. 11.	The Contracts (India Office) Act, 1903.	The whole Act.
4 Edw. 7, c. 26.	The Indian Councils Act, 1904.	The whole Act.
7 Edw. 7, c. 35.	The Council of India Act, 1907.	The whole Act.
9 Edw. 7, c. 4.	The Indian Councils Act, 1909.	The whole Act.
1 & 2 Geo. 5, c. 18.	The Indian High Courts Act, 1911.	The whole Act.
1 & 2 Geo. 5, c. 25.	The Government of India Act Amendment Act, 1911.	The whole Act.
2 & 3 Geo. 5, c. 6.	The Government of India Act, 1912.	The whole Act.

FIFTH SCHEDULE.

Section 131
(3).

PROVISIONS OF THIS ACT WHICH MAY BE REPEALED OR ALTERED BY THE GOVERNOR-GENERAL IN LEGISLATIVE COUNCIL.

Section.	Subject.
16	Transmission of information by the Governor-General in Council to the Secretary of State.
33, the last twenty words.	Obedience of Governor-General in Council to orders of Secretary of State.
40 (1)	Form and signature of proceedings of Governor-General in Council.
41 (1), the words "the Governor-General in Council shall be bound by the opinion and decision of the majority of those present."	Governor-General in Council to be bound by the opinion and decision of the majority of the members present at a meeting of the executive council.
41 (4)	Restriction of powers of governor-general in acting against the opinion of the majority present at a meeting of his executive council.

Section.	Subject.
43 (2)	Orders by governor-general to local Governments or officers or servants during absence from his executive council.
43 (3)	Suspension by Secretary of State in Council of the power to issue orders under section 43 (2).
44	Restrictions on power of Governor-General in Council to make war or treaty.
45 (2)	Restrictions on power of local Government to make war or treaty; punishment of officers disobeying orders of Governor-General in Council under this sub-section.
47 (3)	Commander-in-chief when to be a member of a governor's executive council.
49 (1)	Form and signature of proceedings of Governor-in-Council.
50 (2)	Power of governor to act against the opinion of the majority present at a meeting of his executive council.
50 (3)	Written communications, and signature, in such cases.
50 (4)	Restriction on powers of governor in acting against the opinion of the majority present at a meeting of his executive council.
51, first paragraph, the last twelve words.	Powers of member of governor's executive council presiding in absence of governor.
51, proviso	Governor's signature to proceedings of meeting held in his absence.
62	Power to extend limits of presidency-towns.
104 (2)	Commencement and exclusiveness of official remuneration of judges of high courts.
104 (3), (4)	Payments to representatives of deceased judges of high courts.
106	Jurisdiction, powers and authority of high courts.
108 (1)	Exercise of jurisdiction of high court by single judges or division courts.
109	Power for Governor-General in Council to alter local limits of jurisdiction of high courts, etc.
110	Exemption from jurisdiction of high courts.

Section.	Subject.
111	Written order by Governor-General in Council a justification for act in high court.
112	Law to be administered in cases of inheritance, succession, contract and dealing between party and party.
•	
114 (2)	Powers of advocate-general.
116	Power of Bishop of Calcutta to admit to holy orders.
118 (2)—so far as it relates to the Bishop of Calcutta and archdeacons.	Commencement, exclusiveness and continuance of official remuneration.
118 (3)—so far as it relates to the Bishop of Calcutta.	Expenses of visitations.
119—so far as it relates to the Bishop of Calcutta.	Payments to representatives of deceased bishop.
120—so far as it relates to residence of the Bishop of Calcutta as such bishop or as archdeacon.	Pensions.
124 (1)	Oppression.
124 (4)—so far as it relates to persons employed or concerned in the collection of revenue or the administration of justice.	Trading.
124 (5)—so far as it relates to persons other than the governor-general, a governor, or a member of the executive council of the governor-general or of a governor.	Receiving presents.
125	Loans to princes or chiefs.
126	Carrying on dangerous correspondence.
127	Prosecution of offences in the United Kingdom.
128	Limitation for prosecutions in British India.
129	Penalties.

APPENDIX V

GOVERNMENT OF INDIA (AMENDMENT) ACT, 1916.
(6 & 7 Geo. V. c. 37).

An Act to amend certain enactments relating to the government of India, and to remove doubts as to the validity of certain Orders in Council made for India. [August 23, 1916.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. (1) In section sixty-three of the Government of India Act, 1915 (in this Act referred to as "the principal Act"), shall be inserted the following sub-sections:

"(6A) Rules made under this section may provide for the final decision of doubts or disputes as to the validity of an election.

"(6B) Subject to any rules made under this section, any person who is a ruler or subject of any state in India shall be eligible to be nominated a member of a legislative council."

(2) In sections seventy-four and seventy-six of the principal Act corresponding sub-sections shall be inserted, and shall be numbered (4A) and (4B) in section seventy-four and (3A) and (3B) in section seventy-six.

(3) This section shall apply to and shall validate rules and nominations made as well before as after the commencement of this Act.

2. (1) In section seventy-one of the principal Act shall be inserted the following sub-section:

"(3A) A regulation made under this section for any territory shall not be invalid by reason only that it confers or delegates power to confer on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers or delegates power to confer appellate jurisdiction or functions on courts or administrative authorities sitting or acting outside the territory."

(2) In section eighty-four of the principal Act, after the words "Governor-General in Legislative Council"

shall be inserted the words "or a local legislature," and, at the end of the section, shall be inserted the following words:—

"A law made by any authority in British India and repugnant to any provision of this or any other Act of Parliament shall, to the extent of that repugnancy, but not otherwise, be void."

(3) This section shall apply to and shall validate laws made as well before as after the commencement of this Act.

3. After section ninety-six of the principal Act shall be inserted the following section:—

"96A. Notwithstanding anything in any other enactment, the Governor-General in Council, with the approval of the Secretary of State in Council, may, by notification, declare that, subject to any conditions or restrictions prescribed in the notification, any named ruler or subject of any state in India shall be eligible for appointment to any civil or military office under the Crown to which a native of British India may be appointed, or any named subject of any state, or any named member of any independent race or tribe, in territory adjacent to India, shall be eligible for appointment to any such military office."

4. In section ninety-seven of the principal Act, after the words "British subjects" shall be inserted the words "and of persons in respect of whom a declaration has been made under the last foregoing section who are," and, after sub-section (2), shall be inserted the following sub-section:—

"(2A) The admission to the Indian Civil Service of a British subject who or whose father or mother was not born within His Majesty's dominions shall be subject to such restrictions as the Secretary of State in Council, with the advice and assistance of the Civil Service Commissioners, may think fit to prescribe, and all such restrictions shall be included in the rules."

5. An Order of His Majesty in Council heretofore or hereafter made under the Foreign Jurisdiction Act, 1890, empowering the Governor-General of India in Council to make rules and orders in respect of courts or administrative authorities acting for any territory, shall not be invalid by reason only that it confers or delegates power to confer on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers or delegates power to confer appellate jurisdiction

Qualification of rulers and subjects of certain states for office.

Admission to Indian Civil Service.

Removal of doubts as to validity of Orders in Council under Foreign Jurisdiction Act. 53 & 54 Vic. c. 37.

Elections and nominations for legislative councils. 5 & 6 Geo. V. c. 61.

Removal of doubts as to validity of certain Indian laws.

or functions on courts or administrative authorities sitting or acting outside the territory.

Transfer of
India stock
by deed.

6. (1) India stock may, if registered for the time being as stock transferable by deed in manner provided by regulations made under this section, be transferred by deed.

(2) The Banks of England and Ireland respectively, with the concurrence of the Secretary of State in Council, shall provide by regulations for a separate stock register being kept for India stock which is for the time being transferable by deed, for the conditions upon which stock is to be entered in or removed from that register, for the mode in which the transfer by deed is to be carried out, and for the payment of any fees in respect of the entry or removal of stock in or from the register and the carrying out of any transfer of stock by deed.

(3) The provisions of all enactments relating to India stock which are in force at the commencement of this Act shall apply to stock transferable by deed in pursuance of this section as they apply to stock transferable in the books of the Banks of England or Ireland, or of the Secretary of State in Council, except so far as express provision is made to the contrary by this section or by the regulations made thereunder.

(4) No stamp duty shall be payable in respect of any deed of transfer of India stock or any dividend warrant or register certificate relating to India stock.

(5) In this section the expression "India stock" means any stock created and issued, whether before or after the commencement of this Act, by the Secretary of State in Council under the authority of Parliament.

7. (1) The principal Act shall be further amended in manner appearing in the First Schedule to this Act.

(2) The enactments specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

(3) Nothing in this Act shall affect any right acquired before the commencement of this Act under any judgment or order of a court of competent jurisdiction.

8. (1) This Act may be cited as the Government of India (Amendment) Act, 1916, and the principal Act and this Act may be cited together as the Government of India Acts, 1915 and 1916.

(2) This Act shall come into operation on the first day of September, one thousand nine hundred and sixteen.

(3) Where any enactment or word is directed by this Act, or by any Act for the time being in force, whether passed before or after the commencement of this Act, to be inserted in or added to the principal Act, or to be substituted in the principal Act for any other enactment or word, or where any enactment or word in the principal Act is so directed to be repealed, then all copies of the

Minor
amendments,
repeals, and
saving.

Short title,
commence-
ment, print-
ing and con-
struction.

principal Act printed by His Majesty's printers after that direction takes effect shall be printed with that enactment or word inserted in or added to the Act, or printed therein in lieu of any enactment or word for which the same is substituted, or omitted therefrom, according as the direction requires, and with the sections and sub-sections numbered in accordance with the direction; and the principal Act shall be construed as if it had, at the time at which the direction takes effect, been enacted with that addition, substitution or omission.

(4) A reference in any enactment, whether passed before or after the commencement of this Act, to the principal Act shall, unless the context otherwise requires, be construed to refer to that Act as amended by any enactment for the time being in force.

SCHEDULES.

FIRST SCHEDULE.

Section 7 (1).

FURTHER AMENDMENTS OF THE GOVERNMENT OF INDIA ACT, 1915.

Enactment to be Amended.	Amendment.
The Government of India Act, 1915 (5 & 6 Geo. 5, c. 61). Section 3 (3).	The word "British," where secondly occurring, shall be repealed.
Section 13 (1).	For this sub-section shall be substituted the following sub-section:— "(1) Where an order or communication concerns the levying of war, or the making of peace, or the public safety, or the defence of the realm, or the treating or negotiating with any prince or state, or the policy to be observed with respect to any prince or state, and a majority of votes therefor at a meeting of the Council of India is not required by this Act, the Secretary of State may send the order or communication to the Governor-General in Council or to any Governor in Council or officer or servant in India without submitting it to a meeting of the council or depositing it for the perusal of the members of the council or sending or giving notice of the reasons for making it, if he considers that it is of a nature to require secrecy."

Enactment to be Amended.	Amendment.
Section 13 (2) .	The words "or any of the matters aforesaid" shall be substituted for the words "or the levying of war, or the making of peace, or negotiations or treaties with any prince or state."
Section 21 .	At the end of this section shall be added the words "Provided that a grant or appropriation made in accordance with provisions or restrictions prescribed by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the council shall be deemed to be made with the concurrence of a majority of such votes."
Section 26 .	The words "twenty-eight days" shall be substituted for the words "fourteen days."
Section 27 (10)	The words "or retiring" shall be inserted after the word "superannuation"; the words "and their legal personal representatives shall, for the purposes of gratuity" shall be inserted after the word "allowance"; and the words "the auditor and his assistants" shall be substituted for the word "they."
Sections 28 (1) and 30 (1).	The words "or personal" shall be inserted after the word "real," where secondly occurring, and the words "or otherwise" shall be inserted after the word "mortgage."
Section 28 (2).	The word "two" shall be substituted for the word "three."
Sections 63 (3) and 74 (2).	The words "any office of profit" shall be substituted for the word "office."
Sections 64 (3), 75 (3) and 78 (2).	The words "or when questions are asked" shall be inserted after the words "any matter of general public interest."
Sections 67 (3) and 80 (3).	The words "or when questions are asked" shall be inserted after the words "at any such discussion."
Section 86 (1)	The words "and a Lieutenant-Governor in Council" shall be inserted after the words "a Governor in Council."
Section 92 (3)	The words "or special duty" shall be inserted after the words "is absent on leave."
Section 94 .	The words "or special duty" shall be inserted after the words "absence on leave," and the words "absence may be permitted" shall be substituted for the words "leave may be granted"

Enactment to be Amended.	Amendment.
Section 99 (1) .	The words "in British India," where secondly occurring, shall be repealed.
Section 106 .	In this section shall be inserted the following sub-section:— "(1 A) The letters patent establishing, or vesting jurisdiction, powers or authority in, a high court may be amended from time to time by His Majesty by further letters patent."
Section 107, proviso.	The word "law" shall be substituted for the word "Act."
Section 109 (1)	The words "any British subject for the time being within" shall be substituted for the words "Christian subjects of His Majesty resident in."
Section 110 (1)	The words "lieutenant-governor and chief commissioner" shall be inserted after the words "each governor," and the words "the executive council of the governor-general or of a governor or lieutenant-governor" shall be substituted for the words "their respective executive councils."
Section 114 .	At the end of this section shall be added the following sub-section:— "(3) On the occurrence of a vacancy in the office of advocate-general, or during any absence or deputation of an advocate-general, the Governor-General in Council in the case of Bengal, and the local Government in other cases, may appoint a person to act as advocate-general; and the person so appointed may exercise the powers of an advocate-general until some person has been appointed by His Majesty to the office and has entered on the discharge of his duties, or until the advocate-general has returned from his absence or deputation, as the case may be, or until the Governor-General in Council or the local Government, as the case may be, cancels the acting appointment."
Section 120 .	The words "Secretary of State" shall be substituted for the words "Chancellor of the Exchequer"; the words "Madras or Bombay" shall be inserted after the words "Bishop of Calcutta," where thirdly and fourthly occurring; and the words "to be paid quarterly" and the word "British" shall be repealed.

For the Fifth Schedule shall be substituted the following :—

" FIFTH SCHEDULE.

Section 131
(3).

PROVISIONS OF THIS ACT WHICH MAY BE REPEALED OR ALTERED BY THE GOVERNOR-GENERAL IN LEGISLATIVE COUNCIL.

Section.	Subject.
62	Power to extend limits of presidency towns.
106	Jurisdiction, powers and authority of high courts.
108 (1)	Exercise of jurisdiction of high court by single judges or division courts.
109	Power for Governor-General in Council to alter local limits of jurisdiction of high courts, etc.
110	Exemption from jurisdiction of high courts.
111	Written order by Governor-General in Council a justification for act in high court.
112	Law to be administered in cases of inheritance, succession, contract and dealing between party and party.
114 (2)	Powers of advocate-general.
124 (1)	Oppression.
124 (4)—so far as it relates to persons employed or concerned in the collection of revenue or the administration of justice.	Trading.
124 (5)—so far as it relates to persons other than the governor-general, a governor, or a member of the executive council of the governor-general or of a governor.	Receiving presents.
125	Loans to princes or chiefs.
126	Carrying on dangerous correspondence.
128	Limitation for prosecutions in British India.
129	Penalties."

SECOND SCHEDULE.

Section 7 (2).

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
18 Geo. 3, c. 63.	The East India Company Act, 1772.	Sections forty-two, forty-three and forty-five.
24 Geo. 3, sess. 2, c. 25.	The East India Company Act, 1784.	The whole Act.
26 Geo. 3, c. 57.	The East India Company Act, 1786.	The whole Act.
9 Geo. 4, c. 74.	The Criminal Law (India) Act, 1828.	Section fifty-six, except so far as in force in the Straits Settlements.
5 & 6 Geo. 5, c. 61.	The Government of India Act, 1915.	In section twenty-six, paragraph (d). In section eighty-seven, sub-sections (2), (3), (4), and (5). Section one hundred and sixteen.

POSTSCRIPT

EVENTS in India move so rapidly that no book dealing with the history of that country can be in any sense complete. But a few words may be added by way of comment on the present situation and forecast of what may be expected in the near future.

That the Montagu-Chelmsford Reforms would be unpopular and in the main unsuccessful was very generally expected. They did not meet the wants of any of the parties in India, and they presented many obvious defects. Perhaps the chief ground on which they were open to criticism lay in the fact that they did not achieve the purpose for which they were planned. They were designed to teach Indians the art of government without risking any great injury to the administrative fabric of the country. That, however, as both reflection and experience will show, is an impossible task. There can be no true political training without serious responsibility, and it was just because that sense of responsibility was wanting that the Indians felt that the Reforms were unreal.

The opposition to this scheme of government has naturally taken the form of a very general demand for its revision before the allotted period of ten years, and there seems no doubt that some very important concessions to popular opinion will be made. The recent official inquiry into the success of the scheme revealed but little admiration for "Dyarchy", and seemed to show that it was not regarded with any particular enthusiasm in official circles; and without such enthusiasm on the part of both Indians and English it could not possibly be successful. It must be added too that the mere fact of the Montagu-Chelmsford Reforms having been granted and the fact that their provisional nature was from the first frankly and authoritatively acknowledged, make it more easy than might be thought to take a further step. What that step is to be is a large and vastly important question. One or two suggestions may be made by way of answering it.

1. It is clear that "Dyarchy" will give place to some more responsible form of government in the Provinces. What the results will be is a problem for the politician and not for the historian. All that the latter can say is that experience has shown that it is difficult to concede as much as was conceded in the Reforms without going much farther. Those who have read India's long and troubled history will, however, be prepared for the statement that it is not probable that Western ideas of representative government and the party system will be what India will finally adopt,

and that it is much more probable that a bureaucracy, largely Indian in composition, will be, for many years at least, the form that India will find most suited to her needs and traditions.

2. We may be quite sure that in many ways India will be governed on a simpler plan than that to which present arrangements seem to point.

The system as we know it is cheap, but that is only because many of the benefits of government, speaking in a Western sense, are enjoyed by but a fraction of the people. When all are educated and all have been taught to expect the way of living for which education on Western lines prepares them, it will be found that the country cannot afford anything of the kind. India is a poor country, but her peoples are blessed with plenty of common sense, and they will no doubt adapt themselves to circumstances and will find that there are advantages as well as drawbacks in so doing. India will become Indian and not English.

3. We may be equally sure that the organization of the government of India will be changed in many important respects. The authors of the Montagu-Chelmsford scheme seem to have contemplated the possibility of some plan which should ultimately embrace the whole of India, the India that is to say which includes the Native States as well as the British Provinces. The farther British India progresses on the path towards self-government the more important does it become for her to take the lead in uniting the whole country in some well-designed federal system. It is not only important that this should be done; it is absolutely necessary, because the granting of self-government implies an entirely new relation between British India and the Native States.

The student who ponders over the past history of India with its wonderful wealth of legend, and its equally wonderful story of sacrifice and progress, will have but ill learned the lesson that it teaches if he despairs of the future. It is true that directly the Montagu-Chelmsford scheme was announced the old India, that is to say the old system of administration, was doomed; much of the present confusion and alarm is due to that fact. But the real India, the India that matters, remains, and the constitution of the future will gradually be framed so as to meet its various needs. There will be gain as well as loss. We can but hope that the gain will be worth the effort that will have to be made.

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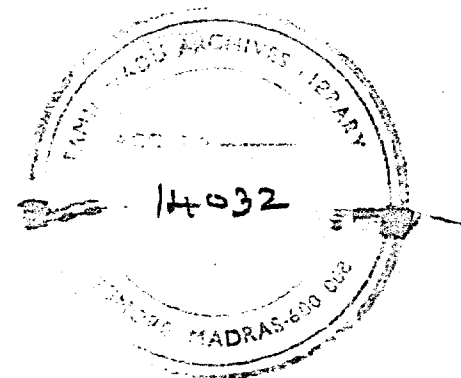
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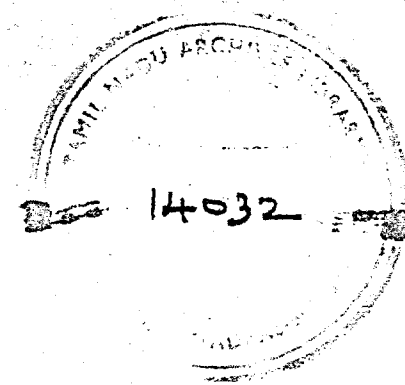
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