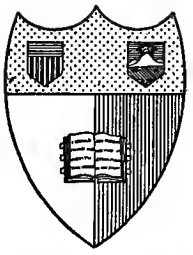

THE GOVERNMENT OF INDIA

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THE
GOVERNMENT OF INDIA

A BRIEF HISTORICAL SURVEY OF

PARLIAMENTARY LEGISLATION

RELATING TO INDIA

BY

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PREFACE

THIS is a reprint, revised, and brought up to date, of the Historical Introduction forming the first chapter of the book entitled *The Government of India*, third edition, 1915.

It is intended to republish this historical survey subsequently with the addition of the text of the Government of India Act now in force, and with explanatory notes and other documents and indexes which will give a complete account of the constitutional law now in force and of the important changes made in 1919.

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HISTORICAL INTRODUCTION

Twofold origin of British authority in India.

BRITISH authority in India may be traced, historically, to a twofold source. It is derived partly from the British Crown and Parliament, partly from the Great Mogul and other native rulers of India.

In England, the powers and privileges granted by royal charter to the East India Company were confirmed, supplemented, regulated, and curtailed by successive Acts of Parliament, and were finally transferred to the Crown.

In India, concessions granted by, or wrested from, native rulers gradually established the Company and the Crown as territorial sovereigns, in rivalry with other country powers ; and finally left the British Crown exercising undivided sovereignty throughout British India, and paramount authority over the subordinate native States.

It is with the development of this power in England that we are at present concerned. The history of that development may be roughly divided into three, or possibly four, periods.

Periods in history of constitutional development.

During the first, or trading, period, which began with the charter of Elizabeth in 1600, the East India Company were primarily traders. They enjoyed important mercantile privileges, and for the purposes of their trade held sundry factories, mostly on or near the coast, but they had not yet assumed the responsibilities of territorial sovereignty. The cession of Burdwan, Midnapur, and Chittagong in 1760 made them masters of a large tract of territory, but the first period may perhaps be most fitly terminated by the grant of the *diwani* in 1765, when the Company became practically sovereigns of Bengal, Bihar, and Orissa.

During the second period, from 1765 to 1858, the Company were territorial sovereigns, sharing their sovereignty in diminishing proportions with the Crown, and gradually losing their mercantile privileges and functions. This period may, with reference to its greater portion, be described as the period of double government, using the phrase in the sense in which it was commonly applied to the system abolished by the Act of 1858. The first direct interference of Parliament with the government of India was in 1773, and the Board of Control was established in 1784.

The third period, under which India was governed by the Crown, began with 1858, when, as an immediate consequence of the Mutiny of 1857, the remaining powers of the East India Company were transferred to the Crown.

Perhaps a fourth period should now be added, and might be called the period of constitutional experiments.

In each of these periods a few dates may be selected as convenient landmarks.

Landmarks of first period.

The first period is the period of charters. The charter of 1600 was continued and supplemented by other charters, of which the most important were James I's charter of 1609, Charles II's charter of 1661, James II's charter of 1686, and William III's charters of 1693 and 1698.

The rivalry between the Old or 'London' Company and the New or 'English' Company was terminated by the fusion of the two Companies under Godolphin's Award of 1708.

The wars with the French in Southern India between 1745 and 1761 and the battles of Plassey (1757) and Baxar (1764) in Northern India indicate the transition to the second period.

Landmarks of second period.

The main stages of the second period are marked by Acts of Parliament, occurring with one exception at regular intervals of twenty years.

North's Regulating Act of 1773 (13 Geo. III, c. 63) was followed by the Charter Acts of 1793, 1813, 1833, and 1853. The exceptional Act is Pitt's Act of 1784.

The Regulating Act organized the government of the Bengal Presidency and established the Supreme Court at Calcutta.

The Act of 1784 (24 Geo. III, sess. 2, c. 25) established the Board of Control.

The Charter Act of 1793 (33 Geo. III, c. 52) made no material change in the constitution of the Indian Government, but happened to be contemporaneous with the permanent settlement of Bengal.

The Charter Act of 1813 (53 Geo. III, c. 155) threw open the trade to India, whilst reserving to the Company the monopoly of the China trade.

The Charter Act of 1833 (3 & 4 Will. IV, c. 85) terminated altogether the trading functions of the Company.

The Charter Act of 1853 (16 & 17 Vict. c. 95) took away from the Court of Directors the patronage of posts in their service, and threw open the covenanted civil service to general competition.

Landmarks of third period.

The third period was ushered in by the Government of India Act, 1858 (21 & 22 Vict. c. 106), which declared that India was to be governed by and in the name of Her Majesty. The change was announced in India by the Queen's Proclamation of November 1, 1858. Two Acts of 1861 (24 & 25 Vict. cc. 67, 104) added the law member to the Governor General's executive council, re-modelled the legislative councils, and provided for the establishment of the Indian High Courts. From that time until the twentieth century Parliamentary legislation for India was confined mainly to matters of detail. The East India Company was not formally dissolved until 1874.

Charter of Elizabeth.

The first charter of the East India Company was granted on December 31, 1600. The circumstances in which the grant of this charter arose have been well described by Sir A. Lyall.[1] The customary trade-routes from Europe to the East had been closed by the Turkish Sultan. Another route had been opened by the discovery of the Cape of Good Hope. Thus the trade with the East had

[1] *British Dominion in India.*

been transferred from the cities and states on the Mediterranean to the states on the Atlantic seaboard. Among these latter Portugal took the lead in developing the Indian trade, and when Pope Alexander VI (Roderic Borgia) issued his Bull of May, 1493, dividing the whole undiscovered non-Christian world between Spain and Portugal, it was to Portugal that he awarded India. But since 1580 Portugal had been subject to the Spanish Crown; Holland was at war with Spain, and was endeavouring to wrest from her the monopoly of Eastern trade which had come to her as sovereign of Portugal. During the closing years of the sixteenth century, associations of Dutch merchants had fitted out two great expeditions to Java by the Cape (1595–6 and 1598–9), and were shortly (1602) to be combined into the powerful Dutch East India Company. Protestant England was the political ally of Holland but her commercial rival, and English merchants were not prepared to see the Indian trade pass wholly into her hands. It was in these circumstances that on September 24, 1599, the merchants of London held a meeting at Founders' Hall, under the Lord Mayor, and resolved to form an association for the purpose of establishing direct trade with India. But negotiations for peace were then in progress at Boulogne, and Queen Elizabeth was unwilling to take a step which would give umbrage to Spain. Hence she delayed for fifteen months to grant the charter for which the London merchants had petitioned. The charter incorporated George, Earl of Cumberland, and 215 knights, aldermen, and burgesses, by the name of the 'Governor and Company of Merchants of London trading with the East Indies'. The Company were to elect annually one governor and twenty-four committees, who were to have the direction of the Company's voyages, the provision of shipping and merchandises, the sale of merchandises returned, and the managing of all other things belonging to the Company. Thomas Smith, Alderman of London, and Governor of the Levant Company, was to be the first governor.

The Company might for fifteen years 'freely traffic and use the trade of merchandise by sea in and by such ways and passages already found out or which hereafter shall be found out and discovered . . . into and from the East Indies, in the countries and parts of Asia and Africa, and into and from all the islands, ports, havens, cities, creeks, towns, and places of Asia and Africa, and America, or any of them, beyond the Cape of Bona Esperanza to the Streights of Magellan'.

During these fifteen years the Company might assemble themselves in any convenient place, 'within our dominions or elsewhere,' and there 'hold court' for the Company and the affairs thereof, and, being so assembled, might 'make, ordain, and constitute such and so many reasonable laws, constitutions, orders, and ordinances, as to them or the greater part of them being then and there present, shall seem necessary and convenient for the good government of the same Company, and of all factors, masters, mariners, and other officers, employed or to be employed in any of their voyages, and for the better advancement and continuance of the said trade and traffick'. They might also impose such pains, punishments, and penalties by imprisonment of body, or by fines and amerciaments, as might seem necessary or convenient for observation of these laws and ordinances. But their laws and punishments were to be reasonable, and not contrary or repugnant to the laws, statutes, or customs of the English realm.

The charter was to last for fifteen years, subject to a power of determination on two years' warning, if the trade did not appear to be profitable to the realm. If otherwise, it might be renewed for a further term of fifteen years.

The Company's right of trading, during the term and within the limits of the charter, was to be exclusive, but they might grant licences to trade. Unauthorized traders were to be liable to forfeiture of their goods, ships, and tackle, and to 'imprisonment and such other punishment

as to us, our heirs and successors, for so high a contempt, shall seem meet and convenient '.

The Company might admit into their body all such apprentices of any member of the Company, and all such servants or factors of the Company, ' and all such other ' as to the majority present at a court might be thought fit. If any member, having promised to contribute towards an adventure of the Company, failed to pay his contribution, he might be removed, disenfranchised, and displaced.

Points of constitutional interest in charter of Elizabeth.

The points of constitutional interest in the charter of Elizabeth are the constitution of the Company, its privileges, and its legislative powers.

Constitution of Company.

The twenty-four committees to whom, with the governor, was entrusted the direction of the Company's business, were individuals, not bodies, and were the predecessors of the later directors. Their assembly was in subsequent charters called the court of committees, as distinguished from the court general or general court, which answers to the ' general meeting ' of modern companies.

The most noticeable difference between the charter and modern instruments of association of a similar character is the absence of any reference to the capital of the Company and the corresponding qualification and voting powers of members. It appears from the charter that the adventurers had undertaken to contribute towards the first voyage certain sums of money, which were ' set down and written in a book for that purpose ', and failure to pay their contributions to the treasurer within a specified date was to involve ' removal and disenfranchisement ' of the defaulters. But the charter did not specify the amount of the several contributions,[1] and for all that appears to the contrary each adventurer was to be equally eligible to the office of committee, and to have equal voting power in the general court. The explanation is that the Company belonged at the outset to the simpler and looser form of

[1] The total amount subscribed in September, 1599, was £30,133, and there were 101 subscribers.

association to which the City Companies then belonged, and still belong, and which used to be known by the name of 'regulated companies'. The members of such a company were subject to certain common regulations, and were entitled to certain common privileges, but each of them traded on his own separate capital, and there was no joint stock. The trading privileges of the East India Company were reserved to the members, their sons at twenty-one, and their apprentices, factors, and servants. The normal mode of admission to full membership of the Company was through the avenue of apprenticeship or service. But there was power to admit 'others', doubtless on the terms of their offering suitable contributions to the adventure of the Company.

When an association of this kind had obtained valuable concessions and privileges, its natural tendency was to become an extremely close corporation, and to shut its doors to outsiders except on prohibitory terms, and the efforts of those who suffered from the monopoly thus created were directed towards reduction of these terms. Thus by a statute of 1497 the powerful Merchant Adventurers trading with Flanders had been required to reduce to 10 marks (£6 13*s.* 4*d.*) the fine payable on admission to their body. By similar enactments in the seventeenth century the Russia Company and Levant Company were compelled to grant privileges of membership on such easy terms as to render them of merely nominal value, and thus to entitle the companies to what, according to Adam Smith, is the highest eulogium which can be justly bestowed on a regulated company, that of being merely useless. The charter of Elizabeth contains nothing specific as to the terms on which admission to the privileges of the Company might be obtained by an outsider. It had not yet been ascertained how far those privileges would be valuable to members of the Company, and oppressive to its rivals.

Privileges of Company.

The chief privilege of the Company was the exclusive right of trading between geographical limits which were

practically the Cape of Good Hope on the one hand and the Straits of Magellan on the other, and which afterwards became widely famous as the limits of the Company's charter. The only restriction imposed on the right of trading within this vast and indefinite area was that the Company were not to 'undertake or address any trade into any country, port, island, haven, city, creek, towns, or places being already in the lawful and actual possession of any such Christian Prince or State as at this present or at any time hereafter shall be in league or amity with us, our heirs and successors, and which doth not or will not accept of such trade'. Subject to this restriction the trade of the older continent was allotted to the adventurers with the same lavish grandeur as that with which the Pope had granted rights of sovereignty over the new continent, and with which in our own day the continent of Africa was parcelled out among rival chartered companies. The limits of the English charter of 1600 were identical with the limits of the Dutch charter of 1602, and the two charters may be regarded as the Protestant counter-claims to the monopoly claimed under Pope Alexander's Bull. During the first few years of their existence the two Companies carried on their undertakings in co-operation with each other; but they soon began to quarrel, and in 1611 we find the London merchants praying for protection against their Dutch competitors. Projects for amalgamation of the English and Dutch Companies fell through, and during the greater part of the seventeenth century Holland was the most formidable rival and opponent of English trade in the East.

'By virtue of our Prerogative Royal, which we will not in that behalf have argued or brought in question,' the Queen straitly charges and commands her subjects not to infringe the privileges granted by her to the Company, upon pain of forfeitures and other penalties. Nearly a century was to elapse before the Parliament of 1693 formally declared the exercise of this unquestionable prerogative to be illegal as transcending the powers of the Crown. But neither at the beginning nor at the end

of the seventeenth century was any doubt entertained about the expediency, as apart from the constitutionality, of granting a trade monopoly of this description. Such monopolies were in strict accordance with the ideas, and were justified by the circumstances, of the time.

In the seventeenth century the conditions under which private trade is now carried on with the East did not exist. Beyond certain narrow territorial limits international law did not run, diplomatic relations had no existence.[1] Outside those limits force alone ruled, and trade competition meant war. At the present day territories are annexed for the sake of developing and securing trade. The annexations of the sixteenth century were annexations not of territory, but of trading-grounds. The pressure was the same, the objects were the same, the methods were different. For the successful prosecution of Eastern trade it was necessary to have an association powerful enough to negotiate with native princes, to enforce discipline among its agents and servants, and to drive off European rivals with the strong hand. No Western State could afford to support more than one such association without dissipating its strength. The independent trader, or interloper, was, through his weakness, at the mercy of the foreigner, and, through his irresponsibility, a source of danger to his countrymen. It was because the trade monopoly of the East India Company had outlived the conditions out of which it arose that its extinction in the nineteenth century was greeted with general and just approval.

Legislative powers of Company.

The powers of making laws and ordinances granted by the charter of Elizabeth did not differ in their general provisions from, and were evidently modelled on, the powers of making by-laws commonly exercised by ordinary municipal and commercial corporations. No copies of any laws made under the early charters are known to

[1] The state of things in European waters was not much better. See the description of piracy in the Mediterranean in the seventeenth century in Masson, *Histoire du Commerce Français dans le Levant*, chap. ii.

exist. They would doubtless have consisted mainly of regulations for the guidance of the Company's factors and apprentices. Unless supplemented by judicial and punitive powers, the early legislative powers of the Company could hardly have been made effectual for any further purpose. But they are of historical interest, as the germ out of which the Anglo-Indian codes were ultimately developed. In this connexion they may be usefully compared with the provisions which, twenty-eight years after the charter of Elizabeth, were granted to the founders of Massachusetts.

Resemblance to Massachusetts Company.

In 1628 Charles I granted a charter to the Governor and Company of the Massachusetts Bay in New England. It created a form of government consisting of a governor, deputy governor, and eighteen assistants, and directed them to hold four times a year a general meeting of the Company to be called the 'great and general Court', in which general court 'the Governor or deputie Governor, and such of the assistants and freemen of the Company as shall be present shall have full power and authority to choose other persons to be free of the Company and to elect and constitute such officers as they shall think fitte for managing the affairs of the said Governor and Company and to make Lawes and Ordinances for the Good and Welfare of the saide Company and for the Government and Ordering of the said Landes and Plantasion and the People inhabiting and to inhabit the same, soe as such Lawes and Ordinances be not contrary or repugnant to the Lawes and Statutes of this our realme of England'. The charter of 1628 was replaced in 1691 by another charter, which followed the same general lines, but gave the government of the colony a less commercial and more political character. The main provisions of the charter of 1691 were transferred bodily to the Massachusetts constitution of 1780, which is now in force, and which, as Lord Bryce remarks,[1] profoundly influenced the conven-

[1] *American Commonwealth*, pt. 2, chap. xxxvii. See also Lyall, *British Dominion in India*, p. 54.

tion that prepared the federal constitution of the United States in 1787.

Thus from the same germs were developed the independent republic of the West and the dependent empire of the East.

Other English trading companies.

The Massachusetts Company may be taken as the type of the bodies of adventurers who during the early part of the seventeenth century were trading and settling in the newly discovered continent of the West. It may be worth while to glance at the associations of English merchants who, at the date of the foundation of the East India Company, were trading towards the East. Of these the most important were the Russia or Muscovy Company and the Levant or Turkey Company.[1]

Russia Company.

The foundations of the Russia Company[2] were laid by the discoveries of Richard Chancellor. In 1553–4 this Company was incorporated by charter of Philip and Mary under the name of 'the Merchants and Adventurers for the discovery of lands not before known or frequented by any English'. It was to be governed by a court consisting of one governor (the first to be Sebastian Cabot) and twenty-eight of the most sad, discreet, and learned of the fellowships, of whom four were to be called consuls, and the others assistants. The members of the Company were to have liberty to resort, not only to all parts of the dominions of 'our cousin and brother, Lord John Bazilowitz, Emperor of all Russia, but to all other parts not known to our subjects'. And none but such as were free of or licensed by the Company were to frequent the parts aforesaid, under forfeiture of ships and merchandise—a comprehensive monopoly.

[1] A good account of the great trading companies is given by Bonnassieux, *Les Grandes Compagnies de Commerce* (Paris, 1892). See also Causton and Keene, *The Early Chartered Companies* (1896); the article on 'Colonies, Government of, by Companies' in the *Dictionary of Political Economy*; the article on 'Chartered Companies' in the *Encyclopaedia of the Laws of England*; and Egerton, *Origin and Growth of English Colonies* (1903).

[2] As to the Russia Company, see the Introduction to *Early Voyages to Russia* in the publications of the Hakluyt Society.

In 1566 the adventurers were again incorporated, not by charter, but by Act of Parliament, under the name of 'the fellowship of English Merchants for discovery of new trade',[1] with a monopoly of trade in Russia, and in the countries of Armenia, Media, Hyrcania, Persia, and the Caspian Sea.

In the seventeenth century the members of the Company were compelled by the Czar of the time to share with the Dutch their trading privileges from the Russian Government, and by an Act of 1698, which reduced their admission fine to £5,[2] their doors were thrown open. After this they sank into insignificance.

A remnant of their ancient privileges survives in the extra-territorial character still attaching for marriage purposes to the churches and chapels formerly belonging to their factories in Russia. The Russia Company has now lost its mercantile character, and its funds are almost entirely applied to charitable purposes in connexion with Russia, such as the maintenance of English chaplains in Petrograd, Moscow, and elsewhere. But it still retains its ancient constitution, and, as in the days of Sebastian Cabot, is controlled by a governor, 4 councils, and 24 assistants.[3]

Levant Company.

The Levant Company was founded by Queen Elizabeth for the purpose of developing the trade with Turkey under the concessions then recently granted by the Ottoman Porte. Under arrangements made with various Christian powers and known as the Capitulations, foreigners trading or residing in Turkey were withdrawn from Turkish jurisdiction for most civil and criminal purposes. The first of the Capitulations granted to England bears date in the year 1579, and the first charter of the Levant Company was granted two years afterwards, in 1581. This charter was extended in 1593, renewed by James I, confirmed by Charles II, and, like the East India

[1] This is said to have been the first English statute which established an exclusive mercantile corporation.

[2] 10 & 11 Will. III, c. 6.

[3] For this information I am indebted to Mr. Evelyn Hubbard, the present Governor of the Company.

Company's charters, recognized and modified by various Acts of Parliament.

The Levant Company attempted to open an overland trade to the East Indies, and sent merchants from Aleppo to Bagdad and thence down the Persian Gulf. These merchants obtained articles at Lahore and Agra, in Bengal, and at Malacca, and on their return to England brought information of the profits to be acquired by a trade to the East Indies. In 1593 the Levant Company obtained a new charter, empowering them to trade to India overland through the territories of the Grand Signor. Under these circumstances it is not surprising to find members of the Levant Company taking an active part in the promotion of the East India Company. Indeed the latter Company was in a sense the outgrowth of the former. Alderman Thomas Smith, the first Governor of the East India Company, was at the same time Governor of the Levant Company, and the adventures of the two Companies were at the outset intimately connected with each other. At the end of the first volume of court minutes of the East India Company are copies of several letters sent to Constantinople by the Levant Company.

Had history taken a different course, the Levant Company might have founded on the shores of the Mediterranean an empire built up of fragments of the dominions of the Ottoman Porte, as the East India Company founded on the shores of the Bay of Bengal an empire built up of fragments of the dominions of the Great Mogul. But England was not a Mediterranean power, trade with the East had been deflected from the Mediterranean to the Atlantic, and the causes which had destroyed the Italian merchant states were fatal to the Levant Company. As the East India Company grew, the Levant Company dwindled, and in 1825 it was formally dissolved.[1]

To return to the East India Company.

During the first twelve years of its existence, the Com-

[1] In 1918 a new Levant Company was established, not by charter, but under the Companies Acts, with Sir Maurice de Buusen as its first president.

The separate voyages.

pany traded on the principle of each subscriber contributing separately to the expense of each voyage, and reaping the whole profits of his subscription. The voyages during these years are therefore known in the annals of the Company as the 'separate voyages'. But after 1612 the subscribers threw their contributions into a 'joint stock', and thus converted themselves from a regulated company into a joint-stock company, which, however, differed widely in its constitution from the joint-stock companies of the present day.

James I's charter of 1609.

In the meantime James I had in 1609 renewed the charter of Elizabeth, and made it perpetual, subject to determination after three years' notice on proof of injury to the nation. The provisions of this charter did not, except with regard to its duration, differ in any material respect from those of the charter of Elizabeth.

Beginning of martial law exercisable by Company.

It has been seen that under the charter of Elizabeth the Company had power to make laws and ordinances for the government of factors, masters, mariners, and other officers employed on their voyages, and to punish offenders by fine or imprisonment. This power was, however, insufficient for the punishment of grosser offences and for the maintenance of discipline on long voyages. Accordingly, the Company were in the habit of procuring for each voyage a commission to the 'general' in command, empowering him to inflict punishments for non-capital offences, such as murder or mutiny, and to put in execution 'our law called martial'.[1]

Grant of 1615.

This course was followed until 1615, when, by a Royal grant of December 16, the power of issuing commissions embodying this authority was given to the Company, subject to a proviso requiring the verdict of a jury in the case of capital offences.

Grant of 1623.

By 1623 the increase in the number of the Company's

[1] For an example of a sentence of capital punishment under one of these commissions, see Kaye, *Administration of East India Company*, p. 66. In transactions with natives the Company's servants were nominally subject to the native courts. Rights of extra-mural jurisdiction had not yet been claimed.

settlements, and the disorderliness of their servants, had drawn attention to the need for further coercive powers. Accordingly King James I, by a grant of February 4, $162\frac{2}{3}$,[1] gave the Company the power of issuing similar commissions to their presidents and other chief officers, authorizing them to punish in like manner offences committed by the Company's servants on land, subject to the like proviso as to the submission of capital cases to the verdict of a jury.

Contests with Dutch and English rivals.

The history of the Company during the reigns of the first two Stuarts and the period of the Commonwealth was mainly occupied with their contests with Dutch competitors and English rivals.

Massacre of Amboyna.

The massacre of Amboyna (February 16, $162\frac{2}{3}$) was the turning-point in the rivalry with the Dutch. On the one hand it enlisted the patriotic sympathies of Englishmen at home on behalf of their countrymen in the East. On the other hand it compelled the Company to retire from the Eastern Archipelago, and concentrate their efforts on the peninsula of India.

Courten's Association.

Under Charles I the extensive trading privileges of the Company were seriously limited. Sir William Courten, through the influence of Endymion Porter, a gentleman of the bedchamber, obtained from the king a licence to trade to the East Indies independently of the East India Company. His association, which, from a settlement established by it at Assada, in Madagascar, was often spoken of as the Assada Company, was a thorn in the side of the East India Company for many years.

Cromwell's relations to the Company.

Under the Commonwealth the intervention of the Protector was obtained for the settlement of the Company's differences both with their Dutch and with their English competitors. By the Treaty of Westminster in 1654, Cromwell obtained from the Dutch payment of a sum of

[1] The double date here and elsewhere indicates a reference to the three months, January, February, March, which according to the Old Style closed the old year, while under the New Style, introduced in 1751 by the Act 24 Geo. II, c. 23, they begin the new year.

£85,000 as compensation for the massacre of Amboyna and for the exclusion of the Company from trade with the Spice Islands. Difficulties arose, however, as to the apportionment of this sum among the several joint stocks of which the Company's capital was then composed, and, pending their settlement, Cromwell borrowed £50,000 of the sum for the expenses of the State. He thus anticipated the policy subsequently adopted by Montagu and his successors of compelling the Company to grant public loans as a price for their privileges.

Cromwell's charter of 1657.

Ultimately the Company obtained from Cromwell in 1657 a charter under which the rump of Courten's Association was united with the East India Company, and the different stocks of the Company were united into a new joint stock. No copy of this charter is known to exist. Perhaps it was considered impolitic after the Restoration to preserve any evidence of favours obtained from the Protector.

The Company after the Restoration.

During the period after the Restoration the fortunes of the Company are centred in the remarkable personality of Sir Josiah Child, and are depicted in the vivid pages of Macaulay. He has described how Child converted the Company from a Whig to a Tory Association, how he induced James II to become a subscriber to its capital, how his policy was temporarily baffled by the Revolution, how vigorously he fought and how lavishly he bribed to counteract the growing influence of the rival English Company.

Marks of royal favour are conspicuous in the charters of the Restoration period.

Charles II's charter of 1661.

The charter granted by Charles II on April 3, 1661, conferred new and important privileges on the Company. Their constitution remained practically unaltered, except that the joint-stock principle was recognized by giving each member one vote for every £500 suscribed by him to the Company's stock. But their powers were materially increased.

They were given 'power and command' over their fortresses, and were authorized to appoint governors and

other officers for their government. The governor and council of each factory were empowered 'to judge all persons belonging to the said Governor and Company or that shall be under them, in all causes, whether civil or criminal, according to the laws of this kingdom, and to execute judgement accordingly'. And the chief factor and council of any place for which there was no governor were empowered to send offenders for punishment, either to a place where there was a governor and council, or to England.

The Company were also empowered to send ships of war, men, or ammunition for the security and defence of their factories and places of trade, and 'to choose commanders and officers over them and to give them power and authority, by commission under their common seal or otherwise, to continue or make peace or war with any people that are not Christians, in any place of their trade, as shall be for the most advantage and benefit of the said Governor and Company, and of their trade'. They were further empowered to erect fortifications, and supply them with provisions and ammunition, duty free, 'as also to transport and carry over such number of men, being willing thereunto, as they shall think fit,' to govern them in a legal and reasonable manner, to punish them for misdemeanour, and to fine them for breach of orders. They might seize unlicensed persons and send them to England, punish persons in their employment for offences, and in case of their appealing against the sentence, seize them and send them as prisoners to England, there to receive such condign punishment as the merits of the offenders' cause should require, and the laws of the nation should allow.

Arrangements for administration of justice at Madras in seventeenth century.

With regard to the administration of justice, nothing appears to have been done towards carrying into effect the provisions of the charter of 1661 till the year 1678. At Madras, which was at that time the chief of the Company's settlements in India,[1] two or more officers

[1] The settlement of Madras or Fort St. George had been erected into a Presidency in 1651.

of the Company used before 1678 to sit as justices in the 'choultry' to dispose of petty cases, but there was no machinery for dealing with serious crimes.[1]

In 1678 the agent and council at Madras resolved that, under the charter of 1661, they had power to judge all persons living under them in all cases, whether criminal or civil, according to the English laws, and to execute judgement accordingly, and it was determined that the governor and council should sit in the chapel in the fort on every Wednesday and Saturday to hear and judge all causes. But this high court was not to supersede the justices of the choultry, who were still to hear and decide petty cases.

Grant of Bombay to the Company.

In the meantime the port and island of Bombay, which had, in 1661, been ceded to the British Crown as a part of the dower of Catherine of Braganza, were, by a charter of 1669, granted to the East India Company to be held of the Crown, 'as of the Manor of Greenwich in free and common soccage,' for the annual rent of £10.

And by the same charter the Company were authorized to take into their service such of the king's officers and soldiers as should then be on the island and should be willing to serve them. The officers and men who volunteered their services under this power became the cadets of the Company's '1st European Regiment', or 'Bombay Fusiliers', afterwards the 103rd Foot.

The Company were authorized, through their court of committees, to make laws, orders, ordinances, and constitutions for the good government and otherwise of the port and island and of the inhabitants thereof, and, by their governors and other officers, to exercise judicial authority, and have power and authority of government or command, in the island, and to repel any force which should attempt to inhabit its precincts without licence, or to annoy the inhabitants. Moreover, the principal governor of the island was empowered 'to use and

[1] See Wheeler, *Madras in Olden Times.*

exercise all those powers and authorities, in cases of rebellion, mutiny, or sedition, of refusing to serve in wars, flying to the enemy, forsaking colours or ensigns, or other offences against law, custom, and discipline military, in as large and ample manner, to all intents and purposes whatsoever, as any captain-general of our army by virtue of his office has used and accustomed, and may or might lawfully do '.

The transition of the Company from a trading association to a territorial sovereign invested with powers of civil and military government is very apparent in these provisions.

Further attributes of sovereignty were soon afterwards conferred.

Charter of 1677 granting powers of coinage.

By a charter of 1677 the Company were empowered to coin money at Bombay to be called by the name of 'rupees, pices, and budjrooks', or such other names as the Company might think fit. These coins were to be current in the East Indies, but not in England. A mint for the coinage of pagodas had been established at Madras some years before.

Administration of justice at Bombay in seventeenth century.

The commissioners sent from Surat [1] to take possession of Bombay on behalf of the Company made a report in which they requested that a judge-advocate might be appointed, as the people were accustomed to civil law. Apparently, as a temporary measure, two courts of judicature were formed, the inferior court consisting of a Company's civil officer assisted by two native officers, and having limited jurisdiction, and the supreme court consisting of the deputy governor and council, whose decisions were to be final and without appeal, except in cases of the greatest necessity.

Charter of 1683 giving power to raise

By a charter of 1683 the Company were given full power to declare and make peace and war with any of the 'heathen nations' being natives of the parts of Asia and

[1] Bombay was then subordinate to Surat, where a factory had been established as early as 1612, and where there was a president with a council of eight members.

forces and exercise martial law, and establishing Court of Admiralty.

America mentioned in the charter, and to 'raise, arm, train, and muster such military forces as to them shall seem requisite and necessary; 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'. But this power was subject to a proviso reserving to the Crown 'the sovereign right, powers, and dominion over all the forts and places of habitation', and 'power of making peace and war, when we shall be pleased to interpose our royal authority thereon'.

By the same charter the king established a court of judicature, to be held at such place or places as the Company might direct, and to consist of 'one person learned in the civil law, and two assistants', to be appointed by the Company. The court was to have power to hear and determine all cases of forfeiture of ships or goods trading contrary to the charter, and also all mercantile and maritime cases concerning persons coming to or being in the places aforesaid, and all cases of trespasses, injuries, and wrongs done or committed upon the high seas or in any of the regions, territories, countries or places aforesaid, concerning any persons residing, being, or coming within the limits of the Company's charter. These cases were to be adjudged and determined by the court, according to the rules of equity and good conscience, and according to the laws and customs of merchants, by such procedure as they might direct, and, subject to any such directions as the judges of the court should, in their best judgement and discretion, think meet and just.

The only person learned in the civil law who was sent out to India in pursuance of the charter of 1683 was Dr. John St. John. By a commission from the king, supplemented by a commission from the Company, he was appointed judge of the court at Surat. But he soon became involved in disputes with the governor, Sir John

Child,[1] who limited his jurisdiction to maritime cases, and appointed a separate judge for civil actions.

At Madras, the president of the council was appointed to supply the place of judge-advocate till one should arrive. But this arrangement caused much dissatisfaction, and it was resolved that, instead of the president's accepting this appointment, the old court of judicature should be continued, and that, until the arrival of a judge-advocate, causes should be heard under it as formerly in accordance with the charter of 1661.

Charter of 1686.

In 1686 James II granted the Company a charter by which he renewed and confirmed their former privileges, and authorized them to appoint 'admirals, vice-admirals, rear-admirals, captains, and other sea officers' in any of the Company's ships within the limits of their charter, with power for their naval officers to raise naval forces, and to exercise and use 'within their ships on the other side of the Cape of Good Hope, in the time of open hostility with some other nation, the law called the law martial for defence of their ships against the enemy'. By the same charter the Company were empowered to coin in their forts any species of money usually coined by native princes, and it was declared that these coins were to be current within the bounds of the charter.

The provisions of the charter of 1683 with respect to the Company's admiralty court were repeated with some modifications, and under these provisions Sir John Biggs, who had been recorder of Portsmouth, was appointed judge-advocate at Madras.

Establishment of municipality at Madras.

Among the prerogatives of the Crown one of the most important is the power of constituting municipal corporations by royal charter. Therefore it was a signal mark of royal favour when James II, in 1687, delegated to the East India Company the power of establishing by charter a municipality at Madras. The question whether this

[1] A dependent, but not a brother, of Sir Josiah Child. See Strachey, *Keigwin's Rebellion*, p. 21. See also H. G. Rawlinson, *British Beginnings in Western India*. Clarendon Press, 1920.

charter should be passed under the great seal or under the Company's seal was discussed at a cabinet council. The latter course was eventually adopted at the instance of the governor and deputy governor of the Company, and the reasons urged for its adoption are curious and characteristic. The governor expressed his opinion that no persons in India should be employed under immediate commission from His Majesty, 'because the wind of extraordinary honour in their heads would probably render them so haughty and overbearing that the Company would be forced to remove them.' He was evidently thinking of the recent differences between Sir John Child and Dr. St. John, and was alive to the dangers arising from an independent judiciary which in the next century were to bring about the conflicts between Warren Hastings and the Calcutta supreme court.

Charter of 1687.

Accordingly the charter of 1687, which established a municipality and mayor's court at Madras, proceeds from the Company, and not from the Crown. It recites 'the approbation of the king, declared in His Majesty's Cabinet Council [1] the eleventh day of this instant December', and then goes on to constitute a municipality according to the approved English type. The municipal corporation is to consist of a mayor, twelve aldermen, and sixty or more burgesses. The mayor and aldermen are to have power to levy taxes for the building of a convenient town house or guild hall, of a public jail, and of a school-house 'for the teaching of the Gentues or native children to speak, read, and write the English tongue, and to understand arethmetick and merchants' accompts, and for such further ornaments and edifices as shall be thought convenient for the honour, interest, ornament, security, and defence' of the corporation, and of the inhabitants of Madras, and for the payment of the salaries of the necessary municipal officers, including a school-

[1] This formal recognition of the existence of a cabinet council is of constitutional interest. But of course the cabinet council of 1687 was a very different thing from the cabinet council of the present day.

master. The mayor and aldermen are to be a court of record, with power to try civil and criminal causes, and the mayor and three of the aldermen are to be justices of the peace. There is to be an appeal in civil and criminal cases from the mayor's court to 'our supreme court of judicature, commonly called our court of admiralty'. There is to be a recorder, who must be a discreet person, skilful in the laws and constitutions of the place, and who is to assist the mayor in trying, judging, and sentencing causes of any considerable value or intricacy. And there is to be a town clerk and clerk of the peace, an able and discreet person, who must always be an Englishman born, but well skilled in the language of East India, and who is to be esteemed a notary public.

Nor are the ornamental parts of municipal life forgotten. 'For the greater solemnity and to attract respect and reverence from the common people', the mayor is to 'always have carried before him when he goes to the guild hall or other place of assembly, two silver maces gilt, not exceeding three feet and a half in length', and the mayor and aldermen may 'always upon such solemn occasions wear scarlet serge gowns, all made after one form or fashion, such as shall be thought most convenient for that hot country'. The burgesses are, on these occasions, to wear white 'pelong', or other silk gowns. Moreover, the mayor and aldermen are 'to have and for ever enjoy the honour and privilege of having rundelloes and kattysols[1] borne over them when they walk or ride abroad on these necessary occasions within the limits of the said corporation, and, when they go to the guild hall or upon any other solemn occasion, they may ride on horseback in the same order as is used by the Lord Mayor and aldermen of London, having their horses decently furnished with saddles, bridles, and other trimmings after one form and manner as shall be devised and directed by our President and Council of Fort St. George'.

The charter of 1687 was the last of the Stuart charters

[1] Umbrellas and parasols.

Company's resolution of 1689.

affecting the East India Company. The constitutional history of the Company after the Revolution of 1688 may be appropriately ushered in by a reference to the resolution which was passed by them in that year:

'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 thinks it their interest to prevent us; and upon this account it is that the wise Dutch, in all their general advices that we have seen, write ten paragraphs concerning their government, their civil and military policy, warfare, and the increase of their revenue, for one paragraph they write concerning trade.'

This famous resolution, which was doubtless inspired, if not penned, by Sir Josiah Child, announced in unmistakable terms the determination of the Company to guard their commercial supremacy on the basis of their territorial sovereignty and foreshadowed the annexations of the next century.

Controversies after Revolution of 1688.

The Revolution of 1688 dealt a severe blow to the policy of Sir Josiah Child, and gave proportionate encouragement to his rivals. They organized themselves in an association which was popularly known as the New Company, and commenced an active war against the Old Company both in the City and in Parliament. The contending parties presented petitions to the Parliament of 1691, and the House of Commons passed two resolutions—first, that the trade of the East Indies was beneficial to the nation, and secondly, that the trade with the East Indies would be best carried on by a joint-stock company possessed of extensive privileges. The practical question, therefore, was, not whether the trade to the East Indies should be abolished, or should be thrown open, but whether the monopoly of the trade should be left in the hands of Sir Josiah Child and his handful of supporters. On this

question the majority of the Commons wished to effect a compromise—to retain the Old Company, but to remodel it and to incorporate it with the New Company. Resolutions were accordingly carried for increasing the capital of the Old Company, and for limiting the amount of the stock which might be held by a single proprietor. A Bill based on these resolutions was introduced and read a second time, but was dropped in consequence of the refusal of Child to accept the terms offered to him. Thereupon the House of Commons requested the king to give the Old Company the three years' warning in pursuance of which their privileges might be determined.

Two years of controversy followed. The situation of the Old Company was critical. By inadvertently omitting to pay a tax which had been recently imposed on joint-stock companies, they had forfeited their charter and might at any time find themselves deprived of their privileges without any notice at all. At length, by means of profuse bribes, Child obtained an order requiring the Attorney-General to draw up a charter regranting to the Old Company its former privileges, but only on the condition that the Company should submit to further regulations substantially in accordance with those sanctioned by the House of Commons in 1691. However, even these terms were considered insufficient by the opponents of the Company, who now raised the constitutional question whether the Crown could grant a monopoly of trade without the authority of Parliament.[1] This question, having been argued before the Privy Council, was finally decided in favour of the Company, and an order was passed that the charter should be sealed.

Charters of 1693 and 1694.

Accordingly the charter of October 7, 1693, confirmed the former charter of the Company, but was expressed to be revocable in the event of the Company failing to submit

[1] The question had been previously raised in the great case of *The East India Company* v. *Sandys* (1683–85), in which the Company brought an action against Mr. Sandys for trading to the East Indies without a licence, and the Lord Chief Justice (Jeffreys) gave judgement for the plaintiffs. See the report in 10 State Trials, 371.

to such further regulations as might be imposed on them within a year. These regulations were embodied in two supplemental charters dated November 11, 1693, and September 28, 1694. By the first of these charters the capital of the Company was increased by the addition of £744,000. No person was to subscribe more than £10,000. Each subscriber was to have one vote for each £1,000 stock held by him up to £10,000, but no more. The governor and deputy governor were to be qualified by holding £4,000 stock, and each committee by holding £1,000 stock. The dividends were to be made in money alone. Books were to be kept for recording transfers of stock, and were to be open to public inspection. The joint stock was to continue for twenty-one years and no longer.

The charter of 1694 provided that the governor and deputy governor were not to continue in office for more than two years, that eight new committees were to be chosen each year, and that a general court must be called within eight days on request by six members holding £1,000 stock each. The three charters were to be revocable after three years' warning, if not found profitable to the realm.

By a charter of 1698 the provisions as to voting powers and qualification were modified. The qualification for a single vote was reduced to £500, and no single member could give more than five votes. The qualification for being a committee was raised to £2,000.

The affair of the *Redbridge* and its results.

In the meantime, however, the validity of the monopoly renewed by the charter of 1693 had been successfully assailed. Immediately after obtaining a renewal of their charter the directors used their powers to effect the detention of a ship called the *Redbridge*, which was lying in the Thames and was believed to be bound for countries beyond the Cape of Good Hope. The legality of the detention was questioned, and the matter was brought up in Parliament. And on January 11, 169$\frac{3}{4}$, the House of Commons passed a resolution 'that all subjects of

England have equal rights to trade to the East Indies unless prohibited by Act of Parliament'.

'It has ever since been held,' says Macaulay, 'to be the sound doctrine that no power but that of the whole legislature can give to any person or to any society an exclusive privilege of trading to any part of the world.' It is true that the trade to the East Indies, though theoretically thrown open by this resolution, remained practically closed. The Company's agents in the East Indies were instructed to pay no regard to the resolutions of the House of Commons, and to show no mercy to interlopers. But the constitutional point was finally settled. The question whether the trading privileges of the East India Company should be continued was removed from the council chamber to Parliament, and the period of control by Act of Parliament over the affairs of the Company began.

Incorporation of English Company.

The first Act of Parliament for regulating the trade to the East Indies was passed in 1698. The New Company had continued their attacks on the monopoly of the Old Company, a monopoly which had now been declared illegal, and they found a powerful champion in Montagu, the Chancellor of the Exchequer. The Old Company offered, in return for a monopoly secured by law, a loan of £700,000 to the State. But Montagu wanted more money than the Old Company could advance. He also wanted to set up a new company constituted in accordance with the views of his adherents. Unfortunately these adherents were divided in their views. Most of them were in favour of a joint-stock company. But some preferred a regulated company after the model of the Levant Company. The plan which Montagu ultimately devised was extremely intricate, but its general features cannot be more clearly described than in the language of Macaulay: 'He wanted two millions to extricate the State from its financial embarrassments. That sum he proposed to raise by a loan at 8 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 that 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 arrangement was embodied in an Act and two charters. The Act (9 & 10 Will. III, c. 44) authorized the Crown to borrow two millions on the security of taxes on salt, and stamped vellum, parchment, and paper, and to incorporate the subscribers to the loan by the cumbrous name of the 'General Society entitled to the advantages given by an Act of Parliament for advancing a sum not exceeding two millions for the service of the Crown of England'. The Act followed closely the lines of that by which, four years before, Montagu had established the Bank of England in consideration of a loan of £1,200,000. In each case the loan bears interest at the rate of 8 per cent., and is secured on the proceeds of a special tax or set of taxes. In each case the subscribers to the loan are incorporated and obtain special privileges. The system was an advance on that under which bodies of merchants had obtained their privileges by means of presents to the king or bribes to his ministers, and was destined to receive much development in the next generation. The plan of raising special loans on the security of special taxes has since been superseded by the National Debt and the Consolidated Fund. But the debt to the Bank of England still remains separate, and retains some of the features originally imprinted on it by the legislation of Montagu.

Of the charters granted under the Act of 1698, the first [1] incorporated the General Society as a regulated company, whilst the second [2] incorporated most of the subscribers to the General Society as a joint-stock company, under the name of 'The English Company trading to the East Indies'. The constitution of the English Company was formed on the same general lines as that of the Old or London Company, but the members of their governing body were called directors instead of 'committees'.

The New Company was given the exclusive privilege of trading to the East Indies, subject to a reservation of the concurrent rights of the Old Company until September 29, 1701. The New Company, like the Old Company, was authorized to make by-laws and ordinances, to appoint governors, with power to raise and train military forces, and to establish courts of judicature. It was also directed to maintain ministers of religion at its factories in India, and to take a chaplain in every ship of 500 tons. The ministers were to learn the Portuguese language and to 'apply themselves to learn the native language of the country where they shall reside, the better to enable them to instruct the Gentoos that shall be the servants or slaves of the same Company or of their agents, in the Protestant religion'. Schoolmasters were also to be provided.

Union of Old and New Companies.

It soon appeared that the Old Company had, to use a modern phrase, 'captured' the New Company. It had subscribed £315,000 towards the capital of two millions authorized by the Act of 1698. It had thus acquired a material interest in its rival's concern, and, at the same time, was in possession of the field. It had the capital and plant indispensable for the East India trade, and it retained concurrent privileges of trading. It soon showed its strength by obtaining a private Act of Parliament (11 & 12 Will. III, c. 4) which continued it as a trading corporation until repayment of the whole loan of two millions.

The situation was impossible; the privileges nominally

[1] Charter of September 3, 1698. [2] Charter of September 5, 1698.

obtained by the New Company were of no real value to it; and a coalition between the two Companies was the only practicable solution of the difficulties which had been created by the Act and charters of 1698.

The coalition was effected in 1702, through the intervention of Lord Godolphin, and by means of an Indenture Tripartite to which Queen Anne and the two Companies were parties, and which embodied a scheme for equalizing the capital of the two Companies and for combining their stocks. The Old Company was to maintain its separate existence for seven years, but the trade of the two Companies was to be carried on jointly, in the name of the English Company, but for the common benefit of both, under the direction of twenty-four managers, twelve to be selected by each Company. At the end of the seven years the Old Company was to surrender its charters. The New or English Company was to continue its trade in accordance with the provisions of the charter of 1698, but was to change its name for that of 'The United Company of Merchants of England trading to the East Indies'.

A deed of the same date, by which the 'dead stock' of the two Companies was conveyed to trustees, contains an interesting catalogue of their Indian possessions at that time.

Difficulties arose in carrying out the arrangement of 1702, and it became necessary to apply for the assistance of Parliament, which was given on the usual terms. By an Act of 1707 [1] the English Company was required to advance to the Crown a further loan of £1,200,000 without interest, a transaction which was equivalent to reducing the rate of interest on the total loan of £3,200,000 from 8 to 5 per cent. In consideration of this advance the exclusive privileges of the Company were continued to 1726, and Lord Godolphin was empowered to settle the differences still remaining between the London Company and the English Company. Lord Godolphin's Award was

[1] 6 Anne, c. 71.

given in 1708, and in 1709 Queen Anne accepted a surrender of the London Company's charters and thus terminated its separate existence. The original charter of the New or English Company thus came to be, in point of law, the root of all the powers and privileges of the United Company, subject to the changes made by statute. Henceforth down to 1833 (see 3 & 4 Will. IV, c. 85, s. 111) the Company bears its new name of 'The United Company of Merchants of England trading to the East Indies'.

Period between 1708 and 1765.

For constitutional purposes the half-century which followed the union of the two Companies may be passed over very lightly.

An Act of 1711 [1] provided that the privileges of the United Company were not to be determined by the repayment of the loan of two millions.

Extension of Company's charter.

The exclusive privileges of the United Company were extended for further terms by Acts of 1730 [2] and 1744.[3] The price paid for the first extension was an advance to the State of £200,000 without interest, and the reduction of the rate of interest on the previous loan from 5 per cent. to 4 per cent. By another Act of 1730 [4] the security for the loan by the Company was transferred from the special taxes on which it had been previously charged to the 'aggregate fund', the predecessor of the modern Consolidated Fund. The price of the second extension, which was to 1780, was a further loan of more than a million at 3 per cent. By an Act of 1750 [5] the interest on the previous loan of £3,200,000 was reduced, first to 3½ per cent., and then to 3 per cent.

Provisions against interlopers.

Successive Acts were passed for increasing the stringency of the provisions against interlopers [6] and for

[1] 10 Anne, c. 35. [2] 3 Geo. II, c. 14. [3] 17 Geo. II, c. 17.
[4] 3 Geo. II, c. 20. [5] 23 Geo. II, c. 22.
[6] 1718, 5 Geo. I, c. 21; 1720. 7 Geo. I, Stat. 1, c. 21; 1722, 9 Geo. I, c. 26; 1732, 5 Geo. II, c. 29. See the article on 'Interlopers' in the *Dictionary of Political Economy*. For the career of a typical interloper see the account of Thomas Pitt, afterwards Governor of Madras, and grandfather of the elder William Pitt, given in vol. iii. of Yule's edition of the Diary of William Hedges and in vol. i. of Mr. Basil Williams's *Life of William Pitt*. The relations between interlopers and the East India Company in the preceding

penalizing any attempt to support the rival Ostend Company.[1]

Judicial charters of 1726 and 1753.

In 1726 a charter was granted establishing or reconstituting municipalities at Madras, Bombay, and Calcutta, and setting up or remodelling mayor's and other courts at each of these places. At each place the mayor and aldermen were to constitute a mayor's court with civil jurisdiction, subject to an appeal to the governor or president in council, and a further appeal in more important cases to the king in council. The mayor's court now also gave probates and exercised testamentary jurisdiction. The governor or president and the five seniors of the council were to be justices of the peace, and were to hold quarter sessions four times in the year, with jurisdiction over all offences except high treason. At the same time the Company was authorized, as in previous charters, to appoint generals, and other military officers, with power to exercise the inhabitants in arms, to repel force by force, and to exercise martial law in time of war.

The capture of Madras by the French in 1746 having destroyed the continuity of the municipal corporation at that place, the charter of 1726 was surrendered and a fresh charter was granted in 1753.

century are well illustrated by Skinner's case, which arose on a petition presented to Charles II soon after the Restoration. According to the statement signed by the counsel of Skinner there was a general liberty of trade to the East Indies in 1657 (under the Protectorate), and he in that year sent a trading ship there; but the Company's agents at Bantam, under pretence of a debt due to the Company, seized his ship and goods, assaulted him in his warehouse at Jamba in the island of Sumatra, and dispossessed him of the warehouse and of a little island called Barella. After various ineffectual attempts by the Crown to induce the Company to pay compensation, the case was, in 1665, referred by the king in council to the twelve judges, with the question whether Skinner could have full relief in any court of law. The answer was that the king's ordinary courts of justice could give relief in respect of the wrong to person and goods, but not in respect of the house and island. The House of Lords then resolved to relieve Skinner, but these proceedings gave rise to a serious conflict between the House of Lords and the House of Commons. See Hargrave's Preface to Hale's *Jurisdiction of the House of Lords*, p. cv.

[1] Charter granted by the Emperor Charles VI in 1722, but withdrawn in 1725.

The charter of 1753 expressly excepted from the jurisdiction of the mayor's court all suits and actions between the Indian natives only, and directed that these suits and actions should be determined among themselves, unless both parties submitted them to the determination of the mayor's courts. But, according to Mr. W. H. Morley, it does not appear that the native inhabitants of Bombay were ever actually exempted from the jurisdiction of the mayor's court, or that any peculiar laws were administered to them in that court.[1]

The charters of 1726 and 1753 have an important bearing on the question as to the precise date at which the English criminal law was introduced at the presidency towns. This question is discussed by Sir James Stephen with reference to the legality of Nuncomar's conviction for forgery; the point being whether the English statute of 1728 (2 Geo. II, c. 25) was or was not in force in Calcutta at the time of Nuncomar's trial. Sir James Stephen inclines to the opinion that English criminal law was originally introduced to some extent by the charter of 1661, but that the later charters of 1726, 1753, and 1774 must be regarded as acts of legislative authority whereby it was reintroduced on three successive occasions, as it stood at the three dates mentioned. If so, the statute of 1728 would have been in force in Calcutta in 1770 when Nuncomar's offence was alleged to have been committed, and at the time of his trial in 1775. But high judicial authorities in India have maintained a different view. According to their view British statute law was first given to Calcutta by the charter establishing the mayor's court in 1726, and British statutes passed after the date of that charter did not apply to India, unless expressly or by necessary implication extended to it.[2] Since the passing of the Indian Penal Code the question has ceased to be of practical importance.

[1] Morley's *Digest of Cases in the Supreme Court in India*, Introduction, p. clxix.

[2] Morley's *Digest*, Introduction, pp. xi, xxiii.

Mutiny Act and Articles of War for Indian Forces.

In 1744 war broke out between England and France, and in 1746 their hostilities extended to India. These events led to the establishment of the Company's Indian Army. The first establishment of that army may, according to Sir George Chesney,[1] be considered to date from the year 1748, 'when a small body of sepoys was raised at Madras, after the example set by the French, for the defence of that settlement during the course of the war which had broken out, four years previously, between France and England. At the same time a small European force was raised, formed of such sailors as could be spared from the ships on the coast, and of men smuggled on board the Company's vessels in England by the Company. An officer, Major Lawrence, was appointed by a commission from the Company to command these forces in India.' During the Company's earliest wars its army consisted mainly, for fighting purposes, of Europeans.

It has been seen that by successive charters the Company had been authorized to raise troops and appoint officers. But the more extensive scale on which the military operations of the Company were now conducted made necessary further legislation for the maintenance of military discipline. An Act of 1754 [2] laid down for the Indian forces of the Company provisions corresponding to those embodied in the annual English Mutiny acts. It imposed penalties for mutiny, desertion, and similar offences, when committed by officers or soldiers in the Company's service. The Court of Directors might, in pursuance of an authority from the king, empower their president and council and their commanders-in-chief to hold courts-martial for the trial and punishment of military offences. The king was also empowered to make articles of war for the better government of the Company's forces. The same Act contained a provision, repeated in subsequent Acts, which

[1] *Indian Polity* (3rd ed.), ch. xii, which contains an interesting sketch of the rise and development of the Indian Army. The nucleus of a European force had been formed at Bombay in 1669, *supra*, p. 18.

[2] 27 Geo. II, c. 9.

made oppression and other offences committed by the Company's presidents or councils cognizable and punishable in England. The Act of 1754 was amended by another Act passed in 1760.[1]

Charters of 1757 and 1758 as to booty and cession of territory.

The warlike operations which were carried on by the East India Company in Bengal at the beginning of the second half of the eighteenth century, and which culminated in Clive's victory at Plassey, led to the grant of two further charters to the Company.

A charter of 1757 recited that the Nabob of Bengal had taken from the Company, without just or lawful pretence and contrary to good faith and amity, the town and settlement of Calcutta, and goods and valuable commodities belonging to the Company and to many persons trading or residing within the limits of the settlement, and that the officers and agents of the Company at Fort St. George had concerted a plan of operations with Vice-Admiral Watson and others, the commanders of our fleet employed in those parts, for regaining the town and settlement and the goods and commodities, and obtaining adequate satisfaction for their losses; and that it had been agreed between the officers of the Company, on the one part, and the vice-admiral and commanders of the fleet, on the other part, assembled in a council of war, that one moiety of all plunder and booty 'which shall be taken from the Moors' should be set apart for the use of the captors, and that the other moiety should be deposited till the pleasure of the Crown should be known. The charter went on to grant this reserved moiety to the Company, except any part thereof which might have been taken from any of the king's subjects. Any part so taken was to be returned to the owners on payment of salvage.

A charter of 1758, after reciting that powers of making peace and war and maintaining military forces had been granted to the Company by previous charters, and that many troubles had of late years arisen in the East Indies, and the Company had been obliged at very great expense

[1] 1 Geo. III, c. 14.

to carry out a war in those parts against the French and likewise against the Nabob of Bengal and other princes or Governments in India, and that some of their possessions had been taken from them and since retaken, and forces had been maintained, raised, and paid by the Company in conjunction with some of the royal ships of war and forces, and that other territories or districts, goods, merchandises, and effects had been acquired and taken from some of the princes or Governments in India at variance with the Company by the ships and forces of the Company alone, went on to grant to the Company all such booty or plunder, ships, vessels, goods, merchandises, treasure, and other things as had since the charter of 1757 been taken or seized, *or should thereafter be taken*, from any of the enemies of the Company or any of the king's enemies in the East Indies by any ships or forces of the Company employed by them or on their behalf within their limits of trade. But this was only to apply to booty taken during hostilities begun and carried on in order to right and recompense the Company upon the goods, estate, or people of those parts from whom they should sustain or have just and well-grounded cause to fear any injury, loss, or damage, or upon any people who should interrupt, wrong, or injure them in their trade within the limits of the charters, or should in a hostile manner invade or attempt to weaken or destroy the settlements of the Company or to injure the king's subjects or others trading or residing within the Company's settlements or in any manner under the king's protection within the limits of the Company. The booty must also have been taken in wars or hostilities or expeditions begun, carried on, and completed by the forces raised and paid by the Company alone or by the ships employed at their sole expense. And there was a saving for the royal prerogative to distribute the booty in such manner as the Crown should think fit in all cases where any of the king's forces should be appointed and commanded to act in conjunction with the ships or forces of the Company. There was also an

exception for goods taken from the king's subjects, which were to be restored on payment of reasonable salvage. These provisions, though they gave rise to difficult questions at various subsequent times, have now become obsolete. But the charter contained a further power which is still of practical importance. It expressly granted to the Company power, by any treaty of peace made between the Company, or any of their officers, servants, or agents, and any of the Indian princes or Governments, to cede, restore, or dispose of any fortresses, districts, or territories acquired by conquest from any of the Indian princes or Governments during the late troubles between the Company and the Nabob of Bengal, or which should be acquired by conquest in time coming, subject to a proviso that the Company should not have power to cede, restore, or dispose of any territory acquired from the subjects of any European Power without the special licence and approbation of the Crown. This power has been relied on as the foundation, or one of the foundations, of the power of the Government of India to cede territory.[1]

The Company as territorial sovereign.

The year 1765 marks a turning-point in Anglo-Indian history, and may be treated as commencing the period of territorial sovereignty by the East India Company. The successes of Clive and Lawrence in the struggle between the English and French and their respective allies had extinguished French influence in the south of India. The victories of Plassey [2] and Baxar [2] made the Company masters of the north-eastern provinces of the peninsula. In 1760 Clive returned from Bengal to England. In 1765, after five years of confusion, he went back to Calcutta as Governor and Commander-in-Chief of Bengal, armed with extraordinary powers. His administration of eighteen months was one of the most memorable in Indian history. The beginning of our Indian rule dates from the second governorship of Clive, as our military supremacy

[1] *Lachmi Narayan* v. *Raja Pratab Singh*, I. L. R. 2 All. 1.

[2] Plassey (Clive), June 23, 1757; Baxar (Munro), October 23, 1764.

had dated from his victory at Plassey. Clive's main object was to obtain the substance, though not the name, of territorial power, under the fiction of a grant from the Mogul Emperor.

Grant of the Diwani.

This object was obtained by the grant from Shah Alam of the Diwani or fiscal administration of Bengal, Bihar, and Orissa.[1]

The criminal jurisdiction in the provinces was still left with the puppet Nawab, who was maintained at Moorshedabad, whilst the Company was to receive the revenues and to maintain the army. But the actual collection of the revenues still remained until 1772 in the hands of native officials.

Thus a system of dual government was established, under which the Company, whilst assuming complete control over the revenues of the country, and full power of maintaining or disbanding its military forces, left in other hands the responsibility for maintaining law and order through the agency of courts of law.

The great events of 1765 produced immediate results in England. The eyes of the proprietors of the Company were dazzled by golden visions. On the dispatch bearing the grant of the Diwani being read to the Court of Proprietors they began to clamour for an increase of dividend, and, in spite of the Company's debts and the opposition of the directors, they insisted on raising the dividend in 1766 from 6 to 10 per cent., and in 1767 to 12½ per cent.

At the same time the public mind was startled by the enormous fortunes which 'Nabobs' were bringing home, and the public conscience was disturbed by rumours of the unscrupulous modes in which these fortunes had been amassed. Constitutional questions were also raised as to the right of a trading company to acquire on its own

[1] The grant is dated August 17, 1765. The 'Orissa' of the grant corresponds to what is now the district of Midnapur, and is not to be confused with the modern Orissa, which was not acquired until 1803. A good account of the condition of Bengal during the period 1765–72 will be found in Ramsay Muir's *Making of British India*, ch. iii.

account powers of territorial sovereignty.[1] The intervention of Parliament was imperatively demanded.

Legislation of 1767.

On November 25, 1766, the House of Commons resolved to appoint a committee of the whole house to inquire into the state and condition of the East India Company, and the proceedings of this committee led to the passage in 1767 of five Acts with reference to Indian affairs. The first disqualified a member of any company for voting at a general court unless he had held his qualification for six months, and prohibited the making of dividends except at a half-yearly or quarterly court.[2] Although applying in terms to all companies, the Act was immediately directed at the East India Company, and its object was to check the trafficking in votes and other scandals which had recently disgraced their proceedings. The second Act [3] prohibited the East India Company from making any dividend except in pursuance of a resolution passed at a general court after due notice, and directly over-ruled the recent resolution of the Company by forbidding them to declare any dividend in excess of 10 per cent. per annum until the next session of Parliament. The third and fourth Acts [4] embodied the terms of a bargain to which the Company had been compelled to consent. The Company was required to pay into the Exchequer an annual sum of £400,000 for two years from February 1, 1767, and in consideration of this payment was allowed to retain its territorial acquisitions and revenues for the same period.[5] At the same time certain duties on tea were reduced on an undertaking by the Company to indemnify the Exchequer against any loss arising from the reduction. Thus the State claimed its share of the Indian spoil, and asserted its rights to control the sovereignty of Indian territories.

In 1768 the restraint on the dividend was continued for

[1] For the arguments on this question, see Lecky, *History of England in the Eighteenth Century*, ch. xii.

[2] 7 Geo. III, c. 48. [3] 7 Geo. III, c. 49. [4] 7 Geo. III, cc. 56, 57.

[5] This was apparently the first direct recognition by Parliament of the territorial acquisitions of the Company. See *Damodhar Gordhan* v. *Deoram Kanji* (the *Bhaunagar* case), L. R. 1 App. Cas. 332, 342.

another year,[1] and in 1769 a new agreement was made by Parliament with the East India Company for five years, during which time the Company was guaranteed the territorial revenues, but was bound to pay an annuity of £400,000, and to export a specified quantity of British goods. It was at liberty to increase its dividends during that time to 12½ per cent. provided the increase did not exceed 1 per cent. If, however, the dividend should fall below 10 per cent. the sum to be paid to the Government was to be proportionately reduced. If the finances of the Company enabled it to pay off some specified debts, it was to lend some money to the public at 2 per cent.[2]

These arrangements were obviously based on the assumption that the Company was making enormous profits, out of which it could afford to pay, not only liberal dividends to its proprietors, but a heavy tribute to the State. The assumption was entirely false. Whilst the servants of the Company were amassing colossal fortunes, the Company itself was advancing by rapid strides to bankruptcy. 'Its debts were already estimated at more than six millions sterling. It supported an army of about 30,000 men. It paid about one million sterling a year in the form of tributes, pensions, and compensations to the emperor, the Nabob of Bengal, and other great native personages. Its incessant wars, though they had hitherto been always successful, were always expensive, and a large portion of the wealth which should have passed into the general exchequer was still diverted to the private accounts of its servants.'[3] Two great calamities hastened the crisis. In the south of India, Hyder Ali harried the Carnatic, defeated the English forces, and dictated peace on his own terms in 1769. In the north, the great famine of 1770 swept away more than a third of the inhabitants of Bengal.

Pecuniary embarrassments in 1772.

Yet the directors went on declaring dividends at the rates of 12 and 12½ per cent. At last the crash came. In the spring session of 1772 the Company had endeavoured

[1] 8 Geo. III, c. 1. [2] 9 Geo. III, c. 24. [3] Lecky, iv. 273.

to initiate legislation for the regulation of its affairs. But its, the Company's, Bill was thrown out on the second reading, and in its place a select committee of inquiry was appointed by the House of Commons. In June, 1772, Parliament was prorogued, and in July the directors were obliged to confess that the sum required for the necessary payments of the next three months was deficient to the extent of £1,293,000. In August the chairman and deputy chairman waited on Lord North to inform him that nothing short of a loan of a million from the public could save the Company from ruin.

In November, 1772, Parliament met again, and its first step was to appoint a new committee with instructions to hold a secret inquiry into the Company's affairs. This committee presented its first report with unexpected rapidity, and on its recommendation Parliament in December, 1772, passed an Act prohibiting the directors from sending out to India a commission of supervision on the ground that the Company would be unable to bear the expense.[1]

Legislation of 1773.

In 1773 the Company came to Parliament for pecuniary assistance, and Lord North's Government took advantage of the situation to introduce extensive alterations into the system of governing the Company's Indian possessions.[2]

In spite of vehement opposition, two Acts were passed through Parliament by enormous majorities. By one of these Acts[3] the ministers met the financial embarrassments

[1] 13 Geo. III, c. 9.

[2] The history of the East India Company tends to show that whenever a chartered company undertakes territorial sovereignty on an extensive scale the Government is soon compelled to accept financial responsibility for its proceedings, and to exercise direct control over its actions. The career of the East India Company as a territorial power may be treated as having begun in 1765, when it acquired the financial administration of the provinces of Bengal, Bihar, and Orissa. Within seven years it was applying to Parliament for financial assistance. In 1773 its Indian operations were placed directly under the control of a governor-general appointed by the Crown, and in 1784 the Court of Directors in England were made directly subordinate to the Board of Control—that is, to a minister of the Crown.

[3] 13 Geo. III, c. 64.

of the Company by a loan of £1,400,000 at 4 per cent., and agreed to suspend payment by the Company of the annuity of £400,000 till this loan had been discharged. The Company was restricted from declaring any dividend above 6 per cent. till the new loan had been discharged, and above 7 per cent. until the bond debt was reduced to £1,500,000. It was obliged to submit its accounts every half-year to the Treasury, it was restricted from accepting bills drawn by their servants in India for above £300,000 a year, and it was required to export to the British settlements within its limits British goods of a specified value.

The Regulating Act of 1773.

The other Act was that commonly known as the Regulating Act.[1] To understand the object and effect of its provisions brief reference must be made to the constitution of the Company at the time when it was passed.

At home the Company was still governed in accordance with the charter of 1698, subject to a few modifications of detail made by the legislation of 1767. There was a Court of Directors and a General Court of Proprietors. Every holder of £500 stock had a vote in the Court of Proprietors, but the possession of £2,000 stock was the qualification for a director. The directors were twenty-four in number, and the whole of them were re-elected every year.

In India each of the three presidencies was under a president or governor and council, appointed by commission of the Company, and consisting of its superior servants. The numbers of the council varied,[2] and some of its members were often absent from the presidency town, being chiefs of subordinate factories in the interior of the country. All power was lodged in the president and council jointly, and nothing could be transacted except by a majority of votes. So unworkable had the council become as an instrument of government, that in Bengal Clive had been compelled to delegate its functions to a select committee.

[1] 13 Geo. III, c. 63. This Act is described in its 'short title' as an Act of 1772 because Acts then dated from the beginning of the session in which they were passed.

[2] They were usually from twelve to sixteen.

The presidencies were independent of each other. The Government of each was absolute within its own limits, and responsible only to the Company in England.

The civil and military servants of the Company were classified, beginning from the lowest rank, as writers, factors, senior factors, and merchants. Promotion was usually by seniority. Their salaries were extremely small,[1] but they made enormous profits by trading on their own account, and by money drawn from extortions and bribes. The select committee of 1773 published an account of such sums as had been proved and acknowledged to have been distributed by the princes and other natives of Bengal from the year 1757 to 1766, both included. They amounted to £5,940,987, exclusive of the grant made to Clive after the battle of Plassey. Clive, during his second governorship, made great efforts to put down the abuses of private trade, bribery, and extortion, and endeavoured to provide more legitimate remunerations for the higher classes of the Company's civil and military servants by assigning to them specific shares in the profits derived from the salt monopoly. According to his estimates the profits from this source of a commissioner or colonel would be at least £7,000 a year ; those of a factor or major, £2,000.[2]

At the presidency towns, civil justice was administered in the mayor's courts and courts of request, criminal justice by the justices in petty and quarter sessions. In 1772 Warren Hastings became Governor of Bengal, and took steps for organizing the administration of justice in the interior of that province. In the previous year the Court of Directors had resolved to assert in a more active form the powers given them by the grant of the Diwani in 1765, and in a letter of instructions to the president and council at Fort William had announced their resolution

[1] In the early part of the eighteenth century a writer, after five years' residence in India, received £10 a year, and the salaries of the higher ranks were on the same scale. Thus a member of council had £80 a year. When Thomas Pitt was appointed Governor of Madras in 1698 he received £300 a year for salary and allowances, and £100 for outfit.

[2] See Lecky, iv. 266, 270.

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.[1] In pursuance of these instructions the Court of Directors appointed a committee, consisting of the Governor of Bengal and four members of council, and these drew up a report, comprising a plan for the more effective collection of the revenue and the administration of justice. This plan was adopted by the Government on August 21, 1772, and many of its rules were long preserved in the Bengal Code of Regulations.[2]

In pursuance of this plan, a board of revenue was created, consisting of the president and members of the council, and the treasury was removed from Moorshedabad to Calcutta. The supervisors of revenue became collectors, and with them were associated native officers, styled 'diwans'. Courts were established in each collectorship, one styled the Diwani, a civil court, and the other the Faujdari, a criminal court. Over the former the collector presided in his quality of king's diwan. In the criminal court the kazi and mufti of the district sat to expound the Mahomedan law. Superior courts were established at the chief seat of government, called the Sadr Diwani Adalat and the Sadr Nizamat Adalat. These courts theoretically derived their jurisdiction and authority, not from the British Crown, but from the native Government in whose name the Company acted as administrators of revenue. They were Company's courts, not king's courts.

Provisions of Regulating Act.

By the Regulating Act of 1773 the qualification to vote in the Court of Proprietors was raised from £500 to £1,000, and restricted to those who had held their stock for twelve months. The directors, instead of being annually elected,

[1] Letter of August 28, 1771.

[2] The office of 'diwan' implied, not merely the collection of the revenue, but the administration of civil justice. The 'nizamut' comprised the right of arming and commanding the troops, and the management of the whole of the police of the country, as well as the administration of criminal justice. Morley, *Digest of Cases in the Supreme Courts in India*, p. xxxi. See a fuller account of Warren Hastings's plan, ibid., p. xxxiv.

were to sit for four years, a quarter of the number being annually renewed.

For the government of the Presidency of Fort William in Bengal, a governor-general and four counsellors were appointed, and the Act declared that the whole civil and military government of this presidency, and also the ordinary management and government of all the territorial acquisitions and revenues in the kingdoms of Bengal, Bihar, and Orissa, should, during such time as the territorial acquisitions and revenues remained in the possession of the Company, be vested in the governor-general and council of the Presidency of Fort William, in like manner as they were or at any time theretofore might have been exercised by the president and council or select committee in the said kingdoms. The avoidance of any attempt to define, otherwise than by reference to existing facts, the nature or extent of the authority claimed or exercised by the Crown over the Company in the new territorial acquisitions is very noticeable, and is characteristic of English legislation.

The first governor-general and counsellors were named in the Act. They were to hold office for five years,[1] and were not to be removable in the meantime, except by the king on the representation of the Court of Directors. A casual vacancy in the office of governor-general during these five years was to be supplied by the senior member of council. A casual vacancy in the office of member of council was during the same time to be filled by the Court of Directors with the consent of the Crown. At the end of the five years the patronage was to be vested in the Company. The governor-general and council were to be bound by the votes of a majority of those present at their meetings, and in the case of an equal division the governor-general was to have a casting vote.

[1] It has been suggested that this enactment is the origin of the custom under which the tenure of the more important offices in India, such as those of governor-general, governor, lieutenant-governor, and member of council, is now limited to five years. The limitation is not imposed by statute or by the instrument of appointment.

Warren Hastings, who had been appointed Governor of Bengal in 1772, was to be the first governor-general. The first members of his council were to be General Clavering, Colonel Monson, Mr. Barwell, and Mr. Francis.

The supremacy of the Bengal Presidency over the other presidencies was definitely declared. The governor-general and council were to have power of superintending and controlling the government and management of the presidencies of Madras, Bombay, and Bencoolen,[1] so far and in so much as that it should not be lawful for any Government of the minor presidencies 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 with any such prince or power without the previous consent of the governor-general and council, except in such cases of imminent necessity as would render it dangerous to postpone such hostilities or treaties until the arrival of their orders, and except also in cases where special orders had been received from the Company.[2] A president and a council offending against these provisions might be suspended by order of the governor-general and council. The governors of the minor presidencies were to obey the order of the governor-general and council, and constantly and dutifully to transmit to them advice and intelligence of all transactions and matters relating to the government, revenues, or interest of the Company.

Provisions followed for regulating the relations of the governor-general and his council to the Court of Directors, and of the directors to the Crown. The governor-general and council were to obey the orders of the Court of Directors and keep them constantly informed of all matters

[1] Bencoolen, otherwise Fort Marlborough, is in Sumatra. It was founded by the English in 1686, and was given to the Dutch by the London Treaty, March 11, 1824, in exchange for establishments on the continent of India and for the town and fort of Malacca and its dependencies, which were handed over to the East India Company by 5 Geo. IV, c. 108.

[2] This was the first assertion of Parliamentary control over the treaty relations of the Company.

relating to the interest of the Company. The directors were, within fourteen days after receiving letters or advices from the governor-general and council, to transmit to the Treasury copies of all parts relating to the management of the Company's revenue, and to transmit to a secretary of state copies of all parts relating to the civil or military affairs and government of the Company.

Important changes were made in the arrangements for the administration of justice in Bengal. The Crown was empowered to establish by charter a supreme court of judicature at Fort William, consisting of a chief justice and three other judges, who were to be barristers of five years' standing, and were to be appointed by the Crown. The supreme court was empowered to exercise civil, criminal, admiralty, and ecclesiastical jurisdiction, and to appoint such clerks and other ministerial officers with such reasonable salaries as should be approved by the governor-general and council, and to establish such rules of procedure and do such other things as might be found necessary for the administration of justice and the execution of the powers given by the charter. The court was declared to be at all times a court of record and a court of oyer and terminer and jail delivery in and for the town of Calcutta and factory of Fort William and the factories subordinate thereto. Its jurisdiction was declared to extend to all British subjects who should reside in the kingdoms or provinces of Bengal, Bihar, and Orissa, or any of them, under the protection of the United Company. And it was to have 'full power and authority to hear and determine all complaints against any of His Majesty's subjects for crimes, misdemeanours, or oppressions, and also to entertain, hear, and determine any suits or actions whatsoever against any of His Majesty's subjects in Bengal, Bihar, and Orissa, and any suit, action, or complaint against any person employed by or in the service of the Company or of any of His Majesty's subjects'.

But on this jurisdiction two important limitations were imposed.

First, the court was not to be competent to hear or determine any indictment or information against the governor-general or any of his council for any offence, not being treason or felony,[1] alleged to have been committed in Bengal, Bihar, or Orissa. And the governor-general and members of his council were not to be liable to be arrested or imprisoned in any action, suit, or proceeding in the supreme court.[2]

Then, with respect to proceedings in which natives of the country were concerned, it was provided that the court should hear and determine 'any suits or actions whatsoever of any of His Majesty's subjects against any inhabitant of India residing in any of the said kingdoms or provinces of Bengal, Bihar, or Orissa', on any contract in writing where the cause of action exceeded 500 rupees, and where the said inhabitant had agreed in the contract that, in case of dispute, the matter should be heard and determined in the supreme court. Such suits or actions might be brought in the first instance before the supreme court, or by appeal from any of the courts established in the provinces.

This authority, though conferred in positive, not negative, terms, appears to exclude by implication civil jurisdiction in suits by British subjects against 'inhabitants' of the country, except by consent of the defendant, and is silent as to jurisdiction in civil suits by 'inhabitants' against British subjects, or against other 'inhabitants'.

An appeal against the supreme court was to lie to the king in council, subject to conditions to be fixed by the charter.

All offences of which the supreme court had cognizance were to be tried by a jury of British subjects resident in Calcutta.

The governor-general and council and the chief justice and other judges of the supreme court were to act as

[1] Could it then try the governor-general for treason or felony?

[2] The saving appears to be limited to civil proceedings. It would exempt against arrest on mesne process.

justices of the peace, and for that purpose to hold quarter sessions.

Liberal salaries were provided out of the Company's revenues for the governor-general and his council and the judges of the supreme court. The governor-general was to have annually £25,000, each member of his council £10,000, the chief justice £8,000, and each puisne judge £6,000.

The governor-general and council were to have powers 'to make and issue such rules, ordinances, and regulations for the good order and civil government' of the Company's settlement at Fort William, and the subordinate factories and places, as should be deemed just and reasonable, and should not be repugnant to the laws of the realm, and to set, impose, inflict, and levy reasonable fines and forfeitures for their breach.

But these rules and regulations were not to be valid until duly registered and published in the supreme court, with the assent and approbation of the court, and they might, in effect, be set aside by the king in council. A copy of them was to be kept affixed conspicuously in the India House, and copies were also to be sent to a secretary of state.

The remaining provisions of the Act were aimed at the most flagrant of the abuses to which public attention had been recently directed. The governor-general and members of his council, and the chief justice and judges of the supreme court were prohibited from receiving presents or being concerned in any transactions by way of traffic, except the trade and commerce of the Company.

No person holding or exercising any civil or military office under the Crown or the Company in the East Indies was to receive directly or indirectly any present or reward from any of the Indian princes or powers, or their ministers or agents, or any of the nations of Asia. Any offender against this provision was to forfeit double the amount received, and might be removed to England. There was an exception for the professional remuneration of counsellors at law, physicians, surgeons, and chaplains.

No collector, supervisor, or any other of His Majesty's subjects employed or concerned in the collection of revenues or administration of justice in the provinces of Bengal, Bihar, and Orissa was, directly or indirectly, to be concerned in the buying or selling of goods by way of trade, or to intermeddle with or be concerned in the inland trade in salt, betel-nut, tobacco or rice, except on the Company's account. No subject of His Majesty in the East Indies was to lend money at a higher rate of interest than 12 per cent. per annum. Servants of the Company prosecuted for breach of public trust, or for embezzlement of public money or stores, or for defrauding the Company, might, on conviction before the supreme court at Calcutta or any other court of judicature in India, be fined and imprisoned, and sent to England. If a servant of the Company was dismissed for misbehaviour, he was not to be restored without the assent of three-fourths both of the directors and of the proprietors.

If any governor-general, governor, member of council, judge of the supreme court, or any other person for the time being employed in the service of the Company committed any offence against the Act, or was guilty of any crime, misdemeanour, or offence against any of His Majesty's subjects, or any of the inhabitants of India, he might be tried and punished by the Court of King's Bench in England.

Charter of 1774 constituting supreme court at Calcutta.

The charter of justice authorized by the Regulating Act was dated March 26, 1774, and remained the foundation of the jurisdiction exercised by the supreme court at Calcutta until the establishment of the present high court under the Act of 1861.[1] The first chief justice was Sir Elijah Impey. His three colleagues were Chambers, Lemaistre, and Hyde.

Difficulties arising out of Regulating Act.

Warren Hastings retained the office of governor-general until 1785, when he was succeeded temporarily by Sir John Macpherson, and, eventually, by Lord Cornwallis. His appointment, which was originally for a term of five years, was continued by successive Acts of Parliament.

[1] Copy printed in Morley's *Digest*, ii. 549.

His administration was distracted by conflicts between himself and his colleagues on the supreme council, and between the supreme council and the supreme court, conflicts traceable to the defective provisions of the Regulating Act.

Difficulties in the council.

Of Hastings's four colleagues, one, Barwell, was an experienced servant of the Company, and was in India at the time of his appointment. The other three, Clavering, Monson, and Francis, were sent out from England, and arrived in Calcutta with the judges of the new supreme court.

Barwell usually supported Hastings. Francis, Clavering, and Monson usually opposed him. Whilst they acted together, Hastings was in a minority, and found his policy thwarted and his decisions overruled. In 1776 he was reduced to such depression that he gave his agents in England a conditional authority to tender his resignation. The Court of Directors accepted his resignation on this authority, and took steps to supply his place. But in the meantime Clavering died (November, 1776) and Hastings was able, by means of his casting vote, to maintain his supremacy in the council. He withdrew his authority to his English agents, and obtained from the judges of the supreme court an opinion that his resignation was invalid. These proceedings possibly occasioned the provision which was contained in the Charter Act of 1793 and repeated in the Act of 1833, that the resignation of a governor-general is not valid unless signified by a formal deed.

Difficulties between supreme council and supreme court.

The provisions of the Act of 1773 were obscure and defective as to the nature and extent of the authority exercisable by the governor-general and his council, as to the jurisdiction of the supreme court, and as to the relation between the Bengal Government and the court. The ambiguities of the Act arose partly from the necessities of the case, partly from a deliberate avoidance of new and difficult questions on constitutional law. The situation created in Bengal by the grant of the Diwani in 1765, and recognized by the legislation of 1773, resembled what in

the language of modern international law is called a protectorate. The country had not been definitely annexed;[1] the authority of the Delhi emperor and of his native vicegerent was still formally recognized; and the attributes of sovereignty had been divided between them and the Company in such proportions that whilst the substance had passed to the latter, a shadow only remained with the former. But it was a shadow with which potent conjuring tricks could be performed. Whenever the Company found it convenient, they could play off the authority derived from the Mogul against the authority derived from the British law, and justify under the one proceedings which it would have been difficult to justify under the other. In the one capacity the Company was the all-powerful agent of an irresponsible despot; in the other it was tied and bound by the provisions of charters and Acts of Parliament. It was natural that the Company's servants should prefer to act in the former capacity. It was also natural that their Oriental principles of government should be regarded with dislike and suspicion by English statesmen, and should be found unintelligible and unworkable by English lawyers steeped in the traditions of Westminster Hall.

In the latter half of the nineteenth century Englishmen became familiar with situations of this kind, and devised appropriate formulae for dealing with them. The modern practice has been to issue an Order in Council under the Foreign Jurisdiction Act, establishing consular and other courts of civil and criminal jurisdiction, and providing them with codes of procedure and of substantive law, which are sometimes derived from Anglo-Indian sources. The jurisdiction is to be exercised and the law is to be

[1] On May 10, 1773, the House of Commons, on the motion of General Burgoyne, passed two resolutions, (1) that all acquisitions made by military force or by treaty with foreign powers do of right belong to the State; (2) that to appropriate such acquisitions to private use is illegal. But the nature and extent of the sovereignty exercised by the Company was for a long time doubtful. See *Mayor of Lyons* v. *East India Company*, 3 State Trials, new series, 647, 707; 1 Moore P. C. 176.

applied in cases affecting British subjects, and, so far as is consistent with international law and comity, in cases affecting European or American foreigners. But the natives of the country are, so far as is compatible with regard to principles of humanity, left in enjoyment of their own laws and customs. If a company has been established for carrying on trade or business, its charter is so framed as to reserve the supremacy and prerogatives of the Crown. In this way a rough-and-ready system of government was provided, which would often fail to stand the application of severe legal tests, but which supplied an effectual mode of maintaining some degree of order in uncivilized or semi-civilized countries.[1]

But in 1773 both the theory and the experience were lacking, which are requisite for adapting English institutions to new and foreign circumstances. For want of such experience England was destined to lose her colonies in the Western hemisphere. For want of it mistakes were committed which imperilled the empire she was building up in the East. The Regulating Act provided insufficient guidance as to points on which both the Company and the supreme court were likely to go astray; and the charter by which it was supplemented did not go far to supply its deficiencies. The language of both instruments was vague and inaccurate. They left unsettled questions of the gravest importance. The Company was vested with supreme administrative and military authority. The Court was vested with supreme judicial authority. Which of the two authorities was to be paramount? The court was avowedly established for the purpose of controlling the actions of the Company's servants, and preventing the exercise of oppression against the natives of the country. How far could it extend its controlling power without sapping the foundations of civil authority? The members

[1] See the Orders in Council under the successive Foreign Jurisdiction Acts, printed in the Statutory Rules and Orders Revised, and the charters granted to the Imperial British East Africa Company (Hertslet, *Map of Africa by Treaty*, i. 118), to the Royal British South Africa Company (ibid. i. 274), and to the Royal Niger Company (ibid. i. 446).

of the supreme council were personally exempt from the coercive jurisdiction of the court. But how far could the court question and determine the legality of their orders?

Both the omissions from the Act and its express provisions were such as to afford room for unfortunate arguments and differences of opinion.

What law was the supreme court to administer? The Act was silent. Apparently it was the unregenerate English law, insular, technical, formless, tempered in its application to English circumstances by the quibbles of judges and the obstinacy of juries, capable of being an instrument of the most monstrous injustice when administered in an atmosphere different from that in which it had grown up.

To whom was this law to be administered? To British subjects and to persons in the employment of the Company. But whom did the first class include? Probably only the class now known as European British subjects, and probably not the native 'inhabitants of India' residing in the three provinces, except such of them as were resident in the town of Calcutta. But the point was by no means clear.[1]

What constituted employment by the Company? Was a native landowner farming revenues so employed? And in doubtful cases on whom lay the burden of proving exemption from or subjection to the jurisdiction?

These were a few of the questions raised by the Act and charter, and they inevitably led to serious conflicts between the council and the court.

In the controversies which followed there were, as Sir James Stephen observes,[2] three main heads of difference between the supreme council and the supreme court.

These were, first, the claims of the court to exercise jurisdiction over the whole native population, to the extent of making them plead to the jurisdiction if a writ was served on them. The quarrel on this point culminated

[1] See *In the matter of Ameer Khan*, 6 Bengal Law Reports, 392, 443.

[2] *Nuncomar and Impey*, ii. 237.

in what was known as the Cossijurah case, in which the sheriff and his officers, when attempting to execute a writ against a zemindar, were driven off by a company of sepoys acting under the orders of the council. The action of the council was not disapproved by the authorities in England, and thus this contest ended practically in the victory of the council and the defeat of the court.

The second question was as to the jurisdiction of the court over the English and native officers of the Company employed in the collection of revenues for corrupt or oppressive acts done by them in their official capacity. This jurisdiction the Company was compelled by the express provisions of the Regulating Act to admit, though its exercise caused its officers much dissatisfaction.

The third question was as to the right of the supreme court to try actions against the judicial officers of the Company for acts done in the execution of what they believed, or said they believed, to be their legal duty. This question arose in the famous Patna case, in which the supreme court gave judgement with heavy damages to a native plaintiff in an action against officers of the Patna provincial council, acting in its judicial capacity. Impey's judgement in this case was made one of the grounds of impeachment against him, but is forcibly defended by Sir James Stephen against the criticisms of Mill and others, as being not only technically sound, but substantially just. Hastings endeavoured to remove the friction between the supreme court and the country courts by appointing Impey judge of the court of Sadr Diwani Adalat, and thus vesting in him the appellate and revisional control over the country courts which had been nominally vested in, but never exercised by, the supreme court. Had he succeeded, he would have anticipated the arrangements under which, some eighty years later, the court of Sadr Diwani Adalat and the supreme court were fused into the high court. But Impey compromised himself by drawing a large salary from his new office in addition to that which he drew as chief justice, and his acceptance of a post

tenable at the pleasure of the Company was held to be incompatible with the independent position which he was intended to occupy as chief justice of the supreme court.

Amending Act of 1781.

In the year 1781 a Parliamentary inquiry was held into the administration of justice in Bengal, and an amending Act of that year [1] settled some of the questions arising out of the Act of 1773.

The governor-general and council of Bengal were not to be subject, jointly or severally, to the jurisdiction of the supreme court for anything counselled, ordered, or done by them in their public capacity. But this exemption did not apply to orders affecting British subjects.

The supreme court was not to have or exercise any jurisdiction in matters concerning the revenue, or concerning any act done in the collection thereof, according to the usage and practice of the country, or the regulations of the governor-general and council.

No person was to be subject to the jurisdiction of the supreme court by reason only 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 of 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 under-tenants 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 or by reason of his becoming security for the payment of rent'.

No person was, by reason of his being employed by the Company, or by the governor-general and council, or by a native or descendant of a native of Great Britain, to 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 parties, except in actions for wrongs or trespasses, or in civil suits by agreement of the parties.

[1] 21 Geo. III, c. 70.

Registers were to be kept showing the names, &c., of natives employed by the Company.

The supreme court was, however, to have jurisdiction in all manner of actions and suits against all and singular the inhabitants of Calcutta 'provided that their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined in the case of Mahomedans, by the laws and usages of Mahomedans, and in the case of Gentus by the laws and usages of Gentus; and where only one of the parties shall be a Mahomedan or Gentu by the laws and usages of the defendant.' [1]

In order that regard should be had to the civil and religious usages of the said natives, the rights and authorities of fathers of families, and masters of families, according as the same might have been exercised by the Gentu or Mahomedan law, were to be preserved to them within their families, nor was any act done in consequence of the rule and law of caste, respecting the members of the said families only, to be held and adjudged a crime, although it might not be held justifiable by the laws of England.

Rules and forms for the execution of process in the supreme court were to be accommodated to the religion and manners of the natives, and sent to the Secretary of State, for approval by the king.

The appellate jurisdiction of the governor-general and council in country cases was recognized and confirmed in cautiously general terms. 'Whereas the governor-general and council, or some committee thereof or appointed thereby, do determine on appeals and references from the country or provincial courts in civil cases,' 'the said court shall and lawfully may hold all such pleas and appeals, in the manner and with such powers as it hitherto hath held the same, and shall be deemed in law a court of record;

[1] This proviso was taken from Warren Hastings's plan for the administration of justice prepared and adopted in 1772, when the Company first 'stood forth as diwan'. It is interesting as a recognition of the personal law which played so important a part during the break-up of the Roman Empire, but has, in the West, been gradually superseded by territorial law.

and the judgements therein given shall be final and conclusive, except upon appeal to His Majesty, in civil suits only, the value of which shall be five thousand pounds and upwards.' The same court was further declared to be a court to hear and determine on all offences, abuses, and extortions committed in the collection of revenue, and on severities used beyond what shall appear to the said court customary or necessary to the case, and to punish the same according to sound discretion provided the said punishment does not extend to death, or maiming, or perpetual imprisonment.[1]

No action for wrong or injury was to lie in the supreme court against any person whatsoever exercising any judicial office in the country courts for any judgement, decree, or order of the court, nor against any person for any act done by or in virtue of the order of the court.

The defendants in the Patna case were to be released from prison on the governor-general and council giving security (which they were required to do) for the damages recovered in the action against them; and were to be at liberty to appeal to the king in council against the judgement, although the time for appealing under the charter had expired.

The decision of Parliament, as expressed in the Act of 1781, was substantially in favour of the council and against the court on all points. Sir James Stephen argues that the enactment of this Act 'shows clearly that the supreme court correctly interpreted the law as it stood.'[2] But this contention seems to go too far. A legislative reversal of a judicial decision shows that, in the opinion of the legislature, the decision is not substantially just, but must not necessarily be construed as an admission that the decision is technically correct. It is often more convenient to cut a knot by legislation than to attempt

[1] See Harington's *Analysis*, i. 22. But it seems very doubtful whether the council or any of the council had in fact ever exercised jurisdiction as a court of Sadr Diwani Adalat. See *Nuncomar and Impey*, ii. 189.

[2] *Nuncomar and Impey*, ii. 192.

its solution by the dilatory and expensive way of appeal.

The Act of 1781 contained a further provision which was of great importance in the history of Indian legislation. It empowered the governor-general and council 'from time to time to frame regulations for the provincial courts and councils'. Copies of these regulations were to be sent to the Court of Directors and to the Secretary of State. They might be disallowed or amended by the king in council, but were to remain in force unless disallowed within two years.

On assuming the active duties of revenue authority in Bengal in 1772, the president and council had made general regulations for the administration of justice in the country by the establishment of civil and criminal courts. And by the Regulating Act of 1773 the governor-general and council were expressly empowered to make rules, ordinances, and regulations. But regulations made under this power had to be registered in the supreme court,[1] with the consent and approbation of that court. In 1780 the governor-general and council made regulations, in addition to those of 1772, for the more effectual and regular administration of justice in the provincial civil courts, and in 1781 they issued a revised code superseding all former regulations. If these regulations were made under the power given by the Act of 1773 they ought to have been registered. But it does not appear that they were so registered, and after the passing of the Act of 1781 the governor-general and council preferred to act under the powers which enabled them to legislate without any reference to the supreme court. However, notwithstanding the limited purpose for which the powers of 1781 were given, it was under those powers that most of the regulation laws for Bengal purported to be framed. Regulations so made did not require registration or approval by the

[1] As French laws had to be registered by the *Parlement*, and as Acts of Parliament affecting the Channel Islands still have to be registered by the Royal Courts.

supreme court. But it was for some time doubtful whether they were binding on that court.[1]

Further legislation of 1781.

The Act of 1781 for defining the powers of the supreme court was not the only legislation of that year affecting the East India Company. The Company had by 1778 duly repaid its loan of £1,400,000 from the Exchequer, and subsequently reduced the bond debt to the limits prescribed by an Act of that year.[2] By an Act passed in 1781[3] the Company was required to pay a single sum of £400,000 to the public in discharge of all claims to a share in its territorial revenues up to March 1 in that year, and its former privileges were extended until three years' notice after March 1, 1791. By the same Act it was authorized to pay a dividend of 8 per cent. out of its clear profits, but three-fourths of the remainder were to go as a tribute to the public.

By way of repayment of the military expenses incurred by the State on its behalf, the Company was required to pay two lacs of rupees annually for each regiment of 1,000 men sent to India at the Company's desire. The Act further authorized the Company to enlist soldiers[4] and punish deserters, and prohibited British subjects from residing more than ten miles from any of the Company's principal settlements without a special licence.

Parliamentary inquiries of 1781.

Two Parliamentary committees on Indian affairs were appointed in the year 1781. The object of the first, of which Burke was the most prominent member, was to consider the administration of justice in India. Its first-fruits were the passing of the Act, to which reference has

[1] See Cowell's *Tagore Law Lectures*, 1872, and *In the matter of Ameer Khan*, 6 Bengal Law Reports, 392, 408. The power of legislation was recognized and extended in 1797 by 37 Geo. III, c. 142, s. 8.

[2] 19 Geo. III, c. 61.

[3] 21 Geo. III, c. 65. The Company was unable to meet the payments required by this Act, and successive Acts had to be passed for extending the terms fixed for payment (22 Geo. III, c. 51; 23 Geo. III, cc. 36, 83; 24 Geo. III, sess. I, c. 3).

[4] This was the first Act giving Parliamentary sanction to the raising of European troops by the Company. Clode, *Military Forces of the Crown*, i. 269.

been made above, for further defining the powers of the supreme court. But it continued to sit for many years and presented several reports, some written by Burke himself. The other committee, which sat in secret, and of which Dundas was chairman, was instructed to inquire into the cause of the recent war in the Carnatic and the state of the British government on the coast. This com mittee did not publish its report until 1782, by which time Lord North's Government had been driven out of office by the disastrous results of the American war, and had been succeeded by the second Rockingham ministry. The reports of both committees were highly adverse to the system of administration in India, and to the persons responsible for that administration, and led to the passing of resolutions by the House of Commons requiring the recall of Hastings and Impey, and declaring that the powers given by the Act of 1773 to the governor-general and council ought to be more distinctly ascertained. But the Court of Proprietors of the Company persisted in retaining Hastings in office in defiance both of their directors and of the House of Commons, and no steps were taken for further legislation until after the famous coalition ministry of Fox and North had come into office. Soon after this event, Dundas, who was now in opposition, introduced a Bill which empowered the king to recall the principal servants of the Company, and invested the Governor-General of Bengal with power which was little short of absolute. But a measure introduced by a member of the opposition had no chance of passing, and the Government were compelled to take up the question themselves.

Fox's East India Bill.

It was under these circumstances that Fox introduced his famous East India Bill of 1783. His measure would have completely altered the constitution of the East India Company. It was clear that the existing distribution of powers between the State, the Court of Directors, and the Court of Proprietors at home, and the Company's servants abroad, was wholly unsatisfactory, and led to anarchy

and confusion. Dundas had proposed to alter it by making the governor-general practically independent, and vesting him with absolute power. Fox adopted the opposite course of increasing the control of the State over the Company at home and its officers abroad. His Bill proposed to substitute for the existing Courts of Directors and Proprietors a new body, consisting of seven commissioners, who were to be named in the Act, were during four years to be irremovable, except upon an address from either House of Parliament, and were to have an absolute power of placing or displacing all persons in the service of the Company, and of ordering and administering the territories, revenues, and commerce of India. Any vacancy in the body was to be filled by the king. A second or subordinate body, consisting of nine assistant directors chosen by the legislature from among the largest proprietors, was to be formed for the purpose of managing the details of commerce. For the first five years they were given the same security of tenure as the seven commissioners, but vacancies in their body were to be filled by the Court of Proprietors.

The events which followed the introduction of Fox's East India Bill belong rather to English than to Indian constitutional history. Everybody is supposed to know how the Bill was denounced by Pitt and Thurlow as a monstrous device for vesting the whole government and patronage of India in Fox and his Whig satellites; how, after having been carried through the House of Commons by triumphant majorities, it was defeated in the House of Lords through the direct intervention of the king; how George III contumeliously drove Fox and North out of office after the defeat of their measure; how Pitt, at the age of twenty-five, ventured to assume office with a small minority at his back; and how his courage, skill, and determination, and the blunders of his opponents, converted that minority into a majority at the general election of 1784.

Like other ministers, Pitt found himself compelled to

introduce and defend when in office measures which he had denounced when in opposition. The chief ground of attack on Fox's Bill was its wholesale transfer of patronage from the Company to nominees of the Crown. Pitt steered clear of this rock of offence. He also avoided the appearance of radically altering the constitution of the Company. But his measure was based on the same substantial principle as that of his predecessor and rival, the principle of placing the Company in direct and permanent subordination to a body representing the British Government. Pitt's Act of 1784.

The Act of 1784[1] began by establishing a board of six commissioners, who were formally styled the 'Commissioners for the Affairs of India' but were popularly known as the Board of Control. They were to consist of the Chancellor of the Exchequer and one of the secretaries of state for the time being, and of four other Privy Councillors, appointed by the king, and holding office during pleasure. There was to be a quorum of three, and the president was to have a casting vote. They were unpaid, and had no patronage, but were empowered 'to superintend, direct, and control all acts, operations, and concerns which in anywise relate to the civil or military government or revenues of the British territorial possessions in the East Indies'. They were to have access to all papers and instruments of the Company, and to be furnished with such extracts or copies as they might require. The directors were required to deliver to the Board of Control copies of all minutes, orders, and other proceedings of the Company, and of all dispatches sent or received by the directors or any of their committees, and to pay due obedience to, and be bound by, all orders and directions of the Board, touching the civil or military government and revenues of India. The Board might approve, disapprove, or modify the dispatches proposed to be sent by the directors, might require the directors to send out

[1] 24 Geo. III, sess. 2, c. 25. Many of the provisions of this Act were re-enacted in the subsequent Acts of 1793, 1813, and 1833.

the dispatches as modified, and in case of neglect or delay, might require their own orders to be sent out without waiting for the concurrence of the directors.

A committee of secrecy, consisting of not more than three members, was to be formed out of the directors, and, when the Board of Control issued orders requiring secrecy, the committee of secrecy was to transmit these orders to India, without informing the other directors.

The Court of Proprietors lost its chief governing faculty, for it was deprived of the power of revoking or modifying any proceeding of the Court of Directors which had received the approval of the Board of Control.[1]

These provisions related to the Government of India at home. Modifications were also made in the governing bodies of the different presidencies in India.

The number of members of the governor-general's council was reduced to three, of whom the commander-in-chief of the Company's forces in India was to be one and to have precedence next to the governor-general.

The Government of each of the Presidencies of Madras and Bombay was to consist of a governor and three counsellors, of whom the commander-in-chief in the presidency was to be one, unless the commander-in-chief of the Company's forces in India happened to be in the presidency, in which case he was to take the place of the local commander-in-chief. The governor-general or governor was to have a casting vote.

The governor-general, governors, commander-in-chief, and members of council were to be appointed by the Court of Directors. They, and any other person holding office under the Company in India, might be removed from office either by the Crown or by the directors. Only covenanted servants of the Company were to be qualified to be members of council. Power was given to make provisional and temporary appointments. Resignation of the office of governor-general, governor, commander-

[1] The Court of Proprietors had recently overruled the resolution of the Court of Directors for the recall of Warren Hastings.

in-chief, or member of council was not to be valid unless signified in writing.[1]

The control of the governor-general and council over the government of the minor presidencies was enlarged, and was declared to extend to 'all such points as relate to any transactions with the country powers, or to war or peace, or to the application of the revenues or forces of such presidencies in time of war'.

A similar control over the military and political operations of the governor-general and council was reserved to the Court of Directors. '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 his council were not, without the express authority of the Court of Directors, or of 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 for guaranteeing the possession of any country prince or State, except where hostilities had actually been commenced, or preparations actually made for the commencement of hostilities, against the British nation in India, or against some of the princes of States who were dependent thereon, or whose territories were guaranteed by any existing treaty.[2]

The provisions of the Act of 1773 for the punishment of offences committed by British subjects in India were repeated and strengthened. Thus the receipt of presents by persons in the employment of the Company or the Crown was to be deemed extortion, and punishable as such, and there was an extraordinary provision requiring the servants of the Company, under heavy penalties, to declare truly on oath the amount of property they had brought from India.

[1] s. 28. This was probably enacted in consequence of the circumstances attending Hastings's resignation of office.

[2] s. 34. This enactment with its recital was substantially reproduced by a section of the Act of 1793 (33 Geo. III, c. 52, s. 42).

All British subjects were declared to be amenable to all courts of competent jurisdiction in India or in England for acts done in Native States, as if the act had been done in British territory.[1] The Company was not to release or compound any sentence or judgement of a competent court against any of its servants, or to restore any such servant to office after he had been dismissed in pursuance of a judicial sentence. The governor-general was empowered to issue his warrant for taking into custody any person suspected of carrying on illicit correspondence with any native prince or other person having authority in India.[2]

A special court, consisting of three judges, four peers, and six members of the House of Commons, was constituted for the trial in England of offences committed in India.[3]

The Company was required to take into consideration its civil and military establishments in India, and to give orders 'for every practicable retrenchment and reduction', and numerous internal regulations, several of which had been proposed by Fox, were made for Indian administration. Thus, promotion was to be as a rule by seniority, writers and cadets were to be between the ages of fifteen and twenty-two when sent out, and servants of the Company who had been five years in England were not to be capable of appointment to an Indian post, unless they could show that their residence in England was due to ill health.

The double government established by Pitt's Act of 1784, with its cumbrous and dilatory procedure and its

[1] s. 44. Re-enacted by 33 Geo. III, c. 52, s. 67.

[2] s. 53. This section was re-enacted in substance by 33 Geo. III, c. 52, ss. 45, 46.

[3] ss. 66–80. The elaborate enactments constituting the court and regulating its procedure were amended by an Act of 1786 (26 Geo. III, c. 57), but appear never to have been put in force. 'In 149 B.C., on the proposal of Lucius Calpurnius Piso, a standing Senatorial Commission (*quaestio ordinaria*) was instituted to try in judicial form the complaints of the provincials regarding the extortions of their Roman magistrates.' Mommsen, 3, 73.

elaborate system of checks and counter-checks, though modified in details, remained substantially in force until 1858. In practice the power vested in the Board of Control was exercised by the senior commissioner, other than the Chancellor of the Exchequer or Secretary of State. He became known as the President of the Board of Control, and occupied a position in the Government of the day corresponding to some extent to that of the modern Secretary of State for India. But the Board of Directors, though placed in complete subordination to the Board of Control, retained their rights of patronage and their powers of revision, and were thus left no unsubstantial share in the home direction of Indian affairs.[1]

Legislation of 1786.

The first important amendments of Pitt's Act were made in 1786. In that year Lord Cornwallis[2] was appointed governor-general, and he made it a condition of his accepting office that his powers should be enlarged. Accordingly an Act was passed which empowered the governor-general in special cases to override the majority of his council and act on his own responsibility, and enabled the offices of governor-general and commander-in-chief to be united in the same person.[3]

By another Act of the same session the provision requiring the approbation of the king for the choice of governor-general was repealed. But as the Crown still retained the power of recall this repeal was not of much practical importance.[4]

A third Act[5] repealed the provisions requiring servants of the Company to disclose the amount of property brought

[1] As to the practical working of the system at the close of the eighteenth century see Kaye's *Administration of the East India Company*, p. 129.

[2] 'The first of the new dynasty of Parliamentary Governors-General.' Lyall, *British Dominion in India*, p. 218.

[3] 26 Geo. III, c. 16. Lord Cornwallis, though holding the double office of governor-general and commander-in-chief, still found his powers insufficient, and was obliged to obtain in 1791 a special Act (31 Geo. III, c. 40) confirming his orders and enlarging his powers. The exceptional powers given to the governor-general by the Act of 1786 were reproduced in the Act of 1793 (33 Geo. III, c. 52, ss. 47–51).

[4] 26 Geo. III, c. 25.

[5] 26 Geo. III, c. 57.

home by them, and amended the constitution and procedure of the special court under the Act of 1784. It also declared (s. 29) that the criminal jurisdiction of the supreme court at Calcutta was to extend to all criminal offences committed in any part of Asia, Africa, or America, beyond the Cape of Good Hope to the Straits of Magellan, within the limits of the Company's trade, and (s. 30) that the governor or president and council of Fort St. George, in their courts of oyer and terminer and jail delivery, and the mayor's court at Madras should have civil and criminal jurisdiction over all British subjects residing in the territories of the Company on the coast of Coromandel, or in any other part of the Carnatic, or in the Northern Circars, or within the territories of the Soubah of the Deccan, the Nabob of Arcot, or the Rajah of Tanjore.

Legislation of 1788.

In 1788 a serious difference arose between the Board of Control and the Board of Directors as to the limits of their respective powers. The Board of Control, notwithstanding the objections of the directors, ordered out four royal regiments to India, and charged their expenses to Indian revenues. They maintained that they had this power under the Act of 1784. The directors on the other hand argued that under provisions of the Act of 1781, which were still unrepealed, the Company could not be compelled to bear the expenses of any troops except those sent out on their own requisition. Pitt proposed to settle the difference in favour of the Board of Control by means of an explanatory or declaratory Act. The discussions which took place on this measure raised constitutional questions which have been revived in later times.[1]

It was objected that troops raised by the Company in India would suffice and could be much more cheaply maintained. It was also argued on constitutional grounds that no troops ought to belong to the king for which Parliament did not annually vote the money.

[1] See the discussion in 1878 as to the employment of Indian troops in Malta, Hansard, ccxl. 14, and Anson, *Law and Custom of the Constitution*, vol. ii, pt. ii, p. 174 (3rd ed.).

In answer to the first objection Pitt confessed that, in his opinion, the army in India ought to be all on one establishment, and should all belong to the king, and declared that it was mainly in preparation for this reform that the troops were to be conveyed.[1]

With respect to the second objection he argued that the Bill of Rights and the Mutiny Act, which were the only positive enactments on the subject, were so vague and indefinite as to be almost nugatory, and professed his willingness to receive any suggestions made for checking an abuse of the powers proposed to be conferred by the Bill.

The questions were eventually settled by a compromise. The Board of Control obtained the powers for which they asked, but a limit was imposed on the number of troops which might be charged to Indian revenues. At the same time the Board of Control were prevented from increasing any salary or awarding any gratuity without the concurrence of the directors and of Parliament, and the directors were required to lay annually before Parliament an account of the Company's receipts and disbursements.[2]

Charter Act of 1793.

In 1793, towards the close of Lord Cornwallis's governor-generalship, it became necessary to take steps for renewal of the Company's charter. Pitt was then at the height of his power; his most trusted friend, Dundas,[3] was President of the Board of Control; the war with France, which had just been declared, monopolized English attention; and Indian finances were, or might plausibly be represented as being, in a tolerably satisfactory condition. Accordingly the Act of 1793,[4] which was introduced by Dundas, passed without serious opposition, and

[1] Lord Cornwallis was at this time considering a scheme for the combination of the king's and Company's forces. See *Cornwallis Correspondence*, i. 251, 341; ii. 316, 572.

[2] 28 Geo. III, c. 8; Clode, *Military Forces of the Crown*, i. 270.

[3] Henry Dundas, who afterwards became the first Viscount Melville. He did not become president till June 22, 1793, but had long been the most powerful member of the Board.

[4] 33 Geo. III, c. 52.

introduced no important alterations. It was a measure of consolidation, repealing several previous enactments, and runs to an enormous length, but the amendments made by it relate to matters of minor importance.

The two junior members of the Board of Control were no longer required to be Privy Councillors. Provision was made for payment of the members and staff of the Board out of Indian revenues.

The commander-in-chief was not to be a member of the council at Fort William unless specially appointed by the Court of Directors. Departure from India with intent to return to Europe was declared to vacate the office of governor-general, commander-in-chief, and certain other high offices. The procedure in the councils of the three presidencies was regulated, the powers of control exercisable by the governor-general were emphasized and explained, and the power of the governor-general to overrule the majority of his council was repeated and extended to the Governors of Madras and Bombay. The governor-general, whilst visiting another presidency, was to supersede the governor, and might appoint a vice-president to act for him in his absence. A series of elaborate provisions continued the exclusive privileges of trade for a further term of twenty years, subject to modifications of detail. Another equally elaborate set of sections regulated the application of the Company's finances. Power was given to raise the dividend to 10 per cent., and provision was made for payment to the Exchequer of an annual sum of £500,000 out of the surplus revenue which might remain after meeting the necessary expenses, paying the interest on, and providing for reduction of capital of, the Company's debt, and payment of dividend. It is needless to say that this surplus was never realized. The mutual claims of the Company and the Crown in respect of military expenses were adjusted by wiping out all debts on either side up to the end of 1792, and providing that thenceforward the Company should defray the actual expenses incurred for the support and mainte-

nance of the king's troops serving in India. Some supplementary provisions regulated matters of civil administration in India. The admiralty jurisdiction of the supreme court of Calcutta was expressly declared to extend to the high seas. Power was given to appoint covenanted servants of the Company or other British inhabitants to be justices of the peace in Bengal. Power was also given to appoint scavengers for the presidency towns, and to levy what would now be called a sanitary rate. And the sale of spirituous liquors was made subject to the grant of a licence.

Legislation between 1793 and 1813.

A few parliamentary enactments of constitutional importance were passed during the interval between the Charter Acts of 1793 and 1813.

The lending of money by European adventurers to native princes on exorbitant terms had long produced grave scandals, such as those which were associated with the name of Paul Benham, and were exposed by Burke in his speech on the Nabob of Arcot's debts. An Act of 1797 [1] laid down an important provision which was reproduced in the Act of 1915 (s. 125), and which prohibited, under heavy penalties, unauthorized loans by British subjects to native princes.

The same Act reduced the number of judges of the supreme court at Calcutta to three, a chief justice and two puisnes, and authorized the grant of charters for the constitution of a recorder's court instead of the mayor's court at Madras and Bombay. It reserved native laws and customs in terms similar to those contained in the Act of 1781. It also embodied an important provision giving an additional and express sanction to the exercise of a local power of legislation in the Presidency of Bengal. One of Lord Cornwallis's regulations of 1793 (Reg. 41) had provided for forming into a regular code all regulations that might be enacted for the internal government of the British territories of Bengal. The Act of 1797 (s. 8) recognized and confirmed this 'wise and salutary

[1] 37 Geo. III, c. 142.

provision', and directed that all regulations which should be issued and framed by the Governor-General in Council at Fort William in Bengal, affecting the rights, persons, or property of the natives, or of any other individuals who might be amenable to the provincial courts of justice, should be registered in the judicial department, and formed into a regular code and printed, with translations in the country languages, and that all the grounds of each regulation should be prefixed to it. The provincial courts of judicature were directed to be bound by these regulations, and copies of the regulations of each year were to be sent to the Court of Directors and to the Board of Control.[1]

An Act of 1799[2] gave the Company further powers for raising European troops and maintaining discipline among them. Under this Act the Crown took the enlistment of men for serving in India into its own hands, and, on petition from the Company, transferred recruits to them at an agreed sum per head for the cost of recruiting. Authority was given to the Company to train and exercise recruits, not exceeding 2,000, and to appoint officers for that purpose (bearing also His Majesty's commission) at pay not exceeding the sums stated in the Act. The number which the Crown could hold for transfer to the Company was limited to 3,000 men, or such a number as the Mutiny Act for the time being should specify. All the men raised were liable to the Mutiny Act until embarked for India.

An Act of 1800[3] provided for the constitution of a supreme court at Madras, and extended the jurisdiction of the supreme court at Calcutta over the district of Benares (which had been ceded in 1775) and all other districts which had been or might thereafter be annexed to the Presidency of Bengal.

[1] See Harington's *Analysis of Bengal Laws and Regulations*, 1–9.

[2] 39 & 40 Geo. III, c. 109. See Clode, *Military Forces of the Crown*, i. 289.

[3] 39 & 40 Geo. III, c. 79. The charter under this Act was granted in December, 1801. Bombay did not acquire a supreme court until 1823 (3 Geo. IV, c. 71).

An Act of 1807[1] gave the governors and councils at Madras and Bombay the same powers of making regulations, subject to approval and registration by the supreme court and recorder's court, as had been previously vested in the Government of Bengal, and the same power of appointing justices of the peace.

Charter Act of 1813.

The legislation of 1813 was of a very different character from that of 1793. It was preceded by the most searching investigation which had yet taken place into Indian affairs. The vigorous policy of annexation carried on by Lord Wellesley during his seven years' tenure of office (1798–1805) had again involved the Company in financial difficulties, and in 1808 a committee of the House of Commons was appointed to inquire, amongst other things, into the conditions on which relief should be granted. It continued its sittings over the four following years, and the famous Fifth Report, which was published in July, 1812, is still a standard authority on Indian land tenures, and the best authority on the judicial and police arrangements of the time. When the time arrived for taking steps to renew the Company's charter, a Dundas[2] was still at the Board of Control, but it was no longer found possible to avoid the questions which had been successfully shirked in 1793. Napoleon had closed the European ports, and British traders imperatively demanded admission to the ports of Asia. At the end of 1811 Lord Melville told the Court of Directors that His Majesty's ministers could not recommend to Parliament the continuance of the existing system unless they were prepared to agree that the ships, as well as goods, of private merchants should be admitted into the trade with India under such restrictions as might be deemed reasonable.

The Company struggled hard for their privileges. They began by arguing that their political authority and commercial privileges were inseparable, that their trade profits

[1] 47 Geo. III, sess. 2, c. 68.

[2] Robert Dundas, who, on his father's death in 1811, became the second Viscount Melville.

were dependent upon their monopoly, and that if their trade profits were taken away their revenues would not enable them to carry on the government of the country. But their accounts had been kept in such a fashion as to leave it very doubtful whether their trade profits, as distinguished from their territorial revenues, amounted to anything at all. And this ground of argument was finally cut from under their feet by the concession of a continued monopoly of the tea trade, from which it was admitted that the commercial profits of the Company were principally, if not wholly, derived.

Driven from this position the Company dwelt on the political dangers which would arise from an unlimited resort of Europeans to India. The venerable Warren Hastings was called from his retreat to support on this point the views of the Company before the House of Commons, and it was on this occasion that the members testified their respect for him by rising as a body on his entrance into the House and standing until he had assumed his seat near the bar. His evidence confirmed the assertions of the Company as to the danger of unrestricted European immigration into India, and was supplemented by evidence to a similar effect from Lord Teignmouth (Sir J. Shore), Colonel (Sir John) Malcolm, and Colonel (Sir Thomas) Munro. Experience had proved, they affirmed, that it was difficult to impress even upon the servants of the Company, whilst in their noviciate, a due regard for the feelings and habits of the people, and Englishmen of classes less under the observation of the supreme authorities were notorious for the contempt with which, in their natural arrogance and ignorance, they contemplated the usages and institutions of the natives, and for their frequent disregard of the dictates of humanity and justice in their dealings with the people of India. The natives, although timid and feeble in some places, were not without strength and resolution in others, and instances had occurred where their resentment had proved formidable to their oppressors. It was difficult, if not

impossible, to afford them protection, for the Englishman was amenable only to the courts of British law established at the presidencies, and although the local magistrate had the power of sending him further for trial, yet to impose upon the native complainant and witness the obligation of repairing many hundred miles to obtain redress was to subject them to delay, fatigue, and expense, which would be more intolerable than the injury they had suffered.

That their apprehensions were unfounded no one who is acquainted with the history or present conditions of British India would venture to deny. But they were expressed by the advocates of the Company in language of unjustifiable intemperance and exaggeration. Thus Mr. Charles Grant, in the course of the debate in the House of Commons, dwelt on the danger of letting loose among the people of India a host of desperate needy adventurers, whose atrocious conduct in America and in Africa afforded sufficient indication of the evil they would inflict upon India.

The controversy was eventually compromised by allowing Europeans to resort to India, but only under a strict system of licences.

Closely connected with the question of the admission of independent Europeans into India was that of missionary enterprise. The Government were willing to take steps for the recognition and encouragement of Christianity by the appointment of a bishop and archdeacons. But a large number of excellent men, belonging mainly to the Evangelical party, and led in the House of Commons by Wilberforce, were anxious to go much further in the direction of committing the Indian Government to the active propagation of Christianity among the natives of India. On the other hand, the past and present servants of the Company, including even those who, like Lord Teignmouth, were personally in sympathy with the Evangelical school, were fully sensitive to the danger of interfering with the religious convictions or alarming the religious prejudices of the natives.

The proposals ultimately submitted by the Government to Parliament in 1813 were embodied in thirteen resolutions.[1]

The first affirmed the expediency of extending the Company's privileges, subject to modifications, for a further term of twenty years.

The second preserved to the Company the monopoly of the China trade and of the trade in tea.

The third threw open to all British subjects the export and import trade with India, subject to the exception of tea, and to certain safeguards as to warehousing and the like.

The fourth and fifth regulated the application of the Company's territorial revenues and commercial profits.

The sixth provided for the reduction of the Company's debt, for the payment of a dividend at the rate of 10½ per cent. per annum, and for the division of any surplus between the Company and the public in the proportion of one-sixth to the former and five-sixths to the latter.

The seventh required the Company to keep its accounts in such manner as to distinguish clearly those relating to the territorial and political departments from those relating to the commercial branch of its affairs.

The eighth affirmed the expediency, in the interests of economy, of limiting the grants of salaries and pensions.

The ninth reserved to the Court of Directors the right of appointment to the offices of governor-general, governor, and commander-in-chief, subject to the approbation of the Crown.

Under the tenth, the number of the king's troops in India was to be limited, and any number exceeding the limit was, unless employed at the express requisition of the Company, to be at the public charge. This modified, in a sense favourable to the Company, Pitt's declaratory Act of 1788.

Then followed a resolution that it was expedient that the Church establishment in the British territories in the

[1] Printed in an appendix to vol. vii. of Mill and Wilson's *British India*.

East Indies should be placed under the superintendence of a bishop and three archdeacons, and that adequate provision should be made from the territorial revenues of India for their maintenance.

The twelfth resolution declared that the regulations to be framed by the Court of Directors for the colleges at Haileybury and Addiscombe ought to be subject to the regulation of the Board of Control, and that the Board ought to have power to send instructions to India about the colleges at Calcutta[1] and Madras.

It was round the thirteenth resolution that the main controversy raged, and its vague and guarded language shows the difficulty that was experienced in settling its terms. The resolution declared 'that it is the duty of this country to promote the interest and happiness of the native inhabitants of the British dominions in India, and that such measures ought to be adopted as may tend to the introduction amongst them of useful knowledge, and of religious and moral improvement. That in the furtherance of the above objects, sufficient facilities shall be afforded by law to persons desirous of going to and remaining in India for the purpose of accomplishing these benevolent designs, provided always, that the authority of the local Governments, respecting the intercourse of Europeans with the interior of the country, be preserved, and that 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.' One discerns the planter following in the wake of the missionary, each watched with a jealous eye by the Company's servants.

The principles embodied in the Resolutions of 1813 were developed in the Act of the same year.[2] The language of the preamble to the Act is significant. It recites the expediency of continuing to the Company for a further

[1] The college at Calcutta had been founded by Lord Wellesley for the training of the Company's civil servants.

[2] 55 Geo. III, c. 155.

term the possession of the territorial acquisitions in India, and the revenues thereof, 'without prejudice to the undoubted sovereignty of the Crown of the United Kingdom of Great Britain and Ireland in and over the same.'[1] The constitutional controversy of the preceding century was not to be reopened.

The Act then granted the Indian possessions and revenues to the Company for a further term of twenty years, reserved to it for the same time the China trade and the tea trade, but threw open the general Indian trade, subject to various restrictive conditions.

The thirty-third section after reciting the thirteenth resolution, and the expediency of making provision for granting permission to persons desirous of going to and remaining in India, for the purposes mentioned in the resolution (missionaries) 'and for other lawful purposes' (traders), enabled the Court of Directors or, on their refusal, the Board of Control, to grant licences and certificates entitling the applicants to proceed to any of the principal settlements of the Company, and to remain in India as long as they conducted themselves properly, but subject to such restrictions as might for the time being be judged necessary. Unlicensed persons were to be liable to the penalties imposed by earlier Acts on interlopers, and to punishment on summary conviction in India. British subjects allowed to reside more than ten miles from a presidency town were to procure and register certificates from a district court.

A group of sections related to the provision for religion, learning, and education, and the training of the Company's civil and military servants. There was to be a Bishop of Calcutta, with three archdeacons under him. The colleges at Calcutta and elsewhere were placed under the regulations of the Board of Control. One lac of rupees in each year was to be 'set apart and applied to the revival and improvement of literature and the encouragement of the

[1] The sovereignty of the Crown had been clearly reserved in the charter of 1698. But at that time the territorial possessions were insignificant.

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 college at Haileybury and the military seminary at Addiscombe [1] were to be maintained, and no person was to be appointed writer unless he had resided four terms at Haileybury, and produced a certificate that he had conformed to the regulations of the college.

Then came provisions for the application of the revenues,[2] for keeping the commercial and territorial accounts distinct, and for increasing and further defining the powers of superintendence and direction exercised by the Board of Control.

The patronage of the Company was preserved, subject to the approval of the Crown in the case of the higher offices, and of the Board of Control in certain other cases.

The number of king's troops to be paid for out of the Company's revenues was not to exceed 20,000, except in case of special requisition. In order to remove doubts it was expressly declared that the Government in India might make laws, regulations, and articles of war for their native troops, and provide for the holding of courts-martial.

The local Governments were also empowered to impose taxes on persons subject to the jurisdiction of the supreme court, and to punish for non-payment.

Justices of the peace were to have jurisdiction in cases of assault or trespass committed by British subjects on natives of India, and also in cases of small debts due to natives from British subjects. Special provision was

[1] The names of these places are not mentioned.

[2] An interesting discussion of these provisions is to be found in the correspondence of 1833 between Mr. Charles Grant and the Court of Directors. According to Mr. Grant the principle established by the Acts of 1793 and 1813 was that the profit accruing from the Company's commerce should, in the first instance, be employed in securing the regular payment of dividends to the proprietors of stock, and should then be applied for the benefit of the territory. The last-mentioned applications to be suspended only so long as the burden of debt on the territory continued below a certain specified amount.

made for the exercise of jurisdiction in criminal cases over British subjects residing more than ten miles from a presidency town; and British subjects residing or trading, or occupying immovable property, more than ten miles from a presidency town were to be subject to the jurisdiction of the local civil courts.

And, finally, special penalties were enacted for theft, forgery, perjury, and coinage offences, the existing provisions of the common or statute law being apparently considered insufficient for dealing adequately with these offences.

Legislation between 1813 and 1833.

The imperial legislation for India during the interval between 1813 and 1833 does not present many features of importance.

An Act of 1814 [1] removed doubts about the powers of the Indian Government to levy duties of customs and other taxes.

An Act of 1815 [2] gave power to extend the limits of the presidency towns, and amended some of the minor provisions of the Act of 1813.

An Act of 1818 [3] removed doubts about the validity of certain Indian marriages, a subject which has always presented much difficulty, but which has now been dealt with by Indian legislation.[4]

An Act of 1820 [5] enabled the East India Company to raise and maintain a corps of volunteer infantry.

An Act of 1823 [6] charged the revenues of India with the payment of additional sums for the pay and pensions of troops serving in India, and regulated the pensions of Indian bishops and archdeacons, and the salaries and pensions of the judges of the supreme courts.

The same Act authorized the grant of a charter for a supreme court of Bombay in substitution for the recorder's court.

The prohibition on settling in India without a licence

[1] 54 Geo. III, c. 105.
[2] 55 Geo. III, c. 84.
[3] 58 Geo. III, c. 84.
[4] See Acts III & XV of 1872.
[5] 1 Geo. IV, c. 99.
[6] 4 Geo. IV, c. 71.

was still retained. But restrictions on Indian trade were gradually removed, and a consolidating Act of 1823[1] expressly declared that trade might be carried on in British vessels with all places within the limits of the Company's charter except China.

Another Act of 1823[2] consolidated and amended the laws for punishing mutiny and desertion of officers and soldiers in the Company's service.

An Act of 1824[3] transferred the island of Singapore to the East India Company.

Acts of 1825[4] and 1826[5] further regulated the salaries of Indian judges and bishops, and regulated the appointment of juries in the presidency towns.

An Act of 1828[6] declared the real estates of British subjects dying within the jurisdiction of the supreme courts at the presidency towns to be liable for payment of their debts. Other Acts of the same year applied the East India Mutiny Act to the force known as the Bombay Marine,[7] and extended to the East Indies sundry amendments of the English criminal law.[8]

And an Act of 1832[9] authorized the appointment of persons other than covenanted civilians to be justices of the peace in India, and repealed the provisions requiring jurors to be Christians.

Charter Act of 1833.

When the time came round again for renewing the Company's charter, Lord William Bentinck's peaceful *régime* had lasted for five years in India; the Reform Act had just been carried in England, and Whig principles were in the ascendant. Bentham's views on legislation and codification were exercising much influence on the minds of law reformers. Macaulay was in Parliament, and was secretary to the Board of Control, and James Mill, Bentham's disciple, was the examiner of India correspon-

[1] 4 Geo. IV, c. 80.
[2] 4 Geo. IV, c. 81.
[3] 5 Geo. IV, c. 108. Singapore was placed under the Colonial Office by the Straits Settlements Act, 1866 (29 & 30 Vict., c. 115, s. 1).
[4] 6 Geo. IV, c. 85.
[5] 7 Geo. IV, c. 37.
[6] 9 Geo. IV, c. 33.
[7] 9 Geo. IV, c. 72.
[8] 9 Geo. IV, c. 74.
[9] 2 & 3 Will. IV, c. 117.

dence at the India House. The Charter Act of 1833,[1] like that of 1813, was preceded by careful inquiries into the administration of India. It introduced important changes into the constitution of the East India Company and the system of Indian administration.

The territorial possessions of the Company were allowed to remain under its government for another term of twenty years; but were to be held by the Company 'in trust for His Majesty, his heirs and successors, for the service of the Government of India'.

The Company's monopoly of the China trade, and of the tea trade, was finally taken away.

The Company was required to close its commercial business and to wind up its affairs with all convenient speed. Its territorial and other debts were charged on the revenues of India, and it was to receive out of those revenues an annual dividend at the rate of £10 10*s.* per cent. on the whole amount of its capital stock (i.e. £630,000 a year), but this dividend was to be subject to redemption by Parliament on payment of £200 sterling for every £100 stock, and for the purpose of this redemption a sum of two million pounds was to be paid by the Company to the National Debt Commissioners and accumulated with compound interest until it reached the sum of twelve millions.[2]

The Company, while deprived of its commercial functions, retained its administrative and political powers, under the system of double government instituted by previous Acts, and, in particular, continued to exercise its rights of patronage over Indian appointments. The constitution of the Board of Control was modified, but as the powers of the Board were executed by its president the modifications had no practical effect. The Act re-enacted provisions of former Acts as to the 'secret

[1] 3 & 4 Will. IV, c. 85. The Act received the Royal Assent on August 28, 1833, but did not come into operation, except as to appointments and the like, until April 22, 1834 (s. 117).

[2] As to the financial arrangements made under these provisions, see the evidence of Mr. Melvill before the Lords Committee of 1852.

committee ' of the Court of Directors, and the dispatches to be sent through that committee, and it simplified the formal title of the Company by authorizing it to be called the East India Company.

No very material alteration was made in the system on which the executive government was to be carried on in India.

The superintendence, direction, and control of the whole civil and military government were expressly vested in a governor-general and counsellors, who were to be styled 'the Governor-General of India in Council'.[1] This council was increased by the addition of a fourth ordinary member, who was not to be one of the Company's servants, and was not to be entitled to act as member of council except for legislative purposes.[2] It need hardly be stated that the fourth member was Macaulay.

The overgrown Presidency of Bengal[3] was to be divided into two distinct presidencies, to be called the Presidency of Fort William and the Presideney of Agra. But this provision never came into operation. It was suspended by an enactment of 1835 (5 & 6 Will. IV, c. 52), and the suspension was continued indefinitely by the Charter Act of 1853 (16 & 17 Viet., c. 95, s. 15).

The intention was that each of the four presidencies, Fort William, Fort St. George, Bombay, and Agra, should have, for executive purposes, a governor and council of its own. But the governor-general and his council were to be, for the present, the governor and council of Fort

[1] It will be remembered that the Governor-General had been previously the Governor-General of Bengal in Council.

[2] 'The duty of the fourth ordinary member' (under the Act of 1833) 'was confined entirely to the subject of legislation; he had no power to sit or vote except at meetings for the purpose of making laws and regulations; and it was only by courtesy, and not by right, that he was allowed to see the papers or correspondence, or to be made acquainted with the deliberations of Government upon any subject not immediately connected with legislation.' Minute by Sir Barnes Peacock of November 3, 1859.

[3] It had been increased by the addition of Benares in 1775, of the modern Orissa in 1803, of large territories in the North-West in 1801–3, and of Assam, Arakan, and Tenasserim in 1824.

William, and power was given to reduce the members of the council, or even suspend them altogether and vest the executive control in a governor alone.[1]

Important alterations were made by the Act of 1833 in the legislative powers of the Indian Government. 'At that date there were five different bodies of statute law in force in the (Indian) empire. First, there was the whole body of statute law existing so far as it was applicable, which was introduced by the Charter of George I and which applied, at least, in the presidency towns. Secondly, all English Acts subsequent to that date, which were expressly extended to any part of India. Thirdly, the regulations of the governor-general's council, which commence with the Revised Code of 1793, containing forty-eight regulations, all passed on the same day (which embraced the results of twelve years' antecedent legislation), and were continued down to the year 1834. They only had force in the territories of Bengal. Fourthly, the regulations of the Madras council, which spread over the period of thirty-two years, from 1802 to 1834, and are [were] in force in the Presidency of Fort St. George. Fifthly, the regulations of the Bombay Code, which began with the revised code of Mr. Mountstuart Elphinstone in 1827, comprising the results of twenty-eight years' previous legislation, and were also continued into 1834, having force and validity in the Presidency of Fort St. David.'[2]

'In 1833', says Mr. Cowell in continuation, 'the attention of Parliament was directed to three leading vices in the process of Indian government. The first was in the nature of the laws and regulations; the second was in the ill-defined authority and power from which these various

[1] The power of reduction was exercised in 1833 by reducing the number of ordinary members of the Madras and Bombay councils from three to two (Political Dispatch of December 27, 1833). The original intention was to abolish the councils of the minor presidencies, but, at the instance of the Court of Directors, their retention was left optional.

[2] Cowell, *Tagore Lectures* of 1872. For 'Fort St. David' read 'Bombay'. See also Harington's *Analysis of the Bengal Regulations*.

laws and regulations emanated; and the third was the anomalous and sometimes conflicting judicatures by which the laws were administered.'

The Act of 1833 vested the legislative power of the Indian Government exclusively in the Governor-General in Council, who had been, as has been seen, reinforced by the addition of a fourth legislative member. The four Presidential Governments were merely authorized to submit to the Governor-General in Council 'drafts or projects of any laws or regulations which they might think expedient', and the Governor-General in Council was required to take these drafts and projects into consideration and to communicate his resolutions thereon to the Government proposing them.

The Governor-General in Council was expressly empowered to make laws and regulations—

(*a*) for repealing, amending, or altering any laws or regulations whatever, for the time being in force in the Indian territories;

(*b*) for all persons, whether British or native, foreigners or others, and for all courts of justice, whether established by charter or otherwise, and the jurisdiction thereof;

(*c*) for all places and things whatsoever within and throughout the whole and every part of the said territories;

(*d*) for all servants of the Company within the dominions of princes and States in alliance with the Company; and

(*e*) as articles of war for the government of the native officers and soldiers in the military service of the Company, and for the administration of justice by courts-martial to be holden on such officers and soldiers.

But this power was not to extend to the making of any laws and regulations—

(i) which should repeal, vary, or suspend any of the provisions of the Act of 1833, or of the Acts for

punishing mutiny and desertion of officers and soldiers in the service of the Crown or of the Company; or

(ii) which should affect any prerogative of the Crown, or the authority of Parliament, or the constitution or rights of the Company, or any part of the unwritten laws or constitutions of the United Kingdom, whereon may depend the allegiance of any person to the Crown, or the sovereignty or dominion of the Crown over the Indian territories; or

(iii) without the previous sanction of the Court of Directors, which should empower any court other than a chartered court to sentence to death any of His Majesty's natural-born subjects born in Europe, or their children, or abolish any of the chartered courts.

There was also an express saving of the right of Parliament to legislate for India and to repeal Indian Acts, and, the better to enable Parliament to exercise this power, all Indian laws were to be laid before Parliament.

Laws made under the powers given by the Act were to be subject to disallowance by the Court of Directors, acting under the Board of Control, but, when made, were to have effect as Acts of Parliament, and were not to require registration or publication in any court of justice.

The laws made under the Act of 1833 were known as Acts, and took the place of the 'regulations' made under previous Acts of Parliament.

A comprehensive consolidation and codification of Indian laws was contemplated. Section 53 of the Act recited that it was 'expedient that, subject to such special arrangements as local circumstances may require, a general system of judicial establishments and police, to which all persons whatsoever, as well Europeans as natives, may be subject, should be established in the said territories at an early period; and that such laws as may be applicable in common to all classes of the inhabitants

of the said territories, due regard being had to the rights, feelings, and peculiar usages of the people, should be enacted; and that all laws and customs having the force of law within the same territories should be ascertained and consolidated, and, as occasion may require, amended'.

The Act then went on to direct the Governor-General in Council to issue a commission, to be known as the 'Indian Law Commission', which was to inquire into the jurisdiction, powers, and rules of the existing courts of justice and police establishments in the Indian territories, and all existing forms of judicial procedure, and into the nature and operation of all laws, whether civil or criminal, written or customary, prevailing and in force in any part of the Indian territories, to which any inhabitants of those territories were then subject. The commissioners were to report to the Governor-General in Council, setting forth the results of their inquiries, and suggesting alterations, and these reports were to be laid before Parliament.

This was the first Indian Law Commission, of which Macaulay was the most prominent member.[1] Its labours resulted directly in the preparation of the Indian Penal Code, which, however, did not become law until 1860, and, indirectly and after a long interval of time, in the preparation of the Codes of Civil and Criminal Procedure and other codes of substantive and adjective law which now form part of the Indian Statute Book.

Important provisions were made by the Act of 1833 for enlarging the rights of European settlers, and for protecting the natives of the country, and ameliorating their condition.

It was declared to be lawful for any natural-born subject of His Majesty to proceed by sea to any port or place having a custom-house establishment within the Indian territories, and to reside thereat, or to proceed to

[1] His colleagues were another English barrister, Mr. Cameron, afterwards law member of council, and two civil servants of the Company, Mr. Macleod of the Madras Service, and Mr. (afterwards Sir William) Anderson of the Bombay Service. Sir William Macnaghten of the Bengal Service was also appointed, but did not accept the appointment.

and reside in or pass through any part of the territories which were under the Company's government on January 1, 1800, or any part of the countries ceded by the Nabob of the Carnatic, of the province of Cuttack, or of the settlements of Singapore and Malacca. These rights might be exercised without the requirement of any licence. But every subject of His Majesty not being a native was, on his arrival in India from abroad, to signify on entry, to an officer of customs, his name, place of destination, and objects of pursuit in India. A licence was still required for residence in any part of India other than those above mentioned, but power was reserved to the Governor-General in Council, with the previous approbation of the Court of Directors, to declare any such part open, and remove the obligation of a licence.

Another section expressly enabled any natural-born subject of the Crown to acquire and hold lands in India.

The regulations as to licences have long since been abolished or fallen into desuetude. But by s. 84 of the Act of 1833 the Governor-General in Council was required, as soon as conveniently might be, to make laws or regulations providing for the prevention or punishment of the illicit entrance into or residence in British India of persons not authorized to enter or reside therein. Effect was given to this requirement by Act III of 1864, under which, as now amended by Act III of 1915, the Government of India and local Governments can order foreigners to remove themselves from British India, and apprehend and detain them if they refuse to obey the order. Under the same Act the Governor-General in Council can apply to British India, or any part thereof, special provisions as to the reporting and licensing of foreigners.[1]

An echo of the fears expressed in 1813 as to the dangers likely to arise from the free settlement of interlopers is to

[1] See *Alter Caufman* v. *Government of Bombay*, [1894] I. L. R. 18 Bombay, 636. As to the general powers of excluding aliens from British territory, see *Musgrove* v. *Chun Teeong Toy*, [1891] L. R. A. C. 272 (exclusion of Chinese from Australia), and an article in the *Law Quarterly Review* for 1897 on 'Alien Legislation and the Prerogative of the Crown'.

be found in the section which, after reciting that 'the removal of restrictions on the intercourse of Europeans with the said territories will render it necessary to provide for any mischief or dangers that may arise therefrom', requires the Governor-General in Council, by laws and 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, and opinions.[1]

Section 87 of the Act 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 Company'. The policy of freely admitting natives of India to a share in the administration of the country has never been more broadly or emphatically enunciated.

And finally, the Governor-General in Council was 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 Indian territories so soon as such extinction should be practicable and safe, and to prepare and submit to the Court of Directors drafts of laws on the subject.[2] In preparing these drafts due regard was to be had to the laws of marriage and the rights and authorities of fathers and heads of families.

The sections of the Act which follow these broad declarations of policy are concerned mainly with regulations relating to the ecclesiastical establishments in India and increasing the number of bishoprics to three, and with regulations for the college of Haileybury.

The Act of 1833, as sent out to India, was accompanied by an explanatory dispatch from the Court of Directors,

[1] See ss. 295–8 of the Indian Penal Code.

[2] See Act V of 1843 and ss. 370, 371 of the Indian Penal Code. See also Mr. Cameron's evidence before the Select Committee of the House of Lords in 1852, and Minutes by Sir H. S. Maine, No. 92.

which, according to a tradition in the India Office, was drafted by James Mill.[1]

Legislation between 1833 and 1853.

During the twenty years' interval between the Charter Act of 1833 and that of 1853 there was very little Parliamentary legislation on India.

An Act of 1835 (5 & 6 Will. IV, c. 52) suspended the provisions of the Act of 1833 as to the division of the Presidency of Bengal into two presidencies,[2] and authorized the appointment of a lieutenant-governor for the North-Western Provinces.[3] The project of establishing an executive council for the Bengal and North-Western Provinces was abandoned.

An Act of 1840 (3 & 4 Vict. c. 37) consolidated and amended the Indian Mutiny Acts, and empowered the Governor-General in Council to make regulations for the Indian Navy.

An Act of 1848 (11 & 12 Vict. c. 21) enacted for India a law of insolvency, which has been repealed and re-enacted for the presidency towns by Act III of 1909.

Charter Act of 1853.

In 1853, during the governor-generalship of Lord Dalhousie, it became necessary to take steps for renewing the term of twenty years which had been created by the Act of 1833, and accordingly the last of the Charter Acts (16 & 17 Vict. c. 95) was passed in that year.

It differed from the previous Charter Acts by not fixing any definite term for the continuance of the powers, but simply providing that the Indian territories should remain under the government of the Company, in trust for the Crown, until Parliament should otherwise direct.

The Act reduced the number of the directors of the Company from twenty-four to eighteen, and provided that six of these should be appointed by the Crown.

[1] Kaye, *Administration of the East India Company*, p. 137.

[2] By s. 15 of the Charter Act of 1853 (16 & 17 Vict. c. 95) this suspension was continued until the Court of Directors and Board of Control should otherwise direct.

[3] The first appointment was made in 1836.

It continued indefinitely, until the Court of Directors and Board of Control should otherwise direct, the suspension of the division of the Bengal Presidency contemplated by the Act of 1835, but authorized the appointment of a separate governor for that presidency, distinct from the governor-general.[1] However, the Act went on to provide that, unless and until this separate governor was appointed, the Court of Directors and Board of Control might authorize the appointment of a lieutenant-governor of Bengal. The power of appointing a separate governor was not brought into operation until the year 1912, but the power of appointing a lieutenant-governor was exercised in 1854, and continued until 1912.

By the following section, power was given to the directors either to constitute one new presidency, with the same system of a governor and council as in the Presidencies of Madras and Bombay, or, as an alternative, to authorize the appointment of a lieutenant-governor. The power to constitute a new presidency was not exercised, but a new lieutenant-governorship was created for the Punjab in 1859.

Further alterations were made by the Act of 1853 in the machinery for Indian legislation. The 'fourth' or legislative member of the governor-general's council was placed on the same footing with the older or 'ordinary' members of the council by being given a right to sit and vote at executive meetings. At the same time the council was enlarged for legislative purposes by the addition of legislative members, of whom two were the Chief Justice of Bengal and one other supreme court judge, and the others were Company's servants of ten years' standing appointed by the several local Governments. The result was that the council as constituted for legislative purposes

[1] Under the Act of 1833 the Governor-General of India was also Governor of Bengal, but during his frequent absences from Calcutta used to delegate his functions in the latter capacity to the senior member of his council. See the evidence of Sir Herbert Maddock and Mr. F. Millett before the Select Committee of the House of Lords in 1852.

under the Act of 1853 consisted of twelve [1] members, namely—

The governor-general.

The commander-in-chief.

The four ordinary members of the governor-general's council.

The chief justice of Bengal.

A puisne judge.

Four representative members (paid) [2] from Bengal, Madras, Bombay, and the North-Western Provinces.

The sittings of the legislative council were made public and their proceedings were officially published.

The Indian Law Commission appointed under the Act of 1833 had ceased to exist before 1853. It seems to have lost much of its vitality after Macaulay's departure from India. It lingered on for many years, published periodically ponderous volumes of reports, on which, in many instances, Indian Acts have been based, but did not succeed in effecting any codification of the laws or customs of the country, and was finally allowed to expire.[3] Efforts were, however, made by the Act of 1853 to utilize its labours, and for this purpose power was given to appoint a body of English commissioners, with instructions to examine and consider the recommendations of the Indian Commission.[4]

[1] Power was given by the Act of 1853 to the governor-general to appoint, with the sanction of the Home Government, two other members from the civil service, but this power was never exercised.

[2] They received salaries of £5,000 a year each.

[3] As to the proceedings of the Commission, see the evidence given in 1852 before the Select Committee of the House of Lords on the East India Company's charter by Mr. F. Millett and Mr. Hay Cameron. Mr. Millett was the first secretary, and was afterwards member of the Commission. Mr. Cameron was one of the first members of the Commission, and was afterwards legislative member of the governor-general's council.

[4] The commissioners appointed under this power were Sir John (afterwards Lord) Romilly, Sir John Jervis (Chief Justice of Common Pleas), Sir Edward Ryan, C. H. Cameron, J. N. Macleod, J. A. F. Hawkins, Thomas Flower Ellis, and Robert Lowe (Lord Sherbrooke). They were instructed by the Board of Control to consider specially the preparation of a simple and uniform code of procedure for Indian courts, and the amalgamation of the supreme and sadr courts. (Letter of November 30, 1853, from the Board of Control to the Indian Law Commission.)

And, finally, the right of patronage to Indian appointments was by the Act of 1853 taken away from the Court of Directors and directed to be exercised in accordance with regulations framed by the Board of Control. These regulations threw the covenanted civil service open to general competition.[1]

In 1855 an Act was passed (18 & 19 Vict. c. 53) which prohibited the admission of further students to Haileybury College after January 25, 1856, and directed the college to be closed on January 31, 1858.

Establishment of chief commissionerships.

In 1854 was passed an Act [2] which has had important administrative results in India. Under the old system the only mode of providing for the government of newly acquired territory was by annexing it to one of the three presidencies. Under this system of annexations the Presidency of Bengal had grown to unwieldy dimensions. Some provision had been made for the relief of its government by the constitution of a separate lieutenant-governorship for the North-Western Provinces in 1836. The Act of 1853 had provided for the constitution of a second lieutenant-governorship, and, if necessary, of a fourth presidency. These powers were, however, not found sufficient, and it was necessary to provide for the administration of territories which it might not be advisable to include in any presidency or lieutenant-governorship.[3]

This provision was made by the Act of 1854, which empowered the Governor-General of India in Council, with the sanction of the Court of Directors and the Board of Control, to take by proclamation under his immediate authority and management any part of the territories for the time being in the possession or under the government of the East India Company, and thereupon to give all necessary orders and directions respecting the administration of that part, or otherwise provide for its administration. The mode in which this power was

[1] They were prepared in 1854 by a committee under the presidency of Lord Macaulay.

[2] 17 & 18 Vict. c. 77.

[3] See preamble to Act of 1854.

practically exercised was by the appointment of chief commissioners, to whom the Governor-General in Council delegates such powers as need not be reserved to the Central Government. In this way chief commissionerships were established for Assam,[1] the Central Provinces, Burma,[1] and other parts of India. But the title of chief commissioner was not directly recognized by Act of Parliament,[2] and the territories under the administration of chief commissioners are technically 'under the immediate authority and management' of the Governor-General in Council within the meaning of the Act of 1854.

The same Act empowered the Government of India, with the sanction of the Home authorities, to define the limits of the several provinces in India; expressly vested in the Governor-General in Council all the residuary authority not transferred to the local Governments of the provinces into which the old Presidency of Bengal had been divided; and directed that the governor-general was no longer to bear the title of governor of that presidency.

The Government of India Act, 1858.

The Mutiny of 1857 gave the death-blow to the system of 'double government', with its division of powers and responsibilities. In February, 1858, Lord Palmerston introduced a Bill for transferring the government of India to the Crown. Under his scheme the home administration was to be conducted by a president with the assistance of a council of eight persons. The members of the council were to be nominated by the Crown, were to be qualified either by having been directors of the Company or by service or residence in India, and were to hold office for eight years, two retiring by rotation in each year. In other respects the scheme did not differ materially from that eventually adopted. The cause of the East India Company was pleaded by John Stuart Mill in a weighty

[1] The chief commissionership of Assam was abolished in 1908, but restored in 1912. Burma was placed under a lieutenant-governor in 1897.

[2] It was afterwards recognized by the Act of 1870 (33 Vict. c. 3), ss. 1, 3, and is recognized in the Act of 1915.

State paper, but the second reading of the Bill was carried by a large majority.

Shortly afterwards, however, Lord Palmerston was turned out of office on the Conspiracy to Murder Bill, and was succeeded by Lord Derby, with Mr. Disracli as Chancellor of the Exchequer and Lord Ellenborough as President of the Board of Control. The Chancellor of the Exchequer promptly introduced a new Bill for the government of India, of which the most remarkable feature was a council consisting partly of nominees of the Crown and partly of persons elected on a complicated and elaborate system, by citizens of Manchester and other large towns, holders of East India stock, and others. This scheme died of ridicule, and when the House assembled after the Easter recess no one could be found to defend it.[1] Mr. Disraeli grasped eagerly at a suggestion by Lord John Russell that the Bill should be laid aside, to be succeeded by another based on resolutions of the House. In the meantime Lord Ellenborough had been compelled to resign in consequence of disapproval of his dispatch censuring Lord Canning's Oudh proclamation, and had been succeeded by Lord Stanley, on whom devolved the charge of introducing and piloting through the House the measure which eventually became law as the Act for the better government of India.[2]

This Act declared that India was to be governed directly by and in the name of the Crown, acting through a Secretary of State, to whom were to be transferred the powers formerly exercised either by the Court of Directors or by the Board of Control. Power was given to appoint a fifth principal Secretary of State for this purpose.

The Secretary of State was to be aided by a council of fifteen members, of whom eight were to be appointed by the Crown and seven elected by the directors of the East

[1] It was to this Bill that Lord Palmerston applied the Spanish boy's remark about Don Quixote, and said that whenever a man was to be seen laughing in the streets he was sure to have been discussing the Government of India Bill.

[2] 21 & 22 Vict c. 108.

India Company. The major part both of the appointed and of the elected members were to be persons who had served or resided in India for ten years, and, with certain exceptions, who had not left India more than ten years before their appointment. Future appointments or elections were to be so made that nine at least of the members of the council should hold these qualifications. The power of filling vacancies was vested in the crown as to Crown appointments, and in the council itself as to others. The members of the council were to hold office during good behaviour, but to be removable on an address by both Houses of Parliament, and were not to be capable of sitting or voting in Parliament.

The council was charged with the duty of conducting, under the direction of the Secretary of State, the business transacted in the United Kingdom in relation to the government of India and the correspondence with India. The Secretary of State was to be the president of the council, with power to overrule in case of difference of opinion, and to send, without reference to the council, any dispatches which might under the former practice have been sent through the secret committee.

The officers on the home establishment both of the Company and of the Board of Control were to form the establishment of the new Secretary of State in Council, and a scheme for a permanent establishment was to be submitted.

The patronage of the more important appointments in India was vested either in the Crown or in the Secretary of State in Council. Lieutenant-governors were to be appointed by the governor-general subject to the approval of the Crown.

As under the Act of 1853, admission to the covenanted civil service was to be open to all natural-born subjects of Her Majesty, and was to be granted in accordance with the results of an examination held under rules to be made by the Secretary of State in Council with the assistance of the Civil Service Commissioners.

The patronage to military cadetships was to be divided between the Secretary of State and his council.

The property of the Company was transferred to the Crown. The expenditure of the revenues of India was to be under the control of the Secretary of State in Council, but was to be charged with a dividend on the Company's stock and with their debts, and the Indian revenues remitted to Great Britain were to be paid to the Secretary of State in Council and applied for Indian purposes. Provision was made for the appointment of a special auditor of the accounts of the Secretary of State in Council.

The Board of Control was formally abolished. With respect to contracts and legal proceedings, the Secretary of State in Council was given a quasi-corporate character for the purpose of enabling him to assert the rights and discharge the liabilities devolving upon him as successor to the East India Company.

The Indian Army.

It has been seen that under the authority given by various Acts the Company raised and maintained separate military forces of their own. The troops belonging to these forces, whilst in India, were governed by a separate Mutiny Act, perpetual in duration, though re-enacted from time to time with amendments.[1] The Company also had a small naval force, once known as the Bombay Marine, afterwards as the Indian Navy, and now represented by the Royal Indian Marine.

The Act of 1858 transferred to the service of the Crown all the naval and military forces of the Company, retaining, however, their separate local character, with the same liability to local service and the same pay and privileges as if they were in the service of the Company. Many of the European troops refused to acknowledge the authority of Parliament to make this transfer. They demanded re-engagement and bounty as a condition of the transfer

[1] The first of these Acts was an Act of 1753 (27 Geo. II, c. 9), and the last was an Act of 1857 (20 & 21 Vict. c. 66), which was repealed in 1863 (26 & 27 Vict. c. 48).

of their services,[1] and, failing to get these terms, were offered their discharge.

In 1860 the existence of European troops as a separate force was brought to an end by an Act (23 & 24 Vict. c. 100) which, after reciting that it is not expedient that a separate European force should be continued for the local service of Her Majesty in India, formally repealed the enactments by which the Secretary of State in Council was authorized to give directions for raising such forces.

In 1861 the officers and soldiers formerly belonging to the Company's European forces were invited to join, and many of them were transferred to, the regular army under the authority of an Act of that year (24 & 25 Vict. c. 74). Thus the European army of the late East India Company, except a small residue, became merged in the military forces of the Crown.[2]

The naval force of the East India Company was not amalgamated with the Royal Navy, but came to an end in 1863, when it was decided that the defence of India against serious attack by sea should be undertaken by the Royal Navy, which was also to provide for the performance of the duties in the Persian Gulf which had been previously undertaken by the Indian Navy.[3]

The change effected by the Government of India Act, 1858, was formally announced in India by the Queen's Proclamation of November 1, 1858.

In 1859 the Government of India Act, 1859 (22 & 23 Vict. c. 41), was passed for determining the officers by whom, and the mode in which, contracts on behalf of the Secretary of State in Council were to be executed in India.

[1] In 1859 they made a 'demonstration' which, from the small stature of the recruits enlisted during the Indian Mutiny, was sometimes called the 'Dumpy Mutiny'. Pritchard, *Administration of India*, i. 36.

[2] Under existing arrangements all the troops sent to India are placed on the Indian establishment, and from that time cease to be voted on the Army Estimates. The number of the forces in the regular army as fixed by the annual Army Act is declared to be 'exclusive of the number actually serving within Her Majesty's Indian possessions'.

[3] See Sir Charles Wood's letter to the Admiralty of October 20, 1862.

Three Acts of great importance were passed in the year 1861. Legislation of 1861.

Under the Charter Act of 1793 rank and promotion in the Company's civil service were strictly regulated by seniority, and all offices in the 'civil line' of the Company's service in India under the degree of councillor were strictly reserved to the civil servants of the presidency in which the office was held. But by reason of the exigencies of the public service, numerous civil appointments had been made in India in disregard of these restrictions. The Indian Civil Service Act, 1861 (24 & 25 Vict. c. 54), validated all these irregular appointments in the past, but scheduled a number of appointments which, in the future, were to be reserved to members of the covenanted civil service. Indian Civil Service Act, 1861.

At the same time it abolished the rule as to seniority and removed all statutory restrictions on appointments to offices not in the schedule. And, even with respect to the reserved offices, it left a power of appointing outsiders under exceptional circumstances. This power could only be exercised where it appeared to the authority making the appointment that, under the circumstances of the case, it ought to be made without regard to statutory conditions. The person appointed was required to have resided for at least seven years in India. If the post was in the Revenue or Judicial Departments, the person appointed had to pass the same examinations and tests as were required in the case of the covenanted civil service. The appointment was provisional only, and was to be forthwith reported to the Secretary of State in Council with the special reasons for making it, and unless approved within twelve months by the Secretary of State it became void.

The Indian Councils Act, 1861 (24 & 25 Vict. c. 67), modified the constitution of the governor-general's executive council and remodelled the Indian legislatures. Indian Councils Act, 1861

A fifth ordinary member was added to the governor-general's council. Of the five ordinary members, three

were required to have served for ten years in India under the Company or the Crown, and one was to be a barrister or advocate of five years' standing. Power was retained to appoint the commander-in-chief an extraordinary member.

Power was given to the governor-general, in case of his absence from headquarters, to appoint a president of the council, with all the powers of the governor-general except those with respect to legislation. And, in such case, the governor-general might invest himself with all the powers exercisable by the Governor-General in Council, except the powers with respect to legislation.

For purposes of legislation the governor-general's council was reinforced by additional members, not less than six nor more than twelve in number, nominated by the governor-general and holding office for two years. Of these additional members, not less than one-half were to be non-official, that is to say, persons not in the civil or military service of the Crown. The lieutenant-governor of a province was also to be an additional member whenever the council held a legislative sitting within his province.

The Legislative Council established under the Act of 1853 had modelled its procedure on that of Parliament, and had shown what was considered an inconvenient degree of independence by asking questions as to, and discussing the propriety of, measures of the Executive Government.[1] The functions of the new Legislative Council were limited strictly to legislation, and the Council was expressly forbidden to transact any business except the consideration and enactment of legislative measures, or to entertain any motion except a motion for leave to introduce a Bill, or having reference to a Bill actually introduced.[2]

[1] It had, among other things, discussed the propriety of the grant to the Mysore princes. See Proceedings of Legislative Council for 1860, pp. 1343–1402.

[2] 24 & 25 Vict. c. 67, s. 19. As to the object with which this section was framed, see paragraph 24 of Sir Charles Wood's dispatch of August 9, 1861.

Measures relating to the public revenue or debt, religion, military or naval matters, or foreign relations, were not to be introduced without the governor-general's sanction. The assent of the governor-general was required to every Act passed by the council, and any such Act might be disallowed by the Queen, acting through the Secretary of State.

The legislative power of the Governor-General in Council was declared to extend to making laws and regulations for repealing, amending, or altering any laws or regulations for the time being in force in the 'Indian territories now under the dominion of Her Majesty',[1] and to making laws and regulations for all persons, whether British or native, foreigners or others, and for all courts of justice, and for all places and things 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.[2] But there were express savings for certain Parliamentary enactments, for the general authority of Parliament, and for any part of the unwritten laws or constitution of the United Kingdom whereon the allegiance of the subject or the sovereignty of the Crown may depend.

An exceptional power was given to the governor-general, in cases of emergency, to make, without his council, ordinances, which were not to remain in force for more than six months.

Doubts had for some time existed about 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,

[1] Explained by 55 & 56 Vict. c. 14, s. 3.

[2] These powers were extended by 28 & 29 Vict. c. 17, s. 1, and 32 & 33 Vict. c. 98, s. 1.

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.[1] 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.[1]

The power of legislation which had been taken away from the Governments of Madras and Bombay by the Charter Act of 1833 was restored to them by the Act of 1861. The councils of the governors of Madras and Bombay were expanded for legislative purposes by the addition of the advocate-general and of other members nominated on the same principles as the additional members of the governor-general's council. No line of demarcation was

[1] Indian legislation subsequently became necessary for the purpose of ascertaining and determining the rules which had been thus validated in general terms. See Sir James Stephen's speech in the Legislative Council in the debate on the Punjab Laws Acts, March 26, 1872, and the chapter contributed by him to Sir W. Hunter's *Life of Lord Mayo*, vol. ii, pp. 214–221.

drawn between the subjects reserved for the central and the local legislatures respectively; but the previous sanction of the governor-general was made requisite for legislation by the local legislature in certain cases, and all Acts of the local legislature required the subsequent assent of the governor-general in addition to that of the Governor, and were made subject to disallowance by the Crown, as in the case of Acts of the governor-general's council. There were also the same restrictions on the proceedings of the local legislatures.

The governor-general was directed to establish, by proclamation, a legislative council for Bengal,[1] and was empowered to establish similar councils for the North-Western Provinces and for the Punjab.[2] These councils were to consist of the lieutenant-governor and of a certain number of nominated councillors, and were to be subject to the same provisions as the local legislatures for Madras and Bombay.

The Act also gave power to constitute new provinces for legislative purposes and appoint new lieutenant-governors, and to alter the boundaries of existing provinces.

Indian High Courts Act, 1861.

The amalgamation of the supreme and sadr courts, that is to say, of the courts representing the Crown and the Company respectively at the presidency towns, had long been in contemplation, and was carried into effect by the Indian High Courts Act, 1861.[3]

By this Act the Queen was empowered to establish, by letters patent,[4] high courts of judicature in Calcutta, Madras, and Bombay, and on their establishment the old chartered supreme courts and the old 'Sadr Adalat'

[1] A legislative council for Bengal was established by a proclamation of January 18, 1862.

[2] A legislative council was established for the North-Western Provinces and Oudh (now United Provinces of Agra and Oudh) in 1886, and for the Punjab in 1897.

[3] 24 & 25 Vict. c. 104.

[4] The letters patent or charters now in force with respect to these three high courts bear date December 28, 1865.

Courts were to be abolished, the jurisdiction and the powers of the abolished courts being transferred to the new high courts.

Each of the high courts was to consist of a chief justice and not more than fifteen judges, of whom not less than one-third, including the chief justice, were to be barristers, and not less than one-third were to be members of the covenanted civil service. All the judges were to be appointed by and to hold office during the pleasure of the Crown. The high courts were expressly given superintendence over, and power to frame rules of practice for, all the courts subject to their appellate jurisdiction.

Power was given by the Act to establish another high court, with the same constitution and powers as the high courts established at the presidency towns.[1]

Legislation after 1861.

The Indian High Courts Act of 1861 closed the series of constitutional statutes consequent on the transfer of the government of India to the Crown. Until the end of the nineteenth century the Acts of Parliament subsequently passed for India did little more than amend, with reference to minor points, the Acts of 1858 and 1861.

Indian High Courts Act, 1865.

The Indian High Courts Act, 1865,[2] empowered the Governor-General in Council to pass orders altering the limits of the jurisdiction of the several chartered high courts and enabling them to exercise their jurisdiction over native Christian subjects of Her Majesty resident in Native States.

Government of India Act, 1865.

Another Act of the same year, the Government of India Act, 1865,[3] extended the legislative powers of the governor-general's council to all British subjects in Native States, whether servants of the Crown or not, and enabled the Governor-General in Council to define and alter, by proclamation, the territorial limits of the various presidencies and lieutenant-governorships.

[1] s. 16. Under this power a high court was established at Allahabad in 1866. It is probable that the power was thereby exhausted.

[2] 28 & 29 Vict. c. 15.

[3] 28 & 29 Vict. c. 17.

Government of India Act, 1869.

The Government of India Act, 1869,[1] vested in the Secretary of State the right of filling all vacancies in the Council of India, and changed the tenure of members of the council from a tenure during good behaviour to a term of ten years. It also transferred to the Crown from the Secretary of State in Council the right of filling vacancies in the offices of the members of the councils in India.

Indian Councils Act, 1869.

The Indian Councils Act, 1869,[2] still further extended the legislative powers of the governor-general's council by enabling it to make laws for all native Indian subjects of Her Majesty in any part of the world, whether in India or not.

Government of India Act, 1870.

A very important modification in the machinery for Indian legislation was made by the Government of India Act, 1870.[3] It has been seen that for a long time the governor-general believed himself to have the power of legislating by executive order for the non-regulation provinces. The Indian Councils Act of 1861, whilst validating rules made under this power in the past, took away the power for the future. The Act of 1870 practically restored this power by enabling the governor-general to legislate in a summary manner for the less advanced parts of India.[4] The machinery provided was as follows. The Secretary of State in Council was, by resolution, to declare the provisions of section 1 of the Act of 1870 applicable to some particular part of a British Indian province. Thereupon the Governor in Council, lieutenant-governor, lieutenant-governor in Council, or chief commissioner of the province, might at any time propose to the Governor-General in Council drafts of regulations for the peace and good government of that part, and these drafts, when approved and assented to by the Governor-General in Council, and duly gazetted, were to have the same force of law as if they had been formally

Legislation by Regulation.

[1] 32 & 33 Vict. c. 97. [2] 32 & 33 Vict. c. 98. [3] 33 & 34 Vict. c. 3.

[4] This restoration of a power of summary legislation was strongly advocated by Sir H. S. Maine. See Minutes by Sir H. S. Maine, pp. 153, 156.

passed at sittings of the Legislative Council. This machinery was extensively applied to the less advanced districts of the different Indian provinces, and numerous regulations have been made under it.

The same Act of 1870 contained two other provisions of considerable importance. One of them (s. 5) repeated and strengthened the power of the governor-general to overrule his council.[1] The other (s. 6), after reciting the expediency of giving additional facilities for the employment of natives of India 'of proved merit and ability' in the civil service of Her Majesty in India, enabled any native of India to be appointed to any 'office, place, or employment' in that service, notwithstanding that he had not been admitted to that service in the manner directed by the Act of 1858, i.e. by competition in England. The conditions of such appointments were to be regulated by rules made by the Governor-General in Council, with the approval of the Secretary of State in Council. The result of these rules was the 'statutory civilian', who has now been merged in or superseded by the 'Provincial Service'.

Statutory civilians.

Two small Acts were passed in 1871, the Indian Councils Act, 1871 (34 & 35 Vict. c. 34),[2] which made slight extensions of the powers of local legislatures, and the Indian Bishops Act, 1871 (34 & 35 Vict. c. 62), which regulated the leave of absence of Indian bishops.

Indian Councils Act and Indian Bishops Act, 1871.

An Act of 1873 (36 Vict. c. 17) formally dissolved the East India Company as from January 1, 1874.

The Indian Councils Act, 1874 (37 & 38 Vict. c. 91), enabled a sixth member of the governor-general's council to be appointed for public works purposes.

Indian Councils Act, 1874

The Council of India Act, 1876 (39 & 40 Vict. c. 7), enabled the Secretary of State, for special reasons, to appoint any person having professional or other peculiar

Council of India Act, 1876.

[1] It will be remembered that Lord Lytton acted under this power when he exempted imported cotton goods from duty in 1879.

[2] This Act was passed in consequence of the decision of the Bombay High Court in *R.* v. *Reay*, 7 Bom. Cr. 6.

qualifications to be a member of the Council of India, with the old tenure, 'during good behaviour,' which had been abolished in 1869.[1]

Royal Titles Act, 1876.

In the same year was passed the Royal Titles Act, 1876 (39 & 40 Vict. c. 10), which authorized the Queen to assume the title of Empress of India.

Indian Salaries and Allowances Act, 1880.

The Indian Salaries and Allowances Act, 1880 (43 & 44 Vict. c. 3), enabled the Secretary of State to regulate by order certain salaries and allowances which had been previously fixed by statute.

Indian Marine Service Act, 1884.

The Indian Marine Service Act, 1884 (47 & 48 Vict. c. 38), enabled the Governor-General in Council to legislate for maintaining discipline in a small marine establishment, now called the Royal Indian Marine, the members of which were neither under the Naval Discipline Act nor under the Merchant Shipping Acts.

Council of India Reduction Act, 1889.

The Council of India Reduction Act, 1889 (52 & 53 Vict. c. 65), authorized the Secretary of State to abstain from filling vacancies in the Council of India until the number should be reduced to ten.

Indian Councils Act, 1892.

Introduction of elective principle and expansion of functions of Councils.

The Indian Councils Act, 1892 (55 & 56 Vict. c. 14), passed when Lord Kimberley was Secretary of State for India and Lord Lansdowne was Governor-General, enlarged the size of the legislative councils, and also their functions. The regulations under which the non-official members were to be nominated provided for recommendations, which, in practice, were always adopted, and thus introduced the elective principle into the constitution of the councils, whilst scrupulously avoiding the name of election. The restrictions imposed by the Act of 1861 on the functions of the councils were relaxed by giving power to make rules authorizing the discussion of the annual financial statement, and the asking of questions, but no member was to have power to submit or propose any resolution, or to divide the council, in respect of any such financial discussion or the answer to any question.

[1] This power was exercised in the case of Sir H. S. Maine, and was probably conferred with special reference to him.

These provisions were pregnant with consequences which were developed by later legislation.

The Act also cleared up a doubt about the meaning of an enactment in the Indian Councils Act of 1861, modified some of the provisions of that Act about the office of 'additional members' of legislative councils, and enabled local legislatures, with the previous sanction of the governor-general, to repeal or alter Acts of the governor-general's council affecting their province.[1]

Madras and Bombay Armies Act, 1893.

The Madras and Bombay Armies Act, 1893 (56 & 57 Vict. c. 62), abolished the offices of commanders-in-chief of the Madras and Bombay armies, and thus made possible a simplification of the Indian military system which had been asked for persistently by four successive viceroys.[2]

Contracts (India Office) Act, 1903.

The Contracts (India Office) Act, 1903 (3 Edw. VII, c. 11), declared the mode in which certain contracts might be made by the Secretary of State in Council.

Indian Councils Act, 1904.

The Indian Councils Act, 1904 (4 Edw. VII, c. 26), while continuing the power to appoint a sixth member of the Governor-General's Council, removed the necessity for appointing him specifically for public works purposes.

Partition of Bengal.

The partition of Bengal effected by Lord Curzon's government in 1905 did not require any parliamentary legislation. It was subsequently modified in a manner described later on.

Council of India Act, 1907.

The Council of India Act, 1907 (7 Edw. VII, c. 35), modified the constitution of the Council of India.

Indian Councils Act, 1909.

The Indian Councils Act, 1909 (9 Edw. VII, c. 4), the passage of which will always be associated with the name of Lord Morley of Blackburn, made important changes

[1] In the absence of this power the sphere of action of the then new legislature for the North-Western Provinces and Oudh was confined within an infinitesimal area.

[2] Administrative reforms in India are not carried out with undue precipitancy. The appointment of a single commander-in-chief for India, with four subordinate commanders under him, was recommended by Lord William Bentinck, Sir Charles Metcalfe, and others in 1833. (Further Papers respecting the East India Company's Charter, 1833.)

in the constitution and functions of the Indian legislative councils, and gave power to make changes in the executive governments of the Indian provinces.

The introduction of the measure was preceded by discussions and correspondence, which began in Lord Morley's first year of office as Secretary of State for India, and extended over a period of nearly three years.

Lord Minto's Minute.

In 1906 the Viceroy, Lord Minto, drew up a minute in which he reviewed the political situation in India, and pointed out how the growth of education, encouraged by British rule, had led to the rise of important classes claiming equality of citizenship, and aspiring to take a larger part in shaping the policy of the government. He then appointed a committee of his council to consider the group of questions arising out of these novel conditions. From the discussion thus commenced was developed a tentative project of reform, which was outlined in a Home Department letter to local governments dated August 24, 1907. This letter, after having received approval by the Secretary of State in Council, was laid before Parliament, and was published in England and India. The local governments to whom it was addressed were instructed to consult important bodies and individuals representative of various classes of the community before submitting their own conclusions to the Government of India. The replies were received in due course, and are to be found in the 'colossal blue books' appended to a letter from the Government of India, dated October 1, 1908, in which the situation was again reviewed, and revised proposals were formulated. The views of the Secretary of State on these proposals were expressed in a dispatch dated November 27, 1908, and were expounded by Lord Morley in a speech delivered in the House of Lords on December 17, 1908.

Objects of Morley-Minto Reforms.

The main objects of Lord Morley's proposals were to give the Indian legislative councils a more truly representative character, among other things by increasing their numbers, by substituting election for nomination

in constructing them, and by a liberal extension of their freedom of discussion.

The Bill embodying his proposals was introduced by him in the House of Lords in February, 1909, passed through both Houses of Parliament with only one important alteration, and became law before the end of May. Like other Acts relating to India it was couched in wide and general terms, leaving all details, and some matters of principle, to be determined by regulations made by the authorities in India.

The provisions of the Act of 1909, that is to say, that Act, as supplemented by the regulations under it, were as follows:

Size of legislative councils.

(1) The size of the legislative councils was materially enlarged. Thus the maximum number of members[1] was raised, for the Governor-General's Council, from 16 to 60, for Bengal, Madras and Bombay from 20 to 50, and for the United Provinces from 15 to 50.

Principle of election specifically recognized.

(2) The Act required that members of the legislative councils should include elected as well as nominated members. It left the number or proportion of elected members to be fixed by regulations, but it expressly recognized the principle of election which was latent in the regulations under the Act of 1892. The regulations under the Act of 1909 were framed, first, with the object of securing to the Government a sufficient official representation, and secondly, of obtaining, as far as possible, a fair representation of the different classes and interests in the country. Nomination was retained (*a*) for the appointment of official members, and (*b*) for the appointment of non-official members to supplement the elected members. There were thus three classes of 'additional members' in each council—nominated official members, nominated non-official members, elected members. The nomination of non-official members worked alongside of election as a means of representing special interests for whose

Nominated members.

[1] Excluding those who, as members of the executive council, were *ex-officio* members of the legislative council.

representation it seemed impracticable to provide by election, or special qualifications such as those of experts. The elected members were returned by constituencies such as municipalities, district and local boards, universities, chambers of commerce, and trade associations, and groups of persons such as land-holders or tea-planters. Mohammedans also succeeded in obtaining separate representation.

Composition of Councils.

(3) The Act prescribed that at least one half of the additional members of the legislative councils of the Governor-General and of the governors of Madras and Bombay, and at least one-third of the members of the other legislative councils, should be persons not in the civil or military service of the Crown. This left it still permissible to maintain an official majority on each council. But, in pursuance of the policy announced by the Secretary of State, the regulations created non-official majorities in all the provincial legislative councils, and maintained an official majority only in the Governor-General's legislative council.[1] This, however, did not imply that in the provincial legislative councils the majority was to consist wholly of elected members.

Enlargement of functions of Councils.

(4) The functions of the legislative councils were enlarged. Under the Act of 1892, as has been seen, there was power to discuss the financial statement, and to ask questions, but there was no power to move resolutions, or to divide the council, on any topic, financial or other. The practice had been to allot one or two days annually in every council to the discussion of a budget already settled by the executive government. Under the Act of 1909, there was power to move resolutions, not only on the budget, but on any matter of general public interest, and to divide the council upon them. The resolutions were to take the form of recommendations to the executive government, recommendations on which the government were not bound to act. The government,

[1] In Bombay the official members had been in a minority for some years before the Act of 1909.

as Lord Morley said in his speech of December, 1908, 'will deal with these resolutions as carefully, or as carelessly, as they think fit, just as governments do here.' The power to put questions was extended by permitting supplementary questions, subject to disallowance by the president.

Vice-Presidents.

(5) The Governor-General, the governors of presidencies, and lieutenant governors having executive councils, were required to appoint members of their councils to be vice-presidents of the councils, with power, in the temporary absence of their chief, to act for them, and preside at meetings of their councils.

Expansion of size of executive councils in Madras and Bombay.

(6) The maximum number of ordinary members of the executive councils for Madras and Bombay was raised from two to four, but two at least of them were to be persons who at the time of their appointment had been in the service of the Crown in India for at least twelve years.

Power to create executive councils in other provinces.

(7) The Governor-General in Council was given power to establish by proclamation executive councils for lieutenant governors, but, except in the case of Bengal, any such proclamation was to be subject to disallowance by either House of Parliament. The provision giving this power in the case of all lieutenant governorships was struck out by the House of Lords, and the ultimate form of the clause was the result of a compromise between the two Houses. The proclamation which gave an executive council to the United Provinces was vetoed by the House of Lords in 1915.

Lord Morley, in his speech of December, 1908, spoke of his proposals as 'the opening of a very important chapter in the history of Great Britain and India', and again as 'opening a chapter in constitutional reform'. Similar expressions have since been applied to later projects of legislation. A thread of continuity connects the successive stages of English legislation for India, and any division of the series of enactments is open to the charge of being arbitrary. But perhaps the Act of 1909 has a better claim than either its predecessor of 1892,

or its successor of 1919, to close one period and to open another, that of constitutional experiments.[1]

Effect of Morley-Minto Act on constitutional changes.

In any case the Act of 1909 undoubtedly accelerated the pace of constitutional changes, a pace which was further accelerated by the events of the great war. Both Lord Morley and Lord Minto expressly disclaimed any desire or intention to advance towards parliamentary or responsible government. But events are stronger than reformers, and the goal which was emphatically disclaimed in 1908, was as emphatically and authoritatively announced in August 1917.

In the course of the debates on the Bill of 1909, much was said about Lord Morley's announcement of his intention to appoint a native of India to a post on the Governor-General's council. This subject was not strictly relevant to the Bill, because the power of making these appointments is free from any restriction as to race, creed, or place of birth. Effect was given to Lord Morley's intention by the appointment in March, 1909, of Mr. Sinha (now Lord Sinha) to the post of law member of the Governor-General's executive council. This appointment carried a step further the policy adopted in 1907, when two natives of India were placed on the Secretary of State's council. In pursuance of the same policy natives of India were subsequently placed on the executive councils for Bengal, Madras, and Bombay, and for Bihar and Orissa.

Appointment of Indians to executive councils and to Council of India.

Indian High Courts Act, 1911.

The Indian High Courts Act, 1911 (1 & 2 Geo. V, c. 18):

(1) raised the maximum number of judges of an Indian High Court from sixteen to twenty,

(2) gave power to establish new high courts from time to time as occasion may require, and to make consequential changes in the jurisdiction of the courts, and

(3) gave power to appoint temporary additional judges of any high court for a term not exceeding two years.

[1] The difficulties which Lord Morley had to encounter and the formidable nature of the opposition which he had to face, are illustrated by his correspondence with Lord Minto, published in 1917 in the second volume of his *Recollections*.

The construction placed on the power to establish a new high court given by s. 16 of the Indian High Courts Act, 1861, had been, that the power was not recurrent and had been exhausted by the establishment of a high court at Allahabad.

India Office pensions.

The Government of India Act Amendment Act, 1911 (1 & 2 Geo. V, c. 25), amended the pension provisions of the Government of India Act, 1858, by authorizing the grant of allowances to the personal representatives of deceased members of the India Office staff.

King-Emperor's Delhi Durbar, 1911, and further constitutional changes.

On December 12, 1911, at a Durbar held at Delhi, King George V commemorated in person his coronation in Westminster Abbey as King of the United Kingdom of Great Britain and Ireland, and of the British dominions beyond the seas, and as Emperor of India. The event was unprecedented in the annals of British India. Never before had an English king worn his imperial crown in India; indeed, never before had a British sovereign set foot on Indian soil. There had been a general expectation that an exceptional occasion would be signalized by exceptional announcements. The expectation was not disappointed. At the great Durbar, the King-Emperor, accompanied by the Queen-Empress, was surrounded by a vast assemblage, which included the governors and great officials of his Indian empire, the great feudatory princes and chiefs of India, representatives of the Indian peoples, and representatives from the military forces of his Indian dominions. Three announcements were made. The first was made by the King-Emperor himself and expressed his personal feelings and those of the Queen Empress. The second was made by the Governor-General on behalf of the King-Emperor, and declared the grants, concessions, reliefs and benefactions which His Imperial Majesty had been pleased to bestow upon this glorious and memorable occasion. The third was made by the King-Emperor in person and announced the transfer of the seat of the Government of India from

Calcutta to the ancient capital Delhi, and, simultaneously and as a consequence of that transfer, the creation at as early a date as possible of a Governorship for the Presidency of Bengal, of a new Lieutenant-Governorship in Council administering the areas of Bihar, Chota Nagpur, and Orissa, and of a Chief Commissionership of Assam, with the necessary administrative changes and redistribution of boundaries.

The King's announcement. Transfer of capital to Delhi, appointment of Governor in Council in Bengal and creation of new provinces of Bihar and Orissa.

The decisions thus announced had been for many months the subject of discussions in the English Cabinet, at the India Office, and in the Governor-General's Council, and of correspondence between the Government of India and the Secretary of State in England. But the secret had been well kept, and the result of these deliberations was not disclosed, either in England or in India, before the King-Emperor's announcement was made.

The correspondence which led up to the Durbar announcements is embodied in a dispatch from the Government of India dated August 25, 1911, and in the Secretary of State's reply of November 1, 1911. The dispatch states very fully the nature of the proposals submitted to the Secretary of State, and the reasons for them. The reply conveys a general assent.

The Delhi Dispatch and the reply.

The dispatch begins by elaborating the proposal of the Government of India to make Delhi the future capital, because, it said, 'we consider this the keystone of the whole project'. It was certain that in the course of time the just demands of Indians for a larger share in the government of the country would have to be satisfied, and the question would be how this devolution of power could be conceded without impairing the supreme authority of the Governor-General in Council. The only possible solution of the difficulty would appear to be gradually to give the Provinces a larger measure of self-government until at last India would consist of a number of administrations, autonomous in all provincial affairs, with the Government of India above them all, and possessing power to interfere in cases of misgovernment, but

ordinarily restricting their functions on matters of Imperial concern. In order that this consummation might be attained, it was essential that the Supreme Government should not be associated with any particular Provincial Government. The removal of the Government of India from Calcutta was therefore a measure which would materially facilitate the growth of local self-government on sound and safe lines.

The question of providing a separate capital for the Government of India had often been debated, but generally with the object of finding a site where that Government could spend all seasons of the year. Such a solution would be ideal, but was impracticable. The various sites suggested were either difficult of access or devoid of historical associations. 'Delhi is the only possible place.' It had splendid communications, the climate was good for seven months in the year, and its salubrity could be ensured at a reasonable cost. Both on administrative and on political grounds the claims of Delhi to be the capital of India were unrivalled.

Starting from the proposition that Delhi must be the future capital, and examining the weight of Calcutta objections, the dispatch went on to discuss the best mode of dealing with the Presidency of Bengal.

Simple rescission of the partition effected in 1905, and a reversion to the previous state of things, were manifestly impossible, both on political and on administrative grounds. But the partition should be remodelled, and the dispatch indicated the lines on which, in the opinion of the Government of India, the remodelling ought to take place.

The policy foreshadowed by the correspondence and announced at the Durbar embodied two great administrative changes; a transfer of the capital of India from Calcutta to Delhi and a remodelling of the partition of Bengal.

In October, 1905, the huge province under the Lieutenant-Governor of Bengal had been divided into two

lieutenant-governorships. Of these the western retained the old name of Bengal and the old seat of government at Calcutta, whilst the eastern was augmented by the addition of Assam, previously under a Chief Commissioner, was called Eastern Bengal and Assam, and had for its seat of government Dacca.

Lord Curzon's Partition of Bengal, 1905.

The rearrangement effected in pursuance of the Durbar announcements made the following changes :

1. It reunited the five Bengali-speaking divisions of the old province of Bengal, and formed them into a presidency administered by a governor in council. The area of this presidency or province is approximately 70,000 square miles, and its population about 42,000,000.

Re-arrangement of Partition, 1911.

2. It created a lieutenant-governorship in council, consisting of Bihar, Chota Nagpur, and Orissa, with a legislative council, and a capital at Patna. The area of this province is approximately 113,000 square miles, and its population about 35,000,000.

3. It detached Assam from Eastern Bengal and placed it again under a chief commissioner. Assam has an area of about 56,000 square miles, and a population of about 5,000,000.

These administrative changes were mainly effected under powers conferred by Acts relating to the government of India, but some supplementary legislation was required, both in India and in England.

The Secretary of State for India in Council made a formal declaration that the Governor-General of India should no longer be the governor of the presidency of Fort William in Bengal, but that a separate governor should be appointed for that presidency.

By a royal warrant dated March 21, 1912, Lord Carmichael, previously governor of Madras, was appointed governor of the presidency of Fort William in Bengal.

Proclamations giving effect to Delhi Durbar

By a proclamation notified on March 22, 1912, a new province was carved out of the previous lieutenant-governorship of Bengal, was called Bihar and Orissa, and was placed under a lieutenant-governor.

announcements, and their legal basis.

By another proclamation of the same date the territories that were in future to constitute the Presidency of Fort William in Bengal were delimited.

And by a third proclamation of the same date the territories which had before 1905 constituted the chief commissionership of Assam were taken under the immediate authority and management of the Governor-General in Council, and again formed into a chief commissionership, called the chief commissionership of Assam.

Before the Consolidation Act of 1915, the authorities for the powers thus exercised could only be found by diligent search in the tangled mass of enactments relating to the government of India, and require some explanation.

By s. 16 of the Government of India Act, 1853 (16 & 17 Vict. c. 95), the court of directors of the East India Company, acting under the direction and control of the board of control, were empowered to declare that the Governor-General in Council should not be governor of the presidency of Fort William in Bengal, but that a separate governor was to be from time to time appointed in like manner as the governors of Madras and Bombay. In the meantime, and until a governor was appointed, there was power under the same section to appoint a lieutenant-governor of such part of the presidency of Bengal as was not under the lieutenant-governorship of the North-West (now United) Provinces. The power to appoint a lieutenant-governor was exercised, and during the continuance of its exercise, the power to appoint a governor remained in abeyance. But it still existed, was inherited by the Secretary of State from the Court of Directors and the Board of Control, and was exercised in March, 1912, when a governorship was substituted for a lieutenant-governorship of Bengal.

The power to constitute the new province of Bihar and Orissa and to appoint a lieutenant-governor of it was given by s. 46 of the Indian Councils Act, 1861.

The power to delimit the territories of the presidency or province of Bengal was given by s. 47 of the Indian

Councils Act, 1861, and s. 4 of the Government of India Act, 1865.

The power to take Assam under the immediate authority and management of the Governor-General in Council and to place it under a chief commissioner was given by s. 3 of the Government of India Act, 1854.

The territorial redistributions made by the proclamations of March 22 took effect on the following April 1. Under s. 47 of the Indian Councils Act, 1861, laws in force in territories severed from a province remained in force until superseded by further legislation. But it was found in 1912, as it had previously been found after the alteration of provinces made in 1905, that a few minor adaptations were immediately needed to make the old laws fit the new conditions. These adaptations were made by an Act of the Governor-General in Council, which was framed on the lines of the Bengal and Assam Laws Act of 1905 (Act VII of 1905), and was, as a measure of urgency, passed through all its stages on March 25, 1912. The Act, among other things, constituted a board of revenue for the province of Bihar and Orissa.

Further legislative provision, mostly of a technical character, was made by an Act of Parliament, the Government of India Act, 1912, which received the Royal Assent on June 25, 1912.[1]

Government of India Act, 1912.

The Act recited the proclamations of March 22, 1912, and then went on, by s. 1, to declare and explain the powers and position of the new governor of Bengal and his council.

When the Government of India Act, 1833, became law, the intention was to divide the overgrown presidency of Bengal into two presidencies (Fort William and Agra) and to have four presidencies, Fort William (Bengal),

[1] For the debates in Parliament on the Coronation Durbar announcements and on the Government of India Act, 1912, see the Parliamentary Debates in the House of Lords on 12 December, 1911, and 21 and 22 February, 26 March, 12, 17, 18, and 20 June, and 29 July, 1912, and in the House of Commons on 12 December, 1911, and 14 February, 22 and 24 April, and 7 and 10 June, 1912.

Fort St. George (Madras), Bombay, and Agra; and each of these four presidencies was to have a governor and council of its own. But this intention was not carried out. The presidency of Agra was never constituted, the governor-general and his council continued to be, under what had been meant to be a temporary provision, the governor and council of Fort William, and lieutenant-governors were in course of time appointed for the North-West (now United) Provinces and for Bengal. But the provisions of the Act of 1833 were still applicable to the governor in council of Bengal, if and when constituted. What was needed, when that event took place in 1912, was to apply to the governor and council of Bengal those provisions, mostly in Acts subsequent to 1833, which applied exclusively to the governors and councils of Madras and Bombay. Among the provisions so applied were those which relate to legislative councils, to the right of the governor to act as governor-general in the governor-general's absence, to the salaries of the governors and their councils, and to the number and qualifications, under s. 2 of the Act of 1909, of the members of the executive councils.

Creation of executive Council for Bihar and Orissa, and power to create such Councils in other provinces.

The Act of 1912 (s. 2) authorized the creation of an executive council for the new province of Bihar and Orissa. The Act of 1909 had authorized the creation of an executive council to assist the lieutenant-governor of Bengal. It had also given power to create by proclamation an executive council for any other province under a lieutenant-governor, but in any such case the power was not to be exercised until the proclamation had been laid before each house of Parliament, and either house might object. In order to facilitate the immediate establishment of an executive council for Bihar and Orissa, the Act of 1912 dispensed with further reference to Parliament.

Creation of Legislative Councils in Assam and Central Provinces.

Another section (s. 3) of the Act of 1912 authorized the establishment of legislative councils for provinces under chief commissioners. Under the previous law legislative councils could only be established for provinces under

lieutenant-governors. The new power was required primarily to enable continuance of government with a legislative council for Assam, but was wide enough to cover other provinces, such as the Central Provinces. A legislative council was established for Assam on November 14, 1912, and a legislative council for the Central Provinces on November 10, 1913.

Formation of separate province of Delhi.

In the past the transfer of territories for the purpose of forming a chief commissionership had been effected under the power given by s. 3 of the Government of India Act, 1854 (17 & 18 Vict. c. 77). This power was exercised in 1901 to transfer territories from the lieutenant-governorship of the Punjab to the chief commissionership of the North-West Frontier Province. In September, 1912, it was similarly exercised to transfer the city of Delhi and part of the Delhi district from the same lieutenant-governorship, take it under the immediate authority and management of the Governor-General in Council, and form it into a chief commissionership known as the Province of Delhi. An Indian Act, the Delhi Laws Act, 1912 (XIII of 1912), has adapted the old laws to the new conditions. The intention was to make the site of the new capital and its surroundings an *enclave* occupying the same kind of position as Washington and the District of Columbia in the United States.

Government of India Act, 1915.

In 1915 was passed the first measure for consolidating the numerous Acts of Parliament relating to the government of India. The Government of India Act, 1915 (5 & 6 Geo. V, c. 61), gave effect to a project which had engaged the intermittent attention of the Government of India and the India Office for more than forty years. It was based on the 'Digest of Statutory Enactments relating to the Government of India' which formed the nucleus of the book entitled *The Government of India*.[1] It repealed, with a few omissions, the unrepealed provisions of 47 Acts, beginning with an Act of 1770, and consolidated them in a single Act of

[1] First edition 1898, third edition January 1915.

135 sections with 5 schedules. It was introduced in the House of Lords, and was, after second reading, committed to a joint committee of the two Houses of Parliament. The Committee sat under the chairmanship of Lord Loreburn, went very carefully through the Bill, eliminated some proposals which appeared to go beyond the scope of consolidation, and recommended it for adoption. The Bill was passed in July, 1915, and came into operation on January. 1, 1916.

Government of India (Amendment) Act, 1916.

An amending measure, embodying some provisions struck out from the Bill of 1915 as beyond the scope of consolidation, was introduced and passed in 1916, and became law as the Government of India (Amendment) Act, 1916 (6 & 7 Geo. V, c. 37). The alterations which it made in the law were of a minor character.

First consolidation of the law relating to India.

The Consolidation Act of 1915, with its modest supplement of 1916, made the English statute law relating to India easier to understand, and therefore easier to amend. The need for substantial amendment was soon made apparent. The great war which began in 1914 materially changed the political atmosphere in India. The magnificent war services of the princes and peoples of India were recognized by the admission of representatives of India to the Imperial War Conference, to the Imperial War Cabinet, and among the Imperial Delegates at the Peace Conference. These things inspired or quickened among the politically minded classes in India the sense of being an integral part of a world-wide empire. The Morley-Minto reforms, from which so much had been expected, and by which so much had been achieved, were now condemned as no longer adequate to Indian needs.

Further constitutional Reforms.

Responsible Government and announcement of August 20, 1917.

Indian politicians talked much about ' home rule ' and about ' self-government ' on the lines of the British self-governing dominions. The ' Home Rule ' movement, started by Mrs. Besant, found formal expression on September 6, 1916, when the Home Rule League was formally established at a meeting in Madras. A month later nineteen elected members of the Indian Legislative

Council submitted to the Government of India a memorandum of proposed reforms. In December 1916, the Indian National Congress and the Muslim League, in a series of meetings held at Lucknow, agreed to joint action in favour of political reform. Both bodies adopted the proposals known as the Congress League scheme, which was an elaboration of the proposal of the nineteen members, with the addition of special provisions to secure Muslim interests; and both agreed to co-operate with the Home Rule League in its propaganda. The phrase which ultimately found most favour in official quarters as indicating the lines on which reform should proceed was 'Responsible Government'. In 1909 Mr. Berriedale Keith, of the Colonial Office, published a little book, since much expanded, on Responsible Government in the British Dominions. When Mr. Lionel Curtis, the well-known publicist, after visiting other parts of the British Empire, made a long stay in India in the autumn of 1916, he applied the phrase to Indian conditions. It obtained much vogue, and, in course of time, formal and authoritative recognition.

In the meantime much important correspondence on Indian reforms had been carried on between the India Office and the Government of India. On August 20, 1917, Mr. Montagu, the Secretary of State for India, when answering a question in the House of Commons, made a declaration of Government policy, which became widely known as the 'announcement' or 'pronouncement' of that date. 'The policy of His Majesty's Government,' he said, '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.'

'Montagu-Chelmsford Report.'

Mr. Montagu's visit to India followed in the autumn of 1917 and resulted in the famous Montagu-Chelmsford Report, which was signed by the Secretary of State and the Viceroy and bears date April 22, 1918.

The report suggested the appointment of three special committees, of which two were to sit in India, and which were to supplement the work embodied in the report by recommendations on three subjects: (1) the franchise for the legislative councils; (2) the division of functions between the central and provincial governments, and, in the provincial governments, between the executive councils and the 'ministers' whom it was proposed to appoint; and (3) the changes required in the home administration of Indian affairs.

Lord Southborough's Committees.

The constitution of the first two of these committees, commonly known as the Franchise Committee and the Functions Committee, and the terms of reference to them were publicly announced in October 1918, and the committees reported in February 1919. The third committee sat in England with Lord Crewe as chairman, and reported on June 21, 1919.

The Government of India Act, 1919.

After the arrival in England of the supplementary Indian reports no time was lost in converting the Montagu-Chelmsford proposals into legislative form.[1] The Bill introduced in the House of Commons by Mr. Montagu on June 2, 1919, was based upon the Montagu-Chelmsford Report, and followed closely its recommendations. After second reading on June 5, it was referred to a joint committee of the two Houses of which Lord Selborne was chairman. In the months of July and August the joint committee sat in public and heard evidence on the proposals of the Bill from a large number of witnesses, many of whom had come from India for the purpose. When Parliament met again after the autumn recess the committee sat in private, made many important amendments to the Bill and submitted a special report.[2] The Bill as amended passed through both Houses and received the Royal Assent on December 23, 1919.

[1] The Montagu-Chelmsford Report is published as Report on Indian Constitutional Reforms, 1918, Cd. 9109. The supplementary Indian Reports as 1919, Cd. 141, 103.

[2] 1919, Cd. 203. It is also to be found in the report published officially under the title *India in 1919*.

On the same day the King-Emperor, by a royal proclamation[1] of that date, notified in India that he had given his assent to an Act which would take its place among the great historic measures passed by Parliament for the better government of India and for the greater contentment of her people. The proclamation reviewed the course of parliamentary legislation for India. '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 exist 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.'

Purpose and scope of Act of 1919.

The Act of 1919 begins with a preamble which recites the declaration of August 20, 1917. This recital, which appeared in a shorter form in the Bill presented to the House of Commons, was much expanded by the joint committee on the Bill. It is of great importance as embodying the promises made to the peoples of India, and as indicating the policy which underlies the provisions of the Act.

It seems desirable, for historical purposes, to summarize fully the provisions of the Act of 1919, not only because of its importance, but because it has been merged in a measure of consolidation[2] combining its provisions with those of the Acts of 1915 and 1916. It will therefore be convenient to show clearly the changes made by the legislation of 1919 in the previous law as embodied in the Acts of 1915 and 1916.[3]

[1] The proclamation has been published as a parliamentary paper, Cd. 610, and also in the volume published officially as *India in 1919*.

[2] The title of this Consolidation Act is 'The Government of India Act', without date. It was published by the Stationery Office.

[3] The text of the Act of 1919 will be found in the official volume *India in 1919*.

The need for greater provincial autonomy was the point on which there was the largest measure of agreement among Indian reformers, and Part I of the Act deals with Local Governments. In its first section it enunciates the principles on which powers and responsibilities are to be distributed between the central governments and the local governments, leaving all details to be worked out by statutory rules. Subjects are to be classified by rules as 'central subjects' and 'provincial subjects'. Provincial subjects are to be divided into 'reserved subjects' and 'transferred subjects'. Reserved subjects are to be under the control of the Governor in his executive Council, transferred subjects are to be under the control of the Governor acting with ministers to be chosen from the elected members of the provincial legislature.[1]

Thus the plan embodied in the Act partitions the domain of provincial government into two fields, one of which is made over to ministers chosen from the elected members of the provincial legislature, while the other remains under the administration of a Governor in Council.

'This scheme', said the joint committee on the Bill,[2] 'has evoked apprehensions which are not unnatural in view of its novelty. But the committee, after a most careful consideration of all suggested alternatives, are of opinion that it is the best way of giving effect to the declared policy of His Majesty's Government.' So the committee, whilst making many important changes in the measure submitted for their consideration, retained this fundamental feature.

It will be observed that there is a primary division between 'central subjects' and 'provincial subjects', and that the latter class is divided into 'reserved subjects' and 'transferred subjects'. The administration of 'reserved subjects' is, in each province, to be under the control of the governor in his executive council, that

[1] 1919 Act, s. 1; Government of India Act, s. 45 A.
[2] Joint Committee's Report, par. 4.

of 'transferred subjects' under the control of the governor 'acting with ministers appointed under this Act'. This is the famous system of 'diarchy' or 'dyarchy' (for authorities differ on the spelling), about which so much was heard in the discussions on Mr. Montagu's Bill. The word, however spelt, simply means 'double government', a phrase formerly applied to the system under which the government of British India was partly under the Crown and partly under the East India Company.

The Act goes on to enable local governments to borrow money on the security of their own provincial revenues.[1]

'Governors' provinces.'

It alters the system of executive government for eight Indian provinces. These are the three old presidencies of Bengal, Madras, and Bombay, and five other provinces, namely, the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, and Assam. These eight provinces are called in the Act 'governors' provinces', and each of them is to be under a governor in council for reserved subjects and a governor acting with ministers for transferred subjects.[2]

The provisions of previous Acts applying to presidencies are, speaking broadly, to apply to the five other provinces, but, though the appointment of governors of these provinces rests with the Crown, it is to be made after consultation with the Governor-General.[3]

Burma, under its lieutenant-governor, and the areas under chief commissioners, were left outside the range of 'governor's provinces', but their governments were made local governments for certain purposes of the Act.

The joint committee on the Bill, after hearing evidence, did not advise that Burma should be included within the scheme of government laid down by the new Act. But the position of Burma has, since the date at which

[1] 1919 Act, s. 2; G. of I. Act, s. 30 (1 A).
[2] 1919 Act, s. 3; G. of I. Act, s. 46.
[3] 1919 Act, s. 3; G. of I. Act, s. 46.

that committee reported, been made the subject of a further parliamentary inquiry, with the result that the provisions of the Act of 1919 have now been applied to that province also.

Ministers and Council secretaries.

The Act provides for the appointment of 'ministers' and 'Council secretaries'. A minister is to be appointed by the governor and to hold office during the governor's pleasure. He is not to be a member of the governor's executive council, or an official as defined by s. 46 of the Act. He is to draw the same salary as is payable to a member of the executive council unless the local legislature fixes a lower salary. He is not to hold office for more than six months, unless he is or becomes an elected member of the local legislature.[1]

In relation to transferred subjects, 'the governor is to be guided by the advice of his ministers, unless he sees sufficient cause to dissent from their opinion, in which case he must require action to be taken in accordance with their advice.'[2]

The position of 'council secretaries' under this section will correspond roughly to that of under-secretaries in Parliament.

Under s. 5[3] only one member of a governor's executive council need have served for twelve years under the Crown in India, and the commander-in-chief, when resident at Calcutta, Madras, or Bombay, is no longer to be on the governor's executive council.

Section 6[4] regulates the conduct of business by the governor in council and by the governor with ministers. Orders and other proceedings of the government of a governor's province are to be expressed to be made by the government of the province, and are to be authenticated as the governor by rule directs, but provision must be

[1] 1919 Act, s. 4; G. of I. Act, s. 52.

[2] On this point reference should be made to par. 5 of the joint committee's report, and to their note on clause 6 of the Bill.

[3] G. of I. Act, s. 47.

[4] G. of I. Act, s. 49.

made by rule for distinguishing orders and other proceedings relating to transferred subjects from other orders and proceedings. The legal validity of orders or proceedings so authenticated is not to be questioned on the ground that they were not duly made. The governor is empowered to make rules and orders for the transaction of business in his executive council and with his ministers and for regulating the relations between his executive council and his ministers.

Changes in constitution of legislative Councils.

Another section of the Act (s. 7)[1] deals with the composition of governors' legislative councils. These are to consist of the members of the executive council and of members nominated or elected as provided by the Act. The governor is not to be a member of the legislative council, but is to have the right of addressing it and, for that purpose, of requiring its attendance. The proportion of official members and elected members is fixed at a maximum of 20 per cent. official members and a minimum of 70 per cent. elected members. The total number of members of each council is provisionally fixed by the first schedule to the Act, but may be increased, subject to the maintenance of the above proportions. The governor has also power to nominate specialists for the purpose of particular Bills, one in the case of Assam, two in the case of other provinces. The numbers fixed by the schedule materially enlarge the size of the councils. Thus, under Lord Morley's Act, there were, for Bengal, Madras, Bombay, and the United Provinces respectively, 50 members, exclusive of the members of executive councils. Under the schedule to the Act of 1919, the total number for Bengal is 125, for Madras and the United Provinces 118, and for Bombay 111.[2]

Elected majorities.

All matters relating to the qualification of members and electors, and the mode of election, including the vexed question of communal electorates, were to be regulated by statutory rules.[3] The comprehensive rules made for this

[1] G. of I. Act, s. 72 A.

[2] For the numbers as fixed by statutory rules *see* table in Appendix II to *India in 1920*.

[3] G. of I. Act, s. 72 A (4).

purpose were based upon those proposed by the Franchise Committee, but materially modified.[1]

Under s. 8[2] the life of a governor's legislative council is normally three years, but may be terminated by dissolution, and extended, in special circumstances, for a limited period. The governor fixes the times and places for holding the sessions and has power to prorogue the council. The person presiding at a meeting of the council has power to adjourn it. Questions are determined by a majority of votes of the members present, and in case of equality of votes the person presiding has a casting vote.

Elected Presidents of Councils.

For each of the governors' legislative councils there is to be (s. 9)[3] a president, appointed for the first four years by the governor, but subsequently elected by the council from among its members and approved by the governor. There is also to be a deputy president, elected and approved in like manner. The salary of an appointed president is to be fixed by the governor, the salaries of elected presidents and vice-presidents are to be fixed by Act of the local legislature. The report of the joint committee on the Bill contains important observations on the position of these presidents.

Section 10 of the Act of 1919[4] was so framed as to include under the expression 'local legislature' not only the legislative councils of governors' provinces, but any legislative council of a lieutenant-governor[5] or chief commissioner. The alterations which this section makes in the previous law consist mainly in attempts to make more careful adjustments between the powers of the central executive and the central legislature and the powers of the local legislatures. Thus a local legislature may, in certain cases specially exempted by statutory rules, impose a new tax

[1] The draft rules for elections to provincial legislative councils as approved by the joint committee on the Bill were, under the proviso to s. 44 (3) of the Act, laid before each House of Parliament, and were, after amendment, approved by both Houses in July 1920. On the whole question of franchise important expressions of opinion are to be found in the joint committee's report on clause 7 of the Bill.

[2] G. of I. Act, s. 72 B.

[3] G. of I. Act, s. 72 C.

[4] G. of I. Act, s. 80 A.

[5] There was then a lieutenant-governor of Burma.

without the previous sanction of the Governor-General, but may not, without such sanction, make a law regulating any 'central subject', or any 'provincial subject', which has been declared by statutory rule to be either in whole or in part subject to legislation by the Indian Legislature, in respect of any matter to which this declaration applies.

Power to vote or withhold supply, subject to safeguards.

The provisions of s. 11 [1] relating to the business and procedure in governors' legislative councils mark a great advance in the direction of parliamentary methods, particularly in conceding the right to vote supplies. There is to be an annual statement of estimated expenditure and revenues, and the proposals of the local government for the appropriation of provincial revenues in any year are to 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 demanded either by a reduction of the whole grant or by the omission or reduction of any of its items. A proposal for appropriation of revenues is not to be made except on the recommendation of the governor, communicated to the council. The voted 'grants' only cover the kind of expenditure which in England is made out of 'moneys provided by Parliament.' Certain charges of a special or recurring character, set out in the section, are outside the range of voted 'grants'. The distinction will be recognized as corresponding roughly to the English distinction between charges on the votes and charges on the consolidated fund. So far the procedure is based on English practice. But the executive government is given exceptional powers of authorizing expenditure in case of need. If a demand relates to a 'reserved subject', and the governor certifies that the expenditure is essential to the discharge of his responsibility for the subject, the local government has power, in relation to any demand, to act as if it had been assented to, notwithstanding the withholding of the assent, or the reduction of the amount asked for.

[1] G. of I. Act, s. 72 D.

The joint committee on the Bill wished it 'to be perfectly clear that this power is real and that its exercise should not be regarded as unusual or arbitrary. Unless the governor has the right to secure supply for those services for which he remains responsible to Parliament, that responsibility cannot justly be fastened upon him'.

The governor also has 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. In addition to his powers for authorizing expenditure, the governor has, under the same section, powers for stopping dangerous or mischievous legislation. When 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 is to be given to any such direction.

The provisions of this important section are left to be worked out in detail by statutory rules and standing orders. The standing orders are to supplement the rules, and must not be inconsistent with them. They are to be made in the first instance by the governor in council, but may be altered by the local legislature, with the assent of the governor.

The section concludes by declaring that '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 in any proceedings in any court by reason of his speech or vote in any such council, or by reason of anything contained in any official report of the proceedings of any such council.'

Reservation of Bills.

Under previous Acts the governor, lieutenant-governor, or chief commissioner had power either to assent to, or to

withhold his assent from, legislative measures passed by the local legislature. If he assented, the measure was sent up for the assent of the Governor-General. He is now, by s. 12,[1] given alternative powers. He may, instead of either granting or refusing assent to a Bill, return the Bill to his council, for reconsideration, either in whole or in part, together with any amendments which he may recommend. Or he may, in cases prescribed by rules, and in some cases must, reserve the Bill for the consideration of the Governor-General.

The same section gives the Governor-General further powers of dealing with measures of local legislatures submitted for his assent or reserved for his consideration.

Section 11 of the new Act[2] had, as stated above, given the governor power to stop mischievous legislation. Section 13[3] deals with the still more difficult case of failure to pass necessary legislation.

Power vested in the Governor to secure essential legislation.

The Montagu-Chelmsford Report, and the government Bill as introduced, proposed to solve this difficult problem by sending Bills to grand committees on which the Government could secure a majority. But the joint committee rejected this solution. The 'official bloc' was not in good odour, and it was thought preferable to fix responsibility more directly on the governor. Under s. 13 of the Act, 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 to the discharge of his responsibility for the subject, and thereupon the Bill, notwithstanding that the council have not consented thereto, is to be deemed to have passed, and will, 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, or (as the case may be) in the form recommended to the council by the governor. The Act will be

[1] G. of I. Act, s. 81 A.

[2] G. of I. Act, s. 72 D.

[3] G. of I. Act, s 72 E.

expressed to be made by the governor, and an authentic copy will be sent to the Governor-General, who will reserve it for His Majesty's pleasure. But if, in the opinion of the Governor-General, a state of emergency exists which justifies such action, he may give his assent, and thereupon the Act is to come into force at once, but is to be subject to disallowance by His Majesty in Council.

An Act made under this section must, as soon as practicable after being made, be laid before each House of Parliament, and, if it has to be presented for His Majesty's assent, it is not to be so presented until copies have been laid before both Houses of Parliament for not less than eight days on which the House has sat.

Section 14[1] provides for the vacation of seats on local legislative councils. An 'official' is not qualified for election as a member of such a council, and if any non-official member of such a council, whether elected or nominated, accepts any office in the service of the Crown in India, he vacates his seat.

Power to create new Governors' provinces and to exclude 'backward tracts' from the operation of the Act.

The next section (15)[2] provides for the constitution of new provinces, and makes provision for 'backward tracts'. The Governor-General in Council may, by notification, after obtaining an expression of opinion from the local government and local legislature affected, constitute a new governor's province, or place part of a province under a deputy governor. The Governor-General in Council may also by notification declare any territory in British India to be a 'backward tract', and exclude it from the operation of laws applying to the province in which it is situate, or make exceptions or modifications in the application of these laws to the tract. Local legislatures may be authorized to make similar exceptions and modifications with respect to such tracts. These 'backward tracts' will take the place of the scheduled districts under the previous laws.

Part II of the Act relates to the central government of India, and the provisions of this part of the measure

[1] G. of I. Act, s. 80 B.

[2] G. of I. Act, s. 52 A.

Provisions relating to central government.

Constitution of new bicameral Indian Legislature.

were extensively changed in their passage through the joint committee on the Bill. There are still, as originally proposed, to be two chambers of the central legislature, a Council of State and a Legislative Assembly.[1] But the composition and functions of each chamber are materially altered. The Council of State is not to be a device for passing measures which cannot be got through the Legislative Assembly. It is to be, in the language of the joint committee, a 'true second chamber'. Except as otherwise prescribed by or under the Act, a Bill is not to be deemed to have been passed by the Indian legislature unless it has been agreed to by both chambers, either without amendment or with agreed amendments.[1]

Council of State.

The Council of State is to consist of not more than 60 members, nominated or elected in accordance with statutory rules. Of these not more than 20 are to be official members. The Governor-General has power to appoint from among its members a president and other persons to preside in the president's absence.[2]

Legislative Assembly.

The Legislative Assembly is also to consist of members nominated or elected in accordance with statutory rules. The total number was provisionally fixed at 140, 100 elected, 40 non-elected; and of the non-elected 40, 26 must be official. But there is power, by statutory rule, to increase the total number, and to vary the proportion between the classes of members, so however that at least five-sevenths must be elected members and at least one-third of the other members must be non-officials.[3]

The Governor-General is not to be a member of the Council of State or of the Legislative Assembly, but may address either of these bodies, and may for that purpose require the attendance of its members.[4]

As in the case of the provincial legislatures, there is to be a president of the Legislative Assembly, appointed for the first four years by the Governor-General, and

[1] S. 17; G. of I. Act, s. 63.
[2] S. 18; G. of I. Act, s. 63 A.
[3] S. 19; G. of I. Act, s. 63 B. The actual number, as fixed by rule, is 144.
[4] Ss. 18, 19; G. of I. Act, ss. 63 A, 63 B.

subsequently elected by the Assembly and approved by the Governor-General.[1] In these and other respects the provisions for the president and deputy president correspond generally to those for the provincial legislatures.

The normal life of the Council of State is fixed at five years, that of the Legislative Assembly at three years, but as in the case of provincial legislatures there are powers to shorten and extend these periods.[2] And there are corresponding provisions about times, places, and adjournments of meetings and discussion of questions.

An official cannot be an elected member of either chamber, and if an elected member accepts office he vacates his seat. No person can be a member of both chambers. If a person is elected to both, he must choose between them. Every member of the Governor-General's executive council must be nominated to one of the two chambers, and has the right to attend in and address the other.[3]

Principle of responsible government not formally recognized in Central Government.

'It was not', remarked the joint committee, 'within the scheme of the Bill to introduce at the present stage any measure of responsible government into the central administration,' and accordingly the plan of government through ministers, and the division between 'reserved' and 'transferred subjects', find no place in Part II of the Act. But in most of the provisions about the composition, power, and proceedings of the legislatures there is a pretty close resemblance between Part I and Part II.[4] In fact the provisions of Part II on these subjects may be described as being based on those of Part I, with the necessary modifications. In both Parts there is power for the executive government to authorize necessary expenditure and to make necessary laws.

The new Act removes the statutory limit on the number of members of the Governor-General's executive council,

[1] S. 20; G. of I. Act, s. 63 C.
[2] S. 21; G. of I. Act, s. 63 D.
[3] S. 22; G. of I. Act, s. 63 E.
[4] See ss. 24–27; G. of I. Act, ss. 67–67 B.

and adds to the statutory qualifications for the member of the council having legal experience that of being a pleader of an Indian High Court.[1]

There is power, as in the case of local legislatures, to appoint council secretaries.[2]

Transfer of Secretary of State's salary and other India Office expenditure to British Estimates.

Part III of the Act deals with the Secretary of State in Council. It requires the salary of the Secretary of State for India, and enables any other expenses of his department, to be paid out of moneys provided by Parliament, instead of being paid out of the revenues of India.[3] In the opinion of the joint committee, all charges of the India Office, not being agency charges, ought to be paid out of moneys provided by Parliament. This important change brings the administration of the India Office under the direct and recurrent criticism of Parliament, like that of other departments of the British Government. The rather formal and ineffectual debates of previous years on going into committee on the East India revenue accounts have now become things of the past, and the policy of the Secretary of State for India, like that of other Ministers of the Crown, can be challenged on the vote for his salary. The first occasion which provided this opportunity was on July 8, 1920, when the action of the Secretary of State with respect to the proceedings of General Dyer at Amritsar was made the subject of an acrimonious debate.

Changes in constitution and procedure of Council of India.

The report of Lord Crewe's committee on the India Office engaged the attention of the joint committee on the Government Bill. The joint committee were not in favour of abolishing the Council of India. They thought that, at any rate for some time to come, it would be absolutely necessary that the Secretary of State should be advised by persons of Indian experience, and they were convinced that, if no such Council existed, the Secretary of State would have to form an informal one, if not a formal one. Accordingly they contented themselves with recommending alterations in the constitution

[1] S. 28; G. of I. Act, s. 36. [2] S. 29; G. of I. Act, s. 43 A.
[3] S. 30; G. of I. Act, s. 2 [3].

and procedure of the Council, and these alterations are embodied in the Act (ss. 31, 32, 34).[1] The minimum and maximum number of members are to be eight and twelve instead of ten and fourteen. Half of them must have recently served or resided in India (not merely British India). The term of office is reduced from seven years to five. Any member of the council who was at the time of his appointment domiciled in India is to get, in addition to his annual salary of £1,200, an annual subsistence allowance of £600. Service on the Council is to count towards pension for service in India. These changes make it easier to place Indians on the Council of India. The rigid statutory provisions about the business and procedure of the Council are superseded by more elastic regulations.

Relaxation of Secretary of State's power of control over Indian administration.

The relations of the Secretary of State with the Government of India, and through it with the provincial governments, form the subject of another section (33).[2] These relations were given careful consideration by the joint committee on the Bill, and the important conclusions at which they arrived are to be found in their report. The changes in the direction of giving more independence and responsibility both to the central government and to the provincial governments in India were, in the opinion of the committee, to be made, in the main, rather by a change of conventions than by statutory provisions. They were matters of policy rather than of legislation direct or subsidiary. But in some cases restrictions by statutory rules would be necessary. The section confers power to deal with such cases, and provides security for effective parliamentary criticism of rules made under the power.

High Commissioner for India.

The last section (35)[3] of this Part of the Act carries out the recommendation of Lord Crewe's committee, that a High Commissioner for India, paid out of Indian revenues, be appointed to perform for India functions of agency, as distinguished from political functions,

[1] See G. of I. Act, ss. 3-14. Repeal and omission of ss. 12, 13, 14, 16.
[2] G. of I. Act, s. 19 A.
[3] G. of I. Act, s. 29 A.

analogous to those performed in the offices of the High Commissioner of the Dominions.[1]

Provisions relating to civil services.

Part IV of the Act deals with the position of the civil services in India under the new constitution. Subject to the provisions made by statute or statutory rule, any person in the civil service of the Crown in India is declared (by s. 36)[2] to hold 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 he may not be dismissed by any authority subordinate to that by which he was appointed, and may, if dismissed, be reinstated by the Secretary of State in Council. If a person appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in a governor's province, he has a statutory right to complain to the Governor, who is directed to examine the complaint and require such action to be taken therein as may appear to him to be just and equitable.

By the same section (s. 36) the Secretary of State in Council is empowered to 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. Powers for dealing with such matters may be delegated to Indian authorities and legislatures. Pension rights under existing rules are preserved, but the rules may be varied without prejudice to existing rights. Doubts had been entertained about the validity of some of the existing rules about civil servants, and about the authority under which they had been made. For the removal of such doubts, the concluding paragraph of the section confirms 'all rules or other provisions in operation at the time of the passing of the 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', but enables them to be revoked, varied, or added to by rules under the new Act.

[1] The office of High Commissioner for India was created by an Order in Council, dated 13 August, 1920.

[2] G. of I. Act, s. 96 D.

If the third schedule to the 1919 Act and the second schedule to the Government of India Act are compared with the third schedule to the Act of 1915 it will be found that some changes have been made in the list of offices reserved to the Indian Civil Service.

Another section (37)[1] amends the power under s. 97 of the Act of 1915 to appoint to the Indian Civil Service persons domiciled in India.

Public Service Commission.

The Secretary of State is to establish in India (s. 38)[2] a Public Service Commission, to 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.

Auditor General.

Section 39[3] provides for financial control of Indian administration. There is to be an auditor general in India appointed by the Secretary of State in Council, and having his first position regulated by rules made by that authority. Subject to any rules made by the Secretary of State in Council, no office may be added to or withdrawn from the public services, and the emoluments of no post are to be varied, except after consultation with such financial authority as may be designated in the rules, being, as the case requires, either an authority of the province or of the Government of India.

All rules under this Part of the Act require the concurrence of a majority of votes at a meeting of the Council of India.[4]

Statutory Commission to report progress.

Part V of the Act (s. 41)[5] provides for the appointment of a Statutory Commission, to report, after a due interval, on the condition of India, under its new constitution. The Commission is not to be appointed until the expiration of ten years from the passing of the Act, and the joint committee express an opinion that no changes of substance in the constitution, whether in the franchise, or in the lists of transferred and reserved subjects, should

[1] G. of I. Act, s. 97 (2 A).
[2] G. of I. Act, s. 96 C.
[3] G. of I. Act, s. 96 D.
[4] S. 40; G. of I. Act, s. 96 E.
[5] G. of I. Act, s. 84 A.

be made in the interval. The Commission is to inquire into the working of the system of government, the growth of education, and the development of representative institutions in British India, and to 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 in British India, including the question whether the establishment of second chambers of the local legislatures is or is not desirable.

Part VI of the new Act contains some general or supplementary provisions.

Members of the central and local governments may (s. 42)[1] be allowed, under restrictions, to retain their interests in their trade or business, but are not, during their term of office, to take part in its direction or management. A proposal to this effect was considered in connexion with the amending Bill of 1916, but was eventually dropped. Any assent or disallowance which, under the previous law, had to be signified through the Secretary of State in Council, is now (s. 43) to be signified by His Majesty in Council.

Procedure for the making of rules under the Act.

Another section (s. 44)[2] regulates the machinery for making statutory rules. Where any such rules require the approval of Parliament, two alternative methods are permitted. Either the rules must lie on the table of each House for a limited number of days in accordance with the common practice about any English statutory rules and orders, or drafts of the proposed rules must be submitted for the express approval of each House. In the case of the rules made in 1920, the latter method was adopted.

The amending Act of 1916 contained a 'printing clause' under which the amending provisions were to be incorporated with, and printed as part of, the Consolidation Act of 1915. This clause is now superseded by a similar provision (s. 45) for incorporating the new provisions of 1919 in the principal Act of 1915–16. The second schedule

[1] G. of I. Act, s. 124, Proviso.

[2] G. of I. Act, s. 129 A.

to the Act of 1919 shows the mode in which the new provisions are to be incorporated, and the consequential modifications which are to be made in the 'principal Act'.

Part III of the schedule shows how certain provisions of the 'principal Act', 'which are obsolete or unnecessary or require amendment in detail', are repealed or modified or otherwise dealt with in the law as it now stands.

The last section (47) provides a short title, dates (very elastic) at which the new provisions are to come into operation, rules of interpretation, and 'transitory' provisions. Executive powers are conferred for dealing with difficulties which may arise in connexion with first giving effect to the provisions of the new law.

All the statutory rules[1] required for the election and constitution of the new provincial councils and for the central legislature received the necessary parliamentary approval in the course of the year 1920. The first elections were held at the end of that year, and the sittings of the legislatures were formally opened at the beginning of 1921.

At an early date in the parliamentary session of 1921, a joint committee of the two Houses of Parliament was set up for the consideration of all Indian affairs as might be referred to it. This step was taken in pursuance of a recommendation made in the report (par. 6) of the joint committee on the Bill of 1919. The Montagu-Chelmsford Report had recommended a standing committee of the House of Commons. The joint committee of 1921 considered and reported on the House of Lords Bill of that session for regulating the government of Burma.

Inauguration of new legislature by Duke of Connaught

It was on February 9, 1921, that the new Indian Legislature, consisting of the Council of State and the Legislative Assembly, was formally opened at Delhi. The proceedings were inaugurated by the reading of a message from the King-Emperor, and by speeches from the Viceroy (Lord Chelmsford) and from the Duke of Connaught representing the King-Emperor.

[1] They have been published by the Stationery Office in a collected form under the title *Rules under the Government of India Act.*

The royal message contained the following significant passage. 'For years, it may be for generations, patriotic and loyal Indians have dreamed of Swaraj for their Motherland. To-day you have the beginnings of Swaraj within my Empire, and the widest scope and ample opportunity for progress to the liberty which my other Dominions enjoy.' The Viceroy's speech traced the course of evolution of British policy in India, indicated the successive stages in the history of constitutional developments in India under British rule, and expounded the principles on which the Act of 1919 is based. The Duke of Connaught, in the course of an important and interesting speech, said that autocratic as was the Government inaugurated when India became a dependency of the British Crown, it was based on principles laid down by Queen Victoria in her proclamation of 1858 to the peoples of India; and he quoted as the keynote of that proclamation the following words: 'In their prosperity will be our strength, in their contentment our security, and in their gratitude our best reward.' Speaking on behalf of His Majesty and with the assent of his Government, he repudiated in the most emphatic manner the idea that the administration of India had been, or ever could be, based on principles of force or terrorism. The principle of autocracy had now been abandoned. Its retention would have been incompatible with that contentment which had been declared by Queen Victoria to be the aim of British rule, and would have been inconsistent with the legitimate demands and aspirations of the Indian people, and the stage of political development they have attained. Henceforward, in an ever-increasing degree, India would have to bear her own burden.

The message and speeches of February 9, 1921, strike the note on which the foregoing brief summary of British Parliamentary legislation for India may appropriately be brought to a conclusion. The Act of 1919 is the most adventurous experiment which has yet been tried in British India. The ideal aimed at by the British Government in

India had previously been a benevolent despotism administered by an intelligent bureaucracy. That ideal has now to be reconciled with the desire for self-government with which all Englishmen are bound by their instincts and traditions to sympathize, and which no Englishman can afford to condemn. The reconciliation has been attempted by English communities in all parts of the world, by different methods, and with varying degrees of success. It is for India to profit by these experiences, whether of failure or of success, and the executive and legislature at Westminister can best discharge their imperial responsibilities by giving as free a scope as possible to the trial of the great experiment which they have authorized, and by refraining from any form of unnecessary, captious or irritating criticism. Some ten years hence, when the Statutory Commission has reported, it will be easier to say where, how and why the experiment has succeeded or failed. In the meantime our watchword should be patience, sympathy, and hope.

[The authorities which I found most useful when writing this introduction on the last chapter of 'The Government of India' were: Reports of Parliamentary Committees *passim*; Calendar of State Papers, Colonial East Indies; Shaw, *Charters of the East India Company*, Madras, 1887; Birdwood, *Report on the Old Records of the India Office*, 2nd reprint, 1891; Morley's *Digest of Cases in the Supreme Courts in India*, Introduction; Stephen (J. F.), *Nuncomar and Impey*, 1885; Forrest (G.), *Selections from State Papers, India*, 1772–85; and for general history, Hunter (Sir W. W.), *History of British India* (only 2 vols. published); Lyall (Sir A. C.), *British Dominion in India*; Lecky, *History of England in the 18th century*; Hunt (W.), *Political History of England*, 1760–1801; and Mill's *History of British India*, with its continuation by Wilson. Since then ample materials have been published. Many of them will be found in the useful bibliography appended to Sir Thomas Holderness's *Peoples and Problems of India*, in the Home University Library. A few may now be added to this list, such as Ramsay Muir, *The Making of British India* (1915); P. E. Roberts, *Historical Geography of India*, part i, 1916, part ii, 1920; Strachey, *Keigwin's Rebellion* (1916); and, for recent times, the Montagu-Chelmsford *Report on Indian Constitutional Reforms* (1918), the latest *Moral and Material Progress Reports*, those for 1918, 1919, and 1920, edited by Dr. Rushbrook Williams and published at Calcutta as *India in 1918, 1919, and 1920* respectively, and Lionel Curtis, *Dyarchy*, 1920.]

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