perpetual snow." Thus, he adds, the traveller may obtain at a glance a range of vision extending from 2000 to 25,000 feet, "and see spread before him a compendium of the entire vegetation of the globe from the tropics to the poles." Something similar may be said of the animal world. Tigers, for instance, are common in the valleys; and it is not very unusual to see their foot-prints in the snow among oaks and pines and rhododendrons 8000 or 10,000 feet above the sea.

If I wished to give to any one, acquainted only with European mountains, some notion of the scenery of the Kumáon Himálaya, at elevations of about 6000 to 10,000 feet, I should advise him to travel in the Italian valleys of the Alps, to which, on a far greater scale, the gorges of the Himálaya have often a stronger resemblance than those of Switzerland. The Val Anzasca, as we go up towards Macugnaga through the chestnut woods, with Monte Rosa always before us, is not unlike in miniature a valley in the Himálaya, and I hardly like to say that it is less beautiful. But the Indian mountains are grander, their forests are nobler, their whole vegetation is more rich and varied, and nowhere in Europe can we find the splendour of the atmospheric effects and colouring of the Himálaya.

Still less is comparison possible in the higher regions of the mountains. To the traveller who remembers the wild magnificence of the peaks and glaciers of the Himálaya, and the general sublimity of its aspect, Zermatt and Chamouny seem insignificant. The mere fact that the ranges of the Himálaya are often twice as high as those of the Alps gives no idea of their relative magnitude. The whole of the Bernese Alps might, it has been said, be cast into a single Himálayan valley. We might almost as reasonably, when the Scottish o

Welsh hills are white with snow, compare them with Mont Blanc and Monte Rosa, as compare anything in the Alps with Nanda Devi and Trisúl. If, preserving the form of its great obelisk, we could pile the Matterhorn on the Jungfrau, we should not reach the highest summits of the Himálaya, and should have a mountain less wonderful than the astonishing peak of Dunagiri.

Among earthly spectacles, it is hardly possible that any can surpass the Himálaya, as I have often seen it at sunset on an evening in October from the ranges thirty or forty miles from the great peaks. "For the picturesque beauty of its natural setting" (Sir Thomas Holdich writes), "in the midst of tropical mountain scenery, no less than for grandeur of outline and profound impression of majestic predominance, there is probably no rival in the world to Kanchinjunga as seen from Darjiling." One other such view, that from Binsar in Kumáon, stands out vividly in my own remembrance. This mountain is 8000 feet high, covered with oak and rhododendron. Towards the north we look down over pine-clad slopes into a deep valley, where, 6000 feet below, the Sarju runs through a tropical forest. Beyond the river it seems to the eye as if the peaks of perpetual snow rose straight up and almost close to us into the sky. From the bottom of the valley to the top of Nanda Devi we see at a glance almost 24,000 feet of mountain. The stupendous golden or rose-coloured masses and pinnacles of the snowy range extend before us in unbroken succession for more than 250 miles, filling up a third part of the visible horizon, while on all other sides, as far as the eye can reach, stretch away the red and purple ranges of the lower mountains. "In a hundred ages of the gods," writes one of the

old Sanskrit poets, "I could not tell you of the glories of Himáchal."

I must add that few of those who spend the summer in the hill stations of Northern India have the opportunity of witnessing such scenes as these. If they suppose, at a place like Simla, that they have seen the Himálaya, they greatly deceive themselves.

CHAPTER IV

THE CONSTITUTION OF THE GOVERNMENT IN INDIA

Presidencies and provinces—The Presidency of Bengal—First constitution of the Government—Hastings and his Council—Changes between 1773 and 1833—The Governor-General of India in Council—Separation of the North-Western Provinces from Bengal—Renewal of the Charter in 1853—A Lieutenant-Governor appointed for Bengal—The mutiny of the Native army—Transfer of the government to the Crown—The existing constitution of the Supreme and Provincial Governments—The Indian legislatures—The Provincial Governments—Former cumbrous mode of transacting business—Changes made by Lord Canning—Reforms completed by Lord Lawrence—The Council converted into a Cabinet—Manner of transacting business—Power of Governor-General to overrule the Council—Migration of the Government to Simla—Relations between Supreme and Provincial Governments—Mr. Bright on the government of India—Decentralisation.

In the earlier times of the East India Company, the affairs of the three principal settlements in Bengal, Madras, and Bombay were, in each case, administered by a President and a Council composed of servants of the Company, and the term "Presidency" was applied to the whole tract over which their authority extended. The term has lasted to the present day, and is still used in official papers, but it has almost ceased to have any special meaning. British India is not divided into presidencies, but into provinces, nine of which are extensive countries under separate Governments. The

presidencies of Madras and Bombay are now the provinces of the same names.

The term "Presidency of Bengal" requires some explanation.

The name Bengal has had, at different periods since the country came into our possession, very different meanings. It was originally applied, as it still is by the Natives of India, to the tract sometimes called Lower Bengal, including the deltas of the Ganges and Bráhmaputra, and inhabited by the people who speak Bengáli. The earliest factories and settlements on that side of India were established in Bengal, and, as British authority went on extending, the name Bengal was applied to all the territories administered from Fort William, the official headquarters in Calcutta. Thus, the Presidency of Bengal, or, according to its proper official designation, Fort William in Bengal, came to include not only Bengal and the neighbouring provinces of Behár and Orissa, but the whole of the British conquests in Northern India. Some remnants of the old system have lasted into our own times. There was, until 1894, a single army for the provinces of Bengal, the North-Western Provinces and Oudh, and the Punjab, and although, as I shall have again to notice, it had not a single native of Bengal in its ranks, it retained the name of the Bengal Army. This name still survives, for although the Army in the Punjab is now a separate body, the other provinces remain included in the so-called Bengal Command. Another survival from old times is seen in the Bengal Civil Service. The members of the Indian Civil Service, recruited under the system of open competition, are appointed, before they leave England, to the provinces to which under ordinary circumstances they remain permanently attached. The

Civil Services of the United Provinces of Agra and Oudh, and of the Punjab are, for all administrative purposes, as distinct from that of Bengal as from those of Madras and Bombay; but, in regard to some matters connected with annuities to widows and children, they are still treated as a single body and included in the so-called Bengal Civil Service.

The first Act of Parliament which prescribed a definite system of government for the affairs of India was that of 1773.[1] It provided for the appointment of a Governor-General and a Council of four members for the Presidency of Bengal. The administration was to be carried on in accordance with the votes of the majority of the Council, and the Governor-General had no power to set aside their decisions. Certain powers of control, vaguely defined, were given to the Government of Bengal over the presidencies of Madras and Bombay. Warren Hastings was the first Governor-General of Bengal. The scandalous dissensions in his Council, under the malignant influence of Francis, have become a well-known matter of history. They showed that government by the constantly shifting majority of a Council was impossible; but although similar facts repeatedly occurred to illustrate the folly of such a system, it was not until 1786 that a partial remedy was applied, after Lord Cornwallis had made it a condition of his acceptance of the office of Governor-General that the power of overruling his Council should be given to him. On the renewal of the Company's Charter in 1793,[2] the powers of the Governor-General were further extended; authority to overrule their Councils was given to the Governors of Madras and Bombay; the power of the Governments of those presidencies to make laws and

[1] Regulating Act, 13 Geo. III. c. 63. [2] 33 Geo. III. c. 52.

regulations for their own territories was recognised; and the supreme authority of the Governor-General in Council over the whole of India was distinctly declared. No very important changes in the constitution of the Government were made after this until the renewal of the Charter in 1833,[1] when the trading powers of the Company ceased. The Governor-General in Council of Bengal then became the Governor-General of India in Council. Bengal was to be divided into two presidencies, Fort William in Bengal and Agra. The Governor-General was to be Governor of the former, and a Governor was to be appointed for the latter. The Agra presidency was not constituted, but by an amending Act passed in 1835[2] the territories which were to have been included in it were placed, under the name of the North-Western Provinces, under a Lieutenant-Governor without a Council. Madras and Bombay retained their Councils, but no Council was appointed for Bengal.

The Punjab became a Lieutenant-Governorship in 1859, and Burma in 1897. In 1901 a new province, the North-West Frontier Province, was formed, and, to avoid confusion from the similarity of names, the North-Western Provinces, with which Oudh had been included, became the United Provinces of Agra and Oudh.

In 1853 the Charter of the Company was again renewed,[3] and an important change in the Government was made. It had long been obvious that it was impossible for a single person to discharge the double duty of Governor-General of India and Governor of Bengal, and the administration of Bengal had notoriously become less efficient than that of any other province

[1] 3 and 4 Will. IV. c. 85. [2] 5 and 6 Will. IV. c. 52.
[3] 16 and 17 Vict. c. 95.

in India. The Governor-General was relieved from this charge, and a Lieutenant-Governor, without a Council, was appointed.

In 1857 came the mutiny of the Bengal Native army.

In the following year, by the "Act for the better government of India,"[1] the government was transferred from the East India Company to the Crown, and it was provided that all the powers of the Company and of the Board of Control should be exercised by a Secretary of State, in concert, in certain cases, with a Council. This Act, of which I shall again have to speak, applied almost solely to the Government in England, and the Government in India was carried on as before.

In 1861 important changes were made in the constitution both of the Supreme and Provincial Governments in India. The "Indian Councils Act"[2] then passed still regulates, for the most part, the Governments in India. I shall describe its principal provisions.

The Governor-General and the Ordinary members of his Council are appointed by the Crown. No limit of time is specified for their tenure of office, but custom, not often disregarded, has fixed it at five years. The term "Viceroy" has been commonly applied to the Governor-General since the transfer of the government to the Crown, but it is not recognised by law. There are five Ordinary members of Council, and, by an Act passed in 1874,[3] a sixth member may, at the discretion of the Crown, be appointed for public works. Three of the members must have served in India for at least ten years; two of them are members of the Covenanted Civil Service, and the third is a military officer; but

[1] 21 and 22 Vict. c. 106. [2] 24 and 25 Vict. c. 67.
[3] 37 and 38 Vict. c. 91.

this distribution is a matter of custom, not of law. One of the two remaining members must be a Barrister, or a member of the Faculty of Advocates in Scotland, of not less than five years' standing; he has charge of the legislative department. The fifth member has charge of the finances. The Commander-in-Chief in India may also be, and in practice always is, an Extraordinary member of the Council. The Governors of Madras and Bombay become Extraordinary members if the Council meets within their presidencies. Whenever it is declared by the Governor-General in Council to be expedient that the Governor-General should visit any part of India without his Council, he may nominate one of the members of his Council to be President of the Council. The President, during the absence of the Governor-General, exercises the powers which the Governor-General may exercise at meetings of the Council, except that of assenting to or withholding assent to laws; and the Governor-General, when so absent, may himself exercise all or any of the powers which he might exercise as Governor-General in Council, except the power of making laws. The Council may assemble at any place in India which the Governor-General in Council appoints.

For the purposes of legislation, Additional members are nominated to the Council. The Legislative Council is often spoken of as if it had a separate existence, but this is a mistake; only one Council is known to the law. The Additional members are nominated by the Governor-General, and they join the Council when it meets for legislative purposes. Not less than one-half of their number must be persons not holding offices under the Government; some of them are always Natives of India. The Lieutenant-Governor of any province in which the

Council may meet acts as an Additional member. When the Council meets for legislative purposes, and the Ordinary members are present, the Government can usually command a majority of votes.

Under the Indian Councils Act of 1861 the maximum number of Additional members was twelve, all of whom were nominated at the discretion of the Governor-General. The Council, when it met for legislation only, could occupy itself with no matters except those directly connected with the legislative business before it. It had no concern whatever with any of the functions of the executive government. The Provincial Legislatures, of which I shall have again to speak, were similarly constituted, and their powers were similarly limited.

In 1892 an important change was made in the constitution of all the Indian Councils. It had long been felt that the time had come when the administration might gain much advantage if public opinion could be brought more largely to bear upon it. This was especially true of the Provincial Governments, the ordinary business of which is of a kind in which local knowledge is necessary, and on which the expression of intelligent independent criticism may often be very valuable. By an Act of Parliament, passed in 1892,[1] it was provided that the number of Additional members in the Council of the Governor-General should not be less than ten nor more than sixteen. The exact number is left to the discretion of the Governor-General for the time being. The Governor-General in Council, with the approval of the Secretary of State in Council, makes rules defining the manner in which the nominations of Additional members are to be made, under

[1] 55 and 56 Vict. c. 14.

which the annual Financial Statement of the Government may be discussed, and under which questions may be asked. It was obviously impossible to obtain, by any system of popular election or otherwise, any direct representation on the Governor-General's Council of the multifarious interests of the vast populations of the numerous countries of the Indian Empire, and the following procedure was adopted in the rules passed under the Act. There are sixteen Additional members, of whom six are officials appointed by the Governor-General, and ten are non-official. Four of the latter are appointed by the Governor-General on the recommendation of a majority of the non-official Additional members of the Provincial Legislatures, each of these bodies recommending one member. A fifth member is recommended by the Calcutta Chamber of Commerce. The Governor-General can, if he thinks fit, decline to accept a recommendation thus made, and in that case a fresh recommendation is submitted to him. The remaining five non-official members are nominated at the discretion of the Governor-General, "in such manner as shall appear to him most suitable with reference to the legislative business to be brought before the Council, and the due representation of the different classes of the community." In the words of a despatch from the Government of India, "measures may at one time be before the Council, relating to interests which ought to be specially represented in their discussion; at another time the legislative work may be of a different description, calling for the selection of representatives from particular local divisions of the empire, or of persons chosen to represent the most skilled opinion upon large measures affecting British India as a whole. It is desired also to reserve to the Governor-General

the liberty of inviting representatives from Native States."

Under the law as it stood, before the passing of the Act of 1892, there was no opportunity of criticising the financial policy of the Government except on those occasions when financial legislation was necessary. Under the rules now in force, the annual Financial Statement must be made publicly in the Council; every member is at liberty to make any observations that he thinks fit, and the Financial member of Council and the President have the right of reply.

Rules have also been made defining the conditions under which questions may be asked in the Council. The questions, of which due notice has to be given, must be requests for information only, and must not be put in argumentative, or hypothetical, or defamatory language, nor is discussion permitted in respect of an answer given to a question on behalf of the Government. These two restrictions are substantially identical with those in force in the British House of Commons. The President may disallow any question which, in his opinion, cannot be answered consistently with the public interests.

Certain Acts of Parliament under which the Government of India is constituted cannot be touched, and no law can be made affecting the authority of Parliament or allegiance to the Crown, but with these exceptions the legislative powers of the Governor-General in Council over the whole of British India are unrestricted. Measures affecting the public debt or revenues of India, the religion of any of His Majesty's subjects, the discipline or maintenance of the military or naval forces, and the relations of the Government with Foreign States, cannot be introduced by any member without the

previous sanction of the Governor-General. Every Act requires the Governor-General's assent. The assent of the Crown is not necessary to the validity of an Act, but the Crown can disallow any Act that has been passed.

Apart from these ordinary legislative powers, the Governor-General in Council was authorised in 1870[1] to make, without calling in the Additional members, "Regulations" having the force of law for the less advanced parts of the country, where a system of administration simpler than that in force elsewhere is desirable. The effect of this was to put on a legal basis the administration of the so-called "Non-Regulation Provinces."

Further, in cases of urgent necessity, the Governor-General can, on his own authority and without reference to his Council, make Ordinances which have the force of law for six months. This power was given by the Act of 1861 for the first time. It has seldom been exercised, and only for reasons of temporary convenience.

The constitution of the Executive Governments in Madras and Bombay was not altered by the Act of 1861, and they still retain some signs of their former dignity and partial independence. On certain matters they correspond directly with the Secretary of State, a privilege not possessed by other Provincial Governments. The Governor and the Ordinary members of Council are appointed by the Crown. The Governor is usually an English statesman sent from England. Two members of the Civil Service constitute the Council. Until 1893 there was, in each of the two Presidencies, a Commander-in-Chief, who was also a member of the Council, but, as I shall have to notice in describing the constitution of

[1] 33 Vict. c. 3, sec. 1.

the Army in India, the offices of Provincial Commander-in-Chief were, in that year, abolished. The power of legislation, which had been taken away in Madras and Bombay by the Act of 1833, was restored in 1861.

Under the Act of 1892, to which I have already referred, changes similar to those made in the Council of the Governor-General were also made in the Councils of the Governments of Madras and Bombay. Additional members are nominated by the Governor, and they join the Council when it meets for legislative purposes. Their number, both in Madras and Bombay, is twenty, of whom, under the rules laid down, not more than nine can be officials. The system under which the non-official Additional members are chosen is so nearly identical in the two provinces, that it will be sufficient to describe that adopted in one of them. I take the Bombay Council as the example. There are eleven non-official members. Nominations to eight of these seats are made by the Governor on the recommendation of various bodies and associations. The Corporation of Bombay and the Senate of the University each recommend one member. Six members are recommended by groups of Municipal Corporations, groups of District Local Boards, classes of large landholders, and by such Associations of merchants, manufacturers, or tradesmen as the Governor in Council may prescribe. The remaining non-official members are nominated by the Governor "in such manner as shall in his opinion secure a fair representation of the different classes of the community."

The rules for the discussion of the annual Financial Statements in the Provincial Councils are the same as those applicable to the Council of the Governor-General, except that the discussion must be limited to those branches of revenue and expenditure which are under

the control of the Provincial Government. The rules regarding questions are also the same, with two restrictions. Questions cannot be asked or answered as to any matters other than those under the control of the Provincial Government; and in matters which are or have been the subject of controversy between the Provincial Government and the Government of India or the Secretary of State, no question can be asked or answer given except on matters of fact.

All laws passed by the Provincial Legislatures require the sanction of the Governor-General, and may be disallowed by the Crown. The powers of the Governor-General in Council to legislate for all matters throughout India are not affected by the establishment of the Provincial Legislatures, but, as a general rule, the latter are left to deal with subjects of provincial and local interest. They cannot repeal or amend any Act of Parliament, or any law passed in India before the time when the Indian Councils Act of 1861 came into operation, nor, except with the previous sanction of the Governor-General, can they take into consideration any measure affecting the public debt, customs, imperial taxation, currency, the post office and telegraph, the penal code, religion, the military and naval forces, patents, copyright, or relations with Foreign States.

In the other great provinces of India the Executive Governments are differently constituted from those of Madras and Bombay. Bengal, the United Provinces of Agra and Oudh, the Punjab, and Burma are administered by Lieutenant-Governors; they must be chosen from officers in the service of the Crown who have served in India for at least ten years; they are appointed by the Governor-General with the approval of the Crown; and, with one exception, they have

always been members of the Covenanted Civil Service.[1] The Lieutenant-Governors have no Councils for executive business, but the Governor-General in Council may establish in each province a Council for legislative purposes only. This power has been exercised in each of the Lieutenant-Governorships; I shall have occasion to refer again to their Legislative Councils; they are similar in their constitution to those in Madras and Bombay, the Lieutenant-Governor taking the place of the Governor; but in the Punjab and in Burma, the Councils having been formed under the Statute of 1861 and not under that of 1892, the members are all nominated. The Governments of the Central Provinces and Assam are administered by Chief Commissioners. Excepting in name and dignity and in amount of salary and patronage, there is no great difference between them and Lieutenant-Governors. For provinces which have no legislatures of their own, laws are passed by the Governor-General in Council.

I must now speak of the manner in which the executive business of the Governor-General in Council is transacted. The system is very different from that in force under the Government of the East India Company. Although after the Act of 1793 the power of the Governor-General to over-rule his Council was not open to question, the fundamental idea, on which previous legislation had been based, still remained, that the Government was to be carried on by the Governor-General in concert with the whole Council. All public business of every kind, however trivial, was supposed to come before all the members of the Government. Questions were ordinarily decided by the majority, the Governor-General having a casting vote if the votes

[1] 5 and 6 Will. IV. c. 52, sec. 2, and 16 and 17 Vict. c. 95, sec. 16.

were equal. If the Governor-General determined to over-rule the majority, it was provided that he and the members of Council should "mutually exchange with and communicate in writing to each other the grounds and reasons of their respective opinions." They were then to meet a second time, and if both parties retained their first opinions, their minutes were to be entered on the consultations, and the orders of the Governor-General were to be carried out.

In his *Essay on Representative Government*, published in 1861, when the procedure which I have described was still legally in force, Mr. J. S. Mill described the manner in which he considered that Ministers in charge of the great departments of an Executive Government ought to be assisted by Councils:—

"The Councils should be consultative merely, in this sense that the ultimate decision should rest undividedly with the Minister himself: but neither ought they to be looked upon, or to look upon themselves as ciphers, or as capable of being reduced to such at his pleasure. The advisers attached to a powerful and perhaps self-willed man ought to be placed under conditions which make it impossible for them, without discredit, not to express an opinion, and impossible for him not to listen to and consider their recommendations, whether he adopts them or not. The relation which ought to exist between a chief and this description of advisers is very accurately hit by the constitution of the Governor-General and those of the different presidencies in India. These Councils are composed of persons who have professional knowledge of Indian affairs, which the Governor-General and Governors usually lack, and which it would not be desirable to require of them. As a rule, every member of Council is expected to give an opinion, which is, of course, very often a simple acquiescence; but if there is a difference of sentiment, it is at the option of every member, and is the invariable practice, to record the reasons of his opinion; the Governor-General or Governor doing the same. In ordinary cases the decision is according to the sense of the majority; the Council, therefore, has a substantial part in the Government, but

if the Governor-General or Governor thinks fit, he may set aside even their unanimous opinion, recording his reasons. The result is that the chief is, individually and effectually, responsible for every act of the Government. The members of Council have only the responsibility of advisers; but it is always known, from documents capable of being produced, and which, if called for by Parliament or public opinion, always are produced, what each has advised, and what reasons he gave for his advice; while from their dignified position and ostensible participation in all acts of government, they have nearly as strong motives to apply themselves to the public business, and to form and express a well-considered opinion on every part of it, as if the whole responsibility rested with themselves."

I must continue my quotation, for Mr. Mill's commentary on the system thus described is remarkable:—

"This mode of conducting the highest class of administrative business is one of the most successful instances of the adaptation of means to ends which political history, not hitherto very prolific in works of skill and contrivance, has yet to show. It is one of the acquisitions with which the art of politics has been enriched by the experience of the East India Company's rule; and like most of the other wise contrivances by which India has been preserved to this country, and an amount of good government produced which is truly wonderful considering the circumstances and the materials, it is probably destined to perish in the general holocaust which the traditions of Indian government seem fated to undergo, since they have been placed at the mercy of public ignorance and the presumptuous vanity of political men."

Mr. Mill's anticipations have been to some extent verified. The manner of transacting business which existed under the East India Company has perished, but, I venture to say, not for the reasons which he predicted, but because it was not the wise contrivance which he supposed. The principle which he laid down was undoubtedly true, that while a man in the position of Governor-General of India ought to possess, in the

last resort, power to act upon his own judgment, he ought also to be obliged to hear the opinions of experienced councillors, and that those councillors should have the right of making their opinions known, whether they were followed or not. This principle has not been infringed. If Mr. Mill had himself seen in operation the system which he described, he would, I am sure, have given it a different character. The truth is that a more cumbrous, I might say a more impossible, system of administration for a great empire could hardly have been invented than that which prevailed under the Government of the East India Company, when every case was supposed to be laid before the Governor-General and the whole Council, and to be decided by them collectively. The only reason that enabled such a system to last so long was that in matters requiring prompt and vigorous action it was not really acted upon.

In the latter years of the East India Company, and for a few years after the transfer of the government to the Crown, the Governor-General was frequently separated from his Council. His presence was often required in Northern India by reasons of political necessity. He was authorised to exercise, while absent from the Council, all the powers of the Governor-General in Council, except the power of legislation. The Council remained in Calcutta under the presidency of the senior member, who exercised, during the Governor-General's absence, all the powers of the Governor-General in Council, except the power of giving assent to laws. There was a double Government, with a division of authority and responsibility fatal to good administration. Sir Henry Maine has described, from his own observation as a member of Council, the manner in which the system actually worked :—

"A division of business was made between the Governor-General in the Upper provinces and the President in Council at Calcutta. Everything which was of importance was referred directly to the Governor-General, and there was either a rule or an understanding that if any matter which came before the President in Council assumed, contrary to expectation, the least importance, it should be sent on to the Governor-General. . . . Except in regard to matters belonging to the Foreign department, of which it was usual for the Governor-General himself to undertake the primary management, the severance of the Governor-General from the Council dislocated the whole machinery of Government. I was myself in Calcutta, as a member of Council during the absence of Lord Elgin in the Upper provinces, in the summer of 1863. I believe it to be impossible for any human arrangement to have worked more perversely. Lord Elgin was distinguished by remarkable caution —though I doubt whether his caution was practically greater than that which any man comparatively fresh from England would display under similarly vast responsibilities—and all or most important matters were transferred by him over a distance of 1500 miles for the opinions of his Council. The result was that a great deal of work was done twice over, and a great deal not done at all."[1]

In earlier times, when there were no railways or telegraphs, and hardly any roads, the duties of the Government were very different from what they are now. Kingdoms were annexed and conquered, and stirring events were constantly going on, but the ordinary business of administration was comparatively small. But in the years immediately preceding the mutinies of 1857 rapid changes were in progress in all branches of the Government, and when the great reign of Lord Dalhousie was over he declared it to be morally and physically impossible that the Governor-General should efficiently discharge all the duties imposed upon him.

The events of 1857 made the burden still heavier.

[1] Memorandum on the Administration of Bengal, December 2, 1867.

The insertion by Parliament of a few words in the Indian Councils Act of 1861 gave to Lord Canning and his successors the means of reforming a system of government which had become intolerable. It empowered the Governor-General to make from time to time rules and orders for the more convenient transaction of business in his Council, and provided that any order made or act done in accordance with such rules and orders should be deemed to be the order or act of the Governor-General in Council. These provisions made it possible to bring legally to an end the system under which the whole Council was supposed to take part collectively in the disposal of all the business of the Government.

Rules were made by Lord Canning, assigning to each member of the Council the charge of a separate department of the administration, and the Council was virtually converted into a Cabinet, of which the Governor-General was the head. When this change was made it became obvious that the separation, for long periods of time, of the Governor-General from his Council was incompatible with efficient administration. The reform of procedure was completed by Lord Lawrence. Since his time the old plan of double government, under which the Governor-General was frequently absent from the Council, with a President in Council in Calcutta, has been abandoned. It is now never adopted except as an occasional measure of merely temporary convenience.

Although the separation of departments in India is less complete than in England, and the authority of a member of Council much less extensive and exclusive than that of an English Secretary of State, the members of Council are now virtually Cabinet ministers, each of whom has charge of one of the great departments of the

Government. Their ordinary duties are rather those of administrators than of councillors. The Governor-General regulates the manner in which the public business shall be distributed among them. He usually keeps the Foreign department in his own hands; the other departments are—Home, Revenue and Agriculture, Finance and Commerce, Military, Public Works, and Legislative. While the member of Council takes the place of the English Secretary of State, there is in each department a Secretary holding a position analogous to that of a permanent Under-secretary in England. It is the duty of this secretary to place every case before the Governor-General or member in charge of his department, in a form in which it is ready for decision. He submits with it a statement of his own opinion. In minor cases the member of Council passes orders which are final. If the matter be one of greater importance, he sends on the papers, with his own orders, to the Governor-General for his approval. If the Governor-General concurs, and thinks further discussion unnecessary, the orders are issued. If he does not concur, he directs that the case shall be brought before the Council, as in England an important case might come before the Cabinet. The duty rests upon the secretary, apart from his responsibility towards the member of Council in charge of the department, of bringing personally to the knowledge of the Governor-General every matter of special importance. All orders of the Government are issued in the name of the Governor-General in Council.

Although, when a question comes before the whole Council, it is usually decided in accordance with the opinion of the majority, power is reserved by law to the Governor-General to act on his own opinion alone, when-

ever the safety, tranquillity, or interests of the British possessions in India may, in his judgment, be essentially affected.[1] Recourse to this power is very seldom necessary. The only occasion in recent times on which it has been exercised in a matter of importance occurred in March 1879, when Lord Lytton, in opposition to the opinion of a majority of his Council, partially abolished the Indian import duty on English cotton goods. The occasion will be remembered in the economic history of India, because this measure rendered inevitable the application for a time to India of the policy of freedom of trade.

Another consequence has followed from the changes that I have described. The abandonment by Lord Lawrence of the system of double government, and the establishment of the departmental responsibility of the members of Council, rendered it necessary that when the Governor-General left Calcutta for Northern India he should be accompanied by the Council. Lord Lawrence made Simla the ordinary summer headquarters of the Government. There was formerly much criticism of these annual migrations, but no one who has had personal knowledge of the Government of India doubts the increased efficiency of its administration since it has passed a portion of every year in a climate less enervating than that to which it was exposed in the tropical heat of Calcutta, and in which Englishmen can work as vigorously as at home. The Government does not go to Simla for a holiday, but for the hardest and most continuous portion of its work. The evil influence of the climate is not the only reason why the Government of India should not remain permanently in Bengal. It has no local duties. Its business is one of general control,

[1] 33 Vict. c. 3, sec. 5.

and the countries of Northern and Western India will always be those which demand the largest share of its attention and anxiety.

I shall give in another chapter some account of the manner in which the administration of a great British province is carried on. There has been since 1870 a great and beneficial change in the relations between the Supreme and Provincial Governments.

In the speeches on India made by Mr. Bright, about the time when the Government of India was transferred to the Crown, one of the principles on which he insisted was the necessity of decentralising the Government. There is much in those speeches with which I am unable to agree, and much that was once true has ceased to be applicable, but I wish to quote some passages which seem to me to indicate the principles on which government in India can alone be successfully conducted. Mr. Bright's speeches are accessible to every one, and I need not be accused of misrepresenting his views if I quote only those passages with which I myself agree, and which serve my present purpose :—

"The point which I wish to bring before the Committee and the Government is this, because it is on this that I rely mainly —I think I may say, almost entirely—for any improvement in the future of India. I believe a great improvement may be made, and by a gradual process that will dislocate nothing. What you want is to decentralise your Government. . . . You will not make a single step towards the improvement of India unless you change your whole system of government—unless you give to each presidency a Government with more independent powers than are now possessed. What would be thought if the whole of Europe were under one Governor who knew only the language of the Feejee Islands, and that his subordinates were like himself, only more intelligent than the inhabitants of the Feejee Islands are supposed to be? . . . How long does England propose to govern India? Nobody answers that question, and nobody can answer it. Be it

50, or 100, or 500 years, does any man with the smallest glimmering of common-sense believe that so great a country, with its twenty different nations and its twenty languages, can ever be bound up and consolidated into one compact and enduring empire? I believe such a thing to be utterly impossible. We must fail in the attempt if ever we make it, and we are bound to look into the future with reference to that point."

Mr. Bright, seeing that the union of the various countries of India into a single state was impossible, went on to propose that each of the five great provinces should have a separate and almost independent Government of its own, directly subject to the British Crown, and that the Central Government of India under the Governor-General in Council should be abolished. It is with no want of respect for Mr. Bright that I say that the latter suggestion was one which could not possibly be adopted. There is clearly nothing more essential to the maintenance of our empire in India than a strong central authority; but Mr. Bright's belief was undoubtedly true that there can be no successful government in India unless the fundamental fact of the immense diversities of Indian countries and peoples be recognised, and each great province be administered by its own separate Government with a minimum of interference from outside.

There was a time when the tendency in India was towards greater centralisation; but since the Viceroyalty of Lord Mayo the current has happily turned in the other direction, and the Provincial Governments are now far more independent than they were. This change has been mainly the result of the measures of financial decentralisation initiated in 1870, and which were pronounced by Sir Henry Maine to be "much the most successful administrative reform which had taken place

in India in his time."[1] I shall speak of this in another chapter.

The Government of India now interferes very little with the details of provincial administration. The fact is recognised that the Provincial Governments necessarily possess far more knowledge of local requirements and conditions than any to which the distant authorities of the Central Government can pretend.

Although the Governor-General in Council exercises only a general supervision over the internal administration of the empire, there are some branches of the public business which concern the whole of India, and which obviously can be efficiently managed by the central authority alone. The military defence of India, and the conduct of our relations with Foreign Powers and with the Native States of India, rest with the Supreme Government. While the duty of administering the laws rests with the Provincial Governments, and with the local courts and authorities, the Government of India is mainly responsible for the excellence or imperfection of the laws themselves. Subject to the control of the Secretary of State, it makes provision for the construction of the railways and canals, without which there can be no proper development of the public wealth, or protection against drought and famine. It administers the post office and telegraph. It is mainly responsible for the management of the finances, and it lays down the principles by which the fiscal policy of the empire is to be guided.

[1] *The Reign of Queen Victoria*—"India," vol. i. p. 516.

CHAPTER V

THE HOME GOVERNMENT

The Home Government—The Secretary of State and Council of India—Mode of transacting business—Nature of control over the Government of India—Parliamentary interference—Its dangers.

I MUST now refer to the Act of 1858, by which the Government of India was transferred to the Crown. It provided that all the powers of the East India Company and Board of Control should be exercised by a Secretary of State, in concert, in certain cases, with a Council, and, although various changes have been made in it by subsequent legislation, it remains in essential respects still in force.[1]

The Council, styled the Council of India, consisted, as it was first constituted, of fifteen members appointed by the Secretary of State. In 1889 power was given to him to reduce the number of the Council to ten, by abstaining from filling vacancies whenever he thought fit to do so. Three of the members "having professional or other peculiar qualifications" may be appointed for life; the others hold office for ten years, and this term may, for special reasons of public advantage, which must be laid before Parliament, be extended for five years

[1] The principal Acts referring to this subject are the following:—Act 21 and 22 Vict. c. 106; Act 22 and 23 Vict. c. 41; Act 23 and 24 Vict. c. 100; Act 32 and 33 Vict. c. 97; Act 39 Vict. c. 7; Act 52 and 53 Vict. c. 65.

more. The majority of the Council must be persons who have served or resided in India for at least ten years, and who have not left India more than ten years before their appointment. Most of the members are always men who have held high office in India. Several of them have usually belonged to the Indian Civil Service, and have been Lieutenant-Governors of provinces or members of the Viceroy's Council; others are soldiers, engineers, bankers, or men of diplomatic, official, or mercantile experience. The object aimed at by the law is to give to the Secretary of State, who must ordinarily have little personal knowledge of the details of Indian administration, the help of a body of experts.

The position of the Council differs essentially from that formerly held by the Court of Directors of the East India Company, for, unlike that body, which possessed and exercised large independent powers, it has no initiative authority. Questions of the greatest importance, notorious to all the world, may be pending, but the Council can give no opinion on them until they are laid before it by the Secretary of State.

Every order proposed to be made by the Secretary of State must, before it is issued, either be submitted to a meeting of the Council, or be placed in the Council-room for seven days for the perusal of the members, unless the Secretary of State considers the matter urgent, in which case, recording his reasons, he may make the order. If there is a difference of opinion between him and the Council his decision prevails, but there is one limitation on the powers thus given to him. He cannot order expenditure without the consent of a majority of the Council. The Act of 1858 provides that "the expenditure of the revenues of India, both in India and elsewhere, shall be subject to the control of the

Secretary of State in Council, and no grant or appropriation of any part of such revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council."

The powers thus given to the Council in controlling expenditure are, however, far from being as great as at first sight they seem to be, for they can only be exercised in regard to the ordinary business of the administration. Orders involving large expenditure may be given by the Secretary of State without either the consent or the knowledge of the Council. In dealing with questions affecting the relations of the Government with Foreign Powers, making war or peace, prescribing the policy to be followed towards Native States, and generally in matters in which secrecy is necessary, the Secretary of State acts on his own authority alone. Before the transfer of the Government to the Crown, the Board of Control was empowered to send to India any orders on these subjects through the Secret Committee, which consisted of not more than three members of the Court of Directors, and those powers were transferred to the Secretary of State. Despatches from India on similar matters may be marked "Secret" in India, and they are not communicated to the members of the Council unless the Secretary of State so directs. Such questions as an Afghan war, negotiations with Russia and the Amir of Kabul regarding the affairs of Afghanistan, or the annexation of Burma, do not come before the Council. Its members have not only no power of interference, but they have no recognised means of obtaining information in regard to such subjects other than those of the general public.

Apart from questions of this character, most of the ordinary business passes through the Council, and, consisting as it does of men possessing special experience of Indian affairs, its advice is naturally, in the great majority of cases, followed by the Secretary of State.

The business is distributed among the various departments, each of which is in charge of a permanent secretary, and the Secretary of State appoints, for consideration of the questions coming before each department, a committee consisting of four or five members of the Council. They are chosen according to their presumed knowledge of the subjects likely to be referred to them. The recommendations of the committees are laid before the Secretary of State, and, if he so directs, before the Council.

It has often been said that one result of the transfer of the Government of India to the Crown has been to increase very greatly the interference of the Home Government, and to weaken the authority of the Government in India itself. Having myself been a member of the Government of India for nearly nine years, under five Viceroys, from Lord Lawrence to Lord Ripon, and afterwards a member for ten years of the Council of the Secretary of State, this is a point on which I feel that I have authority to speak. The increased facilities of communication, the establishment of telegraphs, the greater interest in India taken by the British public and by Parliament, the growth of the business of the Home Government in consequence of the large investments of British capital in India, and other causes, have made the relations between the two countries far more intimate than was formerly necessary or possible, and have made more frequent the cases in which final orders cannot be passed in India;

but it is an error to suppose that the Secretary of State is constantly interfering in the ordinary work of Indian administration. The description of the Home Government given by Mr. J. S. Mill in the time of the East India Company is as applicable now as when he wrote :—

"It is not," he said, "so much an executive as a deliberative body. The Executive Government of India is, and must be, seated in India itself. The principal function of the Home Government is not to direct the details of administration, but to scrutinise and revise the past acts of the Indian Governments; to lay down principles and issue general instructions for their future guidance, and to give or refuse sanction to great political measures which are referred home for approval."

The action of the Secretary of State is mainly confined to answering references made to him by the Government in India, and, apart from great political or financial questions, the number and nature of those references mainly depend on the character of the Governor-General for the time being. Some men in that position like to minimise personal responsibilities, and to ask for the orders of the Home Government before taking action. Others prefer to act on their own judgment and on that of their councillors. The Secretary of State initiates almost nothing.

So long as the Government of India is content to carry on the administration without largely increasing the cost of existing establishments, and without incurring new and heavy charges, it is practically almost independent, so far as its action in the internal affairs of India is concerned. Even in matters connected with the public expenditure, in regard to which, as I have said, special responsibilities which cannot be avoided have been placed by Parliament on the Secretary of

State in Council, the financial powers of the Governor-General in Council and of the local Governments have been largely extended since the transfer of the government to the Crown.

So far as the Secretary of State is a free agent, the foregoing observations require no qualification. He has no disposition to interfere needlessly in the details of administration in India. Pressure, however, not easy to resist, is sometimes brought to bear upon him.

The growth of interest in the good government of India among the people of this country, and among their representatives in Parliament, is earnestly to be desired, but if such interest is to be practically useful it must be intelligent and prudent, and be kept apart from the slippery domain of party politics. It cannot be said that these conditions have always been fulfilled. More than one instance could be quoted in which serious injury to India has been caused or threatened by the interference of the House of Commons in matters in regard to which the great majority of its members are profoundly ignorant, but out of which some temporary political advantage was apparently to be gained, or which possessed some special interest for the always numerous body of doctrinaires and fanatics. "Nothing," says Goethe, "is more dangerous than ignorance in action," and it may be feared that among the difficulties and perils of the future that are in store for our Indian dominion, not the least serious may be those that spring from the ignorant action of the British House of Commons.[1]

[1] The following passage deserves quotation as an illustration of political foresight. It was written in 1857 by Mr. J. S. Mill, shortly before the transfer of the Government of India from the Company to the Crown :—

"In the exceptional cases in which Parliament and the Nation interfere in Indian affairs, the interference will not be founded on knowledge of the sub-

Although by far the greater part of the administrative improvement of the last thirty years has been due to the Governments in India, credit for some of it must be given to the Government at home. A body constituted like the Home Government of India is slow to move and sometimes obstructive, and its general policy has been conservative and cautious. The more ardent among Indian reformers have sometimes chafed under the restrictions placed upon them, but in their anxiety for improvement they are sometimes more aggressive than is politically prudent. The most important part of our administration in India has the advantage of being carried on by comparatively young men. This is an advantage of inestimable value, and one to which no small part of the general vigour and excellence of Indian administration is due. After thirty-five years' service retirement is compulsory, and this salutary rule, not often broken through, has this for its result, that every one of the highest offices of the State is held by a man in the prime of life. One of the weakest points in our government is the incessant process of change in the *personnel* of the administration, and the constant waste of mature experience. Neither the Viceroy nor any member of his Council, nor any Governor or Lieutenant-Governor, usually holds his office for more than five years, nor is there much greater permanency in the tenure of other offices held by Englishmen. The climate, and the peculiar conditions under which the government

ject and will probably be for the most part confined to cases where an Indian question is taken up from party motives as the means of injuring a Minister, or when some Indian malcontent, generally with objects opposed to good government, succeeds in interesting the sympathies of the public in his favour. For it is not the people of India but rich individuals and societies representing class interests who have the means of engaging the ear of the public through the press and through agents in Parliament."

has to be carried on in a foreign country by a small body of men, make constant changes unavoidable. This renders it difficult to maintain at all times a wise continuity of policy, and in this respect the India Office sometimes exercises a useful influence. The advisers of the Secretary of State, although their knowledge is apt to get rusty, often know more about India than most of the officers of the Government in India itself; they preserve the traditions of administration and the lessons of experience.

CHAPTER VI

THE CIVIL SERVICES

Principles on which first appointments are made—The Covenanted Service—System of nomination before 1853—System of open competition—Natives of India in the Covenanted Service—The Statute of 1833—The Queen's Proclamation of 1858—The Statute of 1870—Admission of Natives to posts of importance—Lord Lytton's rules—Public Service Commission—Imperial and Provincial Services—Small number of Englishmen in the Civil Service—The greater part of the administration in Native hands—High character of Native officers—Their salaries—Necessity for maintaining English principles of government—Question of holding competitive examinations in India—Transfer of important offices to the Provincial Services—The Public Works, Telegraph, Police, Forest, and Educational Services.

It was long ago laid down as a maxim in regard to the employment of European officers in the more important branches of the public service in India, that the first selection of young men shall not be made in that country, but shall rest with the authorities in England, while, after the first selection, those authorities shall exercise no interference. The distribution of offices, and all questions of appointment and promotion, are left absolutely to the Governments in India itself. "It is a historical fact" (I am quoting from an official paper) "that the observance of this wholesome rule has more than anything else conduced to the purity of Indian patronage, and to its general freedom from

party and political bias." I doubt whether there is any other country where appointments to the highest offices are made with so strong a desire that the men who are the most competent shall be chosen, and where jobbery is so rare.

The Statute of 1793,[1] modified by that of 1861,[2] reserved to members of the so-called Covenanted Service, appointed in England, the right to hold, in ordinary circumstances, the principal civil offices in India under the rank of Member of Council.[3] These offices are enumerated in a Schedule of the latter Act. It includes the offices of the Secretaries to Government, the Head of the Account Department, the Civil and Session Judges, Magistrates and Collectors of Districts in the Regulation Provinces, Joint and Assistant Magistrates and Collectors, Members and Secretaries of the Board of Revenue, Commissioners of Revenue, and others. Persons not belonging to the Covenanted Service can only be appointed, under special circumstances, with the approval of the Secretary of State, and a majority of his Council. These Statutes are still in force, but, as I shall presently show, they have been modified, in one important respect, by other legislation.

Until 1853, the first appointments to the Covenanted Service were made by the Directors of the East India Company by nomination. In that year the nomination system was abolished by Parliament,[4] and the service

[1] 33 Geo. III. c. 52.

[2] 24 and 25 Vict. c. 54.

[3] The meaning of the term "Covenanted" is as follows:—The superior servants of the East India Company were obliged to enter into covenants, under which they bound themselves not to engage in trade, not to receive presents, to subscribe for pensions for themselves and their families, and other matters. This custom has been maintained. Successful candidates, after passing their final examinations, enter into covenants with the Secretary of State before receiving their appointments.

[4] 16 and 17 Vict. c. 95.

was thrown open to public competition of all British subjects, without distinction of race. In 1854 regulations for the competitive examinations to be held in accordance with the Act were prepared by a Committee under the presidency of Lord Macaulay, and these, although altered from time to time, have for the most part remained in force ever since. The main object of the competition was declared to be this,—to secure for the Indian Civil Service young men who had received the best, the most liberal, the most finished education that this country affords. The scheme of examination was accordingly made to embrace most of the subjects of the Honour School of the Universities of Great Britain and Ireland. The limits of age for candidates have varied. Since 1892 they have been from 21 to 23. Successful candidates remain for one year on probation, at the end of which time they have to pass a final examination in subjects specially connected with the duties they will have to perform in India. Candidates who are found to have a competent knowledge of these subjects then receive their appointments to the Civil Service of India. Candidates are encouraged by the grant of a special allowance of £100 to pass their year of probation at one of the Universities or Colleges approved by the Secretary of State.

No one now doubts that this competitive system has been successful in its results. It cannot be said that it has given us better officers than the old system of nomination which it superseded, but it has certainly led to no falling off in general efficiency. No country has ever possessed a more admirable body of public servants than the Civil Service of India, and in that term I here include not only its Covenanted members,

but those of its other branches, and the numerous military officers who have contributed to its success.

Although the competitive examinations for the Covenanted Civil Service are open to all classes of British subjects, the number of Natives of India who have been successful in obtaining appointments in it has been small. In 1902 it comprised 1067 members, of whom 40 were Natives. Other means have, however, been provided by which they can rise to high office.

Parliament has from time to time enacted measures with the avowed object of giving to Natives of India a larger share in the administration. The Act of 1833[1] 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 these, be disqualified from holding any place, office, or employment under the East India Company," but while the nomination system lasted, no Native of India received an appointment to the Covenanted Service. The Statute of 1858, which transferred the Government of India from the Company to the Crown, re-affirmed the system introduced in 1853, by which the Covenanted Service was thrown open to the public competition of Englishmen and Natives of India alike; and on the 1st November 1858, when the transfer of the Government was completed, a Proclamation was issued declaring it to be the will of Her Majesty, that "so far as may be, our subjects, of whatever race or creed, be freely and impartially admitted to offices in our Services, the duties of which they may be qualified by their education, ability, and integrity to discharge."

In 1870 another important measure was enacted.

[1] 3 and 4 Will. IV. c. 85.

The Statute of that year[1] declared it to be "expedient that additional facilities should be given for the employment of Natives of India of proved merit and ability in the Civil Service of Her Majesty in India," and that subject to rules to be made by the Governor-General in Council, with the sanction of the Secretary of State, such Natives might be appointed to any of the offices which had been reserved by law to the members of the Covenanted Service.

Thus two roads were opened, by which high office in India may be reached. The road through competition in England is open to Englishmen and Natives alike; that through "proved merit and ability" is open to Natives alone.

It will be understood, from what has been already said, that the system of holding competitive examinations in England was designed with the object of obtaining for the Indian Civil Service, in the best practicable manner, a sufficient number of officers to fill the posts which must ordinarily be held by Englishmen. The Statute of 1870, on the other hand, was designed with the object of giving to Natives of India another means of access to offices for which it was admitted that they might be fit, but from which they were practically, to a great extent, shut out. The declared intention of Parliament was to provide "additional facilities for the employment of Natives of India of proved merit and ability." It was obvious that this could not be done by any fresh system of competitive examination, for not only would such a system have been unsuitable to India, but it could not afford the necessary evidence of that "proved merit and ability" on which the right to employment was to depend. It was recognised by

[1] 33 Vict. c. 3.

Parliament, as the Duke of Argyll, who was then Secretary of State, wrote to the Government of India when announcing the passing of the Act, that "our duty towards the Natives of India in respect of giving them a larger share of employment in the administration of their own country is a duty which must mainly be discharged in India on the principle of careful and cautious selection." He pointed out that if this were wisely done we should gain the advantages of a competitive examination of the best kind, that we must proceed gradually, employing Natives in those offices and places which, in the actual condition of things, the Government of India might determine were really suited to them, and he gave this wise and statesmanlike warning, that "it should never be forgotten, and there should never be any hesitation in laying down the principle that it is one of our first duties to the people of India to guard the safety of our own dominion. . . . In the full belief of the beneficial character of our administration, and of the great probability that on its cessation anarchy and misrule would reappear, the maintenance and stability of our rule must ever be kept in view as the basis of our policy, and to this end a large proportion of British functionaries in the more important posts seems essential."

Nothing could be done towards carrying out the provisions of the Act of 1870 until rules had been made by the Governor-General, and the Act remained almost a dead letter until 1879, when rules were laid down by Lord Lytton with the approval of the Secretary of State. Under these rules, when they came into full operation, a sixth part of the whole number of offices reserved to the Covenanted Civil Service would have been held by Natives of India. In

order to give gradual effect to this object the number of young men appointed in England was in 1880 reduced by one-sixth. Appointments were made by selection by the Provincial Governments, tests of qualification being supplied by special examinations, and in 1889, when the system was changed, about sixty Natives of India had obtained offices which had previously been reserved for men appointed in England. In 1902 there were forty Native gentlemen holding important judicial and other offices, who had been appointed under the rules of 1879. Those rules, however, were not found to work satisfactorily, and after much discussion it was decided by the Secretary of State, Lord Kimberley, in 1886, that a Commission should be appointed by the Government of India with instructions "to devise a scheme which might reasonably be hoped to possess the necessary elements of finality, and to do full justice to the claims of Natives of India to higher employment in the public service." In the previous year Lord Kimberley had pointed out in a despatch to the Government of India, that the Act of 1870 was intended by Parliament to be "the primary remedy for any defects that might show themselves in the competitive system established in 1853, and for any inconvenience or injustice which the Natives of India might be shown by experience to suffer through the necessary adaptation of the examination in London to the circumstances of home-born rather than of Indian competitors." The Act, he said, was "a measure of remarkable breadth and liberality, affording an unlimited field of experiment in methods of selection."

The Commission appointed by the Government of India was carefully constituted. Its president was Sir Charles Aitchison, Lieutenant-Governor of the Punjab;

its members, fifteen in number, were chosen from the principal provinces of India, and six of them were Native gentlemen. The Commission visited every province of India except Burma; it examined several hundred witnesses, members of the various branches of the administration, and representatives of the educated classes of the non-official Native and European community. The report of the Commission was unanimous, and this was the more satisfactory, because it expressed the opinion of men chosen from the most intelligent section of the Native public, both Hindu and Mohammedan, and its proposals afforded, in their judgment, a due measure of satisfaction to the reasonable expectations of their countrymen. The main principles of the scheme recommended by the Commission have been carried into effect.

Under the system that was thus established, the Civil Service for the management of the higher branches of the Executive and Judicial Administration is divided into two sections. The first of these consists of an Imperial Service, called the Civil Service of India, recruited by competition in England, under suitable conditions and standards of its own, open, without distinction of race, to all subjects of His Majesty, European or Native. Its numbers are to be no more than will enable it to fill the majority of the highest civil offices, with such number of less important offices as may be sufficient to provide a course of training for the younger men. The second of the two services is a Provincial Service, recruited in each of the chief provinces, under conditions suitable to local circumstances, and consisting almost entirely of Natives of the Province.

Until 1889 the Civil Service was usually, but not

quite accurately, said to consist of two great divisions, the Covenanted and the Uncovenanted Services. The former is now the Civil Service of India. The latter had no existence as a single and separate body. Every public servant, employed in the civil administration, who did not belong to the Covenanted Civil Service or to the Army was an Uncovenanted officer. The term "Uncovenanted Service" is no longer used, its members now forming part of the Provincial Services.

It is a common but complete mistake to suppose that the greater part of the Civil administration in India is retained in the hands of Englishmen, and that Natives of the country are excluded from important posts. Nothing could be farther from the truth. The number of Englishmen in the Civil Service is so small that it is not the least extraordinary fact connected with our Indian dominion that we should be able with such a handful of men to control the administration of so vast an empire.

In 1902, in the whole of British India, there were only 864 civil charges ordinarily, but by no means always, held by members of the Covenanted Service. This branch of the service comprised, as I have already said, 1067 members, but these numbers include officers on leave and others not actually employed. Including military officers in Civil employ and others, about 1200 Englishmen are employed in the civil government of 232 millions of people, and in the partial control of 62 millions more.

Although the highest offices of control, which are comparatively very few in number, are necessarily held by Englishmen, by far the greater and a most important part of the actual administration is in Native hands. Excluding the 864 offices to which I have already re-

ferred, and excluding also all posts of minor importance, nearly all of which are held by Natives, there are about 3700 persons holding offices in the superior branches of the executive and judicial services, and among them there are only about 100 Europeans. The number of Natives employed in the public service has gone on constantly increasing, and, with very rare exceptions, they now hold all offices other than those held by the comparatively small body of men appointed in England. Under orders passed in 1879 by the Government of Lord Lytton, which apply to all the offices to which I am now referring, and which are still in force, no person other than a Native of India can be appointed to any post in the executive or judicial services carrying a salary of 200 rupees a month and upwards without the previous sanction of the Governor-General in Council.

All these are facts which have usually been completely ignored in the numerous discussions that have taken place in Parliament and elsewhere regarding the employment of Natives of India in posts of importance.

The organisation of our great and highly efficient Native Civil Service is one of the most successful achievements of the British Government in India. Native officers manage by far the greater part of the business connected with all branches of the revenue, and with the multifarious interests in land. Natives dispose of the greater part of the magisterial work. The duties of the Civil Courts throughout India, excepting the Courts of Appeal, are almost entirely entrusted to Native judges. Native judges sit on the Bench in each of the High Courts. For many years past, Native judges have exercised jurisdiction, in all classes of civil cases, over Natives and Europeans alike. Forty years ago the Native Civil Service was badly paid, compara-

tively inefficient, and not always trustworthy. In these respects there has been a great change. Nothing in the recent history of India has been more remarkable than the improvement that has taken place in the standard of morality among the higher classes of Native officials. Much of this has certainly been due to the fact that their position and salaries are far better than they were, and that temptations to corruption have been removed, but it cannot be doubted that much has been due to their better education. Another powerful cause has been in silent and constant operation. The Native officials have had before them, through a long course of years, the example of the irreproachable integrity of the Englishmen employed in the higher ranks of the public service. Living in an atmosphere of official uprightness has made Native judges and magistrates upright also.

The salaries given to Natives in posts of importance are very liberal, and they certainly do not err on the side of being too small. With, possibly, the exception of England, there is no country in Europe in which judicial and executive officers receive salaries equal to those given in the Native Civil Service of India.[1]

[1] It is impossible to make any accurate comparison between salaries in countries where the value of money, the conditions of life, and the official duties to be performed are very different. Subject to this warning, which, however, tells strongly in favour of what I have said regarding the salaries paid to Natives of India, I give the following facts. In Bengal a High Court judge, whether English or Native, receives £3200 a year. The salaries of the Native subordinate judges range from £480 to £800, and those of the Munsifs (the lowest class of judges) from £160 to £320. The salaries attached to posts formerly reserved to officers of the Covenanted Civil Service, and now held by Natives in the Provincial Services, vary from £640 to £1600. The salaries of the higher grades in the executive service are not very dissimilar. In Algeria, the highest judicial officer, the First President of the Court of Appeal, who is always a Frenchman, receives £720, with a furnished house. No other judge has more than £400. The Juges de Paix, also Frenchmen, receive from £108 to £160 a year, with furnished houses. The salary of no Mohammedan judicial officer, a native of

Salaries depend on the service to which a man belongs, and are not affected by questions of nationality. Thus, in the Imperial Service, recruited in England, the rules regarding pay, leave, and pension are the same for all members, whether they are European or Native. In the Provincial Services, recruited in India, the conditions of service are fixed on independent grounds. They are regulated in both cases by consideration of the terms necessary to secure the desired qualifications.

I have shown how extremely small is the number of Englishmen in the Covenanted or Imperial Service, which may be said to represent the only permanent English official element in India. The Public Service Commission laid great stress upon this fact, and on the consequent necessity of recruiting that service in a manner which shall always secure the maintenance of English principles and methods of government. They therefore rejected as altogether inadmissible the proposal that competitive examinations for Native candidates should be held in India, as well as in England. That proposal was afterwards revived by a resolution, passed under circumstances on which I will not dilate, by the

Algeria, exceeds £60. The Préfet of Algiers receives £1000, and two other Préfets receive £800 ; each Préfet has also a travelling allowance of £200 a year and a furnished house. No Sous-Préfet has more than £360. In France itself the salaries of the higher judicial and executive officers are smaller than those given to Natives in India. For instance, the First President of the Cour de Cassation receives £1200. In the Cour d'Appel, the salaries of the First Presidents range from £600 to £1000, and of the other Presidents from £300 to £550. In the Tribunaux de Première Instance the salaries of the judges are from £144 to £800. The Juges d'Instruction receive from £115 to £384 ; the Juges de Paix from £72 to £320. In many cases these salaries are supplemented by the grant of furnished houses and by various allowances, usually of small amount. A comparison between the salaries given to officers of the executive service in India and in France would show similar results. The great majority of the Préfets in France, who hold offices second in importance to hardly any in the country, receive less than Native Deputy Magistrates of the higher grades in Bengal.

House of Commons, without any knowledge of the facts or consideration of the probable consequences. It was not, however, acted upon by the Government.[1] The principle on which the Commission insisted is "that the conditions of the open competitive examination in England should be framed with the object of securing candidates trained in the highest and best form of English education. If, under such conditions, Native candidates succeed, they will then, as Lord Macaulay said, enter the service in the best and most honourable way. . . . Natives of India who undergo English training and show the degree of enterprise, strength of character, and other qualities without which success can scarcely be expected in the English examination, are to be welcomed as suitable recruits for the Covenanted Civil Service." No assumption of the possession of such qualities can be made in the case of Natives whose education and training have been entirely Indian. They may be thoroughly competent for many important offices, but we cannot depend on their possessing the habits of thought, the sympathy with English principles of administration, the vigour and the energy which are necessary qualifications for employment in a comparatively small service constituting the *corps d'élite* entrusted with the highest functions of government. There are other considerations of importance. "To attract English youths of suitable education and intellectual promise to the Covenanted Service in India, it is necessary to offer greater inducements in salary, pension, and furlough than would be requisite were the duties to be performed in their own country or under less unfavourable conditions of climate. To compensate successful Native candidates for the incon-

[1] See Chapter V. p. 71.

venience of presenting themselves at the examination in England, and to avoid an invidious distinction, advantages similar to those given to Englishmen are allowed them. But it would impose an unnecessary, and therefore unjustifiable, burden on the revenues of India, to provide larger emoluments or furlough privileges than are sufficient to attract Natives of high education and ability to an examination for the public service in India. This consideration has constantly been kept in view by the Government of India. As education in that country has from time to time qualified, more extensively, Natives to take part in the administration, European agency has been curtailed, and the field for the employment of Natives has been extended. At the same time, the Statute of 1870 has put it in the power of the Government to secure the services of Natives who have given proof of eminent capacity for employment in any of the offices reserved by the Statute of 1861."[1]

The constitution of the Provincial Service involved action and a transfer to Natives of India of one-tn of the posts reserved by the Statute of 1861 the Covenanted Civil Service, and there is now "a eries of offices, rising from the subordinate classes of administrative business to a very high level of superior and responsible duties, judicial and executive, which throw open a sure and honourable prospect of employment to persons appointed in India, and of continuous promotion to officers of tried merit and ability."[2]

The number of appointments in the Provincial Service thus assigned exclusively to Natives of India is very considerable. Thus, for example, in Bengal, twenty of the offices formerly reserved to the Covenanted Civil

[1] Despatch from Secretary of State to Government of India, Sept. 12, 1889.
[2] Secretary of State to Government of India, Sept. 12, 1889.

Service may now be held by Natives; among them are six Judge-ships, and four appointments of Magistrate and Collector, the highest judicial and executive posts, as I shall hereafter explain, in an Indian district.

Rules have been laid down in each province prescribing the conditions under which the Provincial Government may appoint Natives of proved merit and ability to any of these offices. The first and paramount condition of appointment in every case is proved fitness for the post, and, apart from such fitness, seniority gives no claim. Barristers and pleaders, Natives of India, who have been enrolled for not less than ten years, may, in special cases, be appointed to judicial offices, although they do not belong to the Provincial Service.

The Statute of 1870, under which these rules were made, applied only to the appointment of Natives of India to offices formerly reserved by Statute to the Covenanted Civil Service. It did not allow the appointment of Europeans to such offices, other than members of that service, and in this respect it left untouched the restrictions imposed by the Act of 1861. Under that Act, in the so-called Regulation Provinces of Bengal, Madras, Bombay, and the Province of Agra, no Europeans other than members of the Covenanted Service can hold any of the offices reserved by law to that service unless they are appointed with the special sanction of the Secretary of State and a majority of his Council. The Act of 1861 does not apply to the Non-Regulation Provinces, the Punjab, Oudh, Central Provinces, Assam, and Burma. In those parts of India there has been no restriction on the discretion of the Government to exercise the power of appointment in any way that it thinks fit, and a considerable share in the higher branches of the civil administration has been

entrusted to military officers belonging to the Staff Corps, and to others.

In addition to the two branches of the Civil Service that have been described, there is a very large subordinate service in each province, from which promotion to the Provincial Service may be made as a reward for conspicuous merit. This is essentially a Native service, in which practically no Europeans are employed. Some of the offices comprised in it, although inferior in dignity to those belonging to the superior services, are important and well paid.

I have hitherto referred only to the executive and judicial services. In other important branches of the administration there is a division similar to that between the Imperial and Provincial Services, the members being partly recruited in England, and consisting chiefly of Englishmen, and partly of members recruited in India, and mainly composed of Natives. A division of this sort into two branches is made in the departments of Public Works, Telegraph, Police, and Education.

The English branch of the Public Works Department is recruited from officers of the Royal Engineers, from properly qualified officers of the Indian army, and from students at the Royal Indian Civil Engineering College at Cooper's Hill maintained by the Secretary of State. There are four Engineering Colleges in India, and they furnish to Natives of India, and to them alone, access to the higher grades of the Public Works Department. For many of the more important posts, which require special scientific and technical knowledge, it is at present seldom possible to find Natives possessing the necessary qualifications. The superior branch of the Telegraph Department is chiefly recruited from Cooper's Hill College. In the superior branch of the Indian Police

Service a strong European element is necessary, and for first appointments officers are recruited partly through open competition in England and partly in India. The Superior Educational Service is divided into two sections: the Indian Service, to which the first appointments are made by selection by the Secretary of State, and the Provincial Services, which are recruited exclusively in India. For the first, or Indian Service, the Secretary of State usually selects graduates of the Universities of the United Kingdom who have had experience in teaching. For the Forest Service the superior officers are chosen from men who have been successful in a competitive examination in England; this examination is open to all classes without distinction of race.[1]

I shall return, in a subsequent chapter, to the subject of the employment of Natives of India in posts of high importance.[2]

[1] Full particulars regarding the admission to all the principal Indian services—Civil, Military, and Marine,—and tables showing the salaries given to all the chief officers of the administration will be found in the *India List, and India Office List*, published annually.

[2] Chapter XXV.

CHAPTER VII

THE LAWS AND THE ADMINISTRATION OF JUSTICE

The foundations of the existing Judicial System—Regulations and Acts—The Laws and the Courts before the transfer of the Government to the Crown—Regulation and Non-Regulation Provinces—The Indian Law Commission—Lord Macaulay and the Penal Code—The progress of codification—Sir Henry Maine on the Indian Codes—Sir James Stephen on the Indian Penal Code—The establishment of High Courts—The Code of Criminal Procedure—Constitution of the Criminal Courts—Criminal jurisdiction over European British subjects—Changes in the Law in 1884—The codification of the Civil Law—Hindu and Mohammedan Law—The Code of Civil Procedure—Constitution of the Civil Courts—Civil jurisdiction over Europeans—The "Black Act" of 1836—The Native Judges—Defects in the existing Judicial System.

ALTHOUGH much had been done by Warren Hastings to reform and organise all branches of the public service, the main foundations of the existing administration of justice in India were laid in the time of Lord Cornwallis. In 1793 the issue of formal and definite legislative enactments began in the series of laws known as the Bengal, Madras, and Bombay Regulations. Since 1833 the term "Regulation" has ceased to be used; the laws are called, as in England, "Acts." These Regulations and Acts, and such Acts of Parliament as apply to India, constitute, apart from Hindu and Mohammedan law; of which I must speak separately, the civil and criminal law of British India.

Before the transfer of the Government to the Crown, the administration of criminal justice was in an unsatisfactory condition. The police was often oppressive, inefficient, and corrupt. In the greater part of British India, the criminal law and procedure were a jumble based on the old Mohammedan law, eked out and rendered tolerable by the Regulations and Acts of our own Government, by fragments of English law, and by the decisions and instructions of the superior courts. Civil justice was in a worse condition. The law was only to be found in a wilderness of enactments and "circular orders" of the courts, and as the number of these increased they became in course of time, as Sir Henry Cunningham says, "hoplessly unwieldy, entangled, and confusing. Human diligence shrank from the task of searching amid the voluminous provisions of obsolete or repealed legislation for a germ of living law, and grave illegalities not unfrequently occurred, owing to the ignorance which the chaotic condition of the statute-book rendered almost inevitable."[1]

These difficulties were increased by the devotion of the superior Indian courts of that time to technicalities which survived long after they had ceased in England to be seriously mischievous. Even in the later years of the East India Company, the civil courts often seemed to be intended rather for the performance of certain forms and ceremonies than for the administration of justice.

While this was the condition of the law and procedure, the expansion of the empire was in more or less constant progress, and when new provinces were annexed the Government shrank from taking the judicial system of the older provinces as a model. Apart from such

[1] *India and its Rulers*, p. 203.

reasons, when the people had never been accustomed to anything but personal rule of the roughest sort, it was often necessary, on the first introduction of our government, to concentrate executive and judicial authority in the same hands. Government by regular course of law cannot be substituted in a moment for a government of irresponsible power. Moreover, the simpler forms of administration were much cheaper.

It thus came to pass that there were two systems in force—one in the older provinces, and the other in the territories which had more recently come into our possession. The former were called "Regulation," and the latter "Non-Regulation" provinces. A Non-Regulation province was one to which the old Regulations and Acts in force in the Regulation provinces had not been extended, in which fewer officers were employed, and in which executive and judicial functions were, to a great extent, exercised by the same persons. Bengal, the North-Western Provinces, Madras, and Bombay were Regulation Provinces; the Punjab, Oudh, the Central Provinces, and British Burma were Non-Regulation.

It is a mistake, though a common one, to suppose that in the more advanced of the Non-Regulation Provinces, as, for example, in the Punjab, when the Government was transferred to the Crown, the administration was conducted in a rough and ready way, in accordance with our officers' own notions of equity, unhampered by law. The Government of the Punjab, in 1860, really deserved better than the Government of the North-Western Provinces or of Bengal, so far as the judicial administration was concerned, to be called a Government by law. In the former the laws, though simple, were rational, intelligible, and certain; in the latter the system was so chaotic that there was virtually

almost no law at all. When the admirable codes of law and procedure, of which I shall presently speak, were introduced, less change had to be made in the system of administering criminal and civil justice in the Non-Regulation than in the Regulation Provinces.

The superiority of the administration which was so marked in the Non-Regulation Provinces towards the close of the East India Company's Government ceased before many more years had passed. Improvement in the older provinces went on rapidly, and, although differences in the form of the administration still exist, the distinctions between Regulation and Non-Regulation Provinces have become much less important than they were. A few comparatively wild tracts alone remain outside the pale of the codes of law and procedure which apply to the whole of British India.

The first steps towards the simplification and improvement of the law were taken in the time of the East India Company, but they led to little practical result before the transfer of the Government to the Crown. In 1833 it was provided by the Act of Parliament which renewed the Company's charter that a fourth member of Council should be appointed, in concert with a Commission, for the purpose of preparing a body of law for British India. Lord Macaulay was appointed member of Council, and the first subject taken up was the preparation of a Penal Code. This work fell chiefly upon Lord Macaulay, and it was completed by him while he was in India, between 1834 and 1838. The code remained as a mere draft for twenty-two years, and it was not until 1860 that it became law. During this interval it was revised from time to time by Lord Macaulay's successors, and especially by Sir Barnes Peacock, the last Chief Justice of the Supreme

Court of Calcutta. In the words of Sir James Stephen, "The long delay in the enactment of the Penal Code had thus the singular but most beneficial result of reserving a work which had been drawn up by the most distinguished author of the day for a minutely careful revision by a professional lawyer, possessed of as great experience and as much technical knowledge as any man of his time. An ideal code ought to be drawn by a Bacon and settled by a Coke."[1]

Although many valuable recommendations for the improvement of the criminal and civil law were made by the Commission of which Lord Macaulay was a member, the Penal Code was the only important result of its labours. In 1853, when the Company's charter was again renewed,[2] a fresh Commission was appointed in England, and this was followed in 1861 by a third Commission, for the purpose of preparing a body of substantive law for India, "and also to consider and report on such other matters relating to the reform of the laws of India as might be referred to them by the Secretary of State." To these two Commissions, whose work continued until 1870, and to the eminent men who since the time of Lord Macaulay have held the office of legal member of Council, we owe the succession of excellent laws which have been passed by the Indian Legislature, and which form chapters in a system of codified law. This system is not yet complete, but there is no country where the work of codification has made greater progress. "British India," writes Sir Henry Maine, "is now in possession of a set of codes which approach the highest standard of excellence which this species of legislation has reached. . . . In form, intelligibility, and

[1] *History of the Criminal Law*, vol. iii. p. 300.

[2] 16 and 17 Vict. c. 95.

in comprehensiveness, the Indian codes stand against all competition." [1]

The Penal Code, which became law in 1860, was followed in 1861 by the Code of Criminal Procedure. Substantially, the whole criminal law of British India is contained in these two laws.

In regard to the merits of the Indian Penal Code no one could speak with higher authority than Sir James Stephen, and in forming his judgment he not only had the advantage of his English experience, but of personal knowledge gained by observation in India. He pronounced it to be "by far the best system of criminal law in the world," and I cannot doubt that he was right in his prediction that it will prove the most remarkable and lasting monument of Lord Macaulay, its author. The authority of his other writings is far from as indisputable as it was, but his Penal Code has (in Sir James Stephen's words) "triumphantly supported the test of experience for upwards of twenty-one years, during which time it has met with a degree of success which can hardly be ascribed to any other statute approaching the same dimensions."

I cannot do better than continue my quotation :—

"The Indian Penal Code may be described as the criminal law of England freed from all technicalities and superfluities, systematically arranged, and modified in some few particulars (they are surprisingly few) to suit the circumstances of British India. . . . It is practically impossible to misunderstand the Penal Code, and, though it has been in force for more than twenty years, and is in daily use in every part of India by all sorts of courts and amongst communities of every degree of civilisation, and has given rise to countless decisions, no obscurity or ambiguity worth speaking of has been discovered in it. . . . Since its enactment it has been substantially the only body of

[1] *The Reign of Queen Victoria*—"India," vol. i. p. 503.

criminal law in force in India, though a few other statutes contain penal provisions on various special subjects. I have already expressed my opinion that the Indian Penal Code has been triumphantly successful. The rigorous administration of justice of which it forms an essential part has beaten down crime throughout the whole of India to such an extent that the greater part of that vast country would compare favourably, as far as the absence of crime goes, with any part of the United Kingdom, except perhaps Ireland in quiet times and apart from political and agrarian offences. Apart from this, it has met with another kind of success. Till I had been in India I could not have believed it to be possible that so extensive a body of law could be made so generally known to all whom it concerned in its minutest details. I do not believe that any English lawyer or judge has anything like so accurate and comprehensive and distinct a knowledge of the criminal law of England as average Indian civilians have of the Penal Code. Nor has all the ingenuity of commentators been able to introduce any serious difficulty into the subject. After twenty years' use it is still true that any one who wants to know what the criminal law of India is has only to read the Penal Code with a common use of memory and attention." [1]

Until 1861 the Supreme Courts established by Royal Charter in Calcutta, Madras, and Bombay exercised original criminal and civil jurisdiction over all classes within the limits of the three Presidency towns. The principal criminal and civil courts established by the Company's Government in the Mofussil (as everything outside the Presidency towns was termed) were called respectively the Sudder Nizámat and Sudder Diwáni Adálat. They were the supreme courts of appeal, and capital sentences were referred to the Nizámat Adálat for confirmation.

In 1861 the Supreme and Sudder Courts were

[1] *History of the Criminal Law*, vol. iii. p. 332. The passages quoted were written by Sir James Stephen in 1881, and they were equally true more than twenty years later.

abolished by Act of Parliament,[1] and in substitution for them High Courts with both criminal and civil jurisdiction were established by Letters Patent, one for each of the provinces of Bengal, Madras, Bombay, and the North-Western Provinces. For parts of India not included in any of those provinces, High Courts were formed under other names by the legislative authority of the Government of India; in the Punjab and in Lower Burma there are Chief Courts with three or more judges; in the other provinces the chief appellate authority is an officer called the Judicial Commissioner. The judges of the High Courts are partly English barristers and partly members of the Indian Civil Service, and there are in each court one or more Native judges chosen from the Native judicial service or from the pleaders. The High Courts in each province are the Courts of Appeal from the District Courts, criminal and civil, and their decisions are final, except in certain cases in which an appeal lies to His Majesty in Council, and is heard by the Judicial Committee of the Privy Council in England.

The High Courts exercise constant supervision over all the subordinate courts. Elaborate returns are regularly sent to them at short intervals, showing in great detail the business disposed of, and, as the evidence in every case has to be recorded, the High Courts are able, by examining the returns, by sending for proceedings, and by calling for explanations, as well as from the cases that come before them in appeal, to keep themselves acquainted with the manner in which all the courts are discharging their duties.

The Code of Criminal Procedure, which became law in 1861, has been recast and amended from time to

[1] 24 and 25 Vict. c. 104.

time, but in essential respects it has not been much altered. It is in force throughout British India, although a few of its provisions have, in some parts of the country, been modified to meet special requirements. Among all the laws of India there is no one more important than this, which regulates the machinery by which peace and order are maintained, and by which crime is prevented and punished. It describes the constitution of all the criminal courts; it defines the powers which each court can exercise; it classifies the offences under the Penal Code or other laws which each judge or magistrate can try; it regulates the manner in which police investigations are to be carried on; the powers of the police to make arrest with or without the warrant of a magistrate; the proceedings to be taken for keeping the peace and for preventing unlawful assemblies; for the removal of public nuisances; the manner in which accused persons are to be brought before the magistrate, in which inquiries and trials are to be held, in which evidence is to be heard and recorded, in which commitments to the superior courts are to be made; it contains rules for the trial of cases with juries and assessors, for the admission of appeals, for the revision of sentences and orders by the superior courts, and for many other matters more or less directly connected with criminal procedure. As Sir James Stephen said in one of his speeches in India, this code is the principal means through which the practical everyday business of governing the empire is carried on. The system which it lays down is complete, efficient, and successful.

In every province there are a certain number of divisions, in each of which a Court of Session is established, presided over by a Sessions judge. Additional, joint, and assistant Sessions judges may be appointed.