

THE GOVERNMENT OF INDIA

*BEING A DIGEST OF THE STATUTE LAW
RELATING THERETO*

WITH HISTORICAL INTRODUCTION

AND

EXPLANATORY MATTER

BY

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SECOND EDITION

OXFORD

AT THE CLARENDON PRESS
LONDON AND NEW YORK: HENRY ROWDE

ALSO SOLD BY

STEVENS & SONS, LIMITED, 119 & 120 CHANCERY LANE, LONDON

1907



LONDON

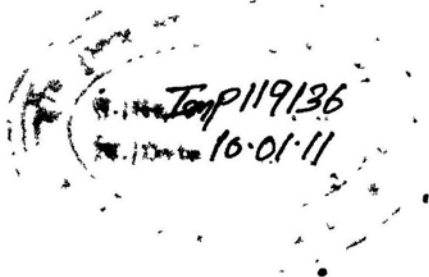
HENRY FROWDE, M.A.

PUBLISHER TO THE UNIVERSITY OF OXFORD



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PREFACE

THIS is a revised edition of a book which was published in 1898.

In the year 1873 the Secretary of State for India sent to the Government of India the rough draft of a Bill to consolidate the enactments relating to the Government of India. This draft formed the subject of correspondence between the India Office and the Government of India, and an amended draft, embodying several proposals for alteration of the law, was submitted to the India Office by the Government of India in the month of February, 1876. After that date the matter was allowed to drop.

The case for consolidating the English statutes relating to India is exceptionally strong. The Government of India is a subordinate Government, having powers derived from and limited by Acts of Parliament. At every turn it runs the risk of discovering that it has unwittingly transgressed one of the limits imposed on the exercise of its authority. The enactments on which its authority rests range over a period of more than 120 years. Some of these are expressed in language suitable to the time of Warren Hastings, but inapplicable to the India of to-day, and unintelligible except by those who are conversant with the needs and circumstances of the times in which they were passed. In some cases they have been duplicated or triplicated by subsequent enactments, which reproduce with slight modifications, but without express repeal, the provisions of earlier statutes; and the combined effect of the series of enactments is only to be ascertained by a careful study and comparison of the several parts. A consolidating Act would repeal and supersede more than forty separate statutes relating to India.

In England the difficulty of threading the maze of administrative statutes is mitigated by the continuity of administrative tradition. In India there is no similar continuity. The Law Member of Council, on whom the Governor-General is mainly dependent for advice as to the nature and extent of his powers, brings with him from England either no knowledge or a scanty knowledge of Indian administration, and holds

office only for a term of five years. The members of the Civil Service who are posted at the head-quarters of the Central and Local Governments are engaged in climbing swiftly up the ladder of preferment, and rarely pause for many years on the same rung. Hence the risk of misconstruing administrative law, or overlooking some important restriction on administrative powers, is exceptionally great.

During various intervals of leisure after my return from India in 1886 I revised and brought up to date the consolidating draft of 1873, and endeavoured to make it an accurate reproduction of the existing statute law. The revised draft was submitted to the Secretary of State, but the conclusion arrived at, after communication with the Government of India, was adverse to the introduction of a consolidating measure into Parliament at that time. It was, however, suggested to me by the authorities at the India Office that the draft might, if published as a digest of the existing law, be useful both to those who are practically concerned in Indian administration, and to students of Indian administrative law. It has accordingly been made the nucleus of the following pages.

The first chapter contains such amount of historical introduction as appeared necessary for the purpose of making the existing law intelligible. The sources from which I have drawn are indicated in a note at the end of the chapter. There are many excellent summaries of British Indian history, and the history of particular periods has been treated with more or less fullness in the biographies of Indian statesmen, such as those which have appeared in Sir William Hunter's series. But a history of the rise and growth of the British Empire in India, on a scale commensurate with the importance of the subject, still remains to be written. Sir Alfred Lyall's admirable and suggestive *Rise and Expansion of the British Dominion in India* appears to me to indicate, better than any book with which I am acquainted, the lines on which it might be written.

The second chapter contains a short summary of the existing system of administrative law in India. This has been carefully revised in the present edition, and brought up to date.

The third chapter is a digest of the existing Parliamentary enactments relating to the government of India, with ex-

planatory notes. This digest has been framed on the principles now usually adopted in the preparation of consolidation Bills to be submitted to Parliament; that is to say, it arranges in convenient order, and states in language appropriate to the present day, what is conceived to be the net effect of enactments scattered through several Acts. When this process is applied to a large number of enactments belonging to different dates, it is always found that there are *lacunae* to be filled, obscurities to be removed, inconsistencies to be harmonized, doubts to be resolved. The Legislature can cut knots of this kind by declaring authoritatively how the law is to be construed. The draftsman or the text-writer has no such power. He can merely state, to the best of his ability, the conclusions at which he has arrived, and supply materials for testing their accuracy.

The fourth chapter, which deals with the application of English law to the natives of India, is based on a paper read at a meeting of the Society of Comparative Legislation. It points to a field in which useful work may be done by students of comparative jurisprudence.

In the fifth chapter I have tried to explain and illustrate the legal relations between the Government of British India and the Governments of the Native States by comparison with the extra-territorial powers exercised by British authorities in other parts of the world, such as the countries where there is consular jurisdiction, and in particular the modern protectorates. The subject is interesting and important, but full of difficulty. The rules and usages which govern the relation between States and peoples of different degrees and kinds of civilization are in a state of constant flux and rapid growth, and on many topics dealt with in this chapter it would be unsafe to lay down general propositions without qualifying and guarding words. There are quicker *als* at every step.

Since the date of the first edition of this work important changes have been made in the Orders in Council which regulate the exercise of jurisdiction in African protectorates, and the jurisdiction exercised by the Governor-General in Council in the Native States of India has been brought into line with the extra-territorial jurisdiction exercised under authority of the

British Crown in other parts of the world by shifting its basis from an Act of the Indian legislature to an Order in Council under the Foreign Jurisdiction Act, 1890.

I am indebted for valuable assistance to friends both at the India Office and in India. Frequent reference has also been made to the minutes of Sir H. S. Maine printed for the Indian Legislative Department in 1890.

But although the book owes its origin to an official suggestion, and has benefited by the criticisms of official friends, it is in no sense an official publication. For any statements or expressions of opinion I am personally and exclusively responsible.

I have omitted from this edition certain reprints of documents which are to be found elsewhere. The charters of the Indian High Courts are now to be found in Vol. VI of the Statutory Rules and Orders revised. The first Charter to the East India Company, with some omissions, will be found in Prothero, *Statutes and Constitutional Documents*. The other illustrative documents printed in ch. viii of the first edition would find an appropriate place in a selection of documents illustrating the constitutional history of British India. Such a selection would be of great use to students.

C. P. ILBERT.

SPEAKER'S COURT,
January, 1907.

CONTENTS

CHAPTER I

HISTORICAL INTRODUCTION

	PAGE
Twofold origin of British authority in India	1
Three periods in history of constitutional development	<i>ib.</i>
Landmarks of first period	2
Landmarks of second period	<i>ib.</i>
Landmarks of third period	3
Charter of Elizabeth	<i>ib.</i>
Points of constitutional interest in charter of Elizabeth. Constitu- tion of Company	6
Privileges of Company	7
Legislative powers of Company	9
Resemblance to Massachusetts Company	10
Other English trading companies	11
Russia Company	<i>ib.</i>
Levant Company	12
The separate voyages	13
James I's charter of 1609	<i>ib.</i>
Beginning of martial law exercisable by Company	14
Grant of 1615	<i>ib.</i>
Grant of 1623	<i>ib.</i>
Contests with Dutch and English rivals	15
Massacre of Amboyna	<i>ib.</i>
Courten's Association	<i>ib.</i>
Cromwell's relations to the Company	<i>ib.</i>
Cromwell's charter of 1657	<i>ib.</i>
The Company after the Restoration	16
Charles II's charter of 1661	<i>ib.</i>
Arrangements for administration of justice at Madras in seventeenth century	17
Grant of Bombay to the Company	18
Charter of 1677 granting powers of coinage	19
Administration of justice at Bombay in seventeenth century	<i>ib.</i>
Charter of 1683 giving power to raise forces and exercise martial law, and establishing Courts of Admiralty	<i>ib.</i>
Charter of 1686	20
Establishment of municipality at Madras	21
Charter of 1687	22
Company's resolution of 1689	23
Controversies after Revolution of 1688	24
Charters of 1693 and 1694	25
The affair of the <i>Redbridge</i> and its results	26
Incorporation of English Company	27
Union of Old and New Companies	29

	PAGE
Period between 1708 and 1765	30
Extension of Company's charter	31
Provisions against interlopers	<i>ib.</i>
Judicial charters of 1726 and 1753	32
Mutiny Act and Articles of War for Indian Forces	33
Charters of 1757 and 1758 as to booty and cession of territory	34
The Company as territorial sovereign	37
Grant of the Diwani	<i>ib.</i>
Legislation of 1767	38
Pecuniary embarrassments in 1772	40
Legislation of 1773	<i>ib.</i>
The Regulating Act of 1773	41
Provisions of Regulating Act	44
Charter of 1774 constituting supreme court at Calcutta	50
Difficulties arising out of Regulating Act	<i>ib.</i>
Difficulties in the council	<i>ib.</i>
Difficulties between supreme council and supreme court	51
Amending Act of 1781	55
Further legislation of 1781	59
Parliamentary inquiries of 1781	60
Fox's East India Bill	61
Pitt's Act of 1784	62
Legislation of 1786	67
Legislation of 1788	68
Charter Act of 1793	69
Legislation between 1793 and 1813	71
Charter Act of 1813	72
Legislation between 1813 and 1833	79
Charter Act of 1833	81
Legislation between 1833 and 1853	89
Charter Act of 1853	90
Establishment of chief commissionerships	92
<u>The Government of India Act, 1858</u>	94
The Indian Army	97
Legislation of 1861	98
Indian Civil Service Act, 1861	<i>ib.</i>
Indian Councils Act, 1861	99
Indian High Courts Act, 1861	103
Legislation since 1861	104

CHAPTER II

SUMMARY OF EXISTING LAW

Home Government, Secretary of State	109
Council of India	<i>ib.</i>
Staff of India Office	110
Indian revenues	<i>ib.</i>
Audit	111
Contracts and legal proceedings	<i>ib.</i>

CONTENTS

ix

	PAGE
Government in India. The governor-general	171
The governor-general's council	ib.
The local governments	114
Indian legislation	115
Local legislatures	118
Indian Law	121
The Civil Service of India	123
The chartered high courts	126
Jurisdiction of English courts over offences in India	128
The army in India	129
Ecclesiastical establishment	131
Subsidiary provisions	ib.
Administrative arrangements not dependent on Acts of Parliament	132
Financial system	133
Administrative staff of local governments	134
Regulation and non-regulation provinces	135
The district	ib.
The district magistrate and his staff	ib.
Municipal and district councils	136
Judicial arrangements	ib.
Civil jurisdiction	137
Criminal jurisdiction	ib.
The Native States	139
Division of sovereignty	ib.
General control by British Government	ib.
Control over foreign relations	140
Power to maintain peace	141
Special responsibility for British subjects in Native States	ib.
Subordinate military co-operation	142
Exceptional position of Native Indian States	143

CHAPTER III

DIGEST OF STATUTORY ENACTMENTS RELATING TO THE GOVERNMENT OF INDIA

PART I.

THE SECRETARY OF STATE IN COUNCIL.

SECTION	<i>The Crown.</i>	
1. Government of India by the Crown		144
	<i>The Secretary of State.</i>	
2. The Secretary of State		145
	<i>The Council of India.</i>	
3. The Council of India		146
4. Seat in council disqualification for Parliament		148
5. Claims to compensation		ib.
6. Duties of council		ib.
7. Powers of council		ib.

SECTION	PAGE
8. President and vice-president of council	149
9. Meetings of the council	<i>ib.</i>
10. Procedure at meetings	<i>ib.</i>
11. Committees of council	150

Orders and Dispatches.

12. Submission of orders, &c., to council, and record of opinions thereon	150
13. Provision for cases of urgency	151
14. Provision as to secret orders and dispatches	<i>ib.</i>
15. Signature and address of orders, &c.	152
16. Communication to Parliament as to orders for commencing hostilities	<i>ib.</i>
17. Correspondence by governor-general with Secretary of State	<i>ib.</i>

Establishment of Secretary of State.

18. Establishment of the Secretary of State	153
19. Pensions	<i>ib.</i>

Indian Appointments.

20. Indian appointments	154
21. Powers of Crown and Secretary of State as to removal of officers	155

PART II.

REVENUES OF INDIA.

22. Application of revenues	159
23. Control of Secretary of State over expenditure of revenues	160
24. Restriction on application of revenues to military operations beyond the frontier	161
25. Accounts of Secretary of State with Bank	<i>ib.</i>
26. Powers of attorney for sale or purchase of stock and receipt of dividends	162
27. Provision as to securities	163
28. Exercise of borrowing powers	<i>ib.</i>
29. Accounts to be annually laid before Parliament	164
30. Audit of Indian accounts in United Kingdom	164

PART III.

PROPERTY, CONTRACTS, AND LIABILITIES.

21. Power of Secretary of State to sell, mortgage, and buy property	167
32. Contracts of Secretary of State	<i>ib.</i>
33. Power to execute assurances, &c., in India	168
34. Power to dispose of escheated property, &c.	169
35. Rights and liabilities of Secretary of State in Council	170

PART IV.

THE GOVERNOR-GENERAL IN COUNCIL.

General Powers of Governor-General in Council.

36. General powers and duties of Governor-General in Council	176
--	-----

The Governor-General.

37. The governor-general	177
------------------------------------	-----

CONTENTS

xi

SECTION,	<i>The Council of the Governor-General.</i>	PAGE
38.	Constitution of governor-general's council	178
39.	Ordinary members of council	<i>ib.</i>
40.	Extraordinary members of council	179
41.	Ordinary and legislative meetings of governor-general's council	180
42.	Ordinary meetings of council	<i>ib.</i>
43.	Business of Governor-General in Council	181
44.	Procedure in case of difference of opinion	182
45.	Provision for appointment of president of council	185
46.	Provision for absence of governor-general, or president, from meetings of council	<i>ib.</i>
47.	Powers of governor-general in absence from council	186

War and Treaties.

48.	Restriction on power of Governor-General in Council to make war or treaty	<i>ib.</i>
-----	---	------------

PART V.

LOCAL GOVERNMENTS.

General.

49.	Relation of local Governments to Governor-General in Council	187
-----	--	-----

Governments of Madras and Bombay.

50.	Governments of Madras and Bombay	188
51.	Ordinary members of councils	189
52.	Ordinary and legislative meetings of Madras and Bombay Councils	190
53.	Procedure in cases of difference of opinion	<i>ib.</i>
54.	Business of Governor in Council	<i>ib.</i>

Lieutenant-Governorships and other Provinces.

55.	Lieutenant-governors	191
56.	Power to place territory under authority of Governor-General in Council	193
57.	Power to alter limits of provinces	194
58.	Saving as to laws	196
59.	Power to extend boundaries of presidency towns	<i>ib.</i>

PART VI.

INDIAN LEGISLATION.

Legislation by Governor-General in Council.

60.	Additional members of council for legislative purposes	197
61.	Times and places of legislative meetings	198
62.	Constitution of legislative meetings of council	<i>ib.</i>
63.	Legislative power of Governor-General in Council	199
64.	Business at legislative meetings	208
65.	Assent of governor-general to Acts	209
66.	Power of Crown to disallow Acts	210
67.	Rules for conduct of business	<i>ib.</i>
68.	Power to make regulations	211
69.	Power to make ordinances in cases of emergency	212

SECTION	<i>Local Legislatures.</i>	PAGE
70.	Meaning of local legislatures	213
71.	Constitution of legislative council in Madras and Bombay	<i>ib.</i>
72.	Procedure at legislative meetings of councils of Madras and Bombay	214
73.	Constitution of legislative councils of lieutenant-governors	215
74.	Power to constitute new local legislatures	216
75.	Procedure at meetings of lieutenant-governor's council	218
76.	Powers of local legislature	<i>ib.</i>
77.	Business at legislative meetings	221
78.	Assent to Acts of local legislatures	222

Validity of Indian Laws

79.	Removal of doubts as to validity of certain laws	223
-----	--	-----

PART VII.

SALARIES, LEAVE OF ABSENCE, VACATION OF OFFICE, TEMPORARY APPOINTMENTS, &c.

80.	Salaries and allowances of governor-general and certain other officials in India	224
81.	Leave of absence to members of council	226
82.	Provision as to absence from India or province	<i>ib.</i>
83.	Conditional appointments	229
84.	Power for governor-general to exercise powers before taking seat	<i>ib.</i>
85.	Provision for temporary vacancy in office of governor-general	230
86.	Provision for temporary vacancy in office of Governor of Madras or Bombay	231
87.	Provision for temporary vacancy in office of ordinary member of council	232
88.	Vacancies amongst additional members of council	233
89.	Leave on furlough	234
90.	Power to make regulations as to Indian appointments	<i>ib.</i>

PART VIII

THE CIVIL SERVICE OF INDIA.

91.	No disabilities in respect of religion, colour, or place of birth	234
92.	Regulations for admission to civil service	<i>ib.</i>
93.	Offices reserved to civil servants	235
94.	Power to appoint natives of India to reserved offices	<i>ib.</i>
95.	Power to make provisional appointments in certain cases	237

PART IX.

THE INDIAN HIGH COURTS.

Constitution

96.	Constitution of high courts	237
97.	Tenure of office of judges of high courts	238
98.	Precedence of judges of high courts	<i>ib.</i>
99.	Salaries, &c., of judges of high courts	<i>ib.</i>
100.	Provision for vacancy in the office of chief justice or other judge	<i>ib.</i>

CONTENTS

xiii

SECTION	<i>Jurisdiction.</i>	PAGE
101.	Jurisdiction of high courts	239
102.	Powers of high courts with respect to subordinate courts	245
103.	Exercise of jurisdiction by single judges or division courts	246
104.	Power for Governor-General in Council to alter local limits of jurisdiction of high courts	<i>ib.</i>
105.	Exemption from jurisdiction of high court in public capacity	247
106.	Written order by governor-general a justification for any act in any court in India	248
107.	Procedure in case of oppression, &c., by governor-general or his council	<i>ib.</i>
	<i>Law to be administered.</i>	
108.	Law to be administered in cases of inheritance and succession	249
	<i>Advocate-General.</i>	
109.	Appointment and powers of advocate-general	251

PART X.

ECCLESIASTICAL ESTABLISHMENT.

110.	Jurisdiction of Indian bishops	252
111.	Power to admit to holy orders	<i>ib.</i>
112.	Consecration of person resident in India appointed to bishopric	253
113.	Salaries and allowances of bishops and archdeacons	<i>ib.</i>
114.	Furlough rules	254
115.	Establishment of chaplains of Church of Scotland	<i>ib.</i>
116.	Saving as to grants to Christians	<i>ib.</i>

PART XI.

OFFENCES, PENALTIES, AND PROCEDURE.

117.	Certain acts to be misdemeanours: Oppression. Wilful disobedience. Breach of duty. Trading. Receiving presents	255
118.	Loans to native princes	256
119.	Prosecution of offences in England	257
120.	Provision as to persons suspected of dangerous correspondence	260

PART XII.

SUPPLEMENTAL.

121.	Saving as to certain rights and powers	262
122.	Treaties, contracts, and liabilities of East India Company	<i>ib.</i>
123.	Orders of East India Company	263
124.	Definitions	<i>ib.</i>
	SUPPLEMENTAL NOTES	266

SCHEDULES :—

I.	Official salaries	272
II.	Offices reserved to the Civil Service of India	<i>ib.</i>

TABLE OF COMPARISON BETWEEN STATUTORY ENACTMENTS AND DIGEST	274
---	-----

CHAPTER IV

APPLICATION OF ENGLISH LAW TO NATIVES OF INDIA

	PAGE
Introduction of English Law into India	323
Charter of 1753	324
Warren Hastings' 'Plan' of 1772	<i>ib.</i>
Gradual modification of criminal law	325
Observance of native rules as to family law	<i>ib.</i>
The Lex Loci Act	327
Law applicable to persons neither Hindus nor Mahomedans	329
Rules as to local usage in Bombay and the Punjab	<i>ib.</i>
Native Christians and Armenians	330
Parsees	<i>ib.</i>
Justice, equity, and good conscience	<i>ib.</i>
State of law at passing of Charter Act of 1833	<i>ib.</i>
First Indian Law Commission	332
Penal Code, Codes of Civil and Criminal Procedure, &c.	<i>ib.</i>
Indian Succession Act	<i>ib.</i>
Oudh Estates Act	333
Hindu Wills Act	<i>ib.</i>
Probate and Administration Act	334
Indian Contract Act	<i>ib.</i>
Negotiable Instruments Act	<i>ib.</i>
Transfer of Property Act	335
Trusts Act	<i>ib.</i>
Easements Act	336
Guardian and Wards Act	<i>ib.</i>
Law of torts	<i>ib.</i>
Subjects to which English and native law respectively apply	<i>ib.</i>
Attempt to govern natives by native law, Englishmen by English law	337
Causes of its failure	338
Reason for codification	339
Merits of Indian codes	<i>ib.</i>
How far codification applicable to native law	340
Codes and text-books	341

CHAPTER V

BRITISH JURISDICTION IN NATIVE STATES

Territorial character of Parliamentary legislation	342
Principles limiting extra-territorial legislation	<i>ib.</i>
Cases in which Parliament legislates for offences committed out of British territory	344
Offences at sea	345
Treason	347
Murder and manslaughter	<i>ib.</i>
Slave trade offences	<i>ib.</i>
Offences against Explosive Substances Act	<i>ib.</i>

CONTENTS

xv

	PAGE
Forgery and perjury	347
Bigamy	<i>ib.</i>
Foreign Enlistment Act	348
Classes of British subjects	<i>ib.</i>
Conclusions as to Parliamentary legislation for extra-territorial offences	350
Foreign Jurisdiction Acts	353
Original of consular jurisdiction. The Capitulations	<i>ib.</i>
The Levant Company	355
Dissolution of Levant Company	356
Difficulties arising from dissolution of Levant Company	357
Failure of Act of 1836 ; its causes	359
Foreign Jurisdiction Act of 1843	361
Law framed and administered under Foreign Jurisdiction Acts	362
Three stages in history of Acts	<i>ib.</i>
First stage : application to States under regular Governments	<i>ib.</i>
Anomalous position in Egypt	363
Second stage : application to barbarous countries	364
Third stage : application to protectorates	365
Recognition of African protectorates by Berlin Conference	<i>ib.</i>
Charter to German Colonization Society	<i>ib.</i>
Questions as to effect of German charter	366
Questions as to English protectorates in Africa	367
Persons over whom consular jurisdiction is exercisable	370
Consequences of establishment of protectorate	371
Jurisdiction in African protectorates	372
Conclusions as to jurisdiction under Foreign Jurisdiction Acts	376
Application of principles to India	377
Powers of Indian Legislature	378
Liability of British subjects for offences committed out of British India	385
Political Agents to certify fitness of inquiry into charge	<i>ib.</i>
Conclusions as to general powers of Indian Legislature	386
Extra-territorial powers of governor-general in executive capacity	387
Classes of persons to which jurisdiction extends	392
Conclusions as to extra-territorial powers of governor-general	398
INDEX	399

TABLE OF DATES

GENERAL HISTORY.	INDIA.
1453 (May 29). Constantinople taken by the Turks.	
1486. Cape of Good Hope discovered by Bartholomew Diaz.	
1493. Pope Alexander the Sixth's Bull.	
1497-8. Voyage of Vasco da Gama to India.	
1535-6 (February). Grant of 'Capitulations' by Solyman the Magnificent to Francis I	1556-1605. Akbar
1558-1603. Elizabeth.	1565. Fall of Hindu kingdom of Vijayanagar.
1572. Massacre of Huguenots.	
1577-80. Drake's voyage round the world.	
1579. Capitulations granted to England.	1579. Thomas Stevens visits Goa.
1580. Spain annexes Portugal.	
1581. Charter granted to Levant Company.	
1588. Defeat of the Spanish Armada. Levant Company incorporated.	
1589. Henry IV of France.	1589. An English expedition reaches India by land.
1598. Edict of Nantes	1600. East India Company founded
1599. Death of Philip II of Spain.	1602. Dutch East India Company founded.
1603. James I.	1604. French East India Company founded.
1606. First Charter of Virginia Company.	1605-27. Jehangir.
1609. Second Charter of Virginia Company.	1609. Charter of East India Company renewed.
Henry IV of France murdered by Ravallac.	1611. English at Masulipatam.
	1612. English at Surat.
	1615. Sir Thomas Roesent as Envoy to Great Mogul.
	Authority to execute martial law granted to East India Company.
	1616. Tranquebar granted to the Danes.
1618. *Beginning of Thirty Years' War.	1620. English agents in Bengal.
	1622-3 (February). Massacre of Amboyna.

GENERAL HISTORY.	INDIA.
1624-42. Richelieu first minister of France.	1623-4 (February). ⁶ East India Company authorized to grant their officers power of executing martial law.
1625. Charles I.	1628-58. Shah Jahan.
1628. Charter granted to Massachusetts Company.	1634. English permitted to trade throughout the dominions of the Mogul.
1632. Battle of Lutzen — Death of Gustavus Adolphus.	1639. Madras bought by East India Company. — Fort St. George built.
1642-9. Civil War in England	1640. East India Company's factory at Hugli.
1643-1715. Louis XIV	1657. Cromwell's charter to East India Company.
1648. Peace of Westphalia. — End of Thirty Years' War.	1658. Madras made independent of Bantam.
1649 Commonwealth	1658-1707. Aurangzeb.
1651. Navigation Act.	1661. English get Bombay as part of dowry of Catherine of Braganza.
1651-4. First war between England and Holland.	(April 3) Charles II grants charter to East India Company.
1652. Dutch East India Company establish a station at the Cape.	1664. Sivaji becomes Raja of Marathas.
1653. Oliver Cromwell, Protector	Defence of Surat against Sivaji. French East India Company (Colbert's) established.
1655. Capture of Jamaica.	1669. Charles II gives Bombay to East India Company.
1660. Charles II. Navigation Act renewed	1677. Charter granting Company powers of coinage.
1664. New York taken from the Dutch.	1679. Aurangzeb at war with the Rajputs.
1665-7. Second war between England and Holland.	1680. Death of Sivaji.
1667 Treaty of Breda.	1681. Bengal made a separate presidency.
1672-4. Third war between England and Holland.	

GENERAL HISTORY.	INDIA.
1683. Death of Colbert.	1683. Rising at Bombay quelled. Charter giving powers of martial law and establishing Admiralty Courts.
1685. James II. Revocation of Edict of Nantes.	1686. Calcutta founded. Charter of James II to East India Company.
1688. Revolution in England.	1687. East India Company's factory moved from Surat to Bombay. English driven from Hugli, but allowed to return. Charter establishing municipality at Madras.
1689. William III.	1687-9. East India Company's war against Aurangzeb.
Peter the Great becomes Czar of Russia.	1691. 'New' or 'English' Company established.
1689-97. War between England and France.	1693 (October 7). Grant of new charter to old East India Company. (Supplemental charters November 11, 1693, and September 28, 1694.)
1694 Bank of England incorporated.	1696. East India Company build Fort William.
1697. Treaty of Ryswick.	1698. Charter modifying voting powers and qualifications of East India Company. Act (9 & 10 William III, c. 44) authorizing incorporation of 'General Society.' (September 3.) Charter incorporating the General Society as a regulated company. (September 5.) Charter incorporating the 'English Company.' East India Company buy site of Calcutta Aitchison's Treaties, i. 2).
1700. War between Sweden and Russia.	1702. Indenture Tripartite amalgamating the Old Company and the English Company.
1702. Anne.	1707. Death of Aurangzeb.
1702-13. War of Spanish Succession.	1708. Lord Godolphin's award as to terms of amalgamation.
1707. Union of England and Scotland.	1709. Old Company's charters surrendered.—The two companies united as the United East India Company.
1713. Treaty of Utrecht.	
1714. George I.	
French occupy Mauritius.	
1715. Rebellion in Scotland.	

GENERAL HISTORY.	INDIA
1715-74. Louis XV.	1719. New French East India Company.
1716-20. Law's 'system.'	1722. Charles VI grants charter to Ostend Company.
1720. South Sea Bubble.	1725. Charter of Ostend Company withdrawn.
1721-42. Walpole, Prime Minister.	1726. Municipal charters granted to Calcutta, Madras, and Bombay. Mayors' courts established in each place.
1725. Death of Peter the Great.	1728. Danish Company extinguished.
1727. George II.	1731. Swedish India Company formed.
1732. Colony of Georgia founded.	1739. Invasion of India by Nadir Shâh.
1740-4. Anson's voyages.	1742. Aliverdi Khan, Nawab of Bengal.
1740-8. Wars of the Austrian Succession.	1746. Labourdonnais takes Madras.
1740-86. Frederick II of Prussia.	1748. English besiege Pondicherry. Madras restored to English by treaty of Aix-la-Chapelle.
1744. Pelham, Prime Minister.	1749-54. War of succession in the Carnatic.
1745-6. Rebellion in Scotland.	1750-4. War between French and English Companies.
1748. Treaty of Aix-la-Chapelle.	1751. Clive seizes Arcot.
1754. Duke of Newcastle, Prime Minister.	1752. French surrender Trichinopoly.
1756-61. The elder Pitt directs foreign policy of England.	1753. New charters granted to Presidency towns.
1756-63. Seven Years' War.	1754. French recall Dupleix. Treaty of peace signed at Pondicherry.
	Mutiny Act (27 Geo. II, c. 9) passed for Indian forces.
	1756. Surâj-ud-doula becomes Nawab of Bengal and (June) takes Calcutta. (Black Hole Massacre.) Rupture between France and England.
	1757 (January). Clive recovers Calcutta.
	(June 23.) Battle of Plassey.
	1758. Lally's expedition reaches India.—Lally besieges Madras. Marâthâ invasion of Punjab.

GENERAL HISTORY.	INDIA.
1759. Wolfe takes Quebec.	1759. Lally raises siege of Madras.
1760. George III.	—Defeat of Dutch in Bengal.
	1760. Coote defeats Lally at Wandewash.
	Clive returns to England.
	1760-5. Period of misrule in Bengal.
	1761. Coote takes Pondicherry.—
1762. Bute, Prime Minister.	Fall of the French power in Deccan.
Catherine, Empress of Russia.	Ahmed Shah defeats Maráthás at
1763. Peace of Paris.—End of Seven	Battle of Paniput.
Years' War.	1763. Pondicherry restored to
George Grenville, Prime Minister.	France (Peace of Paris).
	Massacre of English prisoners at
	Patna.
	1764 (October 23). Battle of
	Baxar.
1765. Stamp Act passed.	1765. Clive returns to India, accepts
(July.) Rockingham, Prime Minister.—Stamp Act repealed.	Diwani of Bengal for the Com-
	pany, makes treaties of alliance
	with Oudh and the Mogul em-
	peror.
1766 (July). Duke of Grafton, Prime	1766. Grant of Northern Sarkars to
Minister.	Company.
	(November.) Parliamentary in-
	quiry into affairs of Company.
	1767-9. First war of English with
	Hyder Ali.
	1767. Clive finally leaves India.
	Acts of Parliament relating to
	East India Company (7 Geo. III,
	cc. 48, 49, 56, 57). Power to
	declare dividend restrained.
	Company to pay £400,000 annu-
	ally into Exchequer.
1768-71. Captain Cook circumnavigated the world.	1768. Restraint on dividend con-
	tinued (8 Geo. III, c. 11).
	The Nizám cedes the Carnatic.
	1769. New arrangement for five
	years between Government and
	Company. Payment of annuity
	of £400,000 continued (9 Geo.
	III, c. 24). "
1770. Lord North, Prime Minister.	1770. Famine in Bengal.
—Disturbance at Boston.	1771 (August 28). Company resolve
	to 'stand forth as Diwan' of
	Bengal.

GENERAL HISTORY.	INDIA.
<p>1773. The people of Boston board the English ships and throw the tea overboard.</p> <p>1774. Congress meets at Philadelphia and denies right of Parliament to tax colonies.—Accession of Louis XVI.</p> <p>1775. George Washington appointed Commander-in-Chief of American forces.</p> <p>1775-83. War of American Independence.</p> <p>1776 (July 4). Declaration of Independence by United States.</p> <p>1778. Death of Earl of Chatham. War with France in Europe. France recognizes independence of United States.</p> <p>1781. England at war with Spain, France, Holland, and American colonies. Cornwallis surrenders at Yorktown.</p> <p>1782. Lord North resigns.—Lord Rockingham and then Lord Shelburne, Prime Ministers. Grattan's Declaration of Right accepted by Irish Parliament.</p> <p>1783 (April 2). Coalition ministry under Duke of Portland as Prime Minister.</p>	<p>1772. Warren Hastings, Governor of Bengal.—Draws up plan of government. Directors of East India Company declare a deficit, and appeal to Lord North for help. (November.) Secret Parliamentary inquiry into affairs of Company.</p> <p>1773. Regulating Act passed (13 Geo. III, c. 63). Motion condemning Clive rejected.</p> <p>1774. Warren Hastings becomes first Governor-General of India. Rohilla War. Death of Clive.</p> <p>1775. Benares and Ghazipur ceded to Company. Government of Bombay occupy Salsette and Bassein.</p> <p>1776. Trial and execution of Nuncomar. Maráthá War.</p> <p>1778. English seize French settlements in India.</p> <p>1779. Maráthás repel English advance on Poona. League of Mysore. Maráthás and Nizám against English.</p> <p>1780. Hyder Ali ravages Carnatic.</p> <p>1781. Benares insurrection.—Defeat of Hyder Ali at Porto Novo.—Treaty of Peace with Maráthás. Parliamentary inquiries into administration of justice in Bengal and into causes of Carnatic War.—Act passed to amend the Regulating Act (51 Geo. III, c. 70).</p> <p>1782. Death of Hyder Ali. Nagal battles between French and English in Bay of Bengal.</p> <p>1783. Pondicherry and other French settlements restored to France by Treaty of Versailles.</p>

GENERAL HISTORY.	INDIA.
(January.) Treaty of Versailles.— Peace signed between England and United States.	1783-4. Fox's India Bill introduced and rejected.
1783 (December 23)-1801. William Pitt, Prime Minister.	1784. Treaty of peace with Tippu, Sultan of Mysore.—General peace in India.
1783. General peace in Europe.	Pitt's Act establishing Board of Control (24 Geo. III, sess. 2, c. 25).
1786. Burke moves impeachment of Warren Hastings	1785. Warren Hastings leaves India. Mahdajee Sindia (Maráthá) occu- pies Delhi.
1788-95. Trial of Warren Hastings.	1786. Act passed to enlarge powers of Governor-General (26 Geo III, c. 16).
1789. Beginning of French Revolu- tion.	1786-93. Lord Cornwallis, Gover- nor-General.
1793. Execution of Louis XVI. War between England and France declared February 11.	1787. Tippu sends embassies to Paris and Constantinople.
1795. Cape of Good Hope captured from Dutch.	1789-90. Tippu attacks Travancore.
1797. Battle of Cape St. Vincent.— Mutiny at the Nore	1790-2. War with Tippu.
1798. Irish Rebellion. French expedition to Egypt.— (August 1) Battle of the Nile	1791. Bangalore taken.
1799. Buonaparte, First Consul.	1792. Tippu signs treaty of peace ceding territory.
1800. Union of Great Britain and Ireland.	1793. English take Pondicherry. Permanent settlement of Bengal. Cornwallis leaves India.
Battles of Marengo and Hohen- linden.	Act renewing Company's charter (33 Geo. III, c. 52).
Malta taken from French.	1793-8. Sir J. Shore (Lord Teign- mouth), Governor-General.
1801. Addington, Prime Minister.	1795. The Maráthás defeat the Nizám.
	1796. Ceylon taken from Dutch.
	1797. Shah Zeman invades Punjab.
	1798-1805. Marquis Wellesley, Governor-General.
	1799. Capture of Seringapatam. Death of Tippu. Partition of Mysore.
	1800. Subsidiary treaty with Nizám.
	1801. Incorporation of Carnatic. Oudh cedes territory by subsi- diary treaty.

GENERAL HISTORY.	INDIA.
1802. Treaty of Amiens. Cape restored to Dutch.	1802. Treaty of Bassein and restoration of Peshwá.
1803 (May). War declared between England and France.	1803. League of Sindia and Nagpur Raja (Marathás).
	Maráthá War (Battles of Assaye, Argaum, Laswaree).
1804. Pitt's second ministry. Napoleon, Emperor	1804. Gáekwar of Baroda submits to subsidiary system.
1805 (October 21). Battle of Trafalgar.—Capitulation of Ulm (December 2) Battle of Austerlitz.	1805 (July to October). Lord Cornwallis again Governor-General. —Succeeded by Sir George Barlow (till 1807).
1806 (January 23) Death of William Pitt—Ministry of 'All the Talents.'—Lord Grenville, Prime Minister.	1806. Mutiny of Sepoys at Vellore.
Berlin Decrees issued, and Orders in Council issued in reply.	
1807. Duke of Portland, Prime Minister.	1807 War with Travancore.
1808-14. Peninsular War	1807-13. Lord Minto, Governor-General.
1809. Walcheren expedition —Battle of Wagram.	1809 Travancore subdued.
Perceval, Prime Minister.	
English occupy the Cape.	
1810 Mauritius taken from French	
1812. Napoleon invades Russia.	
War between England and United States.	
(June) Lord Liverpool, Prime Minister (till 1827).	
(July.) Battle of Salamanca.	
1813 (June). Battle of Vittoria.	1813. Charter Act of 1813 (55 Geo. III, c. 155).
(October 16-19) Battle of Leipzig.	East India Company loses monopoly of Indian trade.
	1813-23. Lord Hastings, Governor-General.
1814 First Peace of Paris. —Napoleon abdicates. Cape ceded to England.	1814-15. Gúrkha War.
1815 (February). Napoleon returns from Elba.	1815. Kumaon ceded.
(June 18) Battle of Waterloo.	1817. Pindáris conquered.
(November.) Second Peace of Paris.	1817-18. Third Maráthá War, ending in annexation of Poona and reduction of Holkar and Rajputana.
1820. George IV. Congress at Trochu, afterwards at Laybach.	1819. Wazir of Oudh assumes title of King.

GENERAL HISTORY.	INDIA.
1821 (May). Death of Napoleon Buonaparte. Congress of Verona.	1823-8. Lord Amherst, Governor-General.
1822 (March 27). Canning appointed Governor-General of India but made Foreign Secretary instead (September).	1824. War with Burma. Rangoon taken.
1825. Commercial panic in England.	1826. Storming of Bhurtpur. Annexation of Assam.
1827 (April 24). Canning, Prime Minister; dies August 8. (September 5.) Lord Goderich, Prime Minister. (October 20.) Battle of Navarino.	1828-35. Lord William Bentinck, Governor-General.
1828 (January 25). Duke of Wellington, Prime Minister.	1830. Mysore becomes a protected State.
1830 (June 26). William IV. (November 22.) Lord Grey, Prime Minister.	1833. Charter Act (3 & 4 Will. IV, c. 85) terminates trading functions of East India Company and defines legislative powers of Governor-General in Council. Macaulay appointed legislative member of Governor-General's Council.
1832 (June). Reform Bill passed.	1834. Annexation of Coorg.
1834 (July 17). Lord Melbourne, Prime Minister; dismissed November 15. (December 26.) Sir Robert Peel, Prime Minister.	1835. Lord Heytesbury appointed Governor-General by Sir R. Peel but appointment cancelled by Whigs.
1835 (April 8). Sir Robert Peel resigns. (April 13.) Lord Melbourne, Prime Minister.	1836-42. Lord Auckland, Governor-General.
1837. Queen Victoria.	1836. Lieutenant-Governorship of North-Western Provinces constituted.
1839-42. War between England and China.	1838. First Afghan War.
	1839. Capture of Ghazni and Kandahar.
	Death of Ranjit Singh.
	1840. Surrender of Dost Mohammad.

TABLE OF DATES

XXV

GENERAL HISTORY.	INDIA.
1841 (September 6). Sir R. Peel, Prime Minister.	1841. Insurrection at Cabul and disastrous retreat of British troops.
	1842-4. Lord Ellenborough, Governor-General.
	1842. Pollock recaptures and evacuates Cabul.
	1843. Annexation of Sind (Battle of Meeanee).—Capture of Gwalior.
	1844-8. Lord Hardinge, Governor-General.
	1845. Danish possessions bought.
	1845-6. Sikh War. Battles of Múdkí and Ferozeshah (1845).
	1846. Battles of Aliwal and Sobraon. —Treaty of Lahore.
1846. Repeal of Corn Laws. (June.) Sir R. Peel resigns. (July 6.) Lord John Russell, Prime Minister.	1848-56. Lord Dalhousie, Governor-General.
1848. Chartist riots.—Revolution in France.	1849. Satára annexed.—Second Sikh War. Battles of Chillianwallah and Goojerat.—Punjab annexed.
	1850. Bombay Railway commenced.
1852. Louis Napoleon, Emperor. (February 27.) Lord Derby, Prime Minister. (December 28.) Lord Aberdeen, Prime Minister.	1852. Second Burmese War.—Pegu annexed.
	1853. Last Charter Act (16 & 17 Vict. c. 95) passed; remodels constitution of Legislative Council.
	Jhánsi, the Berars, and Nagpur annexed. —Telegraphs commenced.
1854-5. Crimean War.	1854. Bengal constituted a Lieutenant-Governorship.
1855 (February 10). Lord Palmerston, Prime Minister.	
1856. Treaty of Paris.	1856. Oudh annexed.
	1856-62. Lord Canthing, Governor-General.
	1857-8. Indian Mutiny. —Outbreaks at Meerut and Delhi (June). Delhi taken (September). First relief of Lucknow by Havelock and Outram (September). Final relief of Lucknow by Sir Colin Campbell (November).

GENERAL HISTORY.	INDIA.
1858 (February 25). Lord Derby, Prime Minister.	1858. Government of India Act, 1858 (21 & 22 Vict. c. 106), places British India under direct government of Crown.—Lord Canning, Viceroy. (November 1.) Queen's Amnesty Proclamation published in India.
1859. Italian War.—Battles of Magenta and Solferino. (June 18.) Lord Palmerston, Prime Minister.	1859. Punjab constituted a Lieutenant-Governorship under Sir John Lawrence. Indian Code of Civil Procedure passed.
	1860. Indian Penal Code passed.
	1861. Indian Civil Service Act, 1861 (24 & 25 Vict. c. 54), Indian Councils Act, 1861 (24 & 25 Vict. c. 67), and Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), passed by Parliament.—Code of Criminal Procedure passed in India.
	1862-3. Lord Elgin, Viceroy.
	1864-9. Lord Lawrence, Viceroy.
	1864. Bhután Dwaṛs annexed.
1865 (November 6). Lord Russell becomes Prime Minister on death of Lord Palmerston.	1865. Indian Succession Act passed.
1866. War between Prussia and Austria.—Battle of Königgrätz or Sadowa. (July 6.) Lord Derby, Prime Minister.	1866. Famine in Orissa.
1868 (February 27). B. Disraeli, Prime Minister. Abyssinian expedition.	1867 (September). Straits Settlements separated from India.
(December 9.) ^c W. E. Gladstone, Prime Minister.	1868. Sher Ali, Amir of Afghanistan.
1869 (November). Suez Canal opened.	1869-72. Lord Mayo, Viceroy.
1870. Franco-German War.—Revolution in France.	1869. Legislative Department of Government of India established.
1871. King William of Prussia becomes German Emperor.	1872. Indian Contract Act and Evidence Act passed.
1874 (February 21). B. Disraeli, Prime Minister.	1872-3. Lord Northbrook, Viceroy.
	1878-80. Lord Lytton, Viceroy.
	1876-8. Famine in India.

GENERAL HISTORY.	INDIA
1877. Russo-Turkish War.	1877 (January 1). Queen proclaimed Empress of India at Delhi.
1878. Treaties of San Stefano (March) and Berlin (July).	1878. Invasion of Afghanistan.
	1879 (July). Treaty of Gandamak. (September.) Cavagnari killed at Cabul.—English invade Afghanistan.
1880 (April 25). W. E. Gladstone, Prime Minister.	1880-4. Lord Ripon, Viceroy.
1882. Indian troops used in the Egyptian War	1880 (July). Abdurrahman recognized as Amir of Afghanistan. —Battle of Maiwand. General Roberts' march from Cabul to Kandahar.
	1884. Boundary Commission appointed to settle North-West frontier.
1885 (June 24). Lord Salisbury, Prime Minister.	1884-8. Lord Dufferin, Viceroy.
1886 (February 6). W. E. Gladstone, Prime Minister. (August 3.) Lord Salisbury, Prime Minister.	1885. Third Burmese War.
1887. Jubilee of Queen Victoria's reign.	1886 (January 1). Upper Burma annexed.
	(November 21.) Legislative Council established for North-Western Provinces.
	1888-93. Lord Lansdowne, Viceroy.
	1889. Military expeditions sent against hill tribes.
	1890. Chin and Lushai expeditions. —Rising in Manipur.
	1891. Massacre in Manipur.
1892 (August 18). W. E. Gladstone, Prime Minister.	1892. Constitution and procedure of Indian Legislative Councils altered by Indian Councils Act, 1892 (55 & 56 Vict. c. 14).
	1893. Separate armies of Madras and Bombay abolished by Madras and Bombay Armies Act, 1893 (56 & 57 Vict. c. 62).
	(June 26.) Indian Mint closed.
1894 (March 3). Lord Rosebery, Prime Minister.	1894 (January 27). Lord Elgin, Viceroy.
	(December, 27.) Import duty imposed on cotton.
1895 (July 2). Lord Salisbury, Prime Minister.	1895. Chitral Expedition.
	1896. Appearance of plague in Bombay.

GENERAL HISTORY.	INDIA.
1897 (June). Jubilee celebrations in England.	1896-7. Famine in India. 1897 (April 9). Legislative Council established for Punjab. Burma constituted a Lieutenant-Governorship, with a Legislative Council. (June 12.) Earthquake in Bengal. War on North-Western frontier.
1899 (October 11). Boer War commenced: ended May 31, 1902.	1898. Appearance of plague at Calcutta and in Madras. Famine Commission. 1899 (January 6). Lord Curzon, Viceroy.
1901 (January 22). Death of Queen Victoria. (January 24.) Proclamation of King Edward VII.	1899-1900. Recurrence of famine in India. 1901 (October). Death of Amir Abdur Rahman of Afghanistan. Punitive operations against Mahsud Waziris. (November.) Constitution of the North-West frontier Province under a Chief Commissioner.
1902 (August 9.) Coronation. (January 30). Anglo-Japanese Treaty signed. (July.) Mr. Balfour, Prime Minister.	1902. 'North-Western Provinces and Oudh' renamed 'United Provinces of Agra and Oudh.' 1902-3. Indian Police Commission. 1903 (January). Delhi Durbar. (October.) Incorporation of Berar with the Central Provinces.
1904 (February 8). Russo-Japanese War commenced: ended September 5, 1905; Peace Treaty signed at Portsmouth, U.S.A. Anglo-French Agreement signed.	1903-4. Mission to Tibet. 1904. Indian Universities Act. 1904-5. Mission to Cabul.
*1905 (August 12). Anglo-Japanese Treaty signed. (November.) Sir Henry Campbell-Bannerman, Prime Minister.	1905 (March). Constitution of Railway Board in India. (April 4.) Earthquake in Punjab. Reorganization of Military Department of the Government of India: creation of Army and Military Supply Departments. • Eastern Bengal and Assam constituted a separate administration under a Lieutenant-Governor with a Legislative Council. (November 18.) Lord Minto, Viceroy.

GOVERNORS-GENERAL OF FORT WILLIAM IN¹ BENGAL¹.

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|---|--|
| 1774 Warren Hastings (Governor of Bengal from 1772). | 1805. Sir George Barlow (temporary, October 10, 1805, to July 31, 1807). |
| 1785. Sir J. Macpherson (temporary, February 1, 1785, to September 12, 1786). | 1807. Lord Minto. |
| 1786. Lord Cornwallis | 1813. Lord Moira (Marquis of Hastings) |
| 1793. Sir John Shore (Lord Teignmouth) | 1823. John Adam (temporary, January 9 to August 1, 1823). |
| 1798 Sir Alured Clarke (temporary, March 6 to May 18, 1798). | 1823. Lord Amherst. |
| 1798. Earl of Mornington (Marquis Wellesley) | 1828. W. B. Bayley (temporary, March 13 to July 4, 1828) |
| 1805 Lord Cornwallis (took office July 30, died October 5) | 1828. Lord William Bentinck. |

GOVERNORS-GENERAL OF INDIA.

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|---|----------------------------------|
| 1834. Lord William Bentinck | 1842. Lord Ellenborough. |
| 1835 Sir Charles Metcalfe (temporary, March 20, 1835, to March 4, 1836) | 1844. Sir Henry (Lord) Hardinge. |
| 1836 Lord Auckland | 1848 Lord Dalhousie |
| | 1856 Lord Canning |

VICEROYS AND GOVERNORS-GENERAL

(FROM NOV 1, 1858).

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| 1858 Lord Canning (continued as Viceroy) | 1880. Lord Ripon. |
| 1862. Lord Elgin | 1884. Lord Dufferin. |
| 1864. Sir John (Lord) Lawrence. | 1888. Lord Lansdowne. |
| 1869. Lord Mayo. | 1894. Lord Elgin. |
| 1872 Lord Northbrook | 1899 Lord Curzon. |
| 1876. Lord Lytton. | 1905. Lord Minto |

PRESIDENTS OF THE BOARD OF CONTROL.

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|--|--|
| 1784. Lord Sydney. | 1806 (July 26). Thomas Grenville. |
| 1790. W. W. Grenville (afterwards Lord Grenville). | 1806 (October 1).* George Tierney. |
| 1793. Henry Dundas (afterwards Viscount Melville). | 1807. Robert Dundas (afterwards Viscount Melville). |
| 1801. Lord Lewisham (afterwards Dartmouth). | 1809 (July). Lord Harrowby. |
| 1802. Lord Castlereagh. | 1809 (November). Robert Dundas (afterwards Viscount Melville). |
| 1806 (February 12). Lord Minto. | 1812. Earl of Buckinghamshire. |
| | 1816. George Canning. |

¹ For more minute particulars as to dates see the India List.

1821. Charles Bathurst.	1846. Sir John Cam Hobhouse.
1822. Charles Watkins Williams-Wynn.	1852 (February 6). Fox Maule (afterwards Lord Panmure and Earl of Dalhousie).
1828 (February). Robert Dundas (afterwards Viscount Melville)	1852 (February 28). John Charles Herries.
1828 (Sept.) Lord Ellenborough	1852 (December 30) Sir Charles Wood (afterwards Viscount Halifax).
1830. Charles Grant (afterwards Lord Glenelg).	1855. Robert Vernon Smith (afterwards Lord Lyveden)
1834. Lord Ellenborough.	1858 (March 6) Lord Ellenborough
1835 Sir John Cam Hobhouse	1858 (June). Lord Stanley (afterwards Earl of Derby).
1841 (Sept.) Lord Ellenborough.	
1841 (October) Lord Fitzgerald and Vesel.	
1843. Lord Ripon.	

SECRETARIES OF STATE FOR INDIA.

1858. Lord Stanley (afterwards Earl of Derby).	1878. Gathorne Hardy (afterwards Earl of Cranbrook)
1859. Sir Charles Wood (afterwards Viscount Halifax).	1880 Lord Hartington (afterwards Duke of Devonshire)
1866 (February) Lord de Grey and Ripon (afterwards Marquis of Ripon).	1882 Lord Kimberley
1866 (July) Lord Cranborne (afterwards Marquis of Salisbury).	1885 Lord Randolph Churchill
1867. Sir Stafford Northcote (afterwards Earl of Iddesleigh).	1886 (February). Lord Kimberley
1868. Duke of Argyll	1886 (August). Sir Richard Cross (afterwards Lord Cross).
1874. Lord Salisbury	1892 Lord Kimberley.
	1894. H. H. Fowler (afterwards Sir H. Fowler)
	1895 Lord George Hamilton.
	1903 Sir John Brodrick.
	1905 John Morley.

TABLE OF CASES

- Advocate-General of Bengal v. Raneé Surnomoye Dossée, 251.
 Alter Caufman v. Government of Bombay, 88.
 Ameer Khan, *In the matter of*, 54, 59, 207, 248; 262.
 Attorney-General for the Colony of Hong Kong v. Kwok-a-Sing, 346.
 Audur Chundra Shaw, *Re*, 245.
 Bedroo Chund v. Elphinstone, 172.
 Bell v. Municipality of Madras, 177, 221.
 Bichitramund, *Re*, 265.
 Bradley v. Arthur, 268, 270.
 Collector of Masulipatam v. Cavalé Vencata Narrainapah, 160.
 Collector of Sea Customs v. Panniar Chithambaram, 245.
 Collector of Thana v. Bhaskar Mahadev Rheth, 220.
 Cook v. Sprigg, 174.
 Damodhar Gordhan v. Deoram Kanji (the Bhaunagar case), 39, 177, 207.
 Doss v. The Secretary of State for India in Council, 171, 174.
 Dunn v. The Queen, 158.
 — v. McDonald, *ib.*
 East India Company v. Sandys, 25.
 — v. Syed Ally, 172.
 Empress v. Keshub Mahajun, 265.
 — v. S. Moorga Chetty, 352, 386.
 — v. Surmook Singh, 386.
 Forester and others v. Secretary of State for India in Council, 173.
 Freeman v. Fairlie, 251.
 Frith v. Regina, 171.
 Ganpat Pataya v. Collector of Canara, 175, 177.
 Gibson v. East India Company, 169, 172.
 Grant v. The Secretary of State for India in Council, 157, 174.
 Gregory v. Vudakasi Kanjani, 386.
 Harris v. Davies, 204.
 Hayes, *Re*, 386, 394.
 Hemchand Devchand v. Azam Sakarlal Chhotamlal, 177, 265, 396.
 Hill v. Bigge, 175.
 Indian Chief, *The*, 251, 355.
 Jagat Mohini Dasi v. Dwarkanath Beisakh, 250.
 Jehangir v. Secretary of State for India, 158, 171, 248.
 Kinlock v. Secretary of State in Council, 170, 174.
 Lachmi Narayan v. Raja Pratab Singh, 36, 145, 177, 207.
 Laconia, *The*, 355, 371.
 Madhub Chunder Poranamah v. Rajcoomar Doss, 251.
 Mandalay v. The East India Company, 172.
 Marais, D. F., *Ex pte.*, 172.
 Mayor of Lyons v. East India Company, 51, 251, 324.
 Muhammed Yusuf-Ud-Din v. The Queen-Empress, 394.
 Musgrove v. Chun Teeong Toy, 88, 204.
 Musgrove v. Pulido, 175.
 Nabob of the Carnatic v. East India Company, 172.
 Nga Hoong v. Reg., 242.
 Nireaha Tamaki v. Baker, 175.
 Nobin Chunder Bannerjee v. Romesh Chunder Ghose, 250.
 Nobin Chunder Dey v. The Secretary of State for India, 171.
 Papayanni v. The Russian Steam Navigation Company, 355.

- Peninsular and Oriental Company v. Secretary of State for India in Council, 171.
 Powell v. Apollo Candle Company, 204.
 Premshankar Raghunathji v. Government of Bombay, 220.
 Prioleau v. United States, 172.
 Queen, The, v. Abdul Latib, 386.
 — v. Burah, 203, 386.
 — v. The Commissioners of the Treasury, 175.
 Queen-Empress, The, v. Barton, 242, 245.
 — v. Daya Bhima, 386.
 — v. Edwards, *ib.*
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 Raleigh v. Goschen, 171.
 Ram Coomar Coondoo v. Chunder Canta Mookerjee, 251.
 Ranee Sonet Kowar v. Mirza Humut Bahadoor, 160.
 Rao Balwant Singh v. Rani Kishori, 239.
 Reiner v. Marquis of Salisbury, 171.
 R. v. Anderson, 345.
 — v. Bernard, 351.
 — v. Carr, 345.
 — v. Debruiel, 352.
 — v. Edmondstone, 265.
 — v. Jameson, 342, 344.
 R. v. Kastya Rama, 265.
 — v. Keyn, 244.
 — v. Lords Commissioners of the Treasury, 171.
 — v. Lukhya Govind, 386.
 — v. Meares, 207.
 — v. Pirtal, 386.
 — v. Reay, 106, 223.
 — v. Thomas, 170.
 Salaman v. Secretary of State for India in Council, 175.
 Sarkies v. Prosonno Mayi Dasi, 250.
 Secretary of State for India v. Bombay Landing and Shipping Company, 170, 177, 251.
 — v. Matthurabhai, 177.
 Secretary of State in Council of India v. Kamachee Boye Sahaba, 172.
 Shenton v. Smith, 157.
 Shivabhajan v. Secretary of State for India, 160, 171.
 Siddha v. Bilgiri, 386.
 Sirdar Bhagwan Singh v. Secretary of State for India in Council, 173.
 Sprigg v. Siggan, 204.
 Taluka of Kotda Sangani v. The State of Gondal, 177, 265, 396.
 Voss v. Secretary of State for India, 158.
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A DIGEST OF THE LAW RELATING TO THE GOVERNMENT OF INDIA

CHAPTER I

HISTORICAL INTRODUCTION

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

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

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

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

During the first, or trading, period, which begins with the charter of Elizabeth in 1600, the East India Company are primarily traders. They enjoy important mercantile privileges, and for the purposes of their trade hold sundry factories, mostly on or near the coast, but they have not yet assumed the responsibilities of territorial sovereignty. The cession of Burdwan, Midnapore, and Chittagong in 1760 makes them masters of a large tract of territory, but the first period may, Three periods in history of constitutional development.

perhaps, be most fitly terminated by the grant of the *diwani* in 1765, when the Company become practically sovereigns of Bengal, Béhar, and Orissa.

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

The third and last period, the period of government by the Crown, begins with 1858, when, as an immediate consequence of the Mutiny of 1857, the remaining powers of the East India Company are transferred to the Crown.

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

Land-
marks of
first
period.

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

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

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

Land-
marks of
second
period.

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

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

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

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

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

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

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

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

The third period was ushered in by the Government of India Act, 1858 (21 & 22 Vict. c. 106), which declared that India was to be governed by and in the name of Her Majesty. The change was announced in India by the Queen's Proclamation of November 1, 1858. The legislative councils and the high courts were established on their present basis by two Acts of 1861 (24 & 25 Vict. cc. 67, 104). Since that date Parliamentary legislation for India has been confined to matters of detail. The East India Company was not formally dissolved until 1874.

The first charter of the East India Company was granted on December 31, 1600. The circumstances in which the grant of this charter arose have been well described by Sir A. Lyall¹. The customary trade routes from Europe to the East had been closed by the Turkish Sultan. Another route had been opened by the discovery of the Cape of Good Hope. Thus the trade with the East had been transferred from the cities and states on the Mediterranean to the states on the

¹ *British Dominion in India.*

Atlantic sea-board. Among these latter Portugal took the lead in developing the Indian trade, and when Pope Alexander VI (Roderic Borgia) issued his Bull of May, 1493, dividing the whole undiscovered non-Christian world between Spain and Portugal, it was to Portugal that he awarded India. But since 1580 Portugal had been subject to the Spanish Crown. Holland was at war with Spain, and was endeavouring to wrest from her the monopoly of Eastern trade which had come to her as sovereign of Portugal. During the closing years of the sixteenth century, associations of Dutch merchants had fitted out two great expeditions to Java by the Cape (1595-96, and 1598-99), and were shortly (1602) to be combined into the powerful Dutch East India Company. Protestant England was the political ally of Holland, but her commercial rival, and English merchants were not prepared to see the Indian trade pass wholly into her hands. It was in these circumstances that on September 24, 1599, the merchants of London held a meeting at Founder's Hall, under the Lord Mayor, and resolved to form an association for the purpose of establishing direct trade with India. But negotiations for peace were then in progress at Boulogne, and Queen Elizabeth was unwilling to take a step which would give umbrage to Spain. Hence she delayed for fifteen months to grant the charter for which the London merchants had petitioned. The charter incorporated George, Earl of Cumberland, and 215 knights, aldermen, and burgesses, by the name of the 'Governor and Company of Merchants of London trading with the East Indies.' The Company were to elect annually one governor and twenty-four committees, who were to have the direction of the Company's voyages, the provision of shipping and merchandises, the sale of merchandises returned, and the managing of all other things belonging to the Company. Thomas Smith, Alderman of London, and Governor of the Levant Company, was to be the first governor.

The Company might for fifteen years 'freely traffic and use

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

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

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

The Company's right of trading, during the term and within the limits of the charter, was to be exclusive; but they might grant licences to trade. Unauthorized traders were to be liable to forfeiture of their goods, ships, and tackle, and to 'imprisonment and such other punishment as to us, our heirs and successors, for so high a contempt, shall seem meet and convenient.'

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

Points of constitutional interest in charter of Elizabeth. The points of constitutional interest in the charter of Elizabeth are the constitution of the Company, its privileges, and its legislative powers. The twenty-four committees to whom, with the governor, is entrusted the direction of the Company's business, are individuals, not bodies, and are the predecessors of the later directors. Their assembly is in subsequent charters called the court of committees, as distinguished from the court general or general court, which answers to the 'general meeting' of modern companies.

The most noticeable difference between the charter and modern instruments of association of a similar character is the absence of any reference to the capital of the Company and the corresponding qualification and voting powers of members. It appears from the charter that the adventurers had undertaken to contribute towards the first voyage certain sums of money, which were 'set down and written in a book for that purpose,' and failure to pay their contributions to the treasurer within a specified date was to involve 'removal and disenfranchisement' of the defaulters. But the charter does not specify the amount of the several contributions¹, and for all that appears to the contrary each adventurer was to be equally eligible to the office of committee, and to have equal voting power in the general court. The explanation is that the Company belonged at the outset to the simpler and looser form of association to which the City Companies then belonged, and still belong, and which used to be known by the name of

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

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

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

The chief privilege of the Company was the exclusive right of trading between geographical limits which were practically the Cape of Good Hope on the one hand and the Straits of Magellan on the other, and which afterwards became widely famous as the limits of the Company's charter. The only

Privileges
of Com-
pany.

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

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

tion. Such monopolies were in strict accordance with the ideas, and were justified by the circumstances, of the time.

In the seventeenth century the conditions under which private trade is now carried on with the East did not exist. Beyond certain narrow territorial limits international law did not run, diplomatic relations had no existence¹. Outside those limits force alone ruled, and trade competition meant war. At the present day territories are annexed for the sake of developing and securing trade. The annexations of the sixteenth century were annexations, not of territory, but of trading grounds. The pressure was the same, the objects were the same, the methods were different. For the successful prosecution of Eastern trade it was necessary to have an association powerful enough to negotiate with native princes, to enforce discipline among its agents and servants, and to drive off European rivals with the strong hand. No Western State could afford to support more than one such association without dissipating its strength. The independent trader, or interloper, was, through his weakness, at the mercy of the foreigner, and, through his irresponsibility, a source of danger to his countrymen. It was because the trade monopoly of the East India Company had outlived the conditions out of which it arose that its extinction in the nineteenth century was greeted with general and just approval.

The powers of making laws and ordinances granted by the charter of Elizabeth did not differ in their general provisions from, and were evidently modelled on, the powers of making by-laws commonly exercised by ordinary municipal and commercial corporations. No copies of any laws made under the early charters are known to exist. They would doubtless have consisted mainly of regulations for the guidance of the Company's factors and apprentices. Unless supplemented by judicial and punitive powers, the early legislative powers of

Legisla-
tive
powers of
Company

¹ The state of things in European waters was not much better. See the description of piracy in the Mediterranean in the seventeenth century in Masson, *Histoire du Commerce Français dans le Levant*, chap. 11.

the Company could hardly have been made effectual for any further purpose. But they are of historical interest, as the germ out of which the Anglo-Indian codes were ultimately developed. In this connexion they may be usefully compared with the provisions which, twenty-eight years after the charter of Elizabeth, were granted to the founders of Massachusetts.

Resemblance to Massachusetts Company.

In 1628 Charles I granted a charter to the Governor and Company of the Massachusetts Bay in New England. It created a form of government consisting of a governor, deputy governor, and eighteen assistants, and directed them to hold four times a year a general meeting of the Company to be called the 'great and general Court,' in which general court 'the Governor or deputie Governor, and such of the assistants and freemen of the Company as shall be present shall have full power and authority to choose other persons to be free of the Company and to elect and constitute such officers as they shall think fitte for managing the affairs of the said Governor and Company and to make Lawes and Ordinances for the Good and Welfare of the saide Company and for the Government and Ordering of the said Landes and Plantasion and the People inhabiting and to inhabit the same, soe as such Lawes and Ordinances be not contrary or repugnant to the Lawes and Statutes of this our realme of England.' The charter of 1628 was replaced in 1691 by another charter, which followed the same general lines, but gave the government of the colony a less commercial and more political character. The main provisions of the charter of 1691 were transferred bodily to the Massachusetts constitution of 1780, which is now in force, and which, as Mr. Bryce remarks ¹, profoundly influenced the convention that prepared the federal constitution of the United States in 1787.

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

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

The Massachusetts Company may be taken as the type of the bodies of adventurers who during the early part of the seventeenth century were trading and settling in the newly discovered continent of the West. It may be worth while to glance at the associations of English merchants, who, at the date of the foundation of the East India Company, were trading towards the East. Of these the most important were the Russia or Muscovy Company and the Levant or Turkey Company¹.

Other
English
trading
com-
panies.

The foundations of the Russia Company² were laid by the discoveries of Richard Chancellor. In 1553-54 they were incorporated by charter of Philip and Mary under the name of 'the Merchants and Adventurers for the discovery of lands not before known or frequented by any English.' They were to be governed by a court consisting of one governor (the first to be Sebastian Cabot) and twenty-eight of the most sad, discreet, and learned of the fellowships, of whom four were to be called consuls, and the others assistants. They were to have liberty to resort, not only to all parts of the dominions of 'our cousin and brother, Lord John Basilowitz, Emperor of all Russia, but to all other parts not known to our subjects.' And none but such as were free of or licensed by the Company were to frequent the parts aforesaid, under forfeiture of ships and merchandise—a comprehensive monopoly.

Russia
Company.

In 1566 the adventurers were again incorporated, not by charter, but by Act of Parliament, under the name of 'the fellowship of English Merchants for discovery of new trade³,' with a monopoly of trade in Russia, and in the countries

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

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

³ This is said to have been the first English statute which established an exclusive mercantile corporation.

of Armenia, Media, Hyrcania, Persia, and the Caspian Sea.

In the seventeenth century they were compelled by the Czar of the time to share with the Dutch their trading privileges from the Russian Government, and by an Act of 1698, which reduced their admission fine to £5¹, their doors were thrown open. After this they sank into insignificance.

A faint legal trace of their ancient privileges survives in the extra-territorial character belonging for marriage purposes to the churches and chapels formerly attached to their factories in Russia. Some years ago they existed, perhaps they still exist, as a dining club².

Levant Company. The Levant Company³ was founded by Queen Elizabeth for the purpose of developing the trade with Turkey under the concessions then recently granted by the Ottoman Porte. Under arrangements made with various Christian powers and known as the Capitulations, foreigners trading or residing in Turkey were withdrawn from Turkish jurisdiction for most civil and criminal purposes. The first of the Capitulations granted to England bears date in the year 1579, and the first charter of the Levant Company was granted two years afterwards, in 1581. This charter was extended in 1593, renewed by James I, confirmed by Charles II, and, like the East India Company's charters, recognized and modified by various Acts of Parliament.

The Levant Company attempted to open an overland trade to the East Indies, and sent merchants from Aleppo to Bagdad and thence down the Persian Gulf. These merchants obtained articles at Lahore and Agra, in Bengal, and at Malacca, and on their return to England brought information of the profits to be acquired by a trade to the East Indies. In 1593 the Levant Company obtained a new charter, empowering them to trade to India overland through the terri-

¹ 10 & 11 Will. III, c. 6.

² MacCulloch, *Dictionary of Commerce*, 1871 edition.

³ As to the Levant Company and the Capitulations, see below, p. 353.

stories of the Grand Signor. Under these circumstances it is not surprising to find members of the Levant Company taking an active part in the promotion of the East India Company. Indeed the latter Company was in a sense the outgrowth of the former. Alderman Thomas Smith, the first Governor of the East India Company, was at the same time Governor of the Levant Company, and the adventures of the two Companies were at the outset intimately connected with each other. At the end of the first volume of court minutes of the East India Company are copies of several letters sent to Constantinople by the Levant Company.

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

To return to the East India Company.

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

In the meantime James I had in 1609 renewed the charter of Elizabeth, and made it perpetual, subject to determination
James I's
charter of
1609.

after three years' notice on proof of injury to the nation. The provisions of this charter do not, except with regard to its duration, differ in any material respect from those of the charter of Elizabeth.

Beginning
of martial
law exer-
cisable
by Com-
pany.

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

Grant of
1615.

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

Grant of
1623

By 1623 the increase in the number of the Company's settlements, and the disorderliness of their servants, had drawn attention to the need for further coercive powers. Accordingly King James I, by a grant of February 14, 1623², gave the Company the power of issuing similar commissions to their presidents and other chief officers, authorizing them to punish in like manner offences committed by the Company's servants on land, subject to the like proviso as to the submission of capital cases to the verdict of a jury.

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

² The double date here and elsewhere indicates a reference to the three months, January, February, March, which according to the Old Style closed the old year, while under the New Style, introduced in 1751 by the Act 24 Geo. II, c. 23, they begin the new year.

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

The massacre of Amboyna (February 16, 1623) is the turning-point in the rivalry with the Dutch. On the one hand it enlisted the patriotic sympathies of Englishmen at home on behalf of their countrymen in the East. On the other hand it compelled the Company to retire from the Eastern Archipelago, and concentrate their efforts on the peninsula of India.

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

Under the Commonwealth the intervention of the Protector was obtained for the settlement of the Company's differences both with their Dutch and with their English competitors. By the Treaty of Westminster in 1654, Cromwell obtained from the Dutch payment of a sum of £85,000 as compensation for the massacre of Amboyna and for the exclusion of the Company from trade with the Spice Islands. Difficulties arose, however, as to the apportionment of this sum among the several joint stocks of which the Company's capital was then composed, and, pending their settlement, Cromwell borrowed £50,000 of the sum for the expenses of the State. He thus anticipated the policy subsequently adopted by Montagu and his successors of compelling the Company to grant public loans as a price for their privileges.

Ultimately the Company obtained from Cromwell in 1657 a charter under which the rump of Courten's Association

Contests
with
Dutch and
English
rivals.

Massacre
of Am-
boyna.

Courten's
Associa-
tion.

Crom-
well's
relations
to the
Company.

Crom-
well's
charter of
1657.

was united with the East India Company, and the different stocks of the Company were united into a new joint stock. No copy of this charter is known to exist. Perhaps it was considered impolitic after the Restoration to preserve any evidence of favours obtained from the Protector.

The Com-
pany after
the Re-
storation.

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

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

Charles
II's
charter of
1662.

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

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

The Company were also empowered to send ships of war, men, or ammunition for the security and defence of their factories and places of trade, and 'to choose commanders

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

With regard to the administration of justice, nothing appears to have been done towards carrying into effect the provisions of the charter of 1661 till the year 1678. At Madras, which was at that time the chief of the Company's settlements in India¹, two or more officers of the Company used before 1678 to sit as justices in the 'choultry' to dispose of petty cases, but there was no machinery for dealing with serious crimes².

Arrangements for administration of justice at Madras in seventeenth century.

In 1678 the agent and council at Madras resolved that, under the charter of 1661, they had power to judge all persons living under them in all cases, whether criminal or civil, according to the English laws, and to execute judgement accordingly, and it was determined that the governor and council should sit in the chapel in the fort on every Wednesday and Saturday to hear and judge all causes. But this high

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

² See Wheeler, *Madras in Olden Times*.

court was not to supersede the justices of the choultry, who were still to hear and decide petty cases.

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

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

The Company were authorized, through their court of committees, to make laws, orders, ordinances, and constitutions for the good government and otherwise of the port and island and of the inhabitants thereof and, by their governors and other officers, to exercise judicial authority, and have power and authority of government or command, in the island, and to repel any force which should attempt to inhabit its precincts without licence, or to annoy the inhabitants. Moreover, the principal governor of the island was empowered 'to use and exercise all those powers and authorities, in cases of rebellion, mutiny, or sedition, of refusing to serve in wars, flying to the enemy, forsaking colours or ensigns, or other offences against law, custom, and discipline military, in as large and ample manner, to all intents and purposes whatsoever, as any captain-general of our army by virtue of his office has used and accustomed, and may or might lawfully do.'

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

Further attributes of sovereignty were soon afterwards conferred

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

Charter of 1677 granting powers of coinage.

The commissioners sent from Surat¹ to take possession of Bombay on behalf of the Company made a report in which they requested that a judge-advocate might be appointed, as the people were accustomed to civil law. Apparently, as a temporary measure, two courts of judicature were formed, the inferior court consisting of a Company's civil officer assisted by two native officers, and having limited jurisdiction, and the supreme court consisting of the deputy governor and council, whose decisions were to be final and without appeal, except in cases of the greatest necessity.

Administration of justice at Bombay in seventeenth century.

By a charter of 1683, the Company were given full power to declare and make peace and war with any of the 'heathen nations' being natives of the parts of Asia and America mentioned in the charter, and to 'raise, arm, train, and muster such military forces as to them shall seem requisite and necessary; and to execute and use, within the said plantations, forts, and places, the law called the martial law, for the defence of the said forts, places, and plantations against any foreign invasion or domestic insurrection or rebellion.' But this power was subject to a proviso reserving to the Crown 'the sovereign right, powers, and dominion over all the forts and places of habitation,' and 'power of making peace and war, when we shall be pleased to interpose our royal authority thereon.'

Charter of 1683 giving power to raise forces and exercise martial law, and establishing Court of Admiralty.

By the same charter the king established a court of judicature, to be held at such place or places as the Company might direct, and to consist of 'one person learned in the

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

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

The only person learned in the civil law who was sent out to India in pursuance of the charter of 1683 was Dr. John St. John. By a commission from the king, supplemented by a commission from the Company, he was appointed judge of the court at Surat. But he soon became involved in disputes with the governor, Sir John Child¹, who limited his jurisdiction to maritime cases, and appointed a separate judge for civil actions.

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

Charter of 1686. In 1686 James II granted the Company a charter by which he renewed and confirmed their former privileges, and authorized them to appoint 'admirals, vice-admirals, rear-admirals, captains, and other sea officers' in any of the

¹ A brother of Sir Josiah Child.

Company's ships within the limits of their charter, with power for their naval officers to raise naval forces, and to exercise and use 'within their ships on the other side of the Cape of Good Hope, in the time of open hostility with some other nation, the law called the law martial for defence of their ships against the enemy.' By the same charter the Company were empowered to coin in their forts any species of money usually coined by native princes, and it was declared that these coins were to be current within the bounds of the charter.

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

Among the prerogatives of the Crown one of the most important is the power of constituting municipal corporations by royal charter. Therefore it was a signal mark of royal favour when James II, in 1687, delegated to the East India Company the power of establishing by charter a municipality at Madras. The question whether this charter should be passed under the great seal or under the Company's seal was discussed at a cabinet council. The latter course was eventually adopted at the instance of the governor and deputy governor of the Company, and the reasons urged for its adoption are curious and characteristic. The governor expressed his opinion that no persons in India should be employed under immediate commission from His Majesty, 'because the wind of extraordinary honour in their heads would probably render them so haughty and overbearing that the Company would be forced to remove them.' He was evidently thinking of the recent differences between Sir John Child and Dr. St. John, and was alive to the dangers arising from an independent judiciary which in the next century were to bring about the conflicts between Warren Hastings and the Calcutta supreme court.

Establishment of municipality at Madras

Charter of
1687.

Accordingly the charter of 1687, which established a municipality and mayor's court at Madras, proceeds from the Company, and not from the Crown. It recites 'the approbation of the king, declared in His Majesty's Cabinet Council¹ the eleventh day of this instant December,' and then goes on to constitute a municipality according to the approved English type. The municipal corporation is to consist of a mayor, twelve aldermen, and sixty or more burgesses. The mayor and aldermen are to have power to levy taxes for the building of a convenient town house or guild hall, of a public gaol, and of a school-house 'for the teaching of the Gentues or native children to speak, read, and write the English tongue, and to understand arethmetick and merchants' accompts, and for such further ornaments and edifices as shall be thought convenient for the honour, interest, ornament, security, and defence' of the corporation, and of the inhabitants of Madras, and for the payment of the salaries of the necessary municipal officers, including a schoolmaster. The mayor and aldermen are to be a court of record, with power to try civil and criminal causes, and the mayor and three of the aldermen are to be justices of the peace. There is to be an appeal in civil and criminal cases from the mayor's court to 'our supreme court of judicature, commonly called our court of admiralty.' There is to be a recorder, who must be a discreet person, skilful in the laws and constitutions of the place, and who is to assist the mayor in trying, judging, and sentencing causes of any considerable value or intricacy. And there is to be a town clerk and clerk of the peace, an able and discreet person, who must always be an Englishman born, but well skilled in the language of East India, and who is to be esteemed a notary public.

Nor are the ornamental parts of municipal life forgotten. 'For the greater solemnity and to attract respect and rever-

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

ence from the common people,' the mayor is to 'always have carried before him when he goes to the guild hall or other place of assembly, two silver maces gilt, not exceeding three feet and a half in length,' and the mayor and aldermen may 'always upon such solemn occasions wear scarlet serge gowns, all made after one form or fashion, such as shall be thought most convenient for that hot country.' The burgesses are, on these occasions, to wear white 'pelong,' or other silk gowns. Moreover, the mayor and aldermen are 'to have and for ever enjoy the honour and privilege of having rundelloes and kattysols¹ born over them when they walk or ride abroad on these necessary occasions within the limits of the said corporation, and, when they go to the guild hall or upon any other solemn occasion, they may ride on horseback in the same order as is used by the Lord Mayor and aldermen of London, having their horses decently furnished with saddles, bridles, and other trimmings after one form and manner as shall be devised and directed by our President and Council of Fort St George.'

The charter of 1687 was the last of the Stuart charters affecting the East India Company. The constitutional history of the Company after the Revolution of 1688 may be appropriately ushered in by a reference to the resolution which was passed by them in that year.

Company's
resolution
of 1689.

'The increase of our revenue is the subject of our care as much as our trade; 'tis that must maintain our force when twenty accidents may interrupt our trade; 'tis that must make us a nation in India; without that we are but a great number of interlopers, united by His Majesty's royal charter, fit only to trade where nobody of power thinks it their interest to prevent us; and upon this account it is that the wise Dutch, in all their general advices that we have seen, write ten paragraphs concerning their government, their civil and military policy, warfare, and the increase of their revenue, for one paragraph they write concerning trade.'

¹ Umbrellas and parasols.