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

Controversies after Revolution of 1688.

The Revolution of 1688 dealt a severe blow to the policy of Sir Josiah Child, and gave proportionate encouragement to his rivals. They organized themselves in an association which was popularly known as the New Company, and commenced an active war against the Old Company both in the City and in Parliament. The contending parties presented petitions to the Parliament of 1691, and the House of Commons passed two resolutions, first, that the trade of the East Indies was beneficial to the nation, and secondly, that the trade with the East Indies would be best carried on by a joint-stock company possessed of extensive privileges. The practical question, therefore, was, not whether the trade to the East Indies should be abolished. or should be thrown open, but whether the monopoly of the trade should be left in the hands of Sir Josiah Child and his handful of supporters. On this question the majority of the Commons wished to effect a compromise—to retain the Old Company, but to remodel it and to incorporate it with the New Company. Resolutions were accordingly carried for increasing the capital of the Old Company, and for limiting the amount of the stock which might be held by a single proprietor. A Bill based on these resolutions was introduced and read a second time, but was dropped in consequence of the refusal of Child to accept the terms offered to him. Thereupon the House of Commons requested the king to give the Old Company the three years' warning in pursuance of which their privileges might be determined.

Two years of controversy followed. The situation of the Old Company was critical. By inadvertently omitting to pay a tax which had been recently imposed on joint-stock companies, they had forfeited their charter and might at

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

Charters of 1693 and 1694.

Accordingly the charter of October 7, 1693, confirms the former charter of the Company, but is expressed to be revocable in the event of the Company failing to submit to such further regulations as might be imposed on them within a year. These regulations were embodied in two supplemental charters dated November 11, 1693, and September 28, 1694. By the first of these charters the capital of the Company was increased by the addition of £744,000. No person was to subscribe more than £10,000. Each subscriber was to have one vote for each £1,000 stock held by him, up to £10,000 but no more. The governor and deputy governor were to be qualified by holding £4,000 stock, and each committee by holding £1,000 stock. The dividends were to be made in money alone. Books were to be kept for recording transfers of stock, and were to be open to public inspection. The joint stock was to continue for twenty-one years and no longer.

The charter of 1694 provided that the governor and deputy governor were not to continue in office for more than two

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

years, that eight new committees were to be chosen each year, and that a general court must be called within eight days on request by six members holding £1,000 stock each. The three charters were to be revocable after three years' warning, if not found profitable to the realm.

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

The affair of the *Redbridge* and its results.

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

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

The first Act of Parliament for regulating the trade to

the East Indies was passed in 1698. The New Company had continued their attacks on the monopoly of the Old Company, a monopoly which had now been declared illegal, and they found a powerful champion in Montagu, the Chancellor of the Exchequer. The Old Company offered, in return for a monopoly secured by law, a loan of £700,000 to the State. But Montagu wanted more money than the Old Company could advance. He also wanted to set up a new company constituted in accordance with the views of his adherents. Unfortunately these adherents were divided in their views. Most of them were in favour of a joint-stock company. But some preferred a regulated company after the model of the Levant Company. The plan which Montagu ultimately devised was extremely intricate, but its general features cannot be more clearly described than in the language of Macaulay: 'He wanted two millions to extricate the State from its financial embarrassments. That sum he proposed to raise by a loan at 8 per cent. The lenders might be either individuals or corporations, but they were all, individuals and corporations, to be united in a new corporation, which was to be called the General Society. Every member of the General Society, whether individual or corporation, might trade separately with India to an extent not exceeding the amount which that member had advanced to the Government. But all the members or any of them might, if they so thought fit, give up the privilege of trading separately, and unite themselves under a royal Charter for the purpose of trading in common. Thus the General Society was, by its original constitution, a regulated company; but it was provided that either the whole Society or any part of it might become a joint-stock company.'

Incorporation of English Company.

This arrangement was embodied in an Act and two charters. The Act (9 & 10 Will. III, c. 44) authorized the Crown to borrow two millions on the security of taxes on salt, and stamped vellum, parchment, and paper, and to incorporate the subscribers to the loan by the cumbrous name of the

'General Society entitled to the advantages given by an Act of Parliament for advancing a sum not exceeding two millions for the service of the Crown of England.' The Act follows closely the lines of that by which, four years before, Montagu had established the Bank of England in consideration of a loan of £1,200,000. In each case the loan bears interest at the rate of 8 per cent., and is secured on the proceeds of a special tax or set of taxes. In each case the subscribers to the loan are incorporated and obtain special privileges. The system was an advance on that under which bodies of merchants had obtained their privileges by means of presents to the king or bribes to his ministers, and was destined to receive much development in the next generation. The plan of raising special loans on the security of special taxes has since been superseded by the National Debt and the Consolidated Fund. But the debt to the Bank of England still remains separate, and retains some of the features originally imprinted on it by the legislation of Montagu.

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

The New Company were given the exclusive privilege of trading to the East Indies, subject to a reservation of the concurrent rights of the Old Company until September 29, 1701. The New Company, like the Old Company, were authorized to make by-laws and ordinances, to appoint governors, with power to raise and train military forces, and to establish courts of judicature. They were also directed to maintain ministers of religion at their factories in India, and

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

to take a chaplain in every ship of 500 tons. The ministers were to learn the Portuguese language and to 'apply themselves to learn the native language of the country where they shall reside, the better to enable them to instruct the Gentoos that shall be the servants or slaves of the same Company or of their agents, in the Protestant religion.' Schoolmasters were also to be provided.

Union of Old and New Companies.

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

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

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

Company were to continue their trade in accordance with the provisions of the charter of 1698, but were to change their name for that of 'The United Company of Merchants of England trading to the East Indies.'

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

Difficulties arose in carrying out the arrangement of 1702, and it became necessary to apply for the assistance of Parliament, which was given on the usual terms. By an Act of 1707 [1] the English Company were required to advance to the Crown a further loan of £1,200,000 without interest, a transaction which was equivalent to reducing the rate of interest on the total loan of £3,200,000 from 8 to 5 per cent. In consideration of this advance the exclusive privileges of the Company were continued to 1726, and Lord Godolphin was empowered to settle the differences still remaining between the London Company and the English Company. Lord Godolphin's Award was given in 1708, and in 1709 Queen Anne accepted a surrender of the London Company's charters and thus terminated their separate existence. The original charter of the New or English Company thus came to be, in point of law, the root of all the powers and privileges of the United Company, 'subject to the changes made by statute. Henceforth down to 1833 (see 3 & 4 Will. IV, c. 85, s. 111) the Company bear their new name of 'The United Company of Merchants of England trading to the East Indies.'

Period between 1708 and 1765.

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

An Act of 1711 [2] provided that the privileges of the United Company were not to be determined by the repayment of the loan of two millions.

The exclusive privileges of the United Company were

[1] 6 Anne, c. 71. [2] 10 Anne, c. 35.

extended for further terms by Acts of 1730 [1] and 1744 [2]. The price paid for the first extension was an advance to the State of £200,000 without interest, and the reduction of the rate of interest on the previous loan from 5 per cent. to 4 per cent. By another Act of 1730 [3] the security for the loan by the Company was transferred from the special taxes on which it had been previously charged to the 'aggregate fund,' the predecessor of the modern Consolidated Fund. The price of the second extension, which was to 1780, was a further loan of more than a million at 3 per cent. By an Act of 1750 [4] the interest on the previous loan of £3,200,000 was reduced, first to 3½ per cent., and then to 3 per cent.

Extension of Company's charter.

Successive Acts were passed for increasing the stringency of the provisions against interlopers [5] and for penalizing any attempt to support the rival Ostend Company [6].

Provisions against interlopers.

In 1726 a charter was granted establishing or reconstituting

[1] 3 Geo. II, c. 14. [2] 17 Geo. II, c. 17.
[3] 3 Geo. II, c. 20. [4] 23 Geo II, c. 22.

[5] 1718, 5 Geo I, c 21; 1720, 7 Geo. I, Stat. 1, c. 21, 1722, 9 Geo. I, c 26; 1732, 5 Geo. II, c 29. See the article on 'Interlopers' in the *Dictionary of Political Economy*. For the career of a typical interloper see the account of Thomas Pitt, afterwards Governor of Madras, and grandfather of the elder William Pitt, given in vol. III. of Yule's edition of the Diary of William Hedges. The relations between interlopers and the East India Company in the preceding century are well illustrated by Skinner's case, which arose on a petition presented to Charles II soon after the Restoration. According to the statement signed by the counsel of Skinner there was a general liberty of trade to the East Indies in 1657 (under the Protectorate), and he in that year sent a trading ship there, but the Company's agents at Bantam, under pretence of a debt due to the Company, seized his ship and goods, assaulted him in his warehouse at Jamba in the island of Sumatra, and dispossessed him of the warehouse and of a little island called Barella. After various ineffectual attempts by the Crown to induce the Company to pay compensation, the case was, in 1665, referred by the king in council to the twelve judges, with the question whether Skinner could have full relief in any court of law. The answer was that the king's ordinary courts of justice could give relief in respect of the wrong to person and goods, but not in respect of the house and island. The House of Lords then resolved to relieve Skinner, but these proceedings gave rise to a serious conflict between the House of Lords and the House of Commons. See Hargrave's Preface to Hale's *Jurisdiction of the House of Lords*, p. cv.

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

Judicial charters of 1726 and 1753.

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

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

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

The charters of 1726 and 1753 have an important bearing on the question as to the precise date at which the English criminal law was introduced at the presidency towns. This question is discussed by Sir James Stephen with reference to the legality of Nuncomar's conviction for forgery; the point being whether the English statute of 1728 (2 Geo. II, c. 25) was or was not in force in Calcutta at the time of

[1] Morley's *Digest*, Introduction, p. clxix.

Nuncomar's trial. Sir James Stephen inclines to the opinion that English criminal law was originally introduced to some extent by the charter of 1661, but that the later charters of 1726, 1753, and 1774 must be regarded as acts of legislative authority whereby it was reintroduced on three successive occasions, as it stood at the three dates mentioned. If so, the statute of 1728 would have been in force in Calcutta in 1770 when Nuncomar's offence was alleged to have been committed, and at the time of his trial in 1775. But high judicial authorities in India have maintained a different view. According to their view British statute law was first given to Calcutta by the charter establishing the mayor's court in 1726, and British statutes passed after the date of that charter did not apply to India, unless expressly or by necessary implication extended to it [1]. Since the passing of the Indian Penal Code the question has ceased to be of practical importance

Mutiny Act and Articles of War for Indian Forces

In 1744 war broke out between England and France, and in 1746 their hostilities extended to India. These events led to the establishment of the Company's Indian Army. The first establishment of that army may, according to Sir George Chesney [2], be considered to date from the year 1748, 'when a small body of sepoys was raised at Madras, after the example set by the French, for the defence of that settlement during the course of the war which had broken out, four years previously, between France and England. At the same time a small European force was raised, formed of such sailors as could be spared from the ships on the coast, and of men smuggled on board the Company's vessels in England by the Company. An officer, Major Lawrence, was appointed by a commission from the Company to command these forces in India.' During the Company's earliest wars its army consisted mainly, for fighting purposes, of Europeans.

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

[2] *Indian Polity* (3rd ed.), ch. xii, which contains an interesting sketch of the rise and development of the Indian Army The nucleus of a European force had been formed at Bombay in 1668, supra, p. 18.

It has been seen that by successive charters the Company had been authorized to raise troops and appoint officers. But the more extensive scale on which the military operations of the Company were now conducted made necessary further legislation for the maintenance of military discipline. An Act of 1754 [1] laid down for the Indian forces of the Company provisions corresponding to those embodied in the annual English Mutiny acts. It imposed penalties for mutiny, desertion, and similar offences, when committed by officers or soldiers in the Company's service. The Court of Directors might, in pursuance of an authority from the king, empower their president and council and their commanders-in-chief to hold courts-martial for the trial and punishment of military offences. The king was also empowered to make articles of war for the better government of the Company's forces. The same Act contained a provision, repeated in subsequent Acts, which made oppression and other offences committed by the Company's presidents or councils cognizable and punishable in England. The Act of 1754 was amended by another Act passed in 1760 [2].

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

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

A charter of 1757 recited that the Nabob of Bengal had taken from the Company, without just or lawful pretence and contrary to good faith and amity, the town and settlement of Calcutta, and goods and valuable commodities belonging to the Company and to many persons trading or residing within the limits of the settlement, and that the officers and agents of the Company at Fort St. George had concerted a plan of operations with Vice-Admiral Watson and others, the commanders of our fleet employed in those parts, for regaining the town and settlement and the goods and com-

[1] 27 Geo. II, c. 9. [2] 1 Geo. III, c. 14.

modities, and obtaining adequate satisfaction for their losses; and that it had been agreed between the officers of the Company, on the one part, and the vice-admiral and commanders of the fleet, on the other part, assembled in a council of war, that one moiety of all plunder and booty 'which shall be taken from the Moors' should be set apart for the use of the captors, and that the other moiety should be deposited till the pleasure of the Crown should be known. The charter went on to grant this reserved moiety to the Company, except any part thereof which might have been taken from any of the king's subjects. Any part so taken was to be returned to the owners on payment of salvage.

A charter of 1758, after reciting that powers of making peace and war and maintaining military forces had been granted to the Company by previous charters, and that many troubles had of late years arisen in the East Indies, and the Company had been obliged at very great expense to carry out a war in those parts against the French and likewise against the Nabob of Bengal and other princes or Governments in India, and that some of their possessions had been taken from them and since retaken, and forces had been maintained, raised, and paid by the Company in conjunction with some of the royal ships of war and forces; and that other territories or districts, goods, merchandises, and effects had been acquired and taken from some of the princes or Governments in India at variance with the Company by the ships and forces of the Company alone, went on to grant to the Company all such booty or plunder, ships, vessels, goods, merchandises, treasure, and other things as had since the charter of 1757 been taken or seized, *or should thereafter be taken*, from any of the enemies of the Company or any of the king's enemies in the East Indies by any ships or forces of the Company employed by them or on their behalf within their limits of trade. But this was only to apply to booty taken during hostilities begun and carried on in order to right and recompense the Company upon the goods, estate, or people of those parts from whom they should

sustain or have just and well-grounded cause to fear any injury, loss, or damage, or upon any people who should interrupt, wrong, or injure them in their trade within the limits of the charters, or should in a hostile manner invade or attempt to weaken or destroy the settlements of the Company or to injure the king's subjects or others trading or residing within the Company's settlements or in any manner under the king's protection within the limits of the Company. The booty must also have been taken in wars or hostilities or expeditions begun, carried on, and completed by the forces raised and paid by the Company alone or by the ships employed at their sole expense. And there was a saving for the royal prerogative to distribute the booty in such manner as the Crown should think fit in all cases where any of the king's forces should be appointed and commanded to act in conjunction with the ships or forces of the Company. There was also an exception for goods taken from the king's subjects, which were to be restored on payment of reasonable salvage. These provisions, though they gave rise to difficult questions at various subsequent times, have now become obsolete. But the charter contained a further power which is still of practical importance. It expressly granted to the Company power, by any treaty of peace made between the Company, or any of their officers, servants, or agents, and any of the Indian princes or Governments, to cede, restore, or dispose of any fortresses, districts, or territories acquired by conquest from any of the Indian princes or Governments during the late troubles between the Company and the Nabob of Bengal, or which should be acquired by conquest in time coming, subject to a proviso that the Company should not have power to cede, restore, or dispose of any territory acquired from the subjects of any European power without the special licence and approbation of the Crown. This power has been relied on as the foundation, or one of the foundations, of the power of the Government of India to cede territory

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

The year 1765 marks a turning-point in Anglo-Indian history, and may be treated as commencing the period of territorial sovereignty by the East India Company. The successes of Clive and Lawrence in the struggle between the English and French and their respective allies had extinguished French influence in the south of India. The victories of Plassey[1] and Baxar[1], made the Company masters of the north-eastern provinces of the peninsula. In 1760 Clive returned from Bengal to England. In 1765, after five years of confusion, he went back to Calcutta as Governor and Commander-in-Chief of Bengal, armed with extraordinary powers. His administration of eighteen months was one of the most memorable in Indian history. The beginning of our Indian rule dates from the second governorship of Clive, as our military supremacy had dated from his victory at Plassey. Clive's main object was to obtain the substance, though not the name, of territorial power, under the fiction of a grant from the Mogul Emperor.

The Company as territorial sovereign.

This object was obtained by the grant from Shah Alam of the Diwani or fiscal administration of Bengal, Behar, and Orissa[2].

Grant of the Diwani.

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

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

The great events of 1765 produced immediate results in

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

[2] The grant is dated August 17, 1765. The 'Orissa' of the grant corresponds to what is now the district of Midnapur, and is not to be confused with the modern Orissa, which was not acquired until 1803.

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

At the same time the public mind was startled by the enormous fortunes which 'Nabobs' were bringing home, and the public conscience was disturbed by rumours of the unscrupulous modes in which these fortunes had been amassed. Constitutional questions were also raised as to the right of a trading company to acquire on its own account powers of territorial sovereignty [1]. The intervention of Parliament was imperatively demanded.

Legislation of 1767.

On November 25, 1766, the House of Commons resolved to appoint a committee of the whole house to inquire into the state and condition of the East India Company, and the proceedings of this committee led to the passage in 1767 of five Acts with reference to Indian affairs. The first disqualified a member of any company for voting at a general court unless he had held his qualification for six months, and prohibited the making of dividends except at a half-yearly or quarterly court [2]. Although applying in terms to all companies, the Act was immediately directed at the East India Company, and its object was to check the trafficking in votes and other scandals which had recently disgraced their proceedings. The second Act [3] prohibited the East India Company from making any dividend except in pursuance of a resolution passed at a general court after due notice, and directly overruled the recent resolution of the Company by forbidding them to declare any dividend in excess of 10 per cent. per annum until the next session of Parliament. The third and fourth Acts [4] embodied the terms of a bargain to which the Company

[1] For the arguments on this question, see Lecky, ch. xii.

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

had been compelled to consent. The Company were required to pay into the Exchequer an annual sum of £400,000 for two years from February 1, 1767, and in consideration of this payment were allowed to retain their territorial acquisitions and revenues for the same period[1]. At the same time certain duties on tea were reduced on an undertaking by the Company to indemnify the Exchequer against any loss arising from the reduction. Thus the State claimed its share of the Indian spoil, and asserted its rights to control the sovereignty of Indian territories.

In 1768 the restraint on the dividend was continued for another year[2], and in 1769 a new agreement was made by Parliament with the East India Company for five years, during which time the Company were guaranteed the territorial revenues, but were bound to pay an annuity of £400,000, and to export a specified quantity of British goods. They were at liberty to increase their dividends during that time to 12½ per cent. provided the increase did not exceed 1 per cent. If, however, the dividend should fall below 10 per cent. the sum to be paid to the Government was to be proportionately reduced. If the finances of the Company enabled them to pay off some specified debts, they were to lend some money to the public at 2 per cent.[3]

These arrangements were obviously based on the assumption that the Company were making enormous profits, out of which they could afford to pay, not only liberal dividends to their proprietors, but a heavy tribute to the State. The assumption was entirely false. Whilst the servants of the Company were amassing colossal fortunes, the Company itself was advancing by rapid strides to bankruptcy. 'Its debts were already estimated at more than six millions sterling. It supported an army of about 30,000 men. It paid about

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

[2] 8 Geo. III, c. 1.

[3] 9 Geo. III, c. 24.

one million sterling a year in the form of tributes, pensions, and compensations to the emperor, the Nabob of Bengal, and other great native personages. Its incessant wars, though they had hitherto been always successful, were always expensive, and a large portion of the wealth which should have passed into the general exchequer, was still diverted to the private accounts of its servants [1].' Two great calamities hastened the crisis. In the south of India, Hyder Ali harried the Carnatic, defeated the English forces, and dictated peace on his own terms in 1769. In the north, the great famine of 1770 swept away more than a third of the inhabitants of Bengal.

Pecuniary embarrassments in 1772.

Yet the directors went on declaring dividends at the rates of 12 and 12½ per cent. At last the crash came. In the spring session of 1772 the Company had endeavoured to initiate legislation for the regulation of their affairs. But their Bill was thrown out on the second reading, and in its place a select committee of inquiry was appointed by the House of Commons. In June, 1772, Parliament was prorogued, and in July the directors were obliged to confess that the sum required for the necessary payments of the next three months was deficient to the extent of £1,293,000. In August the chairman and deputy chairman waited on Lord North to inform him that nothing short of a loan of a million from the public could save the Company from ruin.

In November, 1772, Parliament met again, and its first step was to appoint a new committee with instructions to hold a secret inquiry into the Company's affairs. This committee presented its first report with unexpected rapidity, and on its recommendation Parliament in December, 1772, passed an Act prohibiting the directors from sending out to India a commission of supervision on the ground that the Company would be unable to bear the expense [2].

Legislation of 1773.

In 1773 the Company came to Parliament for pecuniary assistance, and Lord North's Government took advantage

[1] Lecky, iv. 273.

[2] 13 Geo. III, c. 9.

of the situation to introduce extensive alterations into the system of governing the Company's Indian possessions[1].

In spite of vehement opposition, two Acts were passed through Parliament by enormous majorities. By one of these Acts[2] the ministers met the financial embarrassments of the Company by a loan of £1,400,000 at 4 per cent., and agreed to forgo the Company's debt of £400,000 till this loan had been discharged. The Company were restricted from declaring any dividend above 6 per cent. till the new loan had been discharged, and above 7 per cent. until the bond debt was reduced to £1,500,000. They were obliged to submit their accounts every half-year to the Treasury, they were restricted from accepting bills drawn by their servants in India for above £300,000 a year, and they were required to export to the British settlements within their limits British goods of a specified value.

The other Act was that commonly known as the Regulating Act[3]. To understand the object and effect of its provisions brief reference must be made to the constitution of the Company at the time when it was passed. The Regulating Act of 1773

At home the Company were still governed in accordance with the charter of 1698, subject to a few modifications of detail made by the legislation of 1767 There was a Court of Directors and a General Court of Proprietors. Every holder

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

[2] 13 Geo. III, c 64.

[3] 13 Geo. III, c. 63 This Act is described in its 'short title' as an Act of 1772 because Acts then dated from the beginning of the session in which they were passed.

of £500 stock had a vote in the Court of Proprietors, but the possession of £2,000 stock was the qualification for a director. The directors were twenty-four in number, and the whole of them were re-elected every year.

In India each of the three presidencies was under a president or governor and council, appointed by commission of the Company, and consisting of its superior servants. The numbers of the council varied [1], and some of its members were often absent from the presidency-town, being chiefs of subordinate factories in the interior of the country. All power was lodged in the president and council jointly, and nothing could be transacted except by a majority of votes. So unworkable had the council become as an instrument of government, that in Bengal Clive had been compelled to delegate its functions to a select committee.

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

The civil and military servants of the Company were classified, beginning from the lowest rank, as writers, factors, senior factors, and merchants. Promotion was usually by seniority. Their salaries were extremely small [2], but they made enormous profits by trading on their own account, and by money drawn from extortions and bribes. The select committee of 1773 published an account of such sums as had been proved and acknowledged to have been distributed by the princes and other natives of Bengal from the year 1757 to 1766, both included. They amounted to £5,940,987, exclusive of the grant made to Clive after the battle of Plassey. Clive, during his second governorship, made great efforts to put down the abuses of private trade, bribery, and extortion,

[1] They were usually from twelve to sixteen.

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

and endeavoured to provide more legitimate remuneration for the higher classes of the Company's civil and military servants by assigning to them specific shares in the profits derived from the salt monopoly. According to his estimates the profits from this source of a commissioner or colonel would be at least £7,000 a year; those of a factor or major, £2,000 [1].

At the presidency towns, civil justice was administered in the mayor's courts and courts of request, criminal justice by the justices in petty and quarter sessions. In 1772 Warren Hastings became Governor of Bengal, and took steps for organizing the administration of justice in the interior of that province. In the previous year the Court of Directors had resolved to assert in a more active form the powers given them by the grant of the Diwani in 1765, and in a letter of instructions to the president and council at Fort William had announced their resolution to 'stand forth as diwan,' and by the agency of the Company's servants to take upon themselves the entire care and management of the revenues [2]. In pursuance of these instructions the Court of Directors appointed a committee, consisting of the Governor of Bengal and four members of council, and these drew up a report, comprising a plan for the more effective collection of the revenue and the administration of justice. This plan was adopted by the Government on August 21, 1772, and many of its rules were long preserved in the Bengal Code of Regulations [3].

In pursuance of this plan, a board of revenue was created, consisting of the president and members of the council, and the treasury was removed from Moorshedabad to Calcutta. The supervisors of revenue became collectors, and with them

[1] See Lecky, iv. 266, 270 [2] Letter of August 28, 1771.

[3] The office of 'diwan' implied, not merely the collection of the revenue, but the administration of civil justice. The 'nizamut' comprised the right of arming and commanding the troops, and the management of the whole of the police of the country, as well as the administration of criminal justice. Morley, *Digest*, p. xxxi. See a fuller account of Warren Hastings' Plan, ibid. p. lxxiv.

were associated native officers, styled diwans. Courts were established in each collectorship, one styled the Diwani, a civil court, and the other the Faujdari, a criminal court. Over the former the collector presided in his quality of king's diwan. In the criminal court the kazi and mufti of the district sat to expound the Mahomedan law. Superior courts were established at the chief seat of government, called the Sadr Diwani Adalat and the Sadr Nizamat Adalat. These courts theoretically derived their jurisdiction and authority, not from the British Crown, but from the native Government in whose name the Company acted as administrators of revenue. They were Company's courts, not king's courts.

Provisions of Regulating Act

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

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

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

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

The supremacy of the Bengal Presidency over the other presidencies was definitely declared. The governor-general and council were to have power of superintending and controlling the government and management of the presidencies of Madras, Bombay, and Bencoolen [2], so far and in so much as that it should not be lawful for any Government of the minor presidencies to make any orders for commencing hostilities, or declaring or making war, against any Indian princes or powers, or for negotiating or concluding any treaty with any such prince or power without the previous consent

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

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

of the governor-general and council, except in such cases of imminent necessity as would render it dangerous to postpone such hostilities or treaties until the arrival of their orders, and except also in cases where special orders had been received from the Company[1]. A president and a council offending against these provisions might be suspended by order of the governor-general and council. The governors of the minor presidencies were to obey the order of the governor-general and council, and constantly and dutifully to transmit to them advice and intelligence of all transactions and matters relating to the government, revenues, or interest of the Company.

Provisions followed for regulating the relations of the governor-general and his council to the Court of Directors, and of the directors to the Crown The governor-general and council were to obey the orders of the Court of Directors and keep them constantly informed of all matters relating to the interest of the Company The directors were, within fourteen days after receiving letters or advices from the governor-general and council, to transmit to the Treasury copies of all parts relating to the management of the Company's revenue, and to transmit to a secretary of state copies of all parts relating to the civil or military affairs and government of the Company

Important changes were made in the arrangements for the administration of justice in Bengal The Crown was empowered to establish by charter a supreme court of judicature at Fort William, consisting of a chief justice and three other judges, who were to be barristers of five years' standing, and were to be appointed by the Crown. The supreme court was empowered to exercise civil, criminal, admiralty, and ecclesiastical jurisdiction, and to appoint such clerks and other ministerial officers with such reasonable salaries as should be approved by the governor-general and council, and to

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

establish such rules of procedure and do such other things as might be found necessary for the administration of justice and the execution of the powers given by the charter. The court was declared to be at all times a court of record and a court of oyer and terminer and jail delivery in and for the town of Calcutta and factory of Fort William and the factories subordinate thereto. Its jurisdiction was declared to extend to all British subjects who should reside in the kingdoms or provinces of Bengal, Behar, and Orissa, or any of them, under the protection of the United Company. And it was to have 'full power and authority to hear and determine all complaints against any of His Majesty's subjects for crimes, misdemeanours, or oppressions, and also to entertain, hear, and determine any suits or actions whatsoever against any of His Majesty's subjects in Bengal, Behar. and Orissa, and any suit, action, or complaint against any person employed by or in the service of the Company or of any of His Majesty's subjects.'

But on this jurisdiction two important limitations were imposed.

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

Then, with respect to proceedings in which natives of the country were concerned, it was provided that the court should hear and determine 'any suits or actions whatsoever of any of His Majesty's subjects against any inhabitant of India residing in any of the said kingdoms or provinces of Bengal, Behar, or Orissa,' on any contract in writing where

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

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

the cause of action exceeded 500 rupees, and where the said inhabitant had agreed in the contract that, in case of dispute, the matter should be heard and determined in the supreme court. Such suits or actions might be brought in the first instance before the supreme court, or by appeal from any of the courts established in the provinces.

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

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

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

The governor-general and council and the chief justice and other judges of the supreme court were to act as justices of the peace, and for that purpose to hold quarter sessions.

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

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

But these rules and regulations were not to be valid until duly registered and published in the supreme court, with the assent and approbation of the court, and they might, in effect,

be set aside by the king in council. A copy of them was to be kept affixed conspicuously in the India House, and copies were also to be sent to a secretary of state.

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

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

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

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

Charter of 1774 constituting supreme court at Calcutta.

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

Difficulties arising out of Regulating Act.

Warren Hastings retained the office of governor-ge until 1785, when he was succeeded temporarily by Si Macpherson, and, eventually, by Lord Cornwallis. His app ment, which was originally for a term of five years, continued by successive Acts of Parliament. His adm tration was distracted by conflicts between himself and colleagues on the supreme council, and between the sup council and the supreme court, conflicts traceable to defective provisions of the Regulating Act.

Difficulties in the council.

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

Barwell usually supported Hastings. Francis, Clave and Monson usually opposed him. Whilst they acted toge Hastings was in a minority, and found his policy thwa and his decisions overruled. In 1776 he was reduced to depression that he gave his agents in England a conditi authority to tender his resignation. The Court of Direc accepted his resignation on this authority, and took s to supply his place. But in the meantime Clavering

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

(November, 1776) and Hastings was able, by means of his casting vote, to maintain his supremacy in the council. He withdrew his authority to his English agent, and obtained from the judges of the supreme court an opinion that his resignation was invalid. These proceedings possibly occasioned the provision which was contained in the Charter Act of 1793, was repeated in the Act of 1833, and is still law, that the resignation of a governor-general is not valid unless signified by a formal deed [1].

Difficulties between supreme council and supreme court

The provisions of the Act of 1773 are obscure and defective as to the nature and extent of the authority exerciseable by the governor-general and his council, as to the jurisdiction of the supreme court, and as to the relation between the Bengal Government and the court. The ambiguities of the Act arose partly from the necessities of the case, partly from a deliberate avoidance of new and difficult questions on constitutional law. The situation created in Bengal by the grant of the Diwani in 1765, and recognized by the legislation of 1773, resembled what in the language of modern international law is called a protectorate. The country had not been definitely annexed [2]; the authority of the Delhi emperor and of his native vicegerent was still formally recognized; and the attributes of sovereignty had been divided between them and the Company in such proportions that whilst the substance had passed to the latter, a shadow only remained with the former. But it was a shadow with which potent conjuring tricks could be performed. Whenever the Company found it convenient, they could play off the authority derived from the Mogul against the authority derived from the British law, and justify under the one proceedings which

[1] See 3 & 4 Will. IV, c. 85, s. 79. Digest, s. 82.

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

it would have been difficult to justify under the other. In the one capacity the Company were the all-powerful agents of an irresponsible despot; in the other they were tied and bound by the provisions of charters and Acts of Parliament. It was natural that the Company's servants should prefer to act in the former capacity. It was also natural that their Oriental principles of government should be regarded with dislike and suspicion by English statesmen, and should be found unintelligible and unworkable by English lawyers steeped in the traditions of Westminster Hall.

In the latter half of the nineteenth century we became familiar with situations of this kind, and we have devised appropriate formulae for dealing with them. The modern practice has been to issue an Order in Council under the Foreign Jurisdiction Act, establishing consular and other courts of civil and criminal jurisdiction, and providing them with codes of procedure and of substantive law, which are sometimes derived from Anglo-Indian sources. The jurisdiction is to be exercised and the law is to be applied in cases affecting British subjects, and, so far as is consistent with international law and comity, in cases affecting European or American foreigners. But the natives of the country are, so far as is compatible with regard to principles of humanity, left in enjoyment of their own laws and customs. If a company has been established for carrying on trade or business, its charter is so framed as to reserve the supremacy and prerogatives of the Crown. In this way a rough-and-ready system of government is provided, which would often fail to stand the application of severe legal tests, but which supplies an effectual mode of maintaining some degree of order in uncivilized or semi-civilized countries[1].

But in 1773 both the theory and the experience were lacking, which are requisite for adapting English institutions

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

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

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

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

To whom was this law to be administered? To British subjects and to persons in the employment of the Company. But whom did the first class include? Probably only the class now known as European British subjects, and probably not the native 'inhabitants of India' residing in the three

provinces, except such of them as were resident in the town of Calcutta. But the point was by no means clear [1].

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

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

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

These were, first, the claims of the court to exercise jurisdiction over the whole native population, to the extent of making them plead to the jurisdiction if a writ was served on them. The quarrel on this point culminated in what was known as the Cossijurah case, in which the sheriff and his officers, when attempting to execute a writ against a zemindar, were driven off by a company of sepoys acting under the orders of the council. The action of the council was not disapproved by the authorities in England, and thus this contest ended practically in the victory of the council and the defeat of the court.

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

The third question was as to the right of the supreme court to try actions against the judicial officers of the Company for acts done in the execution of what they believed, or said they believed, to be their legal duty. This question arose in the

[1] See *In the matter of Ameer Khan*, 6 Bengal Law Reports, 392, 443.
[2] *Nuncomar and Impey*, ii. 237.

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

Amending Act of 1781.

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

The governor-general and council of Bengal were not to be subject, jointly or severally, to the jurisdiction of the supreme court for anything counselled, ordered, or done by them in their public capacity. But this exemption did not apply to orders affecting British subjects [2].

The supreme court was not to have or exercise any jurisdiction in matters concerning the revenue, or concerning any act done in the collection thereof, according to the usage and practice of the country, or the regulations of the governor-general and council [3].

[1] 21 Geo. III, c. 70. [2] See Digest, s. 106. [3] Ibid. s. 101.

No person was to be subject to the jurisdiction of the supreme court by reason only of his being a 'landowner, landholder, or farmer of land or of land rent, or for receiving a payment or pension in lieu of any title to, or ancient possession of, land or land rent, or for receiving any compensation or share of profits for collecting of rents payable to the public out of such lands or districts as are actually farmed by himself, or those who are his under-tenants in virtue of his farm, or for exercising within the said lands and farms any ordinary or local authority commonly annexed to the possession or farm thereof or by reason of his becoming security for the payment of rent'

No person was, by reason of his being employed by the Company, or by the governor-general and council, or by a native or descendant of a native of Great Britain, to become subject to the jurisdiction of the supreme court, in any matter of inheritance or succession to lands or goods, or in any matter of dealing or contract between parties, except in actions for wrongs or trespasses, or in civil suits by agreement of the parties.

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

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

[1] This proviso was taken from Warren Hastings' plan for the administration of justice prepared and adopted in 1772, when the Company first 'stood forth as diwan.' It is interesting as a recognition of the personal law which played so important a part during the break-up of the Roman empire, but has, in the West, been gradually superseded by territorial law. As to the effect of this and similar enactments, see Digest, s. 108 and note thereon.

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

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

The appellate jurisdiction of the governor-general and council in country cases was recognized and confirmed in cautiously general terms. 'Whereas the governor-general and council, or some committee thereof or appointed thereby, do determine on appeals and references from the country or provincial courts in civil cases,' 'the said court shall and lawfully may hold all such pleas and appeals, in the manner and with such powers as it hitherto hath held the same, and shall be deemed in law a court of record, and the judgements therein given shall be final and conclusive, except upon appeal to His Majesty, in civil suits only, the value of which shall be five thousand pounds and upwards.' The same court was further declared to be a court to hear and determine on all offences, abuses, and extortions committed in the collection of revenue, and on severities used beyond what shall appear to the said court customary or necessary to the case, and to punish the same according to sound discretion, provided the said punishment does not extend to death, or maiming, or perpetual imprisonment [1].

No action for wrong or injury was to lie in the supreme

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

court against any person whatsoever exercising any judicial office in the country courts for any judgement, decree, or order of the court, nor against any person for any act done by or in virtue of the order of the court.

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

The decision of Parliament, as expressed in the Act of 1781, was substantially in favour of the council and against the court on all points Sir James Stephen argues that the enactment of this Act 'shows clearly that the supreme court correctly interpreted the law as it stood[1]' But this contention seems to go too far A legislative reversal of a judicial decision shows that, in the opinion of the legislature, the decision is not substantially just, but must not necessarily be construed as an admission that the decision is technically correct. It is often more convenient to cut a knot by legislation than to attempt its solution by the dilatory and expensive way of appeal

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

On assuming the active duties of revenue authority in Bengal in 1772, the president and council had made general regulations for the administration of justice in the country by the establishment of civil and criminal courts. And by the Regulating Act of 1773 the governor-general and council

[1] *Nuncomar and Impey*, II. 192

were expressly empowered to make rules, ordinances, and regulations. But regulations made under this power had to be registered in the supreme court [1], with the consent and approbation of that court. In 1780 the governor-general and council made regulations, in addition to those of 1772, for the more effectual and regular administration of justice in the provincial civil courts, and in 1781 they issued a revised code superseding all former regulations. If these regulations were made under the power given by the Act of 1773 they ought to have been registered. But it does not appear that they were so registered, and after the passing of the Act of 1781 the governor-general and council preferred to act under the powers which enabled them to legislate without any reference to the supreme court. However, notwithstanding the limited purpose for which the powers of 1781 were given, it was under those powers that most of the regulation laws for Bengal purported to be framed. Regulations so made did not require registration or approval by the supreme court. But it was for some time doubtful whether they were binding on that court [2].

The Act of 1781 for defining the powers of the supreme court was not the only legislation of that year affecting the East India Company. The Company had by 1778 duly repaid their loan of £1,400,000 from the Exchequer, and they subsequently reduced the bond debt to the limits prescribed by an Act of that year [3]. By an Act passed in 1781 [4], the Company were required to pay a single sum of £400,000 to the public in discharge of all claims to a share in their

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

[2] See Cowell's *Tagore Law Lectures*, 1872, and *In the matter of Ameer Khan*, 6 Bengal Law Reports, 392, 408. The power of legislation was recognized and extended in 1797 by 37 Geo. III, c. 142, s. 8. See below, p. 71.

[3] 19 Geo III, c. 61.

[4] 21 Geo. III, c. 65. The Company were unable to meet the payments required by this Act, and successive Acts had to be passed for extending the terms fixed for payment (22 Geo. III, c. 51; 23 Geo. III, cc. 36, 83; 24 Geo. III, sess. 1, c. 3).

territorial revenues up to March 1 in that year, and their former privileges were extended until three years' notice after March 1, 1791. By the same Act they were authorized to pay a dividend of 8 per cent. out of their clear profits, but three-fourths of the remainder were to go as a tribute to the public.

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

Two Parliamentary committees on Indian affairs were appointed in the year 1781. The object of the first, of which Burke was the most prominent member, was to consider the administration of justice in India. Its first fruits were the passing of the Act, to which reference has been made above, for further defining the powers of the supreme court. But it continued to sit for many years and presented several reports, some written by Burke himself. The other committee, which sat in secret, and of which Dundas was chairman, was instructed to inquire into the cause of the recent war in the Carnatic and the state of the British government on the coast. This committee did not publish its report until 1782, by which time Lord North's Government had been driven out of office by the disastrous results of the American war, and had been succeeded by the second Rockingham ministry. The reports of both committees were highly adverse to the system of administration in India, and to the persons responsible for that administration, and led to the passing of resolutions by the House of Commons requiring the recall of Hastings and Impey, and declaring that the powers given

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

by the Act of 1773 to the governor-general and council ought to be more distinctly ascertained. But the Court of Proprietors of the Company persisted in retaining Hastings in office in defiance both of their directors and of the House of Commons, and no steps were taken for further legislation until after the famous coalition ministry of Fox and North had come into office. Soon after this event, Dundas, who was now in opposition, introduced a Bill which empowered the king to recall the principal servants of the Company, and invested the Governor-General of Bengal with power which was little short of absolute. But a measure introduced by a member of the opposition had no chance of passing, and the Government were compelled to take up the question themselves.

It was under these circumstances that Fox introduced his famous East India Bill of 1783. His measure would have completely altered the constitution of the East India Company. It was clear that the existing distribution of powers between the State, the Court of Directors, and the Court of Proprietors at home, and the Company's servants abroad, was wholly unsatisfactory, and led to anarchy and confusion. Dundas had proposed to alter it by making the governor-general practically independent, and vesting him with absolute power. Fox adopted the opposite course of increasing the control of the State over the Company at home and its officers abroad. His Bill proposed to substitute for the existing Courts of Directors and Proprietors a new body, consisting of seven commissioners, who were to be named in the Act, were during four years to be irremovable, except upon an address from either House of Parliament, and were to have an absolute power of placing or displacing all persons in the service of the Company, and of ordering and administering the territories, revenues, and commerce of India. Any vacancy in the body was to be filled by the king. A second or subordinate body, consisting of nine assistant directors chosen by the legislature from among the largest proprietors, was to be formed for the

purpose of managing the details of commerce. For the first five years they were given the same security of tenure as the seven commissioners, but vacancies in their body were to be filled by the Court of Proprietors.

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

Pitt's Act of 1784.

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

The Act of 1784[1] begins by establishing a board of six commissioners, who were formally styled the 'Commissioners for the Affairs of India' but were popularly known as the

[1] 24 Geo. III, sess. 2, c. 25. Almost the whole of this Act has been repealed, but many of its provisions were re-enacted in the subsequent Acts of 1793, 1813, and 1833.

Board of Control. They were to consist of the Chancellor of the Exchequer and one of the secretaries of state for the time being, and of four other Privy Councillors, appointed by the king, and holding office during pleasure. There was to be a quorum of three, and the president was to have a casting vote. They were unpaid, and had no patronage, but were empowered 'to superintend, direct, and control, all acts, operations, and concerns which in anywise relate to the civil or military government or revenues of the British territorial possessions in the East Indies.' They were to have access to all papers and instruments of the Company, and to be furnished with such extracts or copies as they might require. The directors were required to deliver to the Board of Control copies of all minutes, orders, and other proceedings of the Company, and of all dispatches sent or received by the directors or any of their committees, and to pay due obedience to, and be bound by, all orders and directions of the Board, touching the civil or military government and revenues of India. The Board might approve, disapprove, or modify the dispatches proposed to be sent by the directors, might require the directors to send out the dispatches as modified, and in case of neglect or delay, might require their own orders to be sent out without waiting for the concurrence of the directors.

A committee of secrecy, consisting of not more than three members, was to be formed out of the directors, and, when the Board of Control issued orders requiring secrecy, the committee of secrecy was to transmit these orders to India, without informing the other directors [1].

The Court of Proprietors lost its chief governing faculty, for it was deprived of the power of revoking or modifying any proceeding of the Court of Directors which had received the approval of the Board of Control [2].

[1] See Digest, s. 14.

[2] s. 29. The Court of Proprietors had recently overruled the resolution of the Court of Directors for the recall of Warren Hastings.

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

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

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

The governor-general, governors commander-in-chief, and members of council were to be appointed by the Court of Directors. They, and any other person holding office under the Company in India, might be removed from office either by the Crown or by the directors. Only covenanted servants of the Company were to be qualified to be members of council. Power was given to make provisional and temporary appointments. Resignation of the office of governor-general, governor, commander-in-chief, or member of council was not to be valid unless signified in writing[1].

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

A similar control over the military and political operations of the governor-general and council was reserved to the Court of Directors. 'Whereas to pursue schemes of conquest and extension of dominion in India are measures repugnant to

[1] s. 28. See Digest, s. 82. This was probably enacted in consequence of the circumstances attending Hastings' resignation of office.

the wish, the honour, and policy of this nation,' the governor-general and his council were not, without the express authority of the Court of Directors, or of the secret committee, to declare war, or commence hostilities, or enter into any treaty for making war, against any of the country princes or States in India, or any treaty for guaranteeing the possession of any country prince or State, except where hostilities had actually been commenced, or preparations actually made for the commencement of hostilities, against the British nation in India, or against some of the princes or States who were dependent thereon, or whose territories were guaranteed by any existing treaty [1].

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

All British subjects were declared to be amenable to all courts of competent jurisdiction in India or in England for acts done in Native States, as if the act had been done in British territory [2]. The Company were not to release or compound any sentence or judgement of a competent court against any of their servants, or to restore any such servant to office after he had been dismissed in pursuance of a judicial sentence. The governor-general was empowered to issue his warrant for taking into custody any person suspected of carrying on illicit correspondence with any native prince or other person having authority in India [3].

[1] s. 34. This enactment with its recital was substantially reproduced by a section of the Act of 1793 (33 Geo. III, c. 52, s. 42) which still remains unrepealed. See Digest, s. 48.

[2] s. 44. Re-enacted by 33 Geo. III, c. 52, s. 67. See Digest, s. 119.

[3] s. 53. This section was re-enacted in substance by 33 Geo. III, c. 52, ss. 45, 46. See Digest, s. 120.

A special court, consisting of three judges, four peers, and six members of the House of Commons, was constituted for the trial in England of offences committed in India [1].

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

The double government established by Pitt's Act of 1784, with its cumbrous and dilatory procedure and its elaborate system of checks and counter-checks, though modified in details, remained substantially in force until 1858. In practice the power vested in the Board of Control was exercised by the senior commissioner, other than the Chancellor of the Exchequer or Secretary of State. He became known as the President of the Board of Control, and occupied a position in the Government of the day corresponding to some extent to that of the modern Secretary of State for India. But the Board of Directors, though placed in complete subordination to the Board of Control, retained their rights of patronage and their powers of revision, and were thus left no unsubstantial share in the home direction of Indian affairs [2]

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

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

The first important amendments of Pitt's Act were made in 1786. In that year Lord Cornwallis [1] was appointed governor-general, and he made it a condition of his accepting office that his powers should be enlarged. Accordingly an Act was passed which empowered the governor-general in special cases to override the majority of his council and act on his own responsibility [2], and enabled the offices of governor-general and commander-in-chief to be united in the same person [3]. Legislation of 1786.

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

A third Act [5] repealed the provisions requiring servants of the Company to disclose the amount of property brought home by them, and amended the constitution and procedure of the special court under the Act of 1784. It also declared (s. 29) that the criminal jurisdiction of the supreme court at Calcutta was to extend to all criminal offences committed in any part of Asia, Africa, or America, beyond the Cape of Good Hope to the Straits of Magellan, within the limits of the Company's trade, and (s. 30) that the governor or president and council of Fort St. George, in their courts of oyer and terminer and gaol delivery, and the mayor's court at Madras should have civil and criminal jurisdiction over all British subjects residing in the territories of the Company on the coast of Coromandel, or in any other part of the Carnatic,

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

[2] See Digest, s. 44.

[3] 26 Geo. III, c. 16. Lord Cornwallis, though holding the double office of governor-general and commander-in-chief, still found his powers insufficient, and was obliged to obtain in 1791 a special Act (31 Geo. III, c. 40) confirming his orders and enlarging his powers. The exceptional powers given to the governor-general by the Act of 1786 were reproduced in the Act of 1793 (33 Geo. III, c. 52, ss. 47–51), by sections which are still nominally in force but have been practically superseded by a later enactment of 1870 (33 Vict. c. 3, s. 5). See Digest, s. 44.

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

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

or in the Northern Circars, or within the territories of the Soubah of the Deccan, the Nabob of Arcot, or the Rajah of Tanjore.

Legislation of 1788.

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

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

In answer to the first objection Pitt confessed that, in his opinion, the army in India ought to be all on one establishment, and should all belong to the king, and declared that it was mainly in preparation for this reform that the troops were to be conveyed [2].

With respect to the second objection he argued that the Bill of Rights and the Mutiny Act, which were the only positive enactments on the subject, were so vague and indefinite

[1] See the discussion in 1878 as to the employment of Indian troops in Malta, Hansard, ccxl. 14, and Anson, *Law and Custom of the Constitution*, pt. ii. p. 361 (2nd ed.).

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

as to be almost nugatory, and professed his willingness to receive any suggestions made for checking an abuse of the powers proposed to be conferred by the Bill.

The questions were eventually settled by a compromise. The Board of Control obtained the powers for which they asked, but a limit was imposed on the number of troops which might be charged to Indian revenues. At the same time the Board of Control were prevented from increasing any salary or awarding any gratuity without the concurrence of the directors and of Parliament, and the directors were required to lay annually before Parliament an account of the Company's receipts and disbursements [1].

Charter Act of 1793.

In 1793, towards the close of Lord Cornwallis' governor-generalship, it became necessary to take steps for renewal of the Company's charter. Pitt was then at the height of his power; his most trusted friend, Dundas [2], was President of the Board of Control; the war with France, which had just been declared, monopolized English attention; and Indian finances were, or might plausibly be represented as being, in a tolerably satisfactory condition. Accordingly the Act of 1793 [3], which was introduced by Dundas, passed without serious opposition, and introduced no important alterations. It was a measure of consolidation, repealing several previous enactments, and runs to an enormous length, but the amendments made by it relate to matters of minor importance.

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

The commander-in-chief was not to be a member of the council at Fort William unless specially appointed by the

[1] 28 Geo. III, c. 8; Clode, *Military Forces of the Crown*, i. 270.

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

[3] 33 Geo. III, c. 52.

Court of Directors. Departure from India with intent to return to Europe was declared to vacate the office of governor-general, commander-in-chief, and certain other high offices. The procedure in the councils of the three presidencies was regulated, the powers of control exercisable by the governor-general were emphasized and explained, and the power of the governor-general to overrule the majority of his council was repeated and extended to the Governors of Madras and Bombay. The governor-general, whilst visiting another presidency, was to supersede the governor, and might appoint a vice-president to act for him in his absence. A series of elaborate provisions continued the exclusive privileges of trade for a further term of twenty years, subject to modifications of detail. Another equally elaborate set of sections regulated the application of the Company's finances. Power was given to raise the dividend to 10 per cent., and provision was made for payment to the Exchequer of an annual sum of £500 000 out of the surplus revenue which might remain after meeting the necessary expenses, paying the interest on, and providing for reduction of capital of, the Company's debt, and payment of dividend. It is needless to say that this surplus was never realized. The mutual claims of the Company and the Crown in respect of military expenses were adjusted by wiping out all debts on either side up to the end of 1792, and providing that thenceforward the Company should defray the actual expenses incurred for the support and maintenance of the king's troops serving in India. Some supplementary provisions regulated matters of civil administration in India. The admiralty jurisdiction of the supreme court of Calcutta was expressly declared to extend to the high seas. Power was given to appoint covenanted servants of the Company or other British inhabitants to be justices of the peace in Bengal. Power was also given to appoint scavengers for the presidency towns, and to levy what would now be called a sanitary rate. And the sale of spirituous liquors was made subject to the grant of a licence.

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

The lending of money by European adventurers to native princes on exorbitant terms had long produced grave scandals, such as those which were associated with the name of Paul Benham, and were exposed by Burke in his speech on the Nabob of Arcot's debts. An Act of 1797[1] laid down an important provision (s. 28) which is still in force, and which prohibits, under heavy penalties, unauthorized loans by British subjects to native princes.

The same Act reduced the number of judges of the supreme court at Calcutta to three, a chief justice and two puisnes, and authorized the grant of charters for the constitution of a recorder's court instead of the mayor's court at Madras and Bombay. It reserved native laws and customs in terms similar to those contained in the Act of 1781. It also embodied an important provision giving an additional and express sanction to the exercise of a local power of legislation in the Presidency of Bengal. One of Lord Cornwallis' regulations of 1793 (Reg. 41) had provided for forming into a regular code all regulations that might be enacted for the internal government of the British territories of Bengal. The Act of 1797 (s. 8) recognized and confirmed this 'wise and salutary provision,' and directed that all regulations which should be issued and framed by the Governor-General in Council at Fort William in Bengal, affecting the rights, persons, or property of the natives, or of any other individuals who might be amenable to the provincial courts of justice, should be registered in the judicial department, and formed into a regular code and printed, with translations in the country languages, and that all the grounds of each regulation should be prefixed to it. The provincial courts of judicature were directed to be bound by these regulations, and copies of the regulations of each year were

[1] 37 Geo. III, c. 142. See Digest, s. 118.

to be sent to the Court of Directors and to the Board of Control [1].

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

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

An Act of 1807 [4] gave the governors and councils at Madras and Bombay the same powers of making regulations, subject to approval and registration by the supreme court and recorder's court, as had been previously vested in the Government of Bengal, and the same power of appointing justices of the peace.

arter t of 13.

The legislation of 1813 was of a very different character from that of 1793. It was preceded by the most searching investigation which had yet taken place into Indian affairs. The vigorous policy of annexation carried on by Lord

[1] See Harington's *Analysis*, 1-9.

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

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

[4] 47 Geo. III, sess. 2, c. 68.

Wellesley during his seven years' tenure of office (1798 1805) had again involved the Company in financial difficulties, and in 1808 a committee of the House of Commons was appointed to inquire, amongst other things, into the conditions on which relief should be granted. It continued its sittings over the four following years, and the famous Fifth Report, which was published in July, 1812, is still a standard authority on Indian land tenures, and the best authority on the judicial and police arrangements of the time. When the time arrived for taking steps to renew the Company's charter, a Dundas [1] was still at the Board of Control, but it was no longer found possible to avoid the questions which had been successfully shirked in 1793. Napoleon had closed the European ports, and British traders imperatively demanded admission to the ports of Asia. At the end of 1811 Lord Melville told the Court of Directors that His Majesty's ministers could not recommend to Parliament the continuance of the existing system unless they were prepared to agree that the ships, as well as goods, of private merchants should be admitted into the trade with India under such restrictions as might be deemed reasonable.

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

Driven from this position the Company dwelt on the

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

political dangers which would arise from an unlimited resort of Europeans to India. The venerable Warren Hastings was called from his retreat to support on this point the views of the Company before the House of Commons, and it was on this occasion that the members testified their respect for him by rising as a body on his entrance into the House and standing until he had assumed his seat within the bar. His evidence confirmed the assertions of the Company as to the danger of unrestricted European immigration into India, and was supplemented by evidence to a similar effect from Lord Teignmouth (Sir J. Shore), Colonel (Sir John) Malcolm, and Colonel (Sir Thomas) Munro. Experience had proved, they affirmed, that it was difficult to impress even upon the servants of the Company, whilst in their noviciate, a due regard for the feelings and habits of the people, and Englishmen of classes less under the observation of the supreme authorities were notorious for the contempt with which, in their natural arrogance and ignorance, they contemplated the usages and institutions of the natives, and for their frequent disregard of the dictates of humanity and justice in their dealings with the people of India. The natives, although timid and feeble in some places, were not without strength and resolution in others, and instances had occurred where their resentment had proved formidable to their oppressors. It was difficult, if not impossible, to afford them protection, for the Englishman was amenable only to the courts of British law established at the presidencies, and although the local magistrate had the power of sending him further for trial, yet to impose upon the native complainant and witness the obligation of repairing many hundred miles to obtain redress was to subject them to delay, fatigue, and expense, which would be more intolerable than the injury they had suffered.

That their apprehensions were unfounded no one who is acquainted with the history or present conditions of British India would venture to deny. But they were expressed by

the advocates of the Company in language of unjustifiable intemperance and exaggeration. Thus Mr. Charles Grant, in the course of the debate in the House of Commons, dwelt on the danger of letting loose among the people of India a host of desperate needy adventurers, whose atrocious conduct in America and in Africa afforded sufficient indication of the evil they would inflict upon India.

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

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

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

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

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

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

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

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

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

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

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

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

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

Then followed a resolution that it was expedient that the church establishment in the British territories in the East Indies should be placed under the superintendence of a bishop and three archdeacons, and that adequate provision should be made from the territorial revenues of India for their maintenance.

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

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

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

The principles embodied in the Resolutions of 1813 were developed in the Act of the same year [1]. The language of the preamble to the Act is significant. It recites the expediency of continuing to the Company for a further term the possession of the territorial acquisitions in India, and the revenues thereof, 'without prejudice to the undoubted sovereignty of the Crown of the United Kingdom of Great Britain and Ireland in and over the same [2].' The constitutional controversy of the preceding century was not to be reopened.

The Act then grants the Indian possessions and revenues to the Company for a further term of twenty years, reserves to them for the same time the China trade and the tea trade, but throws open the general India trade, subject to various restrictive conditions.

[1] 55 Geo. III, c. 155.

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

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

A group of sections relates to the provision for religion, learning, and education, and the training of the Company's civil and military servants. There is to be a Bishop of Calcutta, with three archdeacons under him. The colleges at Calcutta and elsewhere are placed under the regulations of the Board of Control. One lac of rupees in each year is to be 'set apart and applied to the revival and improvement of literature and the encouragement of the learned native of India, and for the introduction and promotion of a knowledge of the sciences among the inhabitants of the British territories in India.' The college at Haileybury and the military seminary at Addiscombe [1] are to be maintained, and no person is to be appointed writer unless he has resided four terms at Haileybury, and produces a certificate that he has conformed to the regulations of the college.

Then come provisions for the application of the revenues [2], for keeping the commercial and territorial accounts distinct,

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

[2] An interesting discussion of these provisions is to be found in the correspondence of 1833 between Mr. Charles Grant and the Court of Directors. According to Mr. Grant the principle established by the Acts of 1793 and 1813 was that the profit accruing from the Company's commerce should,