and for increasing and further defining the powers of superintendence and direction exercised by the Board of Control.

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

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

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

Justices of the peace are to have jurisdiction in cases of assault or trespass committed by British subjects on natives of India, and also in cases of small debts due to natives from British subjects. Special provision is made for the exercise of jurisdiction in criminal cases over British subjects residing more than ten miles from a presidency town; and British subjects residing or trading, or occupying immovable property, more than ten miles from a presidency town are to be subject to the jurisdiction of the local civil courts.

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

Legislation between 1813 and 1833.

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

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

in the first instance, be employed in securing the regular payment of dividends to the proprietors of stock, and should then be applied for the benefit of the territory. The last-mentioned applications to be suspended only so long as the burden of debt on the territory continued below a certain specified amount.

[1] 54 Geo. III, c. 105.

An Act of 1815 [1] gave power to extend the limits of the presidency towns, and amended some of the minor provisions of the Act of 1813.

An Act of 1818 [2] removed doubts as to the validity of certain Indian marriages, a subject which has always presented much difficulty, but which has now been dealt with by Indian legislation [3].

An Act of 1820 [4] enabled the East India Company to raise and maintain a corps of volunteer infantry.

An Act of 1823 [5] charged the revenues of India with the payment of additional sums for the pay and pensions of troops serving in India, and regulated the pensions of Indian bishops and archdeacons, and the salaries and pensions of the judges of the supreme courts.

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

The prohibition on settling in India without a licence was still retained. But restrictions on Indian trade were gradually removed, and a consolidating Act of 1823 [6] expressly declared that trade might be carried on in British vessels with all places within the limits of the Company's charter except China.

Another Act of 1823 [7] consolidated and amended the laws for punishing mutiny and desertion of officers and soldiers in the Company's service.

An Act of 1824 [8] transferred the island of Singapore to the East India Company.

Acts of 1825 [9] and 1826 [10] further regulated the salaries of Indian judges and bishops, and regulated the appointment of juries in the presidency towns.

[1] 55 Geo. III, c. 84.
[2] 58 Geo. III, c. 84.
[3] See Acts III & XV of 1872.
[4] 1 Geo. IV, c. 99.
[5] 4 Geo. IV, c. 71.
[6] 4 Geo. IV, c. 80.
[7] 4 Geo. IV, c. 81.
[8] 5 Geo. IV, c. 108. Singapore was placed under the Colonial Office by the Straits Settlements Act, 1866 (29 & 30 Vict. c. 115, s. 1).
[9] 6 Geo. IV, c. 85
[10] 7 Geo. IV, c. 37.

An Act of 1828 [1] declared the real estates of British subjects dying within the jurisdiction of the supreme courts at the presidency towns to be liable for payment of their debts. Other Acts of the same year applied the East India Mutiny Act to the force known as the Bombay Marine [2], and extended to the East Indies sundry amendments of the English criminal law [3].

And an Act of 1832 [4] authorized the appointment of persons other than covenanted civilians to be justices of the peace in India, and repealed the provisions requiring jurors to be Christians.

When the time came round again for renewing the Company's charter, Lord William Bentinck's peaceful *régime* had lasted for five years in India; the Reform Act had just been carried in England, and Whig principles were in the ascendant. Bentham's views on legislation and codification were exercising much influence on the minds of law reformers. Macaulay was in Parliament, and was secretary to the Board of Control, and James Mill, Bentham's disciple, was the examiner of India correspondence at the India House. The Charter Act of 1833 [5], like that of 1813, was preceded by careful inquiries into the administration of India. It introduced important changes into the constitution of the East India Company and the system of Indian administration. Charter Act of 1833.

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

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

[1] 9 Geo. IV, c. 33.
[2] 9 Geo. IV, c. 72.
[3] 9 Geo. IV, c. 74.
[4] 2 & 3 Will. IV, c. 117.
[5] 3 & 4 Will. IV, c. 85. The Act received the Royal Assent on August 28, 1833, but did not come into operation, except as to appointments and the like, until April 22, 1834 (s. 117)

The Company were required to close their commercial business and to wind up their affairs with all convenient speed. Their territorial and other debts were charged on the revenues of India, and they were to receive out of those revenues an annual dividend at the rate of £10 10*s.* per cent. on the whole amount of their capital stock (i. e. £630,000 a year), but this dividend was to be subject to redemption by Parliament on payment of £200 sterling for every £100 stock, and for the purpose of this redemption a sum of two million pounds was to be paid by the Company to the National Debt Commissioners and accumulated with compound interest until it reached the sum of twelve millions [1].

The Company, while deprived of their commercial functions, retained their administrative and political powers, under the system of double government instituted by previous Acts, and, in particular, continued to exercise their rights of patronage over Indian appointments. The constitution of the Board of Control was modified, but as the powers of the Board were executed by its president the modifications had no practical effect. The Act re-enacted provisions of former Acts as to the 'secret committee' of the Court of Directors, and the dispatches to be sent through that committee, and it simplified the formal title of the Company by authorizing it to be called the East India Company.

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

The superintendence, direction, and control of the whole civil and military government were expressly vested in a governor-general and councillors, who were to be styled 'the Governor-General of India in Council [2].' This council was increased by the addition of a fourth ordinary member,

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

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

who was not to be one of the Company's servants, and was not to be entitled to act as member of council except for legislative purposes[1]. It need hardly be stated that the fourth member was Macaulay.

The overgrown Presidency of Bengal[2] was to be divided into two distinct presidencies, to be called the Presidency of Fort William and the Presidency of Agra. But this provision never came into operation. It was suspended by an enactment of 1835 (5 & 6 Will. IV, c. 52), and the suspension was continued indefinitely by the Charter Act of 1853 (16 & 17 Vict. c. 95, s. 15).

The intention was that each of the four presidencies, Fort William, Fort St. George, Bombay, and Agra, should have, for executive purposes, a governor and council of its own. But the governor-general and his council were to be, for the present, the governor and council of Fort William, and power was given to reduce the members of the council, or even suspend them altogether and vest the executive control in a governor alone[3].

Important alterations were made by the Act of 1833 in the legislative powers of the Indian Government. 'At that date there were five different bodies of statute law in force in the (Indian) empire. First, there was the whole body of statute law existing so far as it was applicable, which was introduced by the Charter of George I and which applied,

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

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

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

at least, in the presidency towns. Secondly, all English Acts subsequent to that date, which were expressly extended to any part of India Thirdly, the regulations of the governor-general's council, which commence with the Revised Code of 1793, containing forty-eight regulations, all passed on the same day (which embraced the results of twelve years' antecedent legislation), and were continued down to the year 1834. They only had force in the territories of Bengal. Fourthly, the regulations of the Madras council, which spread over the period of thirty-two years, from 1802 to 1834, and are [were] in force in the Presidency of Fort St. George. Fifthly, the regulations of the Bombay Code, which began with the revised code of Mr. Mountstuart Elphinstone in 1827, comprising the results of twenty-eight years' previous legislation, and were also continued into 1834, having force and validity in the Presidency of Fort St. David [1].

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

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

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

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

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

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

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

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

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

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

(i) which should repeal, vary, or suspend any of the provisions of the Act of 1833, or of the Acts for punishing mutiny and desertion of officers and soldiers in the service of the Crown or of the Company; or

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

(iii) without the previous sanction of the Court of Directors, which should empower any court other than a chartered court to sentence to death any of His Majesty's natural-born subjects born in Europe, or their children, or abolish any of the chartered courts [1].

See Digest, s. 63.

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

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

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

A comprehensive consolidation and codification of Indian laws was contemplated. Section 53 of the Act recited that it was 'expedient that, subject to such special arrangements as local circumstances may require, a general system of judicial establishments and police, to which all persons whatsoever, as well Europeans as natives, may be subject, should be established in the said territories at an early period; and that such laws as may be applicable in common to all classes of the inhabitants of the said territories, due regard being had to the rights, feelings, and peculiar usages of the people, should be enacted; and that all laws and customs having the force of law within the same territories should be ascertained and consolidated, and, as occasion may require, amended.'

The Act then went on to direct the Governor-General in Council to issue a commission, to be known as the 'Indian Law Commission,' which was to inquire into the jurisdiction, powers, and rules of the existing courts of justice and police establishments in the Indian territories, and all existing forms of judicial procedure, and into the nature and operation of all laws, whether civil or criminal, written or customary, prevailing and in force in any part of the Indian territories, to which any inhabitants of those territories were then sub-

ject. The commissioners were to report to the Governor-General in Council, setting forth the results of their inquiries, and suggesting alterations, and these reports were to be laid before Parliament.

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

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

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

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

of the Court of Directors, to declare any such part open, and remove the obligation of a licence.

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

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

An echo of the fears expressed in 1813 as to the dangers likely to arise from the free settlement of interlopers is to be found in the section which, after reciting that 'the removal of restrictions on the intercourse of Europeans with the said territories will render it necessary to provide for any mischief or dangers that may arise therefrom,' requires the Governor-General in Council, by laws and regulations, to provide, with all convenient speed, for the protection of the natives of the said territories from insult and outrage in their persons, religions, and opinions [2].

Section 87 of the Act declared that 'no native of the said territories, nor any natural-born subject of His Majesty resident therein, shall, by reason only of his religion, place

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

[2] See ss. 295–298 of the Indian Penal Code.

of birth, descent, colour, or any of them, be disabled from holding any place, office, or employment under the Company.' The policy of freely admitting natives of India to a share in the administration of the country has never been more broadly or emphatically enunciated.

And finally, the Governor-General in Council was required forthwith to take into consideration the means of mitigating the state of slavery, and of ameliorating the condition of slaves, and of extinguishing slavery throughout the Indian territories so soon as such extinction should be practicable and safe, and to prepare and submit to the Court of Directors drafts of laws on the subject [1]. In preparing these drafts due regard was to be had to the laws of marriage and the rights and authorities of fathers and heads of families.

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

The Act of 1833, as sent out to India, was accompanied by an explanatory dispatch from the Court of Directors, which, according to a tradition in the India Office, was drafted by James Mill [2].

Legislation between 1833 and 1853.

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

An Act of 1835 (5 & 6 Will. IV, c. 52) suspended the provisions of the Act of 1833 as to the division of the Presidency of Bengal into two presidencies [3], and authorized the appoint-

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

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

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

ment of a lieutenant-governor for the North-Western Provinces [1]. The project of establishing an executive council for the Bengal and North-Western Provinces was abandoned.

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

An Act of 1848 (11 & 12 Vict. c. 21) enacted for India a law of insolvency, which is still in force in the presidency towns.

Charter Act of 1853.

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

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

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

It continued indefinitely, until the Court of Directors and Board of Control should otherwise direct, the suspension of the division of the Bengal Presidency contemplated by the Act of 1835, but authorized the appointment of a separate governor for that presidency, distinct from the governor-general [2]. However, the Act went on to provide that, unless and until this separate governor was appointed, the Court of Directors and Board of Control might authorize the appointment of a lieutenant-governor of Bengal. The power of appointing a separate governor was never brought into

[1] The first appointment was made in 1836.

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

operation, but the power of appointing a lieutenant-governor was exercised in 1854, and has been continued ever since.

By the following section, power was given to the directors either to constitute one new presidency, with the same system of a governor and council as in the Presidencies of Madras and Bombay, or, as an alternative, to authorize the appointment of a lieutenant-governor. In this case also the former power was never exercised, but a new lieutenant-governorship was created for the Punjab in 1859

Further alterations were made by the Act of 1853 in the machinery for Indian legislation. The 'fourth' or legislative member of the governor-general's council was placed on the same footing with the older or 'ordinary' members of the council by being given a right to sit and vote at executive meetings. At the same time the council was enlarged for legislative purposes by the addition of legislative members, of whom two were the Chief Justice of Bengal and one other supreme court judge, and the others were Company's servants of ten years' standing appointed by the several local Governments. The result was that the council as constituted for legislative purposes under the Act of 1853 consisted of twelve [1] members, namely—

The governor-general.

The commander-in-chief.

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

The Chief Justice of Bengal.

A puisne judge.

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

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

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

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

The Indian Law Commission appointed under the Act of 1833 had ceased to exist before 1853. It seems to have lost much of its vitality after Macaulay's departure from India. It lingered on for many years, published periodically ponderous volumes of reports, on which, in many instances, Indian Acts have been based, but did not succeed in effecting any codification of the laws or customs of the country, and was finally allowed to expire [1]. Efforts were, however, made by the Act of 1853 to utilize its labours, and for this purpose power was given to appoint a body of English commissioners, with instructions to examine and consider the recommendations of the Indian Commission [2].

And, finally, the right of patronage to Indian appointments was by the Act of 1853 taken away from the Court of Directors and directed to be exercised in accordance with regulations framed by the Board of Control. These regulations threw the covenanted civil service open to general competition [3].

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

Establishment of chief commissionerships.

In 1854 was passed an Act [4] which has had important administrative results in India. Under the old system the

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

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

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

[4] 17 & 18 Vict. c. 77.

only mode of providing for the government of newly acquired territory was by annexing it to one of the three presidencies. Under this system of annexations the Presidency of Bengal had grown to unwieldy dimensions. Some provision had been made for the relief of its government by the constitution of a separate lieutenant-governorship for the North-Western Provinces in 1836. The Act of 1853 had provided for the constitution of a second lieutenant-governorship, and, if necessary, of a fourth presidency. These powers were, however, not found sufficient, and it was necessary to provide for the administration of territories which it might not be advisable to include in any presidency of lieutenant-governorship [1].

This provision was made by the Act of 1854, which empowered the Governor-General of India in Council, with the sanction of the Court of Directors and the Board of Control, to take by proclamation under his immediate authority and management any part of the territories for the time being in the possession or under the government of the East India Company, and thereupon to give all necessary orders and directions respecting the administration of that part, or otherwise provide for its administration [2]. The mode in which this power has been practically exercised has been by the appointment of chief commissioners, to whom the Governor-General in Council delegates such powers as need not be reserved to the Central Government. In this way chief commissionerships were established for Assam [3], the Central Provinces, Burma [3], and other parts of India. But the title of chief commissioner was not directly recognized by Act of Parliament [4], and the territories under the administration of chief commissioners are technically 'under the immediate authority

[1] See preamble to Act of 1854.

[2] See Digest, s. 56.

[3] Assam has now been amalgamated with Eastern Bengal under a Lieutenant-Governor, and Burma has been constituted a lieutenant-governorship.

[4] It has since been recognized by the Act of 1870 (33 Vict. c. 3), ss. 1, 3.

and management' of the Governor-General in Council within the meaning of the Act of 1854.

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

The Government of India Act, 1858.

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

Shortly afterwards, however, Lord Palmerston was turned out of office on the Conspiracy to Murder Bill, and was succeeded by Lord Derby, with Mr. Disraeli as Chancellor of the Exchequer and Lord Ellenborough as President of the Board of Control. The Chancellor of the Exchequer promptly introduced a new Bill for the government of India, of which the most remarkable feature was a council consisting partly of nominees of the Crown and partly of persons elected on a complicated and elaborate system, by citizens of Manchester and other large towns, holders of East India stock, and others. This scheme died of ridicule, and when the House assembled

after the Easter recess no one could be found to defend it [1]. Mr. Disraeli grasped eagerly at a suggestion by Lord John Russell that the Bill should be laid aside, to be succeeded by another based on resolutions of the House. In the meantime Lord Ellenborough had been compelled to resign in consequence of disapproval of his dispatch censuring Lord Canning's Oudh proclamation, and had been succeeded by Lord Stanley, on whom devolved the charge of introducing and piloting through the House the measure which eventually became law as the Act for the better government of India [2].

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

The Secretary of State was to be aided by a council of fifteen members, of whom eight were to be appointed by the Crown and seven elected by the directors of the East India Company. The major part both of the appointed and of the elected members were to be persons who had served or resided in India for ten years, and, with certain exceptions, who had not left India more than ten years before their appointment. Future appointments or elections were to be so made that nine at least of the members of the council should hold these qualifications. The power of filling vacancies was vested in the Crown as to Crown appointments, and in the council itself as to others. The members of the council were to hold office during good behaviour, but to be removable on an address by both Houses of Parliament, and were not to be capable of sitting or voting in Parliament [3].

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

[2] 21 & 22 Vict. c. 108.

[3] These provisions have been modified by subsequent legislation. See Digest, s. 4.

The council was charged with the duty of conducting, under the direction of the Secretary of State, the business transacted in the United Kingdom in relation to the government of India and the correspondence with India. The Secretary of State was to be the president of the council, with power to overrule in case of difference of opinion, and to send, without reference to the council, any dispatches which might under the former practice have been sent through the secret committee [1].

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

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

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

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

The property of the Company was transferred to the Crown. The expenditure of the revenues of India was to be under the control of the Secretary of State in Council, but was to be charged with a dividend on the Company's stock and with their debts, and the Indian revenues remitted to Great Britain were to be paid to the Secretary of State in Council and applied for Indian purposes. Provision was made for the appointment of a special auditor of the accounts of the Secretary of State in Council [2].

[1] Digest, ss. 6–14. [2] Ibid. 22, 30.

The Board of Control was formally abolished. With respect to contracts and legal proceedings, the Secretary of State in Council was given a quasi-corporate character for the purpose of enabling him to assert the rights and discharge the liabilities devolving upon him as successor to the East India Company [1].

The Indian Army.

It has been seen that under the authority given by various Acts the Company raised and maintained separate military forces of their own. The troops belonging to these forces, whilst in India, were governed by a separate Mutiny Act, perpetual in duration, though re-enacted from time to time with amendments [2]. The Company also had a small naval force, once known as the Bombay Marine, but after 1829 as the Indian Navy.

The Act of 1858 transferred to the service of the Crown all the naval and military forces of the Company, retaining, however, their separate local character, with the same liability to local service and the same pay and privileges as if they were in the service of the Company. Many of the European troops refused to acknowledge the authority of Parliament to make this transfer. They demanded re-engagement and bounty as a condition of the transfer of their services [3], and, failing to get these terms, were offered their discharge.

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

In 1861 the officers and soldiers formerly belonging to the Company's European forces were invited to join, and many

[1] Digest, s. 35.

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

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

of them were transferred to, the regular army under the authority of an Act of that year (24 & 25 Vict. c. 74). Thus the European army of the late East India Company, except a small residue, became merged in the military forces of the Crown [1].

The naval force of the East India Company was not amalgamated with the Royal Navy, but came to an end in 1863, when it was decided that the defence of India against serious attack by sea should be undertaken by the Royal Navy, which was also to provide for the performance of the duties in the Persian Gulf which had been previously undertaken by the Indian Navy [2].

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

In 1859 the Government of India Act, 1859 (22 & 23 Vict c. 41), was passed for determining the officers by whom, and the mode in which, contracts on behalf of the Secretary of State in Council were to be executed in India [3].

Legislation of 1861.

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

Indian Civil Service Act, 1861.

Under the Charter Act of 1793 rank and promotion in the Company's civil service were strictly regulated by seniority, and all offices in the 'civil line' of the Company's service in India under the degree of councillor were strictly reserved to the civil servants of the presidency in which the office was held. But by reason of the exigencies of the public service, numerous civil appointments had been made in

[1] Under existing arrangements all the troops sent to India are placed on the Indian establishment, and from that time cease to be voted on the Army Estimates. The number of the forces in the regular army as fixed by the annual Army Act is declared to be 'exclusive of the number actually serving within Her Majesty's Indian possessions.' As to the constitutionality of employing Indian troops outside India, see the debates of 1878 on the employment of Indian troops in Malta, Hansard, ccxl. 187, 194, 213, 369, 515; and Anson, *Law and Custom of the Constitution*, pt. ii. p. 361 (2nd ed.).

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

[3] See Digest, s. 33.

India in disregard of these restrictions. The Indian Civil Service Act, 1861 (24 & 25 Vict. c. 54), validated all these irregular appointments in the past, but scheduled a number of appointments which, in the future, were to be reserved to members of the covenanted civil service [1].

At the same time it abolished the rule as to seniority and removed all statutory restrictions on appointments to offices not in the schedule. And, even with respect to the reserved offices, it left a power of appointing outsiders under exceptional circumstances. This power can only be exercised where it appears to the authority making the appointment that, under the circumstances of the case, it ought to be made without regard to statutory conditions. The person appointed must have resided for at least seven years in India. If the post is in the Revenue or Judicial Departments, the person appointed must pass the same examinations and tests as are required in the case of the covenanted civil service. The appointment is provisional only, and must be forthwith reported to the Secretary of State in Council with the special reasons for making it, and unless approved within twelve months by the Secretary of State it becomes void [2].

Indian Councils Act, 1861.

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

A fifth ordinary member was added to the governor-general's council. Of the five ordinary members, three were required to have served for ten years in India under the Company or the Crown, and one was to be a barrister or advocate of five years' standing. Power was retained to appoint the commander-in-chief an extraordinary member [3].

Power was given to the governor-general, in case of his absence from headquarters, to appoint a president of the council, with all the powers of the governor-general except those with respect to legislation. And, in such case, the

[1] This schedule is still in force. Digest, s. 93.
[2] This provision still exists. Ibid. s. 95.
[3] Ibid. 39, 40.

governor-general might invest himself with all the powers exercisable by the Governor-General in Council, except the powers with respect to legislation [1].

For purposes of legislation the governor-general's council was reinforced by additional members, not less than six nor more than twelve in number, nominated by the governor-general and holding office for two years. Of these additional members, not less than one-half were to be non-official, that is to say, persons not in the civil or military service of the Crown [2]. The lieutenant-governor of a province was also to be an additional member whenever the council held a legislative sitting within his province.

The Legislative Council established under the Act of 1853 had modelled its procedure on that of Parliament, and had shown what was considered an inconvenient degree of independence by asking questions as to, and discussing the propriety of, measures of the Executive Government [3]. The functions of the new Legislative Council were limited strictly to legislation, and it was expressly forbidden to transact any business except the consideration and enactment of legislative measures, or to entertain any motion except a motion for leave to introduce a Bill, or having reference to a Bill actually introduced [4].

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

[1] See Digest, ss 45, 47.

[2] These provisions have been modified by the Act of 1892 (55 & 56 Vict. c 14, s. 1). See Digest, s. 60.

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

[4] 24 & 25 Vict. c. 67, s. 19. As to the object with which this section was framed, see paragraph 24 of Sir Charles Wood's dispatch of August 9, 1861 The restrictions imposed in 1861 were relaxed in 1892 (55 & 56 Vict. c 14, s. 2) Digest, s. 64.

disallowed by the Queen, acting through the Secretary of State.

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

An exceptional power was given to the governor-general, in cases of emergency, to make, without his council, ordinances, which were not to remain in force for more than six months [3].

Doubts had for some time existed as to the proper mode of legislating for newly acquired territories of the Company. When Benares and the territories afterwards known as the North-Western Provinces were annexed, the course adopted was to extend to them, with some variations, the laws and regulations in force in the older provinces of Bengal, Behar, and Orissa. But when the Saugor and Nerbudda territories were acquired from the Marathas by Lord Hastings, and when Assam, Arakan, and Tenasserim were conquered in 1824, and Pegu in 1852, these regions were specially exempted from the Bengal Regulations, instructions, however, being given to the officers administering them to conduct their procedure in accordance with the spirit of the regulations, so

[1] Explained by 55 & 56 Vict. c. 14, s. 3. Digest, s. 63.

[2] These powers were extended by 28 & 29 Vict. c. 17, s. 1, and 32 & 33 Vict. c. 98, s. 1. See Digest, s. 63.

[3] See Digest, s. 69.

far as they were suitable to the circumstances of the country [1]. And when the Punjab was annexed the view taken was that the Governor-General in Council had power to make laws for the new territory, not in accordance with the forms prescribed by the Charter Acts for legislation, but by executive orders, corresponding to the Orders in Council made by the Crown for what are called Crown Colonies. Provinces in which this power was exercised were called 'non-regulation provinces' to distinguish them from the 'regulation provinces,' which were governed by regulations formally made under the Charter Acts. A large body of laws had been passed under this power or assumed power, and in order to remove any doubts as to their validity a section was introduced into the Indian Councils Act, 1861, declaring that no rule, law, or regulation made before the passing of the Act by the governor-general or certain other authorities should be deemed invalid by reason of not having been made in conformity with the provisions of the Charter Acts [2].

The power of legislation which had been taken away from the Governments of Madras and Bombay by the Charter Act of 1833 was restored to them by the Act of 1861. The councils of the governors of Madras and Bombay were expanded for legislative purposes by the addition of the advocate-general and of other members nominated on the same principles as the additional members of the governor-general's council [3]. No line of demarcation was drawn between the subjects reserved for the central and the local legislatures respectively; but the previous sanction of the governor-general was made requisite for legislation by the local legislature in certain

[1] Chesney's *Indian Polity* (3rd ed.), pp. 58, 64.

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

[3] These provisions have also been modified by the Act of 1892. See Digest, ss. 71, 76, 77

cases, and all Acts of the local legislature required the subsequent assent of the governor-general in addition to that of the Secretary of State, and were made subject to disallowance by the Crown, as in the case of the governor-general's council. There were also the same restrictions on the proceedings of the local legislatures [1].

The governor-general was directed to establish, by proclamation, a legislative council for Bengal [2], and was empowered to establish similar councils for the North-Western Provinces and for the Punjab [3]. These councils were to consist of the lieutenant-governor and of a certain number of nominated councillors, and were to be subject to the same provisions as the local legislatures for Madras and Bombay.

The Act also gave power to constitute new provinces for legislative purposes and appoint new lieutenant-governors, and to alter the boundaries of existing provinces [4].

Indian High Courts Act, 1861.

The amalgamation of the supreme and sadr courts, that is to say, of the courts representing the Crown and the Company respectively at the presidency towns, had long been in contemplation, and was carried into effect by the Indian High Courts Act, 1861 [5].

By this Act the Queen was empowered to establish, by letters patent [6], high courts of judicature in Calcutta, Madras, and Bombay, and on their establishment the old chartered supreme courts and the old 'Sadr Adalat' Courts were to be abolished, the jurisdiction and the powers of the abolished courts being transferred to the new high courts.

Each of the high courts was to consist of a chief justice and not more than fifteen judges, of whom not less than one-

[1] See note 4, p. 100.

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

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

[4] ss. 46, 47. Digest, s. 74. [5] 24 & 25 Vict. c. 104.

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

third, including the chief justice, were to be barristers, and not less than one-third were to be members of the covenanted civil service. All the judges were to be appointed by and to hold office during the pleasure of the Crown. The high courts were expressly given superintendence over, and power to frame rules of practice for, all the courts subject to their appellate jurisdiction [1].

Power was given by the Act to establish another high court, with the same constitution and powers as the high courts established at the presidency towns [2].

Legislation since 1861.

The Indian High Courts Act of 1861 closed the series of constitutional statutes consequent on the transfer of the government of India to the Crown. Such Acts of Parliament as have since then been passed for India have done little more than amend, with reference to minor points, the Acts of 1858 and 1861.

The Indian High Courts Act, 1865 [3], empowered the Governor-General in Council to pass orders altering the limits of the jurisdiction of the several chartered high courts and enabling them to exercise their jurisdiction over native Christian subjects of Her Majesty resident in Native States.

Another Act of the same year, the Government of India Act, 1865 [4], extended the legislative powers of the governor-general's council to all British subjects in Native States, whether servants of the Crown or not [5], and enabled the Governor-General in Council to define and alter, by proclamation, the territorial limits of the various presidencies and lieutenant-governorships [6].

The Government of India Act, 1869 [7], vested in the Secretary of State the right of filling all vacancies in the Council of India, and changed the tenure of members of the council

[1] See Digest, ss. 96–103.

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

[3] 28 & 29 Vict. c. 15. Digest, s. 104.

[4] 28 & 29 Vict. c. 17.

[5] See Digest, s. 63.

[6] Ibid. 57.

[7] 32 & 33 Vict. c. 97.

from a tenure during good behaviour to a term of ten years. It also transferred to the Crown from the Secretary of State in Council the right of filling vacancies in the offices of the members of the councils in India.

The Indian Councils Act, 1869 [1], still further extended the legislative powers of the governor-general's council by enabling it to make laws for all native Indian subjects of Her Majesty in any part of the world, whether in India or not.

A very important modification in the machinery for Indian legislature was made by the Government of India Act, 1870 [2]. It has been seen that for a long time the governor-general believed himself to have the power of legislating by executive order for the non-regulation provinces. The Indian Councils Act of 1861, whilst validating rules made under this power in the past, took away the power for the future. The Act of 1870 practically restored this power by enabling the governor-general to legislate in a summary manner for the less advanced parts of India [3]. The machinery provided is as follows. The Secretary of State in Council, by resolution, declares the provisions of section 1 of the Act of 1870 applicable to some particular part of a British Indian province. Thereupon the Governor in Council, lieutenant-governor, or chief commissioner of the province, may at any time propose to the Governor-General in Council drafts of regulations for the peace and good government of that part, and these drafts, when approved and assented to by the Governor-General in Council, and duly gazetted, have the same force of law as if they had been formally passed at sittings of the Legislative Council. This machinery has been extensively applied to the less advanced districts of the different Indian provinces, and numerous regulations have been, and are constantly being, made under it.

[1] 32 & 33 Vict. c. 98. See Digest, s. 63.

[2] 33 & 34 Vict. c. 3. Digest, s. 68.

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

The same Act of 1870 contained two other provisions of considerable importance. One of them (s. 5) repeated and strengthened the power of the governor-general to overrule his council [1]. The other (s. 6) after reciting the expediency of giving additional facilities for the employment of natives of India 'of proved merit and ability' in the civil service of Her Majesty in India, enabled any native of India to be appointed to any 'office, place, or employment' in that service, notwithstanding that he had not been admitted to that service in the manner directed by the Act of 1858, i. e. by competition in England. The conditions of such appointments were to be regulated by rules made by the Governor-General in Council, with the approval of the Secretary of State in Council [2]. The result of these rules was the 'statutory civilian,' who has now been merged in or superseded by the 'Provincial Service.'

Two small Acts were passed in 1871, the Indian Councils Act, 1871 (34 & 35 Vict. c. 34) [3], which made slight extensions of the powers of local legislatures, and the Indian Bishops Act, 1871 (34 & 35 Vict. c. 62), which regulated the leave of absence of Indian bishops.

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

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

The Council of India Act, 1876 (39 & 40 Vict. c. 7), enabled the Secretary of State, for special reasons, to appoint any person having professional or other peculiar qualifications to be a member of the Council of India, with the old tenure, 'during good behaviour,' which had been abolished in 1869 [4].

[1] See Digest, s. 44. It will be remembered that Lord Lytton acted under this power when he exempted imported cotton goods from duty in 1879.

[2] See ibid. 94.

[3] This Act was passed in consequence of the decision of the Bombay High Court in *R.* v. *Reay*, 7 Bom. Cr. 6. See note on s. 79 of Digest.

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

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

The Indian Salaries and Allowances Act, 1880 (43 & 44 Vict. c. 3), enabled the Secretary of State to regulate by order certain salaries and allowances which had been previously fixed by statute [1].

The Indian Marine Service Act, 1884 (47 & 48 Vict. c. 38), enabled the Governor-General in Council to legislate for maintaining discipline in a small marine establishment, called Her Majesty's Indian Marine Service, the members of which were neither under the Naval Discipline Act nor under the Merchant Shipping Acts [2].

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

The Indian Councils Act, 1892 (55 & 56 Vict. c. 14), authorized an increase in the number of the members of the Indian legislative councils, and empowered the Governor-General in Council, with the approval of the Secretary of State in Council, to make rules regulating the conditions under which these members are to be nominated [3]. At the same time the Act relaxed the restrictions imposed by the Act of 1861 on the proceedings of the legislative councils by enabling rules to be made authorizing the discussion of the annual financial statement, and the asking of questions, under prescribed conditions and restrictions.

The Act also cleared up a doubt as to the meaning of an enactment in the Indian Councils Act of 1861, modified some of the provisions of that Act about the office of 'additional members' of legislative councils, and enabled local legislatures, with the previous sanction of the governor-general, to repeal

[1] See Digest, ss. 80, 113. [2] See ibid. 63.
[3] See ibid. 60, 71, 73.

or alter Acts of the governor-general's council affecting their province [1].

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

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

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

[1] See Digest, s. 76. In the absence of this power the sphere of action of the new legislature for the North-Western Provinces and Oudh was confined within an infinitesimal area.

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

[3] See Digest, s. 32.

[4] See Digest, s. 39.

[The authorities which I have found most useful for this chapter are, Reports of Parliamentary Committees *passim*; Calendar of State Papers, Colonial, East Indies; Shaw, *Charters of the East India Company*, Madras, 1887; Birdwood, *Report on the Old Records of the India Office*, 2nd reprint, 1891; Morley's *Digest*, Introduction; Stephen (J. F.), *Nuncomar and Impey*, 1885; Forrest (G.), *Selections from State Papers, India*, 1772–85; and, for general history, Hunter (Sir W. W.), *History of British India* (only 2 vols. published); Lyall (Sir A. C.), *British Dominion in India*; Lecky, *History of England in the 18th century*; Hunt (W.), *Political History of England*, 1760–1801; and Mill's *History of British India*, with its continuation by Wilson.]

CHAPTER II

SUMMARY OF EXISTING LAW

THE administration of British India rests upon English Acts of Parliament, largely supplemented by Indian Acts and regulations[1].

Home Government. Secretary of State.

At the head of the administration in England is the Secretary of State, who exercises, on behalf of the Crown, the powers formerly exercised by the Board of Control and Court of Directors, and who, as a member of the Cabinet, is responsible to, and represents the supreme authority of Parliament[2].

Council of India.

He is assisted by a council, the Council of India, originally fifteen in number, but now, under an Act of 1889, being gradually reduced to ten. The members of the council are appointed by the Secretary of State, and hold office for a term of ten years, with a power of reappointment under special circumstances for a further term of five years. There is also a special power to appoint any person 'having professional or other peculiar qualifications' to be a member of the council during good behaviour. At least nine members of the council must be persons who have served or resided in British India for not less than ten years, and who have left British India not more than ten years before their appointment. A member of the council cannot sit in Parliament[3].

The duties of the Council of India are to conduct, under the direction of the Secretary of State, the business transacted in the United Kingdom in relation to the government of

[1] The best authorities for the existing system of administration are Sir John Strachey's *India* (3rd ed., 1903), Sir W. Hunter's *Indian Empire*, Chesney's *Indian Polity* (3rd ed., 1894), and the latest of the Decennial Reports on the Moral and Material Progress of India (1904).

[2] Digest, s. 2 [3] Ibid. 2, 3

India and the correspondence with India. The Secretary of State is president of the council, and has power to appoint a vice-president [1].

Every order proposed to be made by the Secretary of State must, before it is issued, be either submitted to a meeting of the council or deposited in the council room for seven days before a meeting of the council. But this requirement does not apply to orders which, under the old system, might have been sent through the secret committee [2].

In certain matters, including the expenditure of the revenues of India, orders of the Secretary of State are required by law to obtain the concurrence of a majority of votes at a meeting of his council, but in all other matters the Secretary of State can overrule his council. Whenever there has been a difference of opinion in council any member has a right to have his opinion, and the reasons for it, recorded [3].

The council is thus, in the main, a consultative body, without any power of initiation, and with a limited power of veto. Even on questions of expenditure, where they arise out of previous decisions of the Cabinet, as would usually be the case in matters relating to peace or war, or foreign relations, it would be very difficult for the Council to withhold their concurrence from the Secretary of State when he acts as representative and mouthpiece of the Cabinet.

For the better transaction of business the council is divided into committees [4].

Staff of India Office.

The establishment of the Secretary of State, that is to say the permanent staff constituting what is popularly known as the India Office, was fixed by an Order of the Queen in Council made under the Act of 1858 [5]. It is divided into departments, each under a separate permanent secretary, and the committees of the council are so formed as to correspond to these departments.

Indian revenues.

All the revenues of India are required by law to be received

[1] Digest, ss. 5–10. [2] Ibid. 12–14. [3] Ibid. 10.
[4] Ibid. 11. [5] Ibid. 18.

for and in the name of the King, and to be applied and disposed of exclusively for the purposes of the Government of India [1]. The expenditure of these revenues, both in India and elsewhere, is declared to be subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of the revenues is to be made without the concurrence of a majority of the votes at a meeting of the Council of India [2]. Except for preventing or repelling actual invasion of His Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India are not, without the consent of both Houses of Parliament, to be applicable to defraying the expenses of any military operation carried on beyond the external frontiers of those possessions by His Majesty's forces charged upon those revenues [3].

Audit.

The accounts of the Indian revenues and expenditure are laid annually before Parliament, and the accounts of the Secretary of State in Council are audited by an auditor, who is appointed by the King by warrant countersigned by the Chancellor of the Exchequer [4].

Contracts and legal proceedings

For the purpose of legal proceedings and contracts, but not for the purpose of holding property, the Secretary of State in Council is a juristic person or body corporate by that name, having the same capacities and liabilities as the East India Company [5]. He has also statutory powers of contracting through certain officers in India [6].

Government in India. The governor-general

At the head of the Government in India is the governor-general, who is also viceroy, or representative of the King. He is appointed by the King by warrant under his sign manual, and usually holds office for a term of five years [7].

The governor-general's council.

He has a council, which at present consists of six members, besides the commander-in-chief, who may be, and in practice always is, appointed an extraordinary member [8].

[1] Digest, s. 22.

[2] Ibid. 23. See, however, the practical qualifications of this requirement noted above.

[3] Ibid. 24. [4] Ibid. 29, 30. [5] Ibid. 32, 35.

[6] Ibid. 33. [7] Ibid. 36, 37. [8] Ibid. 38–40.

The Governor of Madras or Bombay is also an extraordinary member of the council whenever it sits within his province (which, in fact, never happens [1]).

The power given by an Act of 1874 to appoint a sixth ordinary member specifically for public works purposes was made general by an Act of 1904.

The ordinary members of the governor-general's council are appointed by the Crown, in practice for a term of five years. Three of them must be persons who, at the time of their appointment, have been for at least ten years in the service of the Crown in India, and one must be a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, of not less than five years' standing [2].

If there is a difference of opinion in the council, in ordinary circumstances the opinion of the majority prevails, but, in exceptional circumstances, the governor-general has power to overrule his council [3].

If the governor-general visits any part of India unaccompanied by his council, he is empowered to appoint some ordinary member of his council to be president of the council in his place, and, in such case, there is further power to make an order authorizing the governor-general alone to exercise all the executive powers of the Governor-General in Council [4].

The official acts of the central Government in India are expressed to run in the name of the Governor-General in Council, often described as the Government of India [5]. The executive work of the Government of India is distributed among departments which may be compared to the departments of the central Government in England. There are at present nine of these departments—Finance, Foreign, Home, Legislative, Revenue and Agriculture, Public Works, Commerce and Industry, Army, and Military Supply. At the head of each of them is one of the secretaries to the

[1] Digest, s. 40. [2] Ibid. 39. [3] Ibid. 44. [4] Ibid. 45, 47

[5] Legislative sanction for this name is given by the Indian General Clauses Act (X of 1897, s. 3 (22)).

Government of India, who corresponds to the permanent secretary in England, and each of them, except the Foreign Department, is assigned to the special care of one of the members of council. The Foreign Department is under the immediate superintendence of the viceroy, who may be thus called his own Foreign Minister, although members of the council share responsibility for such matters relating to the department as come within their cognizance.

Besides these nine departments of the Secretariat, there are special departments, outside the Secretariat departments but attached to some one of them. These special departments either transact branches of work which the Government of India keeps in its own hands, or exercise supervision over branches of work which are conducted by the Local Governments. Thus the Directors-General of the Post Office and of the Telegraph department, the Surveyor-General, and the newly constituted Railway Board, are at the head of departments which are centrally administered. On the other hand the Inspectors-General of Forests and of Agriculture, and the Directors-General of Education and of the Indian Medical Service, represent departments which are administered by the Local Governments but supervised by the Government of India.

In the transaction of business, minor questions are settled departmentally. Questions involving a difference of opinion between two departments, or raising any grave issue, are brought up to be settled in council.

The council usually meets once a week, but special meetings may be summoned at any time. The meetings are private, and the procedure is of the same informal kind as at a meeting of the English Cabinet, the chief difference being that one of the secretaries to the Government usually attends during the discussion of any question affecting his department, and takes a note of the order passed [1].

[1] For a description of the mode of transacting business in council before the work of the Government was 'departmentalized,' see *Lord Minto in India*, p. 26, and as to the effect of departmentalizing, see Strachey, p. 60.

Every dispatch from the Secretary of State is circulated among all the members of the council, and every dispatch to the Secretary of State is signed by every member of the council who is present at headquarters, as well as by the Viceroy, unless he is absent.

If any member of the council dissents from any dispatch signed by his colleagues, he has the right to append to it a minute of dissent.

The headquarters of the Government of India are at Calcutta during the cold weather season, and at Simla during the rest of the year [1].

The local governments.

For purposes of administration British India is now divided into thirteen provinces, each with its own local government. These provinces are the old presidencies [2] of Madras (Fort St. George) and Bombay; five Lieutenant-Governorships, namely, Bengal, Eastern Bengal and Assam [3], the United Provinces of Agra and Oudh [4], the Punjab, and Burma [5]; and six Chief Commissionerships, namely, the Central Provinces, Ajmere-Merwara, Coorg, British Baluchistan [6], the North-West Frontier Province [7], and the Andaman Islands.

The provinces of Madras and Bombay are each under a governor and council appointed by the Crown, in practice for a term of five years, the governor being usually an English statesman, and the council consisting of two members of the Indian Civil Service of twelve years' standing [8]. The governors of Madras and Bombay retain their privilege of

[1] As to the advantages and disadvantages of Simla as a seat of Government, see Minutes by Sir H. S. Maine, No. 70.

[2] As to the ambiguity of the term 'presidency,' see Chesney, *Indian Polity* (3rd ed.), pp. 79, 88. Strachey, p. 43.

[3] Constituted in 1905 by the union of the Eastern part of Bengal with the Chief Commissionership of Assam. See Act VII of 1905.

[4] Constituted in 1901 by the union of the Lieutenant-Governorship of the North-Western Provinces with the Chief Commissionership of Oudh.

[5] Placed under a lieutenant-governor in 1897.

[6] Made a Chief Commissionership in 1887.

[7] Carved out of the Punjab, and placed under a Chief Commissioner in 1901.

[8] Digest, ss. 50, 51.

communicating directly with the Secretary of State, and have the same power as the governor-general of overruling their councils in cases of emergency. For reasons which are mainly historical, the control of the Government of India over the Governments of Madras and Bombay is less complete than over other local Governments.

The lieutenant-governors have no executive councils, and are appointed by the governor-general, with the approval of the King [1]. They are in practice appointed from the Indian Civil Service [2], and hold office for five years.

The chief commissioners are appointed by the Governor-General in Council. In some cases this office is combined with another post. Thus the Resident at Mysore is, *ex-officio*, Chief Commissioner of Coorg, and the Governor-General's Agent for Rajputana is, *ex-officio*, Chief Commissioner of Ajmere-Merwara. So also the Chief Commissioners of British Baluchistan and of the North-West Frontier Province are Governor-General's Agents for dealing with the neighbouring tribes outside British India.

Under an arrangement made in 1902 the 'Assigned Districts' of Berar are leased in perpetuity to the British Government, and are administered by the Chief Commissioner of the Central Provinces.

Indian legislation.

For legislative purposes the governor-general's council is expanded into a legislative council by the addition of not less than ten nor more than sixteen additional members, of whom at least one-half must be persons not in the civil or military service of the Crown in India. These additional members are nominated by the governor-general under rules approved by the Secretary of State [3]. Under the rules framed in pursuance of the Act of 1892 [4] there are sixteen additional members, of whom six are officials appointed by the Governor-General in Council, and ten are non-official.

[1] Digest, s. 55.
[2] There may have been exceptions, e. g. Sir H. Durand.
[3] Digest, s. 60.
[4] 55 & 56 Vict. c. 14.

Of the non-official members four are appointed by the governor-general on the recommendation of the non-official additional members of the provincial legislatures of Madras, Bombay, Bengal, and the United Provinces, each of these bodies recommending one member, and one on the recommendation of the Calcutta Chamber of Commerce. The governor-general can, if he thinks fit, decline to accept a recommendation thus made, and in that case a fresh recommendation is submitted to him. The remaining five members are nominated by the governor-general, 'in such manner as shall appear to him most suitable with reference to the legislative business to be brought before the council, and the due representation of the different classes of the community.'

The additional members hold office for two years, and are entitled to be present at all legislative meetings of the council, but at no others [1].

The legislature thus formed bears the awkward name of 'the Governor-General in Council at meetings for the purpose of making laws and regulations.'

The Governor-General in Council at these meetings has power to make laws—

(*a*) for all persons, for all courts, and for all places and things within British India; and

(*b*) for all British subjects of His Majesty and servants of the Government of India within other parts of India, that is to say, within the Native States; and

(*c*) for all persons being native Indian subjects of His Majesty, or native Indian officers or soldiers in His Majesty's Indian forces when in any part of the world, whether within or without His Majesty's dominions; and

(*d*) for all persons employed or serving in the Indian Marine Service [2].

[1] Digest, s. 60.

[2] Ibid. 63. As to whether there is any power to legislate for servants of the Government outside 'India,' see the note (*c*) on that section.

But this power is subject to various restrictions. For instance, it does not extend to the alteration of any Act of Parliament passed since 1860, or of certain specified portions of earlier Acts [1], and does not enable the legislature to make any law affecting the authority of Parliament or any part of the unwritten laws or constitution of the United Kingdom whereon may depend the allegiance of any person to the Crown or the sovereignty or dominion of the Crown in any part of British India [2].

Measures affecting the public debt or revenues of India, the religion or religious rites or usages of any class of His Majesty's subjects in India, the discipline or maintenance of the military or naval forces, or the relations of the Government with foreign States, cannot be introduced by any member without the previous sanction of the governor-general [3]. Every Act requires the governor-general's assent, unless it is reserved by him for the signification of His Majesty's pleasure, in which case the power of assenting rests with the Crown. The assent of the Crown is in other cases not necessary to the validity of an Act, but any Act may be disallowed by the Crown [4].

The procedure at meetings of the Legislative Council is regulated by rules made by the council and assented to by the governor-general [5].

Under the Act of 1861, the powers of the Legislative Council were strictly confined to the consideration of measures introduced into the council for the purpose of enactment or the alteration of rules for the conduct of business [6]. But under the Act of 1892 rules may be made authorizing at meetings of the Council discussion of the annual financial statement and the asking of questions, but under such conditions and restrictions, as to subject or otherwise, as may be prescribed.

[1] Namely, 3 & 4 Will. IV, c. 85, except ss. 81–86; 16 & 17 Vict. c. 95; 17 & 18 Vict. c. 77; 21 & 22 Vict c. 106; 22 & 23 Vict. c. 41. See 24 & 25 Vict. c. 67, s. 22, as amended by 32 & 33 Vict. c. 98, s 2.

[2] Digest, s. 63. [3] Ibid. 64 [4] Ibid. 65, 66

[5] Ibid. 67. [6] See above, p. 100.

Under the rules made in pursuance of this power the annual financial statement must be made publicly in the council. Every member is at liberty to make any observations he thinks fit, and the financial member of the council and the president have the right of reply. Under the same rules due notice must be given of any question, and every question must be a request for information only, and must not be put in argumentative, or hypothetical, or defamatory language. No discussion is permitted in respect of an answer given on behalf of the Government, and the president may disallow any question which, in his opinion, cannot be answered consistently with the public interest.

Besides the formal power of making laws through the Legislative Council, the governor-general has also, under an Act of 1870[1], power to legislate in a more summary manner, by means of regulations, for the government of certain districts of India of a more backward character, which are defined by orders of the Secretary of State, and which are 'scheduled districts' within the meaning of certain Acts of the Indian Legislature. Under a section of the Act of 1861[2] the governor-general has also power, in cases of emergency, to make temporary ordinances which are to be in force for a term not exceeding six months.

The Governor-General in Council also exercises certain legislative powers with respect to Native States, but in his executive capacity, and not through his legislative council[3].

Local legislatures.

Local legislatures were established by the Indian Councils Act, 1861, for the provinces of Madras and Bombay, and have, under the powers given by that Act, since been established for Bengal, for the United Provinces of Agra and Oudh as constituting a single province, for the Punjab, for Burma, and for the province of Eastern Bengal and Assam[4].

The legislatures for Madras and Bombay consist of the

[1] 33 Vict. c. 3, s. 1, above, p. 105. Digest, s. 68.
[2] 24 & 25 Vict. c. 67, s. 23. Digest, s. 69.
[3] See Chapter v.
[4] See Digest, ss. 70, 74.

governor and his council, reinforced, for the purpose of legislation, by additional members. These additional members must be not less than eight and not more than twenty in number, and must include the advocate-general of the province, and at least one-half of them must be persons not in the civil or military service of the Crown. They are nominated by the governor in accordance with rules framed by the Governor-General in Council and approved by the Secretary of State. Under the existing rules, their number, both at Madras and at Bombay, is fixed at twenty, of whom not more than nine may be officials The system of nomination adopted is intended to give a representative character to the members. For instance, at Bombay eight non-official members are nominated on the recommendation of various bodies and associations, including one recommended by the Corporation of the City, one by the University and six by groups of municipal corporations, groups of district local boards, classes of large landholders, and associations of merchants, manufacturers, or tradesmen. The remaining non-official members are nominated by the governor 'in such manner as shall in his opinion secure a fair representation of the different classes of the community.'

In the provinces which have legislative, but not executive, councils, the legislature consists of the lieutenant-governor and of persons nominated by him under similar rules and on the same general principles as those which apply to the local legislatures of Madras and Bombay. The number of the nominated members of the legislative council is twenty in Bengal, fifteen in the United Provinces, nine in the Punjab and Burma respectively, and fifteen in Eastern Bengal and Assam. One-third of them must be persons not in the civil or military service of the Crown[1]. Of the fifteen councillors for Eastern Bengal and Assam not more than seven may be officials[2].

The powers of the local legislatures are more limited than

[1] Digest, s. 73.

[2] See notification of Oct. 16, 1905.

those of the legislative council of the governor-general. They cannot make any law affecting any Act of Parliament for the time being in force in the province, and may not, without the previous sanction of the governor-general, make or take into consideration any law—

(*a*) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the Government of India; or

(*b*) regulating any of the current coin, or the issuing of any bills, notes, or other paper currency; or

(*c*) regulating the conveyance of letters by the post office or messages by the electric telegraph within the province; or

(*d*) altering the Indian Penal Code; or

(*e*) affecting the religion or religious rites or usages of any class of His Majesty's subjects in India; or

(*f*) affecting the discipline or maintenance of any part of His Majesty's naval or military forces; or

(*g*) regulating patents or copyright; or

(*h*) affecting the relations of the Government with foreign princes or States [1].

Until 1892 their powers were much restricted by their inability to alter any Act of the Governor General in Council, but under a provision of the Indian Councils Act, 1892, the local legislature of any province may, with the previous sanction of the governor-general, repeal or amend as to that province any law or regulation made by any other authority in India [2].

Acts passed by a local legislature in India require the assent of the governor-general, and are subject to disallowance by the Crown in the same manner as Acts of the governor-general's legislative council [2]. The restrictions on

[1] Digest, s. 76. [2] Ibid. 78.

the subjects of discussion at that council also apply to meetings of the local legislatures [1].

No precise line of demarcation is drawn between the subjects which are reserved to the control of the local legislatures respectively [2]. In practice, however, the governor-general's council confines itself to legislation which is either for provinces having no local legislatures of their own, or on matters which are beyond the competency of the local legislatures, or on branches of the law which require to be dealt with on uniform principles throughout British India. Under this last head fall the so-called Indian codes, including the Penal Code, the Codes of Civil and Criminal Procedure, the Succession Act, the Evidence Act, the Contract Act, the Specific Relief Act, the Negotiable Instruments Act, the Transfer of Property Act, the Trusts Act, and the Easements Act.

Indian Law.

The law administered by the courts of British India consists, so far as it is enacted law, of—

(1) Such Acts of Parliament as extend, expressly or by implication, to British India [3].

(2) The regulations made by the Governments of Madras, Bengal, and Bombay before the coming into operation of the Government of India Act, 1833 (3 & 4 Will. IV, c. 85) [4].

[1] Digest, s. 77.

[2] As to the relations between the governor-general's council and local legislatures, see Minutes by Sir H. S. Maine, No. 69.

[3] See the Statutes relating to India, published by the Indian Legislative Department in 1899.

[4] The Bengal Regulations passed before 1793 were in that year collected and passed by Lord Cornwallis in the shape of a revised code. 675 Regulations were passed between 1793 and 1834, both inclusive, but of these only eighty-nine are now wholly or partly in force. Such of them as are still in force are to be found in the volumes of the Bengal Code published by the Indian Legislative Department.

Of the 251 Madras Regulations, twenty-eight are still wholly or partly in force, and are to be found in the Madras Code.

The Bombay Regulations were revised and consolidated by Mountstuart Elphinstone in 1827. Twenty Bombay Regulations are still wholly or partly in force, and are to be found in the Bombay Code.

(3) The Acts passed by the Governor-General in Council under the Government of India Act, 1833, and subsequent statutes [1].

(4) The Acts passed by the local legislatures of Madras, Bombay, Bengal, the North-Western Provinces and Oudh (now the United Provinces of Agra and Oudh), the Punjab, Burma and Eastern Bengal and Assam, since their constitution under the Indian Councils Act, 1861 (24 & 25 Vict. c. 67) [2].

(5) The Regulations made by the governor-general under the Government of India Act, 1870 (33 Vict. c. 3) [3].

(6) The Ordinances, if any, made by the governor-general under s. 23 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67), and for the time being in force [4].

To these may be added—

(7) Orders in Council made by the King in Council and applying to India [5].

(8) Statutory rules made under the authority of English Acts [6].

(9) Rules, orders, regulations, by-laws, and notifications made under the authority of Indian Acts [7].

[1] Revised editions of these Acts, omitting repealed matter, have been published by the Indian Legislative Department. Such of them as relate only to particular provinces are to be found in the 'Codes' for these provinces published by the Legislative Department.

[2] These Acts are to be found in the volumes of 'Codes' mentioned above.

[3] A Chronological Table of and Index to these five classes of enactments have been compiled by the Indian Legislative Departments.

[4] See Digest, s. 69.

[5] See e. g. the Order in Council confirming the Extradition (India) Act, 1895 (IX of 1895), *Statutory Rules and Orders Revised*, v. 297; the Zanzibar Order in Council of 1897, which gives an appeal from the British Court in Zanzibar to the Bombay High Court, *Statutory Rules and Orders Revised*, v. 87; and the Indian (Foreign Jurisdiction) Order in Council, 1902, printed below, p. 388.

[6] e. g. the rules made under s. 8 of the Indian Councils Act, 1891 (Digest, s. 43), and under ss. 1 & 2 of the Indian Councils Act, 1892 (Digest, ss. 60, 64).

[7] Lists of such of these as have been made under general Acts have been published by the Legislative Department. There are also some lists and collections of rules made under local Acts.

(10) Rules, laws, and regulations made by the governor-general or the Governor-General in Council for non-regulation provinces before 1861, and confirmed by s. 25 of the Indian Councils Act, 1861 [1].

These enactments are supplemented by such portions of the Hindu, Mahomedan, and other native laws and customs as are still in force, and by such rules or principles of European, mainly English, law as have been applied to the country, either under the direction to act in accordance with justice, equity, and good conscience, or in other ways, and as have not been superseded by Indian codification.

Native law has been wholly superseded, as to criminal law and procedure and as to civil procedure, by the Indian Penal Code, the Indian Codes of Criminal and Civil Procedure, the Evidence Act, and other enactments, and has been largely superseded as to other matters by Anglo-Indian legislation, but still regulates, as personal law, most matters relating to family law and to the law of succession and inheritance among Hindus, Mahomedans, and other natives of the country [2].

The civil service of India

The East India Company Act, 1793 (33 Geo. III, c. 52), reserved to members of the covenanted civil service [3] the principal civil offices in India under the rank of member of council. Appointments to this service were made in England by the Court of Directors.

The Government of India Act, 1853 (16 & 17 Vict. c. 95), threw these appointments open to competition among natural-born subjects of Her Majesty, and this system was maintained by the Act of 1858, which transferred the government of India to the Crown [4]. The first regulations for the competi-

[1] See above, p. 102. Probably most, if not all, of this body of laws has expired or been superseded.

[2] See below, Chapter IV.

[3] So called from the covenants into which the superior servants of the East India Company were required to enter, and by which they were bound not to trade, not to receive presents, to subscribe for pensions, and so forth. Members of the civil service of India are still required to enter into similar covenants before receiving their appointments.

[4] See Digest, s. 92.

tive examinations were framed by Lord Macaulay's committee in 1854, and have since been modified from time to time. Under the existing rules the limits of age for candidates are from twenty-one to twenty-three. Successful candidates remain on probation for one year, and then have to pass an examination in subjects specially connected with their future duties. If they pass, they receive their appointments from the Secretary of State. Probationers are encouraged by a special allowance of £100 to pass their probationary year at a University or College approved by the Secretary of State.

The Indian Civil Service Act, 1861 (24 & 25 Vict. c. 54), whilst validating certain irregular appointments which had been made in the past, expressly reserved in the future to members of the covenanted service all the more important civil posts under the rank of member of council in the regulation provinces. The schedule of reserved posts, which is still in force [1], does not apply to non-regulation provinces, such as the Punjab, Oudh, the Central Provinces, and Burma, where the higher civil posts may be, and in practice often are, filled by military officers belonging to the Indian Army, and others.

An Act of 1870 (33 Vict. c. 3), after reciting that 'it is expedient that additional facilities should be given for the employment of natives of India, of proved merit and ability, in the civil service of Her Majesty in India,' authorized the appointment of any native of India to any office, place, or employment in the civil service in India, without reference to any statutory restriction, but subject to rules to be made by the Governor-General in Council with the sanction of the Secretary of State in Council [2].

Little was done under this Act until rules for regulating appointments under it were made during Lord Lytton's government in 1879. The intention was that about a sixth of the posts reserved by law to the covenanted civil service should be filled by natives of India appointed under these rules; and for the purpose of giving gradual effect to this

[1] Digest, s. 93. [2] Ibid. 94.

scheme, the number of appointments made in England was in 1880 reduced by one-sixth. The persons appointed under the rules were often described as 'statutory civilians,' and about sixty natives of India had been so appointed when the system was changed in 1889. The rules did not work satisfactorily, and in 1886 a commission, under the presidency of Sir Charles Aitchison, was appointed by the Government of India with instructions 'to devise a scheme which might reasonably be hoped to possess the necessary elements of finality, and to do full justice to the claims of natives of India to higher employment in the public service.'

Under the scheme established in pursuance of the recommendations of Sir Charles Aitchison's commission a provincial civil service has been formed by the amalgamation of the higher appointments in what was previously known as the uncovenanted civil service with a certain number of appointments previously held by the covenanted civil service. The lower grade appointments of what had been the uncovenanted civil service are now styled the 'subordinate service.' There are thus three classes of the general civil service, (1) the Civil Service of India, (2) the Provincial Service, and (3) the Subordinate Service. The Civil Service of India is recruited by open competition in England. The other two services are recruited provincially and consist almost entirely of natives of the province. The provincial service is fed mainly by direct recruitment, but, in exceptional cases, by promotion from the subordinate service. In the executive branch the lowest grade in the provincial service is the deputy collector, the highest in the subordinate service is the tahsildar. Judicial officers of all grades belong to the provincial service[1].

Besides this general service, there are special services such as the education department, the public works department, the forest department, and the police department. Appointments to the highest posts in these departments are as a rule

[1] As to the proportion of Englishmen in the Indian Civil Service, see Strachey, *India*, p. 82.

made in England. The other posts are recruited provincially, and are, like posts in the general service, graded as belonging either to a provincial service, or to a subordinate service [1].

The chartered high courts.

It is only with reference to the four chartered high courts that the judicial system of India is regulated by English statute. Under the Regulating Act of 1773 (13 Geo. III, c. 63), a supreme court was established by charter for Calcutta, and similar courts were established for Madras in 1800 (39 & 40 Geo. III, c. 79), and for Bombay in 1823 (4 Geo. IV, c. 71). The Act of 1781 (21 Geo. III, c. 70) recognized an appellate jurisdiction over the country courts established by the Company in the Presidency of Bengal [2].

The Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), amalgamated the supreme and sadr courts at the three presidency towns (that is to say, the courts exercising the jurisdiction of the Crown and the appellate and supervisional jurisdiction of the Company at those towns), by authorizing the establishment of chartered high courts inheriting the jurisdiction of both these courts. The charters now regulating these high courts were granted in December, 1865. The same Act authorized the establishment of a new high court, and accordingly a charter establishing the High Court at Allahabad was granted in 1866.

Each of the four chartered high courts consists of a chief justice, and of as many judges, not exceeding fifteen, as His Majesty may think fit to appoint [3].

A judge of a chartered high court must be either—

(*a*) a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland, of not less than five years' standing; or

(*b*) a member of the civil service of India of not less than ten years' standing, and having for at least three years served as, or exercised the powers of, a district judge, or

[1] See East India (Progress and Condition) Decennial Report, 1904, pp. 58-60.

[2] See above, p. 57.

[3] Digest, s. 96.

(*c*) a person having held judicial office not inferior to that of a subordinate judge, or judge of a small cause court, for not less than five years; or

(*d*) a person having been a pleader of a high court for not less than ten years[1].

But not less than one-third of the judges, including the chief justice, must be barristers or advocates, and not less than one-third must be members of the civil service of India[1].

Every judge of a chartered high court holds office during His Majesty's pleasure[2], and his salary, furlough, and pension are regulated by order of the Secretary of State in Council[3]. Temporary vacancies may be filled by the Governor-General in Council in the case of the high court at Calcutta, and by the local government in other cases[4].

The jurisdiction of the chartered high courts is regulated by their charters[5], and includes the comprehensive jurisdiction formerly exercised by the supreme and sadr courts[6]. They are also expressly invested by statute (24 & 25 Vict. c. 104, s. 15) with administrative superintendence over the courts subject to their appellate jurisdiction, and are empowered to—

(*a*) call for returns;

(*b*) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;

(*c*) make general rules for regulating the practice and proceedings of those courts;

(*d*) prescribe forms for proceedings in those courts, and for the mode of keeping book entries or accounts by the officers of the courts; and

(*e*) settle tables of fees to be allowed to the sheriffs, attorneys, clerks, and officers of the courts[7].

[1] Digest, s. 96. [2] Ibid. 97. [3] Ibid. 99. [4] Ibid. 100.
[5] Printed in *Statutory Rules and Orders Revised*, vol. VI.
[6] Digest, s. 101. [7] Ibid. 102.

But these rules, forms, and tables are to be subject to the previous approval of the Government of India or of the local government [1].

The business of the chartered high courts is distributed among single judges and division courts in accordance with rules of court, subject to any provision which may be made by Act of the Governor-General in Council [2].

The Governor-General in Council may by order alter the local limits of the jurisdiction of the several chartered high courts, and authorize them to exercise jurisdiction over Christian subjects of His Majesty resident in Native States [3].

The old enactments requiring the chartered high courts, in the exercise of their original jurisdiction with reference to certain matters of which the most important are inheritance and succession, when both parties are subject to the same law or custom, to decide according to that law or custom, and when they are subject to different laws or customs, to decide according to the law of the defendant, are still in force, subject to such modifications as have been or may be made by Indian legislation [4].

Traces of the old conflicts between the supreme court and the governor-general's council are still to be found in enactments which exempt the governor-general and the governors of Madras and Bombay and members of their council from the original jurisdiction of the chartered high courts in respect of anything counselled, ordered, or done by any of them in their public capacity, from liability to arrest or imprisonment in any civil proceeding in a high court, and from being subject to the criminal jurisdiction of a high court in respect of any misdemeanour at common law or under any Act of Parliament [5]. Nor are the chartered high courts to exercise original jurisdiction in revenue matters [6].

Jurisdiction of English

The highest officials in India are exempted from the jurisdiction of the Indian chartered high courts, but under enact-

[1] Digest, s. 102. [2] Ibid. 103 [3] Ibid. 104.
[4] Ibid. 108. [5] Ibid. 105. [6] Ibid. 101.

ments which are still in force[1] certain offences by persons holding office under the Crown in India are expressly made punishable as misdemeanours by the High Court in England. These offences are :— courts over offences in India.

(1) Oppression of any of His Majesty's subjects ;

(2) Wilful breach or neglect of the orders of the Secretary of State ;

(3) Wilful breach of the trust and duty of office ;

(4) Trading ; and

(5) Receipt of presents.

Under an Act of 1797 (37 Geo. III, c. 142, s. 28), any British subject[2] who, without the previous consent in writing of the Secretary of State in Council, or of the Governor-General in Council, or of a local Government, is concerned in any loan to a native prince, is guilty of a misdemeanour.

Any of these offences may be tried and punished in England, but the prosecution must be commenced within five years after the commission of the offence or the arrival in the United Kingdom of the person charged, whichever is later[3].

Supreme authority over the army in India is vested by law in the Governor-General in Council[4]. Under the arrangements made in 1905 the commander-in-chief of His Majesty's Forces in India has charge of the Army Department, which to a certain extent corresponds to the War Office in England. Subject to the administrative control of the Governor-General in Council, the same commander-in-chief is also the chief executive officer of the army. Under the system in force before the changes introduced by the Act of 1893 he held special command of the troops in the Bengal Presidency, and exercised a general control over the armies of Madras and Bombay. Each of these armies had a local commander-in-chief, who might The army in India.

[1] Digest, s. 117.

[2] This probably means any European British subject. See Digest, s. 118.

[3] This is the period fixed by 21 Geo. III, c. 70, s. 7. But the period under 33 Geo. III, c. 52, s. 141, is six years from the commission of the offence and a shorter period is fixed by the general Act, 56 & 57 Vict. c. 61. See Digest, s. 119.

[4] See ibid. 36.

be, and in practice always was, appointed a member of the governor's executive council, and the local Government of the presidency had certain administrative powers in military matters. This system of divided control led to much inconvenience, and by an Act of 1893 (56 & 57 Vict. c. 62) the offices of the provincial commanders-in-chief were abolished, and the powers of military control vested in the Governments of Madras and Bombay were transferred to the Government of India.

The administrative arrangements under the Act of 1893 came into force on April 1, 1895. The Army of India was then divided into four great commands, each under a lieutenant-general, the whole being under the direct command of the commander-in-chief in India and the control of the Government of India. In 1904 one of the commands was abolished, and the army is now organized in three commands and two independent divisions, one of which, however, will probably be absorbed into one of the commands.

The army in India consists, first, of His Majesty's forces, which are under the Army Act, and, secondly, of the native troops, of which the British officers are under the Army Act, whilst the remainder are under the Indian Articles of War, an Act of the Indian Legislature[1]. In 1905 the total strength was nearly 231,000 men of all arms, of whom rather more than 78,500 (including the British officers of the Indian Army) were British. This is exclusive of the active reserve, in process of formation, consisting of men who have served with the colours in the Native Army from 5 to 12 years, and numbering now about 24,500 men, and of the volunteers, about 32,000 in number, enrolled under the Indian Volunteers Acts (XX of 1869, as amended by X of 1896).

When the Native Army was reorganized in 1861, its British officers were formed into three 'staff corps,' one for each of the three armies of Bengal, Madras, and Bombay. The officers of the corps were, in the first instance, transferred

[1] Act V of 1869, as amended by Act XII of 1894.

from the East India Company's army, and were subsequently drawn from British regiments. In 1891 the three staff corps were amalgamated into a single body, known as the Indian Staff Corps. In 1902 the use of the term 'Staff Corps' was abandoned, and these officers are now said to belong to the Indian Army. The number of their establishment is nearly 3,200. They are recruited partly from young officers of British regiments and batteries in India, and partly by the appointment of candidates from the Royal Military College, Sandhurst, to an unattached list, from which they are transferred to the Indian Army after a year's duty with a British regiment in India. After passing examinations in the native language and in professional subjects, an officer of the Indian Army is eligible for staff employment or command in any part of India. The officers of the Indian Army are employed not only in the Native Army and in military appointments on the staff, but also in a large number of civil posts. They hold the majority of appointments in the Political Department, and many administrative and judicial offices in non-regulation provinces.

Ecclesiastical establishment.

The Charter Acts of 1813 and 1833 provided for the appointment of bishops at Calcutta, Madras, and Bombay, and conferred on them ecclesiastical jurisdiction and power to admit to holy orders. These provisions are still in force[1], but the bishops who have been since appointed for other Indian dioceses, such as the diocese of Lahore, do not derive their authority from any Act of Parliament. The salaries, allowances, and leaves of absence of the Indian bishops and archdeacons are regulated by the King or by the Secretary of State in Council[2].

Subsidiary provisions.

The provisions summarized above include all the matters relating to the administration of India which are regulated by Act of Parliament, with the exception of some minor points relating to salaries, leave of absence, temporary appointments, and the like.

[1] Digest, ss. 110–112.

[2] Ibid. 113, 114.

The salaries and allowances of the governor-general and the governors of Madras and Bombay, and of their respective councils, of the commander-in-chief, and of lieutenant-governors, are fixed by order of the Secretary of State in Council, subject to limits imposed by Act of Parliament[1].

Return to Europe vacates the offices of the governor-general, of the governors of Madras and Bombay, and the members of their respective councils, and of the commander-in-chief[2], except that members of council can obtain six months' leave of absence on medical certificate[3].

There is power to make conditional appointments to the offices of governor-general, governor, and member of council[4].

If a vacancy occurs in the office of governor-general when there is no successor or conditional successor on the spot, the Governor of Madras or Bombay, whichever is senior in office, fills the vacancy temporarily[5]. A temporary vacancy in the office of Governor of Madras or Bombay is filled by the senior member of council[6]. Provision is also made for filling temporary vacancies in the offices of ordinary or additional members of council.

Absence on sick leave or furlough of persons in the service of the Crown in India is regulated by rules made by the Secretary of State in Council[7]. The distribution of patronage between the different authorities may also be regulated in like manner[8].

Administrative arrangements not dependent on Acts of Parliament.

The administrative arrangements which have been summarized above depend mainly, though not exclusively, on Acts of Parliament. To describe the branches of administration which depend not on Acts of Parliament, but on Indian laws or administrative regulations, would be beyond the scope of this work. For a description of them reference should be made to such authorities as Sir John Strachey's

[1] Digest, s. 80.

[2] Ibid. 82. The precise effect of the enactments reproduced by this section is far from clear.

[3] Ibid. 81. [4] Ibid. 83. [5] Ibid. 85.

[6] Ibid. 86. [7] Ibid. 89. [8] Ibid. 90.

excellent book on India, or the latest of the decennial reports on the moral and material progress of India. Only a few of them can be touched on lightly here.

Financial system.

In the first place something must be said about the Indian financial system. The principal heads of Indian revenue, as shown in the figures annually laid before Parliament, are land revenue, opium, salt, stamps, excise, provincial rates, customs, assessed taxes, forest, registration, and tributes from Native States. The principal heads of expenditure are debt services, military services, collection of revenue, commercial services, famine relief and insurance, and civil service. But during recent years the services grouped as commercial, namely, post office, telegraph, railways and irrigation, have shown a surplus, and have been a source of revenue and not of expenditure. The most important head of revenue is the land revenue, a charge on the land which is permanently fixed in the greater part of Bengal and in parts of Madras, and periodically settled elsewhere.

The central government keeps in its own hands the collection of certain revenues such as those of the Salt Department in Northern India, the Telegraph Department, and the revenues of Coorg, Ajmere, and the North-West Frontier Province, besides certain receipts connected with the Army and other services. It also deals directly with the expenditure on the Army and the Indian Marine, on certain military works, on railways and telegraphs, on the administration of the three small provinces whose revenue it receives, and on the mint, and with the greater part of the post office expenditure and of the political charges.

The other branches of revenue are collected and the other branches of expenditure are administered by the provincial or local governments. But the whole of the income and expenditure, whether collected or borne by the central or by the local government, is brought into one account as the income and expenditure of the Indian Empire.

Since 1871 the relations between central and provincial