

finance' have been regulated by quinquennial contracts between the central and each provincial government. Under these contracts the whole, or a proportion, of certain taxes and other receipts collected by each provincial government is assigned to it for meeting a prescribed portion of the administrative charges within the province.

The provincial governments have thus a direct interest in the efficient collection of revenue and an inducement to be economical in expenditure, since savings effected by them are placed to their credit. But they may not alter taxation, or the rules under which the revenue is administered, without the assent of the Supreme Government. Subject to general supervision, and to rules and conditions concerning such matters as the maintenance of great lines of communication, the creation of new appointments, the alteration of scales of salaries, and the undertaking of new general services or duties, they have a free hand in administering their share of the revenue. The apportionment of revenue is settled afresh every five years, after a review of the provincial finance. Any balance which a provincial government can accumulate by careful administration is placed to its credit, but on occasions of extraordinary stress, as during the Afghan War, the central government has sometimes called upon local governments to surrender a share of their balances.

Adminis-
trative
staff of
local
govern-
ments.

As has been said above the governors of Madras and Bombay are assisted by executive councils. A lieutenant-governor has no executive council, but has the help of a Board of Revenue in Bengal, Eastern Bengal and Assam, and the United Provinces, and of a Financial Commissioner in the Punjab and Burma. Madras has also a Board of Revenue. Each province has its secretariat, manned according to administrative requirements, and also special departments, presided over by heads, such as the inspector-general of police, the commissioner of excise, the director-general of education, the inspector-general of civil hospitals, the

sanitary commissioner, and the chief engineer of public works, for the control of matters which are under provincial, as distinguished from central management. There may be also special officers in charge of such matters as experimental farms, botanical gardens, horse breeding, and the like, which require special qualifications but do not need a large staff.

The old distinction between regulation and non-regulation provinces¹ has become obsolete, but traces of it remain in the nomenclature of the staff, and in the qualifications for administrative posts. The corresponding distinction in modern practice is between the regions which are under ordinary law, and the more backward regions, known as scheduled districts, which are under regulations made in exercise of the summary powers conferred by the Government of India Act, 1870 (33 Vict. c. 3)².

In each province the most important administrative unit is the district. There are 249 districts in British India. They vary considerably in area and population, from the Simla district in the Punjab with 101 square miles to the Upper Khyndwin in Burma with approximately 19,000 square miles, and from the hill district of North Arakan with a population of 20,680 to Maimansingh with a population of 3,915,000. In the United Provinces the district has an average area of 1,500 or 2,000 square miles, with a population of 750,000 to 1,500,000. But in several provinces, and especially in Madras, the district is much larger.

At the head of the district is the district magistrate, who in the old regulation provinces is styled the collector and elsewhere the deputy commissioner. He is the local representative of the Government and his position corresponds more nearly to that of the French *préfet* than to that of any English functionary³.

¹ See above, pp. 101, 102.

² See above, p. 105, and East India (Progress and Condition) Decennial Report (1904), pp. 56, 57.

³ See Strachey, 359. East India (Progress and Condition) Decennial Report (1904), p. 57.

He has assistants and deputies varying in number, title, and rank, and his district is sub-divided for administrative purposes into charges which bear different names in different parts of the country.

In most parts of India, but not in Madras, districts are grouped into divisions, under commissioners, who stand between the district magistrate and his local government.

If the district is, *par excellence*, the administrative unit of the Indian country, the village may be said to be the natural unit. It answers, very roughly, to the English civil parish or the continental *commune*, and it is employed as the unit for revenue and police purposes. Its organization differs much in different parts of India, but it tends to be a self-sufficing community of agriculturists. It has its headman, who in some provinces holds small police powers; its accountant, who keeps the record of the State dues and maintains the revenue and rent rolls of the village; and its watchman and other menials. In Bengal the village system is less developed than elsewhere.

Municipal
and dis-
trict
councils.

Under various Acts of the central and local Indian legislatures municipal and district councils have been established in the several provinces of India with limited powers of local taxation and administration. This system of local government received a considerable extension under the viceroyalty of Lord Ripon¹.

Judicial
arrange-
ments.

Reference has been made above to the four chartered high courts. But the term 'high court,' as used in Indian legislation², includes also the chief courts of those parts of British India which are outside the jurisdiction of the chartered high courts. These are the chief court of the Punjab, established in 1866, the chief court of Lower Burma, established in 1900, and the courts of the judicial commissioners for

¹ See Government of India Acts I, XIV, XV, and XX of 1883, XIII and XVII of 1884; Bengal Act III of 1884; Bombay Acts I and II of 1884; Madras Acts IV and V of 1884.

² See s. 3 (24) of the Indian General Clauses Act (X of 1897).

Oudh, the Central Provinces, Upper Burma, Berar and Sind. The Punjab chief court has at present six judges, the Lower Burma chief court four. The new province of Eastern Bengal and Assam remains under the jurisdiction of the Calcutta high court.

These non-chartered high courts exercise with respect to the courts subordinate to them the like appellate jurisdiction, and the like powers of revision and supervision, as are exercised by the chartered courts, and their decisions are subject to the like appeal to the judicial committee of the Privy Council.

The procedure of the several civil courts is regulated by the general Code of Civil Procedure, but their nomenclature, ^{civil}jurisdiction, classification, and jurisdiction depend on Acts passed for the different provinces. There is usually a district judge for a district or group of districts, whose court is the chief civil tribunal for the district or group, and who usually exercises criminal jurisdiction also as a sessions judge. There are subordinate judges with lesser jurisdiction, and below them there are the courts of the munsif, or of some petty judge with a similar title. The right of appeal from these courts is regulated by the special Act, and by the provisions of s. 584 of the Code of Civil Procedure as to second appeals. In the presidency towns, and in some other places, there are also small cause courts exercising final jurisdiction in petty cases.

The constitution, jurisdiction, and procedure of criminal ^{Criminal}jurisdiction courts are regulated by the Code of Criminal Procedure, which was last re-enacted in 1898 (Act V of 1898). In every province, besides the high court, there is a court of sessions for each sessional division, which consists of a district or group of districts. The judge of the court of sessions also, as has been seen, usually exercises civil jurisdiction as district judge. There may be additional, joint, and assistant sessions judges. There are magistrates of three classes, first, second, and third. For each district outside the presiding

towns there is a magistrate of the first class called the district magistrate, with subordinate magistrates under him. For the three presidency towns there are special presidency magistrates, and the sessions divisions arrangements do not apply to these towns.

A high court may pass any sentence authorized by law. A sessions judge may pass any sentence authorized by law, but sentences of death must be confirmed by the high court. Trials before the high court are by a jury of nine. Trials before a court of sessions are either by a jury or with assessors according to orders of the local Government.

Presidency magistrates and magistrates of the first class can pass sentences of imprisonment up to two years, and of fine up to 1,000 rupees. They can also commit for trial to the court of sessions or high court.

Magistrates of the second class can pass sentences of imprisonment up to six months and of fine up to 200 rupees.

Magistrates of the third class can pass sentences of imprisonment up to one month and of fine up to fifty rupees.

In certain parts of British India the local Government can, under s. 30 of the Code of Criminal Procedure, invest magistrates of the first class with power to try all offences not punishable with death?

In certain cases and under certain restrictions magistrates of the first class, or, if specially so empowered, magistrates of the second class, can pass sentences of whipping.

A judge or magistrate cannot try a European British subject unless he is a justice of the peace. High court judges, sessions judges, district magistrates, and presidency magistrates are justices of the peace ex-officio. In other cases a justice of the peace must be a European British subject. If a European British subject is brought for trial before a magistrate he may claim to be tried by a mixed jury.

India, as defined by the Interpretation Act, 1889 (52 & 53 Vict. c. 63, s. 18), and by the Indian General Clauses Act (X of 1897, s. 3 (27)), includes not only the territories

comprised in British India, that is to say, the territories under the direct sovereignty of the Crown, but also the territories of the dependent Native States. These are upwards of 600 in number. They cover an area of nearly 700,000 square miles, and contain a population of about 62,500,000. Their total revenues are estimated at nearly Rs. 20,000,000¹. They differ from each other enormously in magnitude and importance. The Nizam of Hyderabad rules over an area of 83,000 square miles and a population of more than 11,000,000. There are petty chiefs in Kathiawar whose territory consists of a few acres².

The territory of these States is not British territory. Their subjects are not British subjects. The sovereignty over them is divided between the British Government and the ruler of the Native State in proportions which differ greatly according to the history and importance of the several States, and which are regulated partly by treaties or less formal engagements, partly by sanads or charters, and partly by usage. The maximum of sovereignty enjoyed by any of their rulers is represented by a prince like the Nizam of Hyderabad, who coins money, taxes his subjects, and inflicts capital punishment without appeal. The minimum of sovereignty is represented by the lord of a few acres in Kathiawar, who enjoys immunity from British taxation, and exercises some shadow of judicial authority.

But in the case of every Native State the British Government, as the paramount Power,—

(1) exercises exclusive control over the foreign relations of the State;

(2) assumes a general, but limited, responsibility for the internal peace of the State;

¹ Rs = tens of rupees.

² For further details as to the Native States see East India, Moral and Material Progress, Decennial Report (1904), pp. 15-50; and on the general position of these States see:—Tupper, *Our Indian Protectorate*; Lee-Warner, *Protected Princes of India*; Strachey, *India*, ch. xxiv; Westlake, *Chapters on Principles of International Law*, ch. x; and below, chapter v.

Division
of sove-
reignty

General
control by
British
Govern-
ment.

- (3) assumes a special responsibility for the safety and welfare of British subjects resident in the State; and
- (4) requires subordinate co-operation in the task of resisting foreign aggression and maintaining internal order.

Control
over
foreign
relations.

It follows from the exclusive control exercised by the British Government over the foreign relations of Native States, that a Native State has not any international existence. It does not, as a separate unit, form a member of the family of nations. It cannot make war. It cannot enter into any treaty, engagement, or arrangement with any of its neighbours. If, for instance, it wishes to settle a question of disputed frontier, it does so, not by means of an agreement, but by means of rules or orders framed by an officer of the British Government on the application of the parties to the dispute. It cannot initiate or maintain diplomatic relations with any foreign Power in Europe, Asia, or elsewhere. It cannot send a diplomatic or consular officer to any foreign State. It cannot receive a diplomatic or consular officer from any foreign State. Any attempt by the ruler of a Native State to infringe these rules would be a breach of the duty he owes to the King-Emperor. Any attempt by a foreign Power to infringe them would be a breach of international law. Hence, if a subject of a Native State is aggrieved by the act of a foreign Power, or of a subject of a foreign Power, redress must be sought by the British Government; and, conversely, if a subject of a foreign Power is aggrieved by the act of a Native State, or of any of its subjects, the foreign Power has no direct means of redress, but must proceed through the British Government. Consequently the British Government is in some degree responsible both for the protection of the subjects of Native States when beyond the territorial limits of those States, and for the protection of the subjects of foreign Powers when within the territorial limits of Native States. And, as a corollary from this respon-

sibility, the British Government exercises control over the protected class of persons in each case.

The British Government has recognized its responsibility for, and asserted its control over, subjects of Native Indian States resorting to foreign countries by the Orders in Council which have been made for regulating the exercise of British jurisdiction in Zanzibar, Muscat, and elsewhere. By these orders provision has been made for the exercise of jurisdiction, not only over British subjects in the proper sense, but also over British-protected subjects, that is, persons who by reason of being subjects of princes and States in India in alliance with His Majesty, or otherwise, are entitled to British protection. And the same responsibility is recognized in more general terms by a section in the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37, s. 15), which declares that where any Order in Council made in pursuance of the Act extends to persons enjoying His Majesty's protection, that expression is to include all subjects of the several princes and States in India.

The consequences which flow from the duty and power of the British Government to maintain order and peace in the territories of Native States have been developed at length by Mr. Tupper and Sir William Lee-Warner. The guarantee to a native ruler against the risk of being dethroned by insurrection necessarily involves a corresponding guarantee to his subjects against intolerable misgovernment. The degree of misgovernment which should be tolerated, and the consequences which should follow from transgression of that degree, are political questions to be determined with reference to the circumstances of each case.

The special responsibility assumed by the British Government for the safety and welfare of British subjects, whether English or Indian, within the territories of Native States, involves the exercise of very extensive jurisdiction within those territories. The territories of British India and of the Native States are inextricably interlaced. The territories of

Power to maintain peace.

Special responsibility for British subjects in Native States.

the Native States are intersected by British railway lines, postal lines, and telegraph lines. British subjects, European and Indian, freely and extensively resort to and reside in Native territory for purposes of trade and otherwise. For each Native State there is a British political officer, representing the civil authority exercised by the paramount power, and in each of the more important States there is a resident political officer with a staff of subordinates. Detachments of British troops occupy cantonments in all the more important military positions.

For the regulation of the rights and interests arising from this state of things an extensive judicial machinery is required. It varies in character in different places, and its powers are not everywhere based on the same legal principles. For the proper control of the railway staff it has sometimes been found necessary to obtain a formal cession of the railway lands. In other cases, a cession of jurisdiction within those lands has been considered sufficient. The jurisdiction exercised in cantonments has been sometimes based on the extra-territorial character asserted for cantonments under European international law. And a similar extra-territorial character may be considered as belonging to the residencies and other stations occupied by political officers¹.

Subordinate
military
co-operation.

The duty incumbent on Native States of subordinate co-operation in the task of resisting foreign aggression has been recognized and emphasized by arrangements which were made during Lord Dufferin's viceroyalty with several of these States for maintaining a number of selected troops in such a condition of efficiency as will make them fit to take the field side by side with British troops. Other States have engaged to furnish transport corps. The total number of these contingents is about 17,500 men. The officers and men are, to a great extent, natives of the State to which they belong, but they are inspected and advised by British officers².

Exceptional

1 The result of all these limitations on the powers of the

¹ See below, Chapter v.

² Strachey, *India*, p. 451.

Native Indian States is that, for purposes of international law, they occupy a very special and exceptional position. 'The principles of international law,' declared a resolution of the Government of India in 1891¹, 'have no bearing upon the relations between the Government of India as representing the Queen-Empress on the one hand, and the Native States under the sovereignty of Her Majesty on the other. The paramount supremacy of the former presupposes and implies the subordination of the latter.'

¹ Gazette of India, No. 1700 E, August 21, 1891.

CHAPTER III

DIGEST OF STATUTORY ENACTMENTS RELATING TO THE GOVERNMENT OF INDIA

N.B.—The marginal references in square brackets [] indicate the enactments reproduced.

PART I

THE SECRETARY OF STATE IN COUNCIL.

The Crown.

Government of
India by
the
Crown.
[21 & 22
Vict. c.
106, s. 2.]

1.—(1) British India (a) is governed by and in the name of His Majesty the King (b).

(2) All rights which, if the Government of India Act, 1858, had not been passed, might have been exercised by the East India Company in relation to any territories, may be exercised by and in the name of His Majesty as rights incidental to the government of British India (c).

(a) The expressions 'British India' and 'India' are defined by s. 124 of this Digest, in accordance with the Interpretation Act, 1889 (52 & 53 Vict. c. 63, s. 18), and the Indian General Clauses Act (X of 1897, s. 3 (7) (27)).

The language used in the Act of 1833 (3 & 4 Will. IV, c. 85, s. 1) was: 'the territories *now* in the possession and under the government of the said company.' A similar expression was used in the Indian Councils Act, 1861 (24 & 25 Vict. c. 67, s. 22). Hence questions arose as to the application of the Acts to territories subsequently acquired. Those questions have, however, now been set at rest by s. 3 of the Indian Councils Act, 1892 (55 & 56 Vict. c. 14), which expressly declares the applicability of the Acts of 1833 and 1861 to territories subsequently acquired.

(b) The Royal Titles Act, 1876 (39 & 40 Vict. c. 10), authorized the Queen, with a view to the recognition of the transfer of the government of India from the East India Company to the Crown, by Royal Proclamation, to make such addition to the style and titles appertaining to the Imperial Crown of the United Kingdom and its dependencies as to Her Majesty might seem meet. Accordingly the Queen, by proclamation dated April 28, 1876, added to her style and titles

the words, 'Indiæ Imperatrix, or Empress of India.' (London Gazette, April 28, 1876, 2667), and 'Emperor of India' forms part of the title of the present King.

(c) These rights include the right to acquire and cede territory. See *Lakmi Narayan v. Raja Pratab Singh*, I. L. R. 2 All. 1, and p. 36 above, and note (a) to s. 36 below.

The Secretary of State.

2.—(1) Subject to the provisions embodied in this Digest, one of His Majesty's principal Secretaries of State (in this Digest referred to as 'the Secretary of State') has and performs all such or the like powers and duties in anywise relating to the government or revenues of India (a), and all such or the like powers over all officers appointed or continued under the Government of India Act, 1858, as, if that Act had not been passed, might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of that Company, either alone or by the direction or with the sanction or approbation of the Commissioners for the Affairs of India, in relation to that government or those revenues and the officers and servants of that Company, and also all such powers as might have been exercised by the said Commissioners alone (b).

(2) In particular, the Secretary of State may, subject to the provisions embodied in this Digest, superintend, direct, and control all acts, operations, and concerns which in anywise relate to or concern the government or revenues of India, and all grants of salaries, gratuities, and allowances, and all other payments and charges whatever out of or on the revenues of India.

(3) Any warrant or writing under His Majesty's Royal Sign Manual which, before the passing of the Government of India Act 1858, was required by law to be countersigned by the president of the Commissioners for the Affairs of India must in lieu thereof be countersigned by the Secretary of State (c).

(4) There are paid out of the revenues of India to the Secretary of State and to his under secretaries respectively,

the like yearly salaries as may for the time being be paid to any other Secretary of State and his under secretaries respectively (d).

(a) The term 'revenues of India' is retained here and elsewhere, though in an Act of Parliament it might now be more accurate to speak of the revenues of *British India*.

(b) The Secretary of State is the minister through whom the authority of the Crown over India is exercised in England, and thus corresponds roughly to the president of the Board of Control (Commissioners for the Affairs of India), under the system which prevailed before the Act of 1858. He is appointed by the delivery of the seals of office, and appoints two under secretaries, one permanent, who is a member of the Civil Service, the other parliamentary, who changes with the Government. The Act of 1858 authorized the appointment of a fifth principal Secretary of State, in addition to the four previously existing (Home, Foreign, Colonial, and War).

The office of Secretary of State is constitutionally a unit, though there are five officers. Hence any Secretary of State is capable of performing the functions of any other, and consequently it is usual and proper to confer statutory powers in general terms on 'a (or "the") Secretary of State,' an expression which is defined by the Interpretation Act, 1889, as meaning one of Her Majesty's principal Secretaries of State. But in matters relating to India there are certain functions which must be exercised by the Secretary of State *in Council*. See Anson, *Law and Custom of the Constitution* (second edition), ii. pp. 167, 282.

(c) See e.g. the provisions as to removal of officers below, s. 21.

(d) i.e. £5,000 to the Secretary of State, £2,000 to the permanent Under Secretary, and £1,500 to the Parliamentary Under Secretary.

The Council of India.

The
Council
of India.
[21 & 22
Vict. c.
106, ss. 7,
10, 11, 13.
32 & 33
Vict. c.
97, ss. 1,
2, 3, 6.
52 & 53
Vict. c.
65.]

3.—(1) The Council of India consists of not more than fifteen and not less than ten members (a).

(2) The right of filling any vacancy in the Council of India is vested in the Secretary of State.

(3) Unless at the time of an appointment to fill a vacancy in the Council of India nine of the then existing members of the council are persons who have served or resided in British India (b) for at least ten years, and have not last left British India more than ten years before the date of their appointment, the person appointed to fill the vacancy must be so qualified.

(4) Every member of the Council of India holds office, except as by this section provided, for a term of ten years.

(5) The Secretary of State may for special reasons of public advantage reappoint for a further term of five years any member of the Council of India whose term of office has expired. In any such case the reasons for the reappointment must be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament. Save as aforesaid, a member of the Council of India is not capable of reappointment.

(6) The Secretary of State may also, if he thinks fit, ^{[39 & 40} ^{Vict. c. 7.]} appoint any person having professional or other peculiar qualifications to be a member of the Council of India during good behaviour. The special reasons for every such appointment must be stated in a minute signed by the Secretary of State and laid before both Houses of Parliament. Not more than three persons so appointed may be members of the council at the same time. If a member so appointed resigns his office, and has at the date of his resignation been a member of the council for more than ten years, the King may, by warrant under His Sign Manual, countersigned by the Chancellor of the Exchequer, grant to him, out of the revenues of India, a retiring pension during life of five hundred pounds (c).

(7) Any member of the Council of India may, by writing signed by him, resign his office. The instrument of resignation must be recorded in the minutes of the council.

(8) Any member of the Council of India may be removed by His Majesty from his office on an address of both Houses of Parliament.

(9) There is paid to each member of the Council of India out of the revenues of India the annual salary of twelve hundred pounds.

(a) The Council of India is, in a certain, but very limited, sense the successor of the old Court of Directors. Under the Act of 1858 it consisted of fifteen members, eight appointed by the Crown, and seven elected, in the first instance, by the Court of Directors, and

subsequently by the council itself. The members of the council held office during good behaviour, but were removable on an address by both Houses of Parliament. By an Act of 1869 (32 & 33 Vict. c. 97) the right of filling all vacancies in the council was vested in the Secretary of State, and the tenure was changed from tenure during good behaviour to tenure for a term of ten years, with a power of reappointment for five years, 'for special reasons.' By an Act of 1889 (52 & 53 Vict. c. 65) the Secretary of State was authorized to abstain from filling vacancies in the council until the number should be reduced to ten.

(b) It will be observed that service or residence in *British India* (see 21 & 22 Vict. c. 106, s. 1), not in India, is the qualification.

(c) This exceptional power, which was conferred by an Act of 1876 (39 & 40 Vict. c. 7), was exercised in the case of Sir H. S. Maine, and was probably conferred with special reference to his case.

Seat in
council
disquali-
fication
for Parlia-
ment.

[21 & 22
Vict. c.
106, s. 12.]

Claims to
compensa-
tion.

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

4. A member* of the Council of India is not capable of sitting or voting in Parliament.

This restriction applies to seats in both Houses of Parliament.

5. If at any time it appears to Parliament expedient to reduce the number or otherwise to deal with the constitution of the Council of India, a member of that council is not entitled to claim any compensation for the loss of his office, or for any alteration in the terms and conditions under which his office is held, unless he has served in his office for a period of ten years.

This enactment is contained in the Act of 1869 which changed the tenure of members of council.

Duties of
council.

[21 & 22
Vict. c.
106, s. 19.]

6. The Council of India, under the direction of the Secretary of State, and subject to the provisions embodied in this Digest, conducts the business transacted in the United Kingdom in relation to the government of India and the correspondence with India.

Powers of
council.

[21 & 22
Vict. c.
106, s. 22.]

7.—(1) All powers required to be exercised by the Secretary of State in Council, and all powers of the Council of India, may be exercised at meetings of the council at which not less than five members are present.

(2) The Council of India may act notwithstanding any vacancy in their number.

8.—(1) The Secretary of State is the president of the Council of India, with power to vote. President and vice-president of council. [21 & 22 Vict. c. 106, ss. 21, 22.]

(2) The Secretary of State in Council may appoint any member of the Council of India to be vice-president thereof, and the Secretary of State may at any time remove any person so appointed. [21 & 22 Vict. c. 106, ss. 21, 22.]

(3) At every meeting of the Council of India the Secretary of State, or in his absence the vice-president, if present, or in the absence of both of them, one of the members of the council, chosen by the members present at the meeting, presides.

9. Meetings of the Council of India are convened and held when and as the Secretary of State directs, but one such meeting at least must be held in every week. Meetings of the council. [21 & 22 Vict. c. 106, s. 22.]

10.—(1) At any meeting of the Council of India at which the Secretary of State is present, if there is a difference of opinion on any question, except (a) a question with respect to which a majority of votes at a meeting is by this Digest declared to be necessary, the determination of the Secretary of State is final. Procedure at meetings. [21 & 22 Vict. c. 106, s. 23.]

(2) In case of an equality of votes at any meeting of the council the person presiding at the meeting has a casting vote.

(3) All acts done at a meeting of the council in the absence of the Secretary of State require the approval in writing of the Secretary of State.

(4) In case of difference of opinion on any question decided at a meeting of the council, the Secretary of State may require that his opinion and the reasons for it be entered in the minutes of the proceedings, and any member of the council who has been present at the meeting may require that his opinion and any reasons for it that he has stated at the meeting be also entered in like manner.

(a) A majority of votes is necessary for decisions on the following matters:—

1. Appropriation of revenues or property, s. 23.
2. Issuing securities for money, s. 28.

3. Sale or mortgage of property, s. 31.

4. Contracts, s. 32.

5. Alteration of salaries, s. 80.

6. Furlough rules, s. 89.

7. Indian appointments, s. 90.

8. Appointments of natives of India to offices reserved for Indian Civil Service, s. 94.

9. Provisional appointments to posts on the Governor-General's Council, s. 83, and to reserved offices, s. 95.

Committees of council.
[21 & 22
Vict. c.
106, s. 20.]

11. The Secretary of State may constitute committees of the Council of India for the more convenient transaction of business, and direct what departments of business are to be under those committees respectively, and generally direct the manner in which all business of the council or committees thereof is to be transacted (a).

(a) The existing committees are Finance, Political and Secret, Military, Revenue and Statistics, Public Works, Stores, and Judicial and Public.

Orders and Dispatches.

Submission of orders, &c., to council, and record of opinions thereon.
[21 & 22
Vict. c.
106, ss
24, 25.]

12.—(1) Subject to the provisions (a) embodied in this Digest, every order or communication proposed to be sent to India, and every order proposed to be made in the United Kingdom by the Secretary of State under the Government of India Act, 1858, must, unless it has been submitted to a meeting of the Council of India, be deposited in the council room for the perusal of all members of the council during seven days before the sending or making thereof.

(2) Any member of the Council of India may record, in a minute-book kept for that purpose, his opinion with respect to any such order or communication, and a copy of every opinion so recorded must be sent forthwith to the Secretary of State

(3) If the majority of the Council of India so record their opinions against any act proposed to be done, the Secretary of State must, unless he defers to the opinion of the majority, record his reasons for acting in opposition thereto.

(a) The qualifications relate to urgency orders under s. 13 and secret orders under s. 14.

13.—(1) Where it appears to the Secretary of State that the dispatch of any communication or the making of any order, not being an order for which a majority of votes at a meeting of the Council of India is by this Digest declared to be necessary (a), is urgently required, the communication may be sent or order made, although it has not been submitted to a meeting of the Council of India or deposited for the perusal of the members of that council.

Provision for cases of urgency. [21 & 22 Vict. c. 106, s. 26.]

(2) In any such case the Secretary of State must, except as by this Digest provided (b), record the urgent reasons for sending the communication or making the order, and give notice thereof to every member of the council.

(a) See note on s. 10.

(b) The exception is under the next section, s. 14.

14.—(1) Where an order concerns the levying of war or the making of peace, or the treating or negotiating with any prince or State, or the policy to be observed with respect to any prince or State, and is not an order for which a majority of votes at a meeting of the Council of India is by this Digest declared to be necessary (a), and is an order which in the opinion of the Secretary of State is of a nature to require secrecy, the Secretary of State may send the order to the Governor-General in Council or to any local Government or officer in India without having submitted the order to a meeting of the Council of India or deposited it for the perusal of the members of that council, and without recording or giving notice of the reasons for making the order (b).

Provision as to secret orders and dispatches. [33 Geo. III, c. 52, ss. 19, 20, 3 & 4 Will. IV, c. 85, s. 36, 21 & 22 Vict. c. 106, s. 27.]

(2) Where any dispatch from the Governor-General in Council, or from the Governor in Council of Madras or of Bombay, concerns the government of British India, or any of the matters aforesaid, and in the judgement of the authority sending the dispatch is of a nature to require secrecy, it may be marked 'Secret' by the authority sending it; and a dispatch so marked is not to be communicated to the members of the Council of India unless the Secretary of State so directs.

[33 Geo. III, c. 52, s. 22, 21 & 22 Vict. c. 106, s. 28.]

(a) See note on s. 10.

(b) The Act of 1784 (24 Geo. III, sess. 2, c. 25), which constituted the Board of Control, directed that a committee of secrecy, consisting of not more than three members, should be formed out of the directors of the Company, and, when the Board of Control issued orders requiring secrecy, the committee of secrecy was to transmit the orders to India, without informing the other directors. (See above p. 63.) These directions were reproduced by the Charter Act of 1793 (33 Geo. III, c. 52, ss. 19, 20), and by the Charter Act of 1833 (3 & 4 Will. IV, c. 85, ss. 35, 36). The Government of India Act, 1858 (21 & 22 Vict. c. 106, s. 27), directed that orders which formerly went through the secret committee need not be communicated to the council, unless they were orders for which a majority of votes of the council was required. There are similar provisions as to dispatches from India. 'Secret' orders are usually communicated to the Political and Secret Committee of the council. (See above, s. 11.)

Signature and address of orders, &c. [21 & 22 Vict. c. 106, s. 19.]

15.—(1) Every order or communication sent to India, and [have as expressly provided by this Digest] every order made in the United Kingdom in relation to the government of India under this Act, must be signed by the Secretary of State (a).

(2) Every dispatch from the Governor-General in Council or from the Governor in Council of Madras or of Bombay must be addressed to the Secretary of State (b).

(a) This reproduces the existing enactment, but of course applies only to official orders and communications. It is not clear to what provisions (if any) the saving refers.

(b) This recognizes the right of the Governments of Madras and Bombay to communicate directly with the Secretary of State, a right derived from a time when Madras and Bombay constituted independent presidencies together with the Presidency of Bengal, and before a general Government of India had been established.

Communication to Parliament as to orders for commencing hostilities. [21 & 22 Vict. c. 106, s. 54.]

16. When any order is sent to India directing the actual commencement of hostilities by His Majesty's forces in India, the fact of the order having been sent must, unless the order has in the meantime been revoked or suspended, be communicated to both Houses of Parliament within three months after the sending of the order, or, if Parliament is not sitting at the expiration of those three months, then within one month after the next meeting of Parliament (a).

(a) See also s. 24.

Correspondence by

17. It is the duty of the Governor-General in Council to transmit to the Secretary of State constantly and diligently

an exact particular of all advices or intelligence, and of all transactions and matters, coming to the knowledge of the Governor-General in Council and relating to the government, commerce, revenues, or affairs of India (a).

governor-general with Secretary of State.
[13 Geo. III, c. 63, s. 9.]

(a) This reproduces an enactment contained in the Regulating Act, 1773, by which Warren Hastings and his successors were directed to correspond regularly with the Court of Directors at home, but its re-enactment would probably not be considered necessary at the present day.

Establishment of Secretary of State.

18.—(1) His Majesty the King may, by Order in Council, fix the establishment of the Secretary of State in Council and the salaries to be paid to the persons on that establishment.

Establishment of the Secretary of State.
[21 & 22 Vict. c. 106, ss. 15, 16.]

(2) Every such order must be laid as soon as may be before both Houses of Parliament.

(3) No addition may be made to the said establishment, nor to the salaries authorized by any such order, except by a similar Order in Council to be laid in like manner before both Houses of Parliament.

(4) The regulations made by His Majesty for examinations, certificates, probation, or other tests of fitness in relation to appointments to junior situations in the civil service apply to such appointments on the said establishment.

(5) Subject to the foregoing provisions of this section, the Secretary of State in Council may make all appointments to and promotions in the said establishment, and remove any officer or servant belonging to the establishment (a).

(a) This is the enactment by which the staff of the India Office is regulated.

19. His Majesty may by warrant under the Royal Sign Manual, countersigned by the Chancellor of the Exchequer, grant to any secretary, officer, or servant appointed on the establishment of the Secretary of State in Council such compensation, superannuation, or retiring allowance as may be granted to persons on the establishment of a Secretary of State under the laws for the time being in force concerning

Pensions.
[21 & 22 Vict. c. 106, s. 18.]

superannuations and other allowances to persons having held civil offices in the public service (a).

(a) This gives the staff of the India Office pensions on the civil service scale, i. e. one-sixtieth of annual salary for each year of service, subject to certain conditions and restrictions.

Indian Appointments.

Indian
appoint-
ments.
[21 & 22
Vict. c.
106, ss.
33, 35.
23 & 24
Vict.
c. 100,
s. 1.]

20.—(1) In any regulations for the time being in force for the organization of the Indian Army provision must be made for the benefit of the sons of persons who have served in India in the military or civil service of the Crown or of the East India Company equally advantageous with those which were in force before the twentieth day of August one thousand eight hundred and sixty, and the selection of such persons is to be in accordance with regulations made by the Secretary of State (a)

[21 & 22
Vict. c.
106, s. 37]

(2) Except as provided by this Digest, all powers of making regulations in relation to appointments and admissions to service and other matters connected therewith, and of altering or revoking such regulations, which, if the Government of India Act, 1858, had not been passed, might have been, exercised by the Court of Directors or Commissioners for the Affairs of India, may be exercised by the Secretary of State in Council.

(a) Sections 33, 34, 35, and 36 of the Government of India Act, 1858, run as follows:—

‘33. All appointments to cadetships, naval and military, and all admissions to service not herein otherwise expressly provided for, shall be vested in Her Majesty; and the names of persons to be from time to time recommended for such cadetships and service shall be submitted to Her Majesty by the Secretary of State.

‘34. Regulations shall be made for admitting any persons, being natural-born subjects of Her Majesty (and of such age and qualifications as may be prescribed in this behalf), who may be desirous of becoming candidates for cadetships in the engineers and in the artillery, to be examined as candidates accordingly, and for prescribing the branches of knowledge in which such candidates shall be examined, and generally for regulating and conducting such examinations.

‘35. Not less than one-tenth of the whole number of persons to be recommended in any year for military cadetships (other than cadetships in the engineers and artillery) shall be selected according to such

regulations as the Secretary of State in Council may from time to time make in this behalf from among the sons of persons who have served in India in the military or civil service of Her Majesty, or of the East India Company.

‘ 36. Except as aforesaid, all persons to be recommended for military cadetships shall be nominated by the Secretary of State and members of council, so that out of seventeen nominations the Secretary of State shall have two, and each member of council shall have one; but no person so nominated shall be recommended unless the nomination be approved of by the Secretary of State in Council.’

When the Government of India Act, 1858, passed, and for some years afterwards, the Indian Army (taking European and Native together) was officered in two ways. A certain number of cadets were appointed to Addiscombe, and thence, according to their success in passing the college examination, went to India in the engineers, artillery, or infantry. Others received direct cadetships, and went to India without previous training. The Act speaks of both classes alike as receiving cadetships. But the artillery and engineers were not in practice taken into account in calculating the one-tenth under s. 35. This being so, the effect of s. 35 was, roughly speaking, that one-tenth of the officers appointed to the Indian Army (exclusive of the engineers and artillery) must be the sons of Indian servants.

The Act of 1860 (23 & 24 Vict. c. 100), which abolished the European Army, and which was passed on August 20, 1860, provided that ‘ the same or equal provision for the sons of persons who have served in India shall be maintained in any plan for the reorganization of the Indian Army.’ The mode of appointment to the Native Army was meantime altered. In pursuance of this provision, an order was issued in 1862, under which the Secretary of State makes appointments to cadetships at Sandhurst, fixed at twenty annually, limited to the sons of Indian servants. The expenses of these cadets are borne by India, if their pecuniary circumstances are such as to justify the payment. Regulations as contemplated by s. 35 of the Government of India Act, 1858, have been made governing the selection, and are rigidly followed. These cadetships differ from the old ones in that they are not directly and necessarily connected with the Indian Army, for a cadet might pass from Sandhurst into the British Army and not into the staff corps. But the object is, of course, to supply the Indian Army. The word ‘ cadet ’ in the Government of India Act has no express limitation, and the present cadets appear to fall within the meaning of the term. In practice, appointments of cadets do not now go to the King.

Section 34 appears to be spent, and s. 36 to be virtually repealed by the abolition of the Indian Army. The effect of the other two sections, so far as they are in force, is reproduced in the Digest.

21.—(1) His Majesty may, by writing under the Royal Sign Manual, countersigned by the Secretary of State, re- Powers of Crown and

Secretary of State as to removal of officers. (2) A copy of any writing under the Royal Sign Manual removing or dismissing any such person must, within eight days after the signature thereof, be communicated to the Secretary of State in Council.

(3) Nothing in this enactment affects [any of His Majesty's powers over any officer in the army, or] the power of the Secretary of State in Council [or of any authority in India] to remove or dismiss any such person.

This is an attempt to reproduce the net result of a series of enactments, which are still in the statute book, but the earlier of which were intended to give the Crown power over servants of the East India Company, and, therefore, are not wholly applicable to existing circumstances. The saving words in square brackets do not reproduce any existing enactment, but represent the effect of the law.

The Charter Act of 1793 (33 Geo. III, c. 52) enacted (ss. 35, 36) that :—

‘ 35. It shall and may be lawful to and for the King's Majesty, his heirs and successors, by any writing or instrument under his or their sign manual, countersigned by the president of the Board of Commissioners for the Affairs of India, to remove or recall any person or persons holding any office, employment, or commission, civil or military, under the said united Company in India for the time being, and to vacate and make void all or every or any appointment or appointments, commission or commissions, of any person or persons to any such offices or employments ; and that all and every the powers and authorities of the respective persons so removed, recalled, or whose appointment or commission shall be vacated, shall cease or determine at or from such respective time or times as in the said writing or writings shall be expressed and specified in that behalf : Provided always, that a duplicate or copy of every such writing or instrument under His Majesty's sign manual, attested by the said president for the time being, shall, within eight days after the same shall be signed by His Majesty, his heirs or successors, be transmitted or delivered to the chairman or deputy chairman for the time being of the said Company, to the intent that the Court of Directors of the said Company may be apprised thereof.

‘ 36. Provided always, . . . that nothing in this Act contained shall extend or be construed to preclude or take away the power of the Court of Directors of the said Company from removing or recalling any of the officers or servants of the said Company, but that the said court shall and may at all times have full liberty to remove, recall, or dismiss any of such officers or servants at their will and pleasure, in

the like manner as if this Act had not been made, any governor-general, governor, or commander-in-chief appointed by His Majesty, his heirs or successors, through the default of appointment by the said Court of Directors, always excepted, anything herein contained to the contrary notwithstanding.'

The Charter Act of 1833 (3 & 4 Will. IV, c. 85, ss. 74, 75) enacted that—

'74. It shall be lawful for His Majesty by any writing under his sign manual, countersigned by the president of the said Board of Commissioners, to remove or dismiss any person holding any office, employment, or commission, civil or military, under the said Company in India, and to vacate any appointment or commission of any person to any such office or employment.

'75. Provided always, that nothing in this Act contained shall take away the power of the said Court of Directors to remove or dismiss any of the officers or servants of the said Company, but that the said court shall and may at all times have full liberty to remove or dismiss any of such officers or servants at their will and pleasure.'

And finally the Government of India Act, 1858 (21 & 22 Vict. c. 106, s. 38), enacts that:—

'Any writing under the Royal Sign Manual, removing or dismissing any person holding any office, employment, or commission, civil or military, in India, of which, if this Act had not been passed, a copy would have been required to be transmitted or delivered within eight days after being signed by Her Majesty to the chairman or deputy chairman of the Court of Directors, shall in lieu thereof be communicated within the time aforesaid to the Secretary of State in Council.'

The countersignature of the Secretary of State was substituted for the countersignature of the president of the Board of Control by the Government of India Act, 1858. (See above, s. 2.)

The tenure of persons serving under the Government of India, or under a local Government, is presumably tenure during the pleasure of the Crown. In the case of *Grant v. The Secretary of State for India in Council*, L. R. 2 C. P. D. 455 (1877), the plaintiff, formerly an officer in the East India Company's service, appointed in 1840, and subsequently continuing in the Indian Army when the Indian military and naval forces were transferred to the Crown, brought an action against the defendant for damages for being compulsorily placed by the Government upon the pension list, and so compelled to retire from the army. It was held on demurrer that the claim disclosed no cause of action, because the Crown acting by the defendant had a general power of dismissing a military officer at its will and pleasure, and that the defendant could make no contract with a military officer in derogation of this power. In the case of *Shenton v. Smith* (1895), A. C. 229, which was an appeal from the Supreme Court of Western Australia, it was held that a Colonial Government is on the same footing as the Home Government with respect to the employment and dismissal of servants of the Crown, and that these, in the absence of special contract, hold

their offices during the pleasure of the Crown. The respondent in that case, having been gazetted without any special contract to act temporarily as medical officer during the absence on leave of the actual holder of the office, was dismissed by the Government before the leave had expired. It was held that he had no cause of action against the Government. In the case of *Dunn v. The Queen* (1896), 1 Q. B. 116, it was held that servants of the Crown, civil as well as military, except in special cases where it is otherwise provided by law, hold their offices only during the pleasure of the Crown. In this case a petition of right had been presented, and the case set up by the suppliant was that Sir Claude McDonald, Her Majesty's Commissioner and Consul-General for the Niger Protectorate in Africa, acting on behalf of the Crown, had engaged him in the service of the Crown as consular agent in that region for a period of three years certain, and he claimed damages for having been dismissed before the expiration of that period. It appeared that Sir Claude McDonald himself held office only during the pleasure of the Crown. Mr. Justice Day held that contracts for the service of the Crown were determinable at the pleasure of the Crown, and therefore directed a verdict and judgement for the Crown. The decision was upheld by the Court of Appeal. Subsequently Mr. Dunn brought an action against Sir Claude McDonald, presumably for breach of contract, but the action was dismissed, and the doctrine that an agent who makes a contract on behalf of his principal is liable to the other contracting party for a breach of an implied warrant of his authority to enter into the contract was held inapplicable to a contract made by a public servant acting on behalf of the Crown. *Dunn v. McDonald* (1897), 1 Q. B. 401, 555. See *Jehangir v. S. of S. for India*, I. L. R. 27 Bom. 189; *Voss v. S. of S. for India*, I. L. R. 33 Cal. 669.

It is the practice for the Secretary of State in Council to make a formal contract with persons appointed in England to various branches of the Government service in India, e.g. education officers, forest officers, men in the Geological Survey, and mechanics and artificers on railways and other works, and many of these contracts contain an agreement to keep the men in the service for a term certain, subject to a right of dismissal for particular causes. Whether and how far the principles laid down in the cases of *Shenton v. Smith* and *Dunn v. The Queen* apply to these contracts, is a question which in the present state of the authorities cannot be considered free from doubt.

Tenure during pleasure is the ordinary tenure of public servants in England, including those who belong to the 'permanent civil service,' and the service of a member of the Civil Service of India is expressly declared by his covenant to continue during the pleasure of His Majesty. Tenure during good behaviour is, subject to a few exceptions (e.g. the auditor of Indian accounts: see below, s. 30), confined to persons holding judicial offices. But judges of the Indian high courts are expressly declared by statute to hold during pleasure: see below, s. 97. The difference between the two forms of tenure is that a person holding during good behaviour cannot be removed from his office

except for such misconduct as would, in the opinion of a court of justice, justify his removal; whilst a person holding during pleasure can be removed without any reason for his removal being assigned. See Anson, *Law and Custom of the Constitution* (second edition), pt. ii. p. 213. See also *Willis v. Gipps*, 6 State Trials N. S. 311 (1846), as to removal of judicial officers.

PART II.

REVENUES OF INDIA.

22.—(1) The revenues of India are received for and in the name of His Majesty, and may, subject to the provisions embodied in this Digest (a), be applied for the purposes of the government of British India alone.

Application of revenues.
[16 & 17 Vict. c. 95, s. 27.
21 & 22 Vict. c. 106, ss. 2, 42.]
21 & 22 Vict. c. 106.

(2) There are to be charged on the revenues of India alone—

(a) all the debts of the East India Company; and

(b) all sums of money, costs, charges, and expenses which, if the Government of India Act, 1858, had not been passed, would have been payable by the East India Company out of the revenues of India in respect of any treaties, covenants, contracts, grants, or liabilities existing at the commencement of that Act; and

(c) all expenses, debts, and liabilities lawfully contracted and incurred on account of the government of India (b); and

(d) all payments under the Government of India Act, 1858.

(3) For the purposes of this Digest the revenues of India include—

(a) all the territorial and other revenues of or arising in British India; and

(b) all tributes and other payments in respect of any territories which would have been receivable by or in the name of the East India Company if the Government of India Act, 1858, had not been passed; and

(c) all fines and penalties incurred by the sentence or order of any court of justice in British India, and all forfeitures for crimes of any movable or immovable property (b) in British India; and

(d) all movable or immovable property (c) in British India escheating or lapsing for want of an heir or successor (d), and all property in British India devolving as *bona vacantia* for want of a rightful owner.

(4) All other money vested in, or arising or accruing from property or rights vested in, His Majesty under the Government of India Act, 1858, or to be received or disposed of by the Secretary of State in Council under that Act, must be applied in aid of the revenues of India.

(a) The qualification refers to s. 34, under which there is power to dispose of escheated property.

(b) See *Shivabkajan v. Secretary of State for India*, I. L. R. 28 Bom 314, 321.

(c) The expression in the Act is 'real or personal estate,' but 'movable or immovable property' is more intelligible in India, where the terms are defined by the General Clauses Act (X of 1897, s. 3 (25), (34)).

(d) As to the circumstances under which property in India may escheat or lapse to the Crown, see *Collector of Masulipatam v. Cavalry Vencata Narrainapah*, 8 Moore Ind. App. 500; and *Ranee Sonet Kowar v. Mirza Humut Bahadoor*, L. R. 3 I. A. 92.

Control of
Secretary
of State
over ex-
penditure
of reve-
nues.
[21 & 22
Vict. c.
106, s. 41.]

23. The expenditure of the revenues of India, both in India and elsewhere, is subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of those revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, may be made without the concurrence of a majority of votes at a meeting of the Council of India.

This section of the Act of 1858 has given rise to questions as to the relations between the Secretary of State and his council, and between the Secretary of State in Council and the Government of India.

On the first question there was an important debate in the House of Lords on April 29, 1869 (Hansard, 195, pp. 1821-1846), in which the Marquis of Salisbury and the Duke of Argyll took part, and which was made remarkable by a difference of opinion between high legal authorities on the construction of this section, one view, the stricter, being maintained by Lord Cairns and Lord Chelmsford, and a different view by the then Lord Chancellor, Lord Hatherley. The discussion showed that whilst the object, and to some extent the effect, of this section was to impose a constitutional restraint on the powers of the Secretary of State with respect to the expenditure of money, yet this restraint could not be effectively asserted in all cases, especially where

Imperial questions were involved. For instance, the power to make war necessarily involves expenditure of revenues, but is a power for the exercise of which the concurrence of a majority of votes at a meeting of the council cannot be made a necessary condition. The Secretary of State is a member of the Cabinet, and in Cabinet questions the decision of the Cabinet must prevail.

As to the second point, questions have been raised as to the powers of the Indian Legislature to appropriate by Indian Acts to specific objects, provincial or Imperial, sources of income, such as ferry fees and other tolls, process fees, rates on land, licence taxes, and income taxes. But a strict view of the enactment in the Act of 1858 would be inconsistent with the general course of Indian legislation, and would give rise to inconveniences in practice.

24. 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, 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.

Restriction on application of revenues to military operations beyond the frontier.
[21 & 22 Vict. c. 106, s. 55a]

As to the object and effect of this enactment, and in particular as to whether it requires the consent of Parliament to be obtained before war is commenced, see Hansard, 151, July 19, 23, 1858 (Debates on passing of Government of India Act); Hansard, 240, May 20, 21, 23, 1878 (Employment of Indian Troops in Malta); Hansard, 243, December 16, 17, 1878 (Afghan War); Hansard, 272, 273, July 27, 31, 1882 (Egypt); Hansard, 295, March 5, 9, 16, 1885 (Soudan); Hansard, 302, pp. 322-347, January 25, 1886 (Annexation of Upper Burma), July 6, 1896 (Soudan); April 13, 1904 (Tibet); Correspondence as to incidence of cost of Indian troops when employed out of India, 1896 (C. 8131); Anson, *Law and Custom of the Constitution*, Part ii. p. 361 (second edition). See also s. 16 of this Digest.

25.—(1) Such parts of the revenues of India as are remitted to the United Kingdom, and all money arising or accruing in the United Kingdom from any property or rights vested in His Majesty for the purposes of the government of India, or from the sale or disposal thereof, must be paid to the Secretary of State in Council, to be applied for the purposes of the Government of India Act, 1858.

Accounts of Secretary of State with Bank.
[21 & 22 Vict. c. 106, ss. 43, 45-22 & 23 Vict. c. 41, s. 3, 26 & 27 Vict. c. 73, s. 16.]

(2) All such revenues and money must be paid into the Bank of England to the credit of an account entitled 'The Account of the Secretary of State in Council of India.'

(3) The money placed to the credit of this account is paid out on drafts or orders, either signed by two members of the Council of India and countersigned by the Secretary of State or one of his under secretaries or his assistant under secretary or signed by the accountant-general on the establishment of the Secretary of State in Council or by one of the two senior clerks in the department of that accountant-general and countersigned in such manner as the Secretary of State in Council directs; and any draft or order so signed and countersigned effectually discharges the Bank of England for all money paid thereon.

(4) The Secretary of State in Council may for the payment of current demands keep at the Bank of England such accounts as he deems expedient, and every such account is to be kept in such name and be drawn upon by such person and in such manner as the Secretary of State in Council directs.

(5) There are raised in the books of the Bank of England such accounts as may be necessary in respect of stock vested in the Secretary of State in Council, and any such account is entitled 'The Stock Account of the Secretary of State in Council of India.'

(6) Every account referred to in this section is a public account (a).

(a) This section represents the provisions of the Government of India Act, 1858, as modified by 22 & 23 Vict. c. 41, s. 3, and 26 & 27 Vict. c. 73, s. 16, and by existing practice.

Powers of attorney for sale or purchase of stock and receipt of dividends.
[21 & 22 Vict. c. 106, s. 47, 26 & 27 Vict. c. 73, s. 16.]

26. The Secretary of State in Council, by power of attorney executed by two members of the Council of India and countersigned by the Secretary of State or one of his under secretaries, or his assistant under secretary, may authorize all or any of the cashiers of the Bank of England—

(a) to sell and transfer all or any part of any stock standing in the books of the Bank to the account of the Secretary of State in Council; and

(b) to purchase and accept stock on any such account; and

(c) to receive dividends on any stock standing to any such account ;

and by any writing signed by two members of the Council of India and countersigned as aforesaid may direct the application of the money to be received in respect of any such sale or dividend.

Provided that stock may not be purchased or sold and transferred under the authority of any such general power of attorney, except on an order in writing directed to the chief cashier and chief accountant of the Bank of England, and signed and countersigned as aforesaid.

27. All securities held by or lodged with the Bank of England in trust for or on account or on behalf of the Secretary of State in Council may be disposed of, and the proceeds thereof may be applied, as may be authorized by order in writing signed by two members of the Council of India and countersigned by the Secretary of State or one of his under secretaries, or his assistant under secretary, and directed to the chief cashier and chief accountant of the Bank of England.

Provision
as to
securities.
[21 & 22
Vict. c.
106, s. 48.
26 & 27
Vict. c. 73,
s. 16]

28.—(1) All powers of issuing securities for money in the United Kingdom which are for the time being vested in the Secretary of State in Council must be exercised by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council of India.

Exercise
of borrow-
ing
powers.
[21 & 22
Vict. c.
106, s. 49.
26 & 27
Vict. c.
73, s. 16.
55 & 57
Vict. c. 70,
s. 5.]

(2) Such securities, other than debentures and bills, as might have been issued under the seal of the East India Company must be issued under the hands of two members of the Council of India and countersigned by the Secretary of State or one of his under secretaries, or his assistant under secretary.

(3) All debentures and bills issued by the Secretary of State in Council must bear the name of one of the under secretaries for India for the time being, and that name may be impressed or affixed by machinery or otherwise in such manner as the Secretary of State in Council directs.

The enactments by which the Secretary of State has from time to time been authorized to borrow under special Acts, or for special purposes, such as railways, are not reproduced here.

Accounts
to be
annually
laid before
Parlia-
ment.
[21 & 22
Vict. c.
106, s. 53.]

29.—(1) (a) The Secretary of State in Council must, within the first fourteen days during which Parliament is sitting next after the first day of May in every year, lay before both Houses of Parliament—

(a) An account for the financial year preceding that last completed of the annual produce of the revenues of British India, distinguishing the same under the respective heads thereof, at each of the several provinces; and of all the annual receipts and disbursements at home and abroad for the purposes of the government of India, distinguishing the same under the respective heads thereof.

(b) The latest estimate of the same for the last financial year:

(c) The amount of the debts chargeable on the revenues of India, with the rates of interest they respectively carry, and the annual amount of that interest:

(d) An account of the state of the effects and credits in each province, and in England or elsewhere, applicable to the purposes of the government of India, according to the latest advices which have been received thereof:

(e) A list of the establishment of the Secretary of State in Council, and the salaries and allowances payable in respect thereof.

(2) If any new or increased salary or pension of fifty pounds a year or upwards has been granted or created within any year in respect of the said establishment (b), the particulars thereof must be specially stated and explained at the foot of the account for that year.

(3) The account must be accompanied by a statement prepared from a detailed report from each province in British India in such form as best exhibits the moral and material

progress and condition of British India in each such province (c).

(a) At some time or other during the session of Parliament, usually towards the end, the House of Commons goes into committee on the East India Revenue Accounts, and the Secretary of State for India or his representative in the House of Commons, on the motion to go into committee, makes a statement in explanation of the accounts of the government of India. The debate which takes place on this statement is commonly described as the Indian Budget Debate. The resolution in committee is purely formal.

(b) The words 'in respect of the said establishment' represent the construction placed in practice on the enactment reproduced by this section.

(c) This is the annual 'moral and material progress report.' A special report is published at the expiration of each period of ten years, giving a very full and interesting account of the general condition of India at that date. The last of these decennial reports was in 1904.

30.—(1) (a) His Majesty may, by warrant under His Royal Sign Manual, countersigned by the Chancellor of the Exchequer, appoint a fit person to be auditor of the accounts of the Secretary of State in Council, and authorize that auditor to appoint and remove such assistants as may be specified in the warrant.

Audit of Indian accounts in United Kingdom. 21 & 22 Vict. c. 106, s. 52. 44 & 45 Vict. c. 63, s. 1.]

(2) The auditor examines and audits the accounts of the receipt, expenditure, and disposal in the United Kingdom of all money, stores, and property applicable for the purposes of the Government of India Act, 1858.

(3) The Secretary of State in Council must by the officers and servants of his establishment produce and lay before the auditor all such accounts, accompanied by proper vouchers for their support, and must submit to his inspection all books, papers, and writings having relation thereto.

(4) The auditor has power to examine all such officers and servants in the United Kingdom as he thinks fit in relation to such accounts, and the receipt, expenditure, or disposal of such money, stores, and property, and for that purpose, by writing under his hand, to summon before him any such officer or servant.

(5) The auditor must report to the Secretary of State in Council his approval or disapproval of the accounts aforesaid, with such remarks and observations in relation thereto as he thinks fit, specially noting any case, if such there be, in which it appears to him that any money arising out of the revenues of India has been appropriated to other purposes than those to which they are applicable.

(6) The auditor must specify in detail in his reports all sums of money, stores, and property which ought to be accounted for, and are not brought into account or have not been appropriated, in conformity with the provisions of the law, or which have been expended or disposed of without due authority, and must also specify any defects, inaccuracies, or irregularities which may appear in the accounts, or in the authorities, vouchers, or documents having relation thereto.

(7) The auditor must lay all such reports before both Houses of Parliament, with the accounts of the year to which the reports relate.

(8) The auditor holds office during good behaviour.

(9) There are paid to the auditor and his assistants, out of the revenues of India, such salaries as His Majesty by warrant, signed and countersigned as aforesaid, may direct.

(10) The auditor and his assistants are, for the purposes of superannuation allowance, in the same position as if they were on the establishment of the Secretary of State in Council.

(a) The duties of the India Office auditor as to Indian revenues and expenditure correspond in some respects to the duties of the comptroller and auditor-general with respect to the revenues of the United Kingdom. But the reports of the India Office auditor are not referred to the Public Accounts Committee of the House of Commons. As to the comptroller and auditor-general, see Anson, *Law and Custom of the Constitution* (2nd ed.), pp. 338-346.

PART III.

PROPERTY, CONTRACTS, AND LIABILITIES.

31.—(1) The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, sell and dispose of any property for the time being vested in His Majesty for the purposes of the government of India, and raise money on any such property by way of mortgage and make the proper assurances for any of those purposes, and purchase and acquire any property.

Power of Secretary of State to sell, mortgage, and buy property. [21 & 22 Vict. c. 106, s. 40.]

(2) All property acquired in pursuance of this section vests in His Majesty for the service of the government of India.

(3) Any assurance relating to real estate made by the authority of the Secretary of State in Council may be made under the hands and seals of three members of the Council of India.

32.—(1) The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make any contract for the purposes of the Government of India Act, 1858.

Contracts of Secretary of State. [21 & 22 Vict. c. 106, s. 40. 22 & 23 Vict. c. 41, s. 5. 3 Edw. VII, c. 11.]

(2) Any contract so made may be expressed to be made by the Secretary of State in Council.

(3) Any contract so made, if it is a contract which, if made between private persons, would be by law required to be under seal, may be made, varied, or discharged under the hands and seals of two members of the Council of India.

(4) Any contract so made which, if it were made between private persons, would be by law required to be signed by the party to be charged therewith, may be made, varied, or discharged under the hands of two members of the Council of India.

(5) The benefit and liability of every contract made in pursuance of this section passes to the Secretary of State in Council for the time being.

(6) Every contract for or relating to the manufacture, sale, purchase, or supply of goods, or for or relating to affreightment or the carriage of goods, or to insurance, may be entered into, made, and signed on behalf of the Secretary of State by any person upon the permanent establishment of the Secretary of State, duly empowered by the Secretary of State in this behalf. subject to such rules and restrictions as the Secretary of State prescribes. Contracts so entered into, made, and signed are as valid and effectual as if entered into as prescribed by the foregoing provisions of this section. Particulars of all contracts so entered into as aforesaid must be laid before the Secretary of State in such manner and form and within such times as the Secretary of State prescribes.

Power to
execute
assur-
ances, &c.
in India.
[22 & 23
Vict. c. 41,
ss. 1, 2.
33 & 34
Vict. c.
59, s. 2.]

33.—(1) The Governor-General in Council and any local Government (a) may, on behalf and in the name of the Secretary of State in Council, and subject to such provisions or restrictions as the Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council of India, prescribes, sell and dispose of any movable or immovable property (b) whatsoever in India. within the limits of their respective governments, for the time being vested in His Majesty for the purposes of the government of India, or raise money on any such property by way of mortgage, and make proper assurances for any of these purposes and purchase or acquire any property, movable or immovable (b), in India within the said respective limits, and make any contract for the purposes of the Government of India Act, 1858 (c).

(2) Every assurance and contract made for the purposes of this section must be executed in such manner as the Governor-General in Council by resolution (d) directs or authorizes, and if so executed may be enforced by or against the Secretary of State in Council for the time being.

(3) Neither the Secretary of State nor any member of the Council of India, nor any person executing any such assurance

or contract, is personally liable in respect thereof, but all liabilities in respect of any such assurance or contract are borne by the revenues of India.

(4) All property acquired in pursuance of this section vests in His Majesty for the service of the government of India.

(a) The words 'or any officer for the time being entrusted with the government, charge, or care of any presidency, province, or district' have been construed in practice as including only lieutenant-governors and chief commissioners, and not 'district officers' in the special India sense. They are, therefore, represented in the Digest by the expression 'local Government,' as defined by s. 124 of the Digest.

(b) The words in the Act are 'real or personal estate.'

(c) Soon after the passing of the Government of India Act, 1858, it became necessary to legislate for the purpose of determining how contracts on behalf of the Secretary of State in Council were to be made in India. Before that Act it had been held that contracts made in England by the East India Company as a governing power could only be made under seal (*Gibson v. East India Company*, 5 Bing. N. C. 262). In India, at least in the presidency towns, certain documents required sealing for the purpose of legal validity. The real seal of the Company was in England, but copies were kept in Calcutta, Madras, and Bombay, and documents sealed with these copies were generally accepted as sealed by the Company. Contracts not under seal were made in India on behalf of the Company by various officials. The transfer of the powers of the Company to the Secretary of State in Council disturbed all these arrangements, and the Government of India Act, 1859 (22 & 23 Vict. c. 41), was accordingly 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. The Act was amended by the East India Contracts Act, 1870 (33 & 34 Vict. c. 59).

(d) See the resolution of the Government of India in the Home Department of March 28, 1895, specifying the officers by whom particular classes of instruments may be executed.

34. The Governor-General in Council, and any other person authorized by any Act passed in that behalf by the Governor-General in Council, may make any grant or disposition of any property in India accruing to His Majesty by forfeiture, escheat, or otherwise, to or in favour of any relative or connexion of the person from whom the property has accrued, or to or in favour of any other person.

Power to dispose of escheated property, &c. [16 & 17 Vict. c. 15, s. 27.]

As to escheat, see note (c) on s. 22 above.

Rights
and lia-
bilities of
Secretary
of State in
Council.
[21 & 22
Vict. c.
106, ss.
65, 68.
22 & 23
Vict. c.
41, s. 6.]

35.—(1) The Secretary of State in Council may sue and be sued as well in India as in England by the name of the Secretary of State in Council, as a body corporate (a).

(2) Every person has the same remedies against the Secretary of State in Council as he might have had against the East India Company if the Government of India Act, 1858, had not been passed (b).

(3) The property and effects for the time being vested in His Majesty for the purposes of the government of India, or acquired for those purposes, are liable to the same judgments and executions as they would have been liable to in respect of liabilities lawfully incurred by the East India Company if the Government of India Act, 1858, had not been passed.

(4) Neither the Secretary of State nor any member of the Council of India is personally liable in respect of any contract entered into or other liability incurred by the Secretary of State or the Secretary of State in Council in his or their official capacity, nor in respect of any contract, covenant, or engagement of the East India Company, but all such liabilities, and all costs and damages in respect thereof, are borne by the revenues of India.

(a) Although the Secretary of State is a body corporate, or in the same position as a body corporate, for the purpose of contracts, and of suing and being sued, yet he is not a body corporate for the purpose of holding property. Such property as formerly vested, or would have vested, in the *East India Company*, now vests in the Crown. See the remarks of James, L. J., in *Kinlock v. Secretary of State in Council* (1880), L. R. 15 Ch. D. 1. The Secretary of State in Council has privileges in respect of debts due to him in India similar to those of the Crown in respect of Crown debts in England (*The Secretary of State for India v. Bombay Landing and Shipping Company*, 5 Bom. H. C. Rep. O. C. J. 23).

(b) An action does not lie against the Crown in England. The only legal remedy of a subject against the Crown in England is by petition of right.

Until 1874 it was doubtful whether a petition of right would lie except for restitution of property detained by the Crown. But in that year it was decided that a petition would lie for damages for breach of contract (*R. v. Thomas*, L. R. 10 Q. B. 31); and that decision has been followed in subsequent cases. A petition of right does not

lie for a tort except where the wrong complained of is detention of property, the reason alleged being the maxim that the king can do no wrong. For a wrong done by a person in obedience or professed obedience to the Crown the remedy is against the wrongdoer himself and not against his official superior, because the ultimate superior, the Crown, is not liable. See Clode, *Law and Practice of Petition of Right*, and *R. v. Lords Commissioners of the Treasury*, 7 Q. B. 387, and *Raleigh v. Goschen*, [1898] 1 Ch. 73.

A petition of right does not lie in respect of property detained or a contract broken in India.

In the case of *Früh v. Reg.*, L. R. 7 Ex. 365 (1872), the suppliant, by petition of right, sought to recover from the Crown a debt alleged to have become due to the person whom he represented from the Sovereign of Oudh, before that province was annexed in 1856 to the territories of the East India Company. But it was held that, assuming the East India Company became liable to pay the debt by reason of the annexation of the province, the Secretary of State for India in Council, and not the Crown, was, under the provisions of the Government of India Act, 1858, the person against whom the suppliant must seek his remedy, and that consequently a petition of right would not lie. It was pointed out that the remedy by petition of right was inapplicable, as it was plain that the revenues of England could not be liable to pay the claim, and that consequently a judgement for the suppliant would be barren. See also *Doss v. The Secretary of State for India in Council*, L. R. 19 Ex. 509, and *Reiner v. Marquis of Salisbury*, L. R. 2 Ch. D. 378.

Under the enactments reproduced by this section there is a statutory remedy against the Secretary of State in Council, and that remedy is not confined to the classes of cases for which a petition of right would lie in England. See the judgement of Sir Barnes Peacock, C. J., in the case of the *P. & O. Company v. Secretary of State for India in Council* (1861), 2 Bouike 166; 5 Bom. H. C. R. Appendix A; and Mayne's *Criminal Law of India*, pp. 299 sqq. On the other hand it would appear that, apart from special statutory provisions, the only suits which could have been brought against the East India Company, and which can be brought against the Secretary of State in Council as successor of the Company, are suits in respect of acts done in the conduct of undertakings which might be carried on by private individuals without sovereign powers. See *Nobin Chunder Dey v. The Secretary of State for India*, I. L. R. 1 Cal. 11 (1875); *Jehangir M. Cursetji v. Secretary of State for India in Council* (1902), I. L. R. 27 Bom. 189; *Shivabhanjan v. Secretary of State for India*, I. L. R. 28 Bom. 314.

A suit or action against the Secretary of State in Council may sometimes be met by the plea that the act complained of falls within the category of 'acts of State,' and accordingly cannot be questioned by a municipal court. A plea of this kind was raised successfully in several cases by the East India Company with respect to proceedings taken by them, not in their character of trading company but in their

character of territorial sovereigns. (As to the distinction between these two characters, see *Gibson v. East India Company* (1839), 5 Bing. N. C. 262; *Raja of Coorg v. East India Company* (1860), 29 Beav. 300, at p. 308; and the cases noted below.) And the principles laid down in these cases have been followed in the case of similar proceedings against the Secretary of State in Council.

The question whether the East India Company were acting as a sovereign power or as a private company was raised in *Moodalay v. The East India Company* (1785), 1 Bro. C. C. 469 (referred to in *Prielean v. United States* (1866), L. R. 2 Eq. 659), but the first reported case in which the Company successfully raised the defence that they were acting as sovereigns, and that the acts complained of were 'acts of State,' appears to have been *The Nabob of the Carnatic v. East India Company* (1793), 1 Ves. Jr. 371; 2 Ves. Jr. 56; 3 Bro. C. C. 292; 4 Bro. C. C. 100. This was a suit for an account brought by the Nabob of Arcot against the East India Company. On the hearing it appeared by the Company's answer that the subject-matter of the suit was a matter of political treaty between the Nabob and the Company, the Company having acted throughout the transaction in their political capacity, and having been dealt with by the Nabob as if they were an independent sovereign. On this ground the bill was dismissed.

The same principle was followed in the case of *The East India Company v. Syed Ally* (1827), 7 Moo. Ind. App. 555, where it was held that the resumption by the Madras Government of a 'jaghire' granted by former Nawabs of the Carnatic before the date of cession to the East India Company and the regrant by the Madras Government to another, was such an act of sovereign power as precluded the Courts from taking cognizance of the question in a suit by the heirs of the original grantee.

The case of *Bedreechund v. Elphinstone* (1830), 2 State Trials, N. S. 379; 1 Knapp P. C. 316, raised the question as to the title to booty taken at Poonah, and alleged to be the property of the Peishwa. It was held that the transaction having been that of a hostile seizure made, if not *flagrante yet nondum cessante bello*, a municipal court had no jurisdiction to adjudge on the subject; and that if anything had been done amiss, recourse could be had only to the Government for redress. This decision was followed in *Ex pte. D. F. Marais* (1902), A. C. 109.

In the Tanjore case, *Secretary of State in Council of India v. Kamachee Boye Sahaba* (1859), 13 Moo. P. C. 22, a bill was filed on the equity side of the Supreme Court of Madras to establish a claim as private property to certain property of which the Government had taken possession, and for an account. The acts in question had been done on behalf of the Government by a commissioner appointed by them in connexion with the taking over of Tanjore on the death of the Raja Sivaji without heirs. It was held that as the seizure was made by the British Government, acting as a sovereign Power, through its delegate, the East India Company, it was an act of State, to inquire into the propriety of which a municipal court had no jurisdiction. Lord Kingsdown,

in delivering judgement, remarked that 'the general principle of law could not, with any colour of reason, be disputed. The transactions of independent States between each other are governed by other laws than those which municipal courts administer. Such courts have neither the means of deciding what is right nor the power of enforcing any decision which they make.' It was held that the act complained of fell within this principle. 'Of the propriety or justice of that act,' remarked Lord Kingsdown, 'neither the Court below nor the Judicial Committee have the means of forming, or the right of expressing if they had formed, any opinion. It may have been just or unjust, politic or impolitic, beneficial or injurious, taken as a whole, to those whose interests are affected. These are considerations into which their lordships cannot enter. It is sufficient to say that, even if a wrong has been done, it is a wrong for which no municipal court of justice can afford a remedy.'

In the Coorg case, *Raja of Coorg v. East India Company* (1860), 29 Beav. 300, the East India Company had made war against the Raja of Coorg, annexed his territory, and taken his property, including some of the Company's notes. The raja filed a bill against the East India Company, but it was held that the Company had acted in their sovereign capacity, and the bill was dismissed.

In the Delhi case, *Raja Salig Ram v. Secretary of State for India in Council* (1872), L. R. Ind. App. Supp. Vol., p. 119, the question was as to the validity of the seizure, after the Indian Mutiny, of estates formerly belonging to the titular King of Delhi. Here also it was held that the seizure was an act of State, and as such was not to be questioned in a municipal court.

* In *Sirdar Bhagwan Singh v. Secretary of State for India in Council* (1874), L. R. 2 Ind. App. Cas. 38, an estate belonging to a former chief in the Punjab had been seized by the Crown, and the question was whether it had been so seized in right of conquest or by virtue of a legal title, such as lapse or escheat. It was held that the seizure had been made in right of conquest, and as such must be regarded as an act of State, and was not liable to be questioned in a municipal court.

Forester and others v. Secretary of State for India in Council (1872), L. R. Ind. App. Supp. Vol., p. 10, is a case on the other side of the line. In this case the Government of India had, on the death of Begum Sumroo, resumed property formerly belonging to her, and the legality of their action was questioned by her heirs. It appeared that the Begum had very nearly, but not quite acquired the position of a petty Indian sovereign, but that she was a British subject at the time of her death, and that the seizure in question was not the seizure, by arbitrary power, of territories which up to that time belonged to another sovereign State, but was the resumption, under colour of a legal title, of lands previously held from the Government by a subject under a particular tenure, on the alleged determination of that tenure; and that consequently the questions raised by the suit were recognizable by a municipal court.

Doss v. Secretary of State for India in Council (1875), L. R. 19 Eq. 509, was a case arising out of the extinction of a sovereign power in India, though not in consequence of hostilities. It was a suit brought in the English Court of Chancery by creditors of the late King of Oudh against the Secretary of State as his successor. It was held that as the debt had been incurred by the late king in his capacity as sovereign, and could not have been enforced against him as a legal claim, it did not, upon the annexation of the kingdom of Oudh, become a legal obligation upon the East India Company, and therefore was not, by the Act of 1858, transferred as a legal obligation against the Secretary of State; and on this ground a demurrer to the bill was allowed.

In the case of *Grant v. Secretary of State for India in Council* (1877), 2 C. P. D. 445; 46 L. J. C. 681, a demurrer was allowed to an action by an officer of the East India Company's service who had been compulsorily retired under the order of the Government of India. Here the plaintiff was clearly a British subject, but nothing turned upon this. For the order was held, as an act of administration in the public service, to be within the high powers of government formerly entrusted to the East India Company (not as a trading company, but as a subordinate Government) and now to be exercised by the Government of India. In effect the question was not of a sovereign act, but of the powers of high (but still subordinate) officers of Government.

In *Kinlock v. Secretary of State for India* (1879), L. R. 15 Ch. D. 1 and 7 App. Cas. 619, which was one of the Banda and Kirwee cases, it was held that a royal warrant granting booty of war to the Secretary of State for India in Council in trust to distribute amongst the persons found entitled to share it by the decree of the Court of Admiralty, did not operate as a transfer of property, or create a trust, and that the defendant, being merely the agent of the sovereign, was not liable to account to any of the parties found entitled.

In *Walker v. Baird*, [1892] App. Cas. 491, which was an appeal to the Privy Council from the Supreme Court of Newfoundland, it was held that the plea of 'act of State,' in the sense of an act, the justification of which on constitutional grounds cannot be inquired into, cannot be admitted between British subjects in a British colony. In this case the plaintiff complained of interference with his lobster factory, and the defendant, a captain of one of Her Majesty's ships, pleaded that he was acting in the execution of his duty, in carrying out an agreement between the Queen and the Republic of France. But the defence was not allowed.

In *Cook v. Sprigg*, [1899] A. C. 572, it was held that grantees of concessions made by the paramount chief of Pondoland could not, after the annexation of Pondoland by the Queen, enforce against the Crown the privileges and rights conferred by the concessions. The language used in the Tanjore case was quoted with approval.

In *West Rand Central Gold Mining Company Limited v. The King*, [1905] 2 K. B. 391, it was held, on demurrer to a petition of right, that damages could not be recovered against the Crown in respect of gold

'commandeered' by the Boer Government before the annexation of the Transvaal.

The facts in Duleep Singh's case, *Salaman v. Secretary of State for India in Council*, [1905] 1 K. B. 613, resembled those in the Tanjore case. When the Punjab was annexed, the East India Company confiscated the State property, granted Duleep Singh a pension for life, assumed the custody of his person during his minority, and took possession of his private property. It was held that these were acts of State, and that an action would not lie against the Secretary of State in Council for arrears of the pension and for an account of the personal property.

On 'acts of State,' see further, Mayne, *Criminal Law of India*, pp. 318 sqq., the article 'Act of State' in the *Encyclopædia of the Laws of England*, and the cases collected in the notes on *The Queen v. The Commissioners of the Treasury*, L. R. 7 Q. B. 387, in Campbell's *Ruling Cases*, vol. 1. pp. 802 sqq. The notes on Indian cases in that volume have been partially reproduced above. Mr. Harrison Moore's recent essay on *Act of State in English Law* (London, 1906) covers wider ground, and touches on many points in the 'troublesome borderland of law and politics.'

In suits or actions against the Secretary of State for breach of contract of service, regard must also be had to the principles regulating the tenure of servants under the Crown (see note on s. 21 above).

And, finally, the liability of the Secretary of State in Council to be sued does not deprive the Crown of the privileges to which it is entitled by virtue of the prerogative. In *Ganpat Pataya v. Collector of Canara* (1875), 1 L. R. 1 Bom. 7, the priority of Crown debts over attachment was maintained, and West, J., said—'It is a universal rule that prerogative and the advantages it affords cannot be taken away except by the consent of the Crown embodied in statute. This rule of interpretation is well established, and applies not only to the statutes passed by the British, but also to the Acts of the Indian Legislature framed with constant reference to the rules recognized in England.'

As to the legal liability of a colonial governor, Sir W. Anson says,—'He can be sued in the courts of the colony in the ordinary form of procedure. Whether the cause of action springs from liabilities incurred by him in his private or in his public capacity, this rule would appear to hold good. Though he represents the Crown he has none of the legal irresponsibility of the sovereign within the compass of his delegated and limited sovereignty.' *Law and Custom of the Constitution*, pt. ii. p. 262. See *Hill v. Bigge*, 3 Moore P. C. 465; *Musgrove v. Pulido*, L. R. 5 App. Cas. 102; *Nireaha Tamaki v. Baker*, App. Cas., [1901] pp. 561, 576.

The procedure in suits against the Government in India is regulated by ss. 416-429 of the Code of Civil Procedure (XIV of 1882).

PART IV.

THE GOVERNOR-GENERAL IN COUNCIL.

General Powers of Governor-General in Council.

General powers and duties of Governor-General in Council. [13 Geo. III, c. 63, s. 9. 3 & 4 Will. IV, c. 85, s. 39.]

36.—(1) The superintendence, direction, and control of the civil and military government of British India is vested in the Governor-General of India in Council (a).

(2) The Governor-General in Council is required to pay due obedience to all such orders as he may receive from the Secretary of State (b).

(a) It is difficult to reproduce with accuracy enactments which regulated the powers and duties of the Governor General and his Council in the days of the East India Company.

Section 9 of the Regulating Act of 1773 (13 Geo. III, c. 63) enacts that 'the said governor-general and council' (i. e. the Governor-General and Council of Bengal), 'or the major part of them, shall have . . . power of superintending and controlling the presidencies of Madras, Bombay, and Bencoolen respectively, so far and in so much as that it shall not be lawful for any president and council of Madras, Bombay, or Bencoolen' to make war or treaties without the previous consent of the governor-general and council, except in cases of imminent necessity or of special orders from the Company. See s. 49 of this Digest. Section 39 of the Charter Act of 1833 (3 & 4 Will. IV, c. 85) declared that 'The superintendence, direction, and control of the whole civil and military government of all the said territories and revenues in India shall be and is hereby vested in a governor-general and councillors, to be styled "The Governor-General of India in Council."'

Since India has been placed under the direct government of the Crown the governor-general has also been viceroy, as the representative of the Queen. Lord Canning was the first viceroy.

The Governor-General in Council is often described as the Government of India, a description which is recognized by Indian legislation (X of 1897, s. 3 (22)).

Of course the reproduction of statutory enactments embodied in this Digest is not an exhaustive statement of the powers of the Governor-General in Council. For instance, the powers of the Government of India, as the paramount authority in India, extend beyond the limits of British India.

Again, the Governor-General in Council, as representing the Crown in India, enjoys, in addition to any statutory powers, such of the powers, prerogatives, privileges, and immunities appertaining to the Crown as are appropriate to the case and consistent with the system of law

in force in India. Thus it has been decided that the rule that the Crown is not bound by a statute unless expressly named therein applies also in India. See *Secretary of State for India v. Bombay Landing and Shipping Company*, 5 Bom. H. C. Rep. O. C. J. 23; *Ganpat Pataya v. Collector of Canara*, I. L. R. 1 Bom. 7; *The Secretary of State for India v. Matthurabhai*, I. L. R. 14 Bom. 213, 218; *Bell v. Municipal Commissioners for Madras*, I. L. R. 25 Mad. 457. The Governor-General in Council has also, by delegation, powers of making treaties and arrangements with Asiatic States, of exercising jurisdiction and other powers in foreign territory, and of acquiring and ceding territory. See *Damodhar Khan v. Deoram Khanji*, I. L. R. 1 Bom. 367, L. R. 2 App. Cas. 332; *Lachmi Narayan v. Raja Pratab Singh*, I. L. R. 2 All. 1; *Hemchand Devchand v. Azam Sakarlal Chhotamlal and The Taluka of Koda Sangani v. The State of Gondal*, A. C., [1906] 212, and below, p. 387. Moreover, the Government of India has powers, rights, and privileges derived, not from the English Crown, but from the native princes of India, whose rule it has superseded. For instance, the rights of the Government in respect of land and minerals in India are different from the rights of the Crown in respect of land and minerals in England. Whether and in what cases the Governor-General has the prerogative of pardon has been questioned. The power is not expressly conferred on him by his warrant of appointment, but it would be strange if he had not a power possessed by all colonial governors. However, the power of remitting sentences under the Code of Criminal Procedure makes the question of little practical importance. As to the prerogatives of the Crown in India and elsewhere, see Chitty, *Prerogatives of the Crown*; Forsyth, *Cases and Opinions*, chap. v; and Campbell's *Ruling Cases*, vol. viii. pp. 150-275.

The Madras and Bombay Armies Act, 1893 (56 & 57 Vict. c. 62), took away the military control and authority previously exercisable by the Governments of Madras and Bombay. As to the power of the governor-general to grant military commissions, see the note below, p. 267.

(b) This reproduces part of s. 9 of the Regulating Act (13 Geo. III, c. 63), which directs that 'the said governor-general and council for the time being shall and they are hereby directed and required to obey all such orders as they shall receive from the Court of Directors of the said united Company.' This enactment was necessary at a time when the relations to be regulated were those between the statutory governor-general and his council on the one hand and the directors of the Company on the other, and, being still on the statute book, is reproduced here. But, of course, the relations between the Secretary of State and the Government of India are now regulated by constitutional usage.

The Governor-General.

37. The Governor-General of India is appointed by His Majesty by warrant under the Royal Sign Manual. The governor general.

council, the governor of that province is an extraordinary member of the governor-general's council (b).

(a) In practice, the commander-in-chief is always appointed an extraordinary member of council. Under regulations made in 1905 he is in charge of the army department.

(b) In practice, meetings of the governor-general and his council are not held within the presidencies of Madras and Bombay.

Ordinary
and legis-
lative
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ings of
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general's
council.

41.—(1) The governor-general's council hold ordinary meetings, that is to say, meetings for executive purposes; and legislative meetings, that is to say, meetings for the purpose of making laws.

(2) The ordinary and extraordinary members of the governor-general's council are entitled to be present at all meetings thereof.

This section does not reproduce any specific enactment, but represents existing law and practice.

There appears to be no express enactment that the governor-general shall, when present, preside at meetings of his council, but this is implied by such provisions as 24 & 25 Vict. c. 107, s. 7.

Ordinary
meetings
of council.
[3 & 4
Will. IV,
c. 85, s.
48.
24 & 25
Vict. c.
67, s. 9.]

42.—(1) The ordinary meetings of the governor-general's council are held at such places in India (a) as may be appointed by the Governor-General in Council.

(2) At any ordinary meeting of the governor-general's council the governor-general and one ordinary member of his council may exercise all the functions of the Governor-General in Council (b).

(a) The expression used in the Act of 1861 is 'within the territories of India,' which, perhaps, means British India. In practice, the meetings of the council are held at Calcutta and Simla.

(b) The Act of 1793 (33 Geo. III, c. 52, s. 38) directs that 'the Governor-General and councillors of Fort William, and the several governors and councillors of Fort Saint George and Bombay, shall at their respective council boards proceed in the first place to the consideration of such matters as shall be proposed by the governor-general or by the governors of the said presidencies respectively, and as often as any matter or question shall be propounded by any of the said councillors it shall be competent to the said governor-general or governor respectively to postpone and adjourn the discussion thereof to a future day, provided that no such adjournment shall exceed forty-eight hours, nor shall the matter or question so proposed be adjourned more than twice without the consent of the councillor who proposed the same.'

This enactment, though not specifically repealed, is practically superseded by the rules and orders made under the Indian Councils Act, 1861, and therefore is not reproduced in the Digest.

43.—(1) All orders and other proceedings of the Governor-General in Council must be expressed to be made by the Governor-General in Council, and must be signed by a secretary to the Government of India, or otherwise as the Governor-General in Council may direct (a). Business of Governor-General in Council. [33 Geo. III, c. 52, s. 39. 53 Geo. III, c. 155, s. 79. 24 & 25 Vict. c. 67, s. 8.]

(2) The governor-general may make rules and orders for the more convenient transaction of business in his council, other than the business at legislative meetings, and every order made or act done in accordance with such rules and orders must be treated as being the order or the act of the Governor-General in Council (b) 53 Geo. III, c. 155, s. 79. 24 & 25 Vict. c. 67, s. 8.]

(a) Under the Act of 1793 (33 Geo. III, c. 52, s. 39) the signature referred to is that of 'the chief secretary to the council of the presidency.'

Under the Act of 1813 (53 Geo. III, c. 155, s. 79) orders or proceedings may be signed either by the chief secretary to the Government of the said presidency, or, in the absence of such chief secretary, by the principal secretary of the department of such presidency to which such orders or proceedings relate.

Under Act II of 1834 of the Indian Legislature, each of the secretaries to the Government of India and to the Government of Fort William in Bengal is declared to be competent to perform all the duties and exercise all the powers which by any Act of Parliament or any regulation then in force were assigned to the chief secretary to the Government of Fort William in Bengal, and each of the secretaries to the Governments of Fort St. George and Bombay is declared to be competent to perform all the duties and exercise all the powers which by any such Act or regulation were assigned to the chief secretaries to the Governments of Fort St. George and Bombay respectively.

Under these circumstances this section of the Digest probably represents the form in which Parliament would re-enact the existing statutory provisions, especially as they are provisions which may be modified by Indian Acts. See 24 & 25 Vict. c. 67, s. 22.

In practice, orders and proceedings are signed by the secretary of the department to which they relate.

(b) The rules and orders made under this section appear to be treated by the Government of India as confidential, and have not been published. The most important effect of the section has been to facilitate the departmental transaction of business.

Procedure in case of difference of opinion. [13 Geo. III, c. 63, s. 8, 3 & 4 Will IV, c. 85, s. 48.] **44.**—(1) At any ordinary meeting of the governor-general's council, if any difference of opinion arises on any question brought before the council, the Governor-General in Council is bound by the opinion and decision of the majority of those present, and if they are equally divided the governor-general, or, in his absence, the senior member of the council present, has two votes or the casting vote.

[33 Geo. III, c. 52, ss. 47, 48, 49, 33 & 34 Vict. c. 3, s. 5] (2) Provided that whenever any measure is proposed before the Governor-General in Council whereby the safety, tranquillity, or interests of British India, or of any part thereof, are or may be, in the judgement of the governor-general, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the council dissent from that opinion, the governor-general may, on his own authority and responsibility, adopt, suspend, or reject the measure in whole or in part.

(3) In every such case any two members of the dissentient majority may require that the adoption, suspension, or rejection of the measure, and the fact of their dissent, be notified to the Secretary of State, and the notification must be accompanied by copies of any minutes which the members of the council have recorded on the subject.

(4) Nothing in this section empowers the governor-general to do anything which he could not lawfully have done with the concurrence of his council.

The Regulating Act of 1773 (13 Geo. III, c. 63, s. 8) provides that 'in all cases whatever wherein any difference of opinion shall arise upon any question proposed in any consultation, the said governor-general and council shall be bound and concluded by the opinion and decision of the major part of those present. And if it shall happen that, by the death or removal, or by the absence of any of the members of the said council, such governor-general and council shall be equally divided, then, and in every such case, the said governor-general, or, in his absence, the eldest councillor present, shall have a casting vote, and his opinion shall be decisive and conclusive.'

The Charter Act of 1833 (3 & 4 Will. IV, c. 85, s. 48) enacts that 'in every case of difference of opinion at meetings of the said council where there shall be an equality of votes, the said governor-general shall have two votes or the casting vote.'

The difficulties which Warren Hastings encountered in his council under the Act of 1773 are well known, and Lord Cornwallis stipulated, on his appointment, that his hands should be strengthened; accordingly by an Act of 1786 (26 Geo. III, c. 10) the governor-general was empowered in special cases to override the majority of his council and act on his own responsibility. (See above, p. 67.)

The provisions of the Act of 1786 were re-enacted by ss. 47, 48, and 49 of the Charter Act of 1793 (33 Geo. III, c. 52), which are still in force, and which run as follows:—

'47. And whereas it will tend greatly to the strength and security of the British possessions in India, and give energy, vigour, and dispatch to the measures and proceedings of the executive Government within the respective presidencies, if the Governor-General of Fort William in Bengal and the several governors of Fort Saint George and Bombay were vested with a discretionary power of acting without the concurrence of their respective councils, or forbearing to act according to their opinions, in cases of high importance, and essentially affecting the public interest and welfare, thereby subjecting themselves personally to answer to their country for so acting or forbearing to act: Be it enacted, that when and so often as any measure or question shall be proposed or agitated in the Supreme Council at Fort William in Bengal, or in either of the councils of Fort Saint George and Bombay, whereby the interests of the said united Company, or the safety or tranquillity of the British possessions in India, or in any part thereof, are or may, in the judgement of the governor-general or of the said governors respectively, be essentially concerned or affected, and the said governor-general or such governors respectively shall be of opinion that it will be expedient, either that the measures so proposed or agitated ought to be adopted or carried into execution, or that the same ought to be suspended or wholly rejected, and the several other members of such council then present shall differ in and dissent from such opinion, the said governor-general or such governor and the other members of the council shall and they are hereby directed forthwith mutually to exchange with and communicate in council to each other, in writing under their respective hands (to be recorded at large on their secret consultations), the respective grounds and reasons of their respective opinions; and if after considering the same the said governor-general or such governor respectively, and the other members of the said council, shall severally retain their opinions, it shall and may be lawful to and for the said governor-general in the Supreme Council of Fort William, or either of the said governors in their respective councils, to make and declare any order (to be signed and subscribed by the said governor-general or by the governor making the same) for suspending or rejecting the measure or question so proposed or agitated, in part

or in whole, or to make and declare such order and resolution for adopting and carrying the measure so proposed or agitated into execution, as the said governor-general or such governors in their respective councils shall think fit and expedient; which said last-mentioned order and resolution so made and declared shall be signed as well by the said governor-general or by the governor so making and declaring the same as by all the other members of the council then present, and shall, by force and virtue of this Act, be as effectual and valid to all intents and purposes as if all the said other members had advised the same or concurred therein; and the said members in council, and all officers civil and military, and all other persons concerned, shall be and they are hereby commanded, authorized, and enjoined to be obedient thereto, and to be aiding and assisting in their respective stations in the carrying the same into execution. -

‘48. And . . . that the governor-general or governor who shall declare and command any such order or resolution to be made and recorded without the assent or concurrence of any of the other members of council shall alone be held responsible for the same and the consequences thereof.

‘49. Provided always . . . that nothing in this Act contained shall extend or be construed to extend to give power to the said Governor-General of Fort William in Bengal, or to either of the said governors of Fort Saint George and Bombay respectively, to make or carry into execution any order or resolution which could not have been lawfully made and executed with the concurrence of the councils of the respective Governments or presidencies, anything herein contained to the contrary notwithstanding.’

The Government of India Act, 1870 (33 & 34 Vict. c. 3, s. 5), enacts that ‘Whenever any measure shall be proposed before the Governor-General of India in Council, whereby the safety, tranquillity, or interests of the British possessions in India, or any part thereof, are or may be, in the judgement of the said governor-general, essentially affected, and he shall be of opinion either that the measure proposed might be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority in council then present shall dissent from such opinion, the governor-general may, on his own authority and responsibility, suspend or reject the measure in part or in whole, or adopt and carry it into execution; but in every such case two members of the dissentient majority may require that the said suspension, rejection, or adoption, as well as the fact of their dissent, shall be notified to the Secretary of State for India; and such notification shall be accompanied by copies of the minutes (if any) which the members of the council shall have recorded on the subject.’

This enactment practically supersedes, but does not expressly repeal, the enactments in the Act of 1793, but does not apply to the Governments of Madras and Bombay. It was under the enactment of 1870 that Lord Lytton acted in March, 1879, when he exempted certain imported cotton goods from customs duty.

45.—(1) Whenever the Governor-General in Council declares that it is expedient that the governor-general should visit any part of India, unaccompanied by his council, the Governor-General in Council may appoint some member of the council to be president of the governor-general's council during the time of the visit.

Provision for appointment of president of council.
[24 & 25 Vict. c. 67, s. 6.]

(2) The president of the governor-general's council has, during his term of office, the powers of the governor-general at ordinary meetings of the governor-general's council (a).

(a) The object of this section is to make provision for the current business of Government during the temporary absence of the governor-general. The last occasion on which it was put in force was Lord Dufferin's visit to Burma after the annexation of Upper Burma. In such cases the governor-general retains his own powers under s. 47 (1). This power is not exercised on the occasion of the viceroy's ordinary annual tour.

46. If the governor-general, or the president of the governor-general's council, is obliged to absent himself from any ordinary meeting of the governor-general's council by indisposition, or any other cause, and signifies his intended absence to the council, the senior ordinary (a) member for the time being present at the meeting presides thereat, with the like powers as the governor-general would have had, if present.

Provision for absence of governor-general, or president, from meetings of council.
[24 & 25 Vict. c. 67, s. 7.]

Provided that if the governor-general, or president, is at the time resident at the place where the meeting is assembled, and is not prevented by indisposition from signing any act of council made at the meeting, the act requires his signature; but if he declines or refuses to sign it, the like provisions have effect as in cases where the governor-general, when present, dissents from a majority of the meeting of the council (b).

(a) The word 'ordinary' is not in the Act of 1861, but is probably implied.

(b) See s. 44.

47.—(1) In any case where a president of the council may be appointed, the Governor-General in Council may

Powers of governor-general in

absence
from
Council.
[33 Geo.
III, c. 52,
ss. 54, 55,
24 & 25
Vict. c.
67, s. 6.]

by order authorize the governor-general alone to exercise, in his discretion, all or any of the powers which might be exercised by the Governor-General in Council at ordinary meetings (a).

(2) The governor-general during absence from his council may, if he thinks it necessary, issue, on his own responsibility, any order which might have been issued by the Governor-General in Council to any local Government, or to any officers or servants of the Crown acting under the authority of any local Government, without previously communicating the order to the local Government, and any such order is of the same force as if made by the Governor-General in Council, but a copy of the order must be sent forthwith to the Secretary of State in Council and to the local Government, with the reasons for making the order.

(3) The Secretary of State in Council may by order suspend until further order all or any of the powers of the governor-general under the last foregoing sub-section, and those powers will accordingly be suspended as from the time of the receipt by the governor-general of the order of the Secretary of State in Council (b).

(a) This provision supplements s. 45.

(b) The provisions of sub-sections (2) and (3) are reproduced from ss. 54 and 55 of the Act of 1793 (33 Geo. III, c. 52). But those sections were enacted in circumstances very different from those of the present time, and are practically superseded by the enactment reproduced in sub-section (1).

War and Treaties.

Restriction
on
power of
Governor-
General in
Council
to make
war or
treaty.
[33 Geo.
III, c. 52,
s. 42.]

48.—(1) (a) The Governor-General in Council may not, without the express command of the Secretary of State in Council, in any case (except where hostilities have been actually commenced, or preparations for the commencement of hostilities have been actually made against the British Government of India or against any prince or State dependent thereon, or against any prince or State whose territories His Majesty has engaged by any subsisting treaty to defend or

guarantee) either declare war or commence hostilities or enter into any treaty for making war against any prince or State in India, or enter into any treaty for guaranteeing the possessions of any such prince or State.

(2) In any such excepted case the Governor-General in Council may not declare war or commence hostilities or enter into a treaty for making war against any other prince or State than such as is actually committing hostilities or making preparations as aforesaid, and shall not make a treaty for guaranteeing the possessions of any prince or State except on the consideration of that prince or State actually engaging to assist His Majesty against such hostilities commenced or preparations made as aforesaid.

(3) When the Governor-General in Council commences any hostilities or makes any treaty, he must forthwith communicate the same, with the reasons therefor, to the Secretary of State.

(a) This section first appeared in Pitt's Act of 1784 (24 Geo. III, sess. 2, c. 25, s. 34), and was preceded by the preamble:—'Whereas to pursue schemes of conquest and extension of dominion in India are measures repugnant to the wish, the honour, and policy of this nation.' (See above, p. 64.) It was re-enacted, with the preamble, by s. 42 of the Act of 1793, and, as so re-enacted, is still on the statute book. It is of historical interest as an expression of the views with which the expansion of the territorial possessions of the East India Company was regarded in the eighteenth century, but as it relates only to hostilities against and treaties with the 'country princes or States in India,' it is no longer of practical importance. The last provision, though expressed in general terms, obviously refers to the hostilities and treaties referred to in the preceding part.

PART V.

LOCAL GOVERNMENTS.

General.

49.—(1) Every local Government (a) must obey the orders of the Governor-General in Council, and keep him constantly and punctually informed of its proceedings, and is under his superintendence and authority in all matters relating to the administration of its province.

Relation
of local
Govern-
ments to
Governor-
General
12

Council. (2) No local Government may make or issue any order for
 [13 Geo. III, c. 63, s. 9, 33 Geo. III, c. 52, ss. 24, 40, 41, 43, 44, 3 & 4 Will. IV, c. 85, ss. 65, 67.] commencing hostilities or levying war, or negotiate or conclude any treaty of peace or other treaty with any Indian prince or State (except in cases of sudden emergency or imminent danger when it appears dangerous to postpone such hostilities or treaty), unless in pursuance of express orders from the Governor-General in Council or from the Secretary of State, and every such treaty must, if possible, contain a clause subjecting the same to the ratification or rejection of the Governor-General in Council.

(3) The authority of a local Government is not superseded by the presence in its province of the governor-general (b).

(a) The expression 'local Government' is defined by s. 124 to mean a governor in council, lieutenant-governor, or chief commissioner. By the Indian General Clauses Act (X of 1897) it is defined to mean the person authorized by law to administer executive government in the part of British India in which the Act containing the expression operates, and to include a chief commissioner. As to the existing local Governments, see above, p. 114.

(b) This section reproduces enactments which applied to the Governments of Madras and Bombay, and were passed with the object of maintaining proper control by the Government of Bengal over the Governments of the two other presidencies. Of course the circumstances of the present day are widely different. Some of the provisions of the enactments reproduced are omitted, as having been made unnecessary by the existence of telegraphic communications, and by other alterations of circumstances. For instance, it has not been considered necessary to reproduce the power of the governor-general to suspend a local Government.

Governments of Madras and Bombay.

Governments of Madras and Bombay. [33 Geo. III, c. 52, s. 24, 3 & 4 Will. IV, c. 85, ss. 56, 57, 21 & 22 Vict. c. 106, s. 29.] **50.**—(1) The provinces (a) of Fort St. George and Bombay are, subject to the provisions embodied in this Digest (b), administered by the Governors in Council of Madras and Bombay respectively, and are in this Digest referred to as the provinces of Madras and Bombay respectively.

(2) The governors of Madras and Bombay are appointed by His Majesty by warrant under the Royal Sign Manual (c).

(3) The Secretary of State may, if he thinks fit, by order, revoke or suspend, for such period as he may direct, the

appointment of a council for either or both of those provinces, and whilst any such order is in force the governor of the province to which the order refers has all the powers of the Governor thereof in Council (*d*).

(a) It seems desirable to avoid the term 'presidency,' which dates from a time when British India was divided into three presidencies. But the Governments of Madras and Bombay occupy a position different from and superior to that of the other local Governments. The governor is appointed by the Crown, and not by the governor-general; he is assisted by an executive council, and he retains the right of communicating directly with the Secretary of State (above, s. 15).

(b) e. g. to the control of the governor-general.

(c) Before the Act of 1858 the appointments were made by the Court of Directors with the approval of the Crown.

(d) This power was given by the Act of 1833, but has never been exercised.

51.—(1) The ordinary (*a*) members of the councils of the governors of Madras and Bombay are appointed by His Majesty by warrant under the royal sign manual.

(2) The number of the ordinary members of each of the said councils is such number not exceeding three as the Secretary of State directs (*b*).

(3) Every ordinary member of the said councils must be a person who at the time of his appointment has been for at least twelve years in the service of the Crown in India (*c*).

(4) Provided that if the commander-in-chief of His Majesty's forces in India (not being likewise governor-general) happens to be resident at Madras or Bombay he is, during his continuance there, a member of the governor's council (*d*).

(a) The commanders-in-chief of the Madras and Bombay armies might be appointed, and, in fact, were always appointed, extraordinary members of the Madras and Bombay Councils. But these offices were abolished by the Madras and Bombay Armies Act, 1893 (56 & 57 Vict. c. 62). The term 'ordinary' is used in this section by way of distinction from additional or legislative members (see s. 60).

(b) The number was reduced from three to two in 1833, and is now two.

(c) The qualification under 33 Geo. III, c. 52, s. 25, is twelve years' residence in India in the service of the East India Company. The

Ordinary members of councils.

[33 Geo. III, c. 52, ss. 24, 25, 3 & 4 Will. IV, c. 85, ss.

56, 57, 32 & 33 Vict. c. 97, s. 8.]

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

qualification for membership of the governor-general's council is somewhat different (s. 39).

(d) This proviso, which is taken from the Act of 1793, is practically inoperative.

Ordinary and legislative meetings of Madras and Bombay Councils.

52.—(1) The councils of the governors of Madras and Bombay hold ordinary meetings, that is to say, meetings for executive purposes; and legislative meetings, that is to say, meetings for the purpose of making laws.

(2) The ordinary members of those councils are entitled to be present at all meetings thereof (a).

(a) This section does not reproduce any specific enactment, but represents the existing law.

Procedure in cases of difference of opinion. [33 Geo. III, c. 52, ss. 47, 48, 49.]

53. The foregoing provisions of this Digest with respect to the procedure in case of a difference of opinion between the governor-general and his council, and in case of the governor-general being obliged to absent himself from his council by indisposition or other cause, apply, with the necessary modifications, in the case of a difference of opinion between the Governor of Madras or Bombay and his council, and in the case of either of those governors being obliged to absent himself from his council (a).

(a) See ss. 44 and 46. Section 44 reproduces 33 Geo. III, c. 52, ss. 47-49, as modified by 33 & 34 Vict. c. 3, s. 5. The last enactment applies only to the governor-general's council, but, as will be seen from the note to s. 44, does not substantially modify the Act of Geo. III.

Business of Governor in Council. [33 Geo. III, c. 52, s. 39, 53 Geo. III, c. 155, s. 79, 24 & 25 Vict. c. 67, s. 28.]

54.—(1) All orders and other proceedings of the Governor of Madras in Council and of the Governor of Bombay in Council must be expressed to be made by the Governor in Council, and must be signed by a secretary to the Government of the province, or otherwise as the Governor in Council may direct (a).

(2) The governors of Madras and Bombay respectively may make rules and orders for the conduct of business in their respective councils, other than the business at legislative meetings, and every order made or act done in accordance with such rules and orders is deemed to be the order or the act of the Governor in Council.

(a) See note on s. 43.