Lieutenant-Governorships and other Provinces.

55.—(1) The provinces known as Bengal (*a*), the United Provinces of Agra and Oudh (*b*), the Punjab (*c*), Burma (*c*) and Eastern Bengal and Assam (*a*) are administered by lieutenant-governors. Lieutenant-governors [5 & 6 Will. IV, c. 52, s. 2. 16 & 17 Vict. c. 95, s. 16. 17 & 18 Vict. c. 77, s. 4. 21 & 22 Vict. c. 106, s. 29.]

(2) Every lieutenant-governor of a province in India is appointed by the governor-general, subject to the approval of His Majesty (*d*).

(3) A lieutenant-governor must have been, at the time of his appointment, at least ten years in the service of the Crown in India (*e*).

(4) The Governor-General in Council may, with the approval of the Secretary of State in Council, declare and limit the extent of the authority of any lieutenant-governor (*f*).

(*a*) By s. 16 of the Government of India Act, 1853, the Court of Directors were authorized to declare that the Governor-General of India should not be Governor of the Presidency of Fort William in Bengal, but that a separate governor should be appointed for that presidency, and in that case a governor was to be appointed in like manner as the governors of Madras and Bombay, and the governor-general's power of appointing a deputy-governor of Bengal was to cease. But unless and until a separate governor of the presidency was so constituted, the Governor-General in Council might appoint any servant of the Company who had been ten years in its service in India to be lieutenant-governor of such part of the territories under the Presidency of Fort William in Bengal as, for the time being, might not be under the Lieutenant-Governor of the North-Western Provinces. The project of constituting a new governorship was abandoned, and under the alternative power a lieutenant-governor of the Lower Provinces of Bengal (now commonly known as Bengal) was appointed in 1854. In October, 1905, a new province was formed by detaching the eastern part of Bengal from the rest of the province and uniting it with Assam under a lieutenant-governor. *See* Act VII of 1905.

(*b*) The lieutenant-governorship of the North-Western Provinces was of earlier date than the lieutenant-governorship of Bengal, and was constituted under an Act of 1835 (5 & 6 Will. IV, c. 52). The Act of 1833 had directed the division of the Presidency of Bengal into two distinct presidencies, one to be styled the Presidency of Fort William, the other the Presidency of Agra. The Act of 1835 authorized the Court of Directors to suspend these provisions, and directed that during the period of suspension the Governor-General in Council might appoint any servant of the Company who had been ten years in its

service in India 'to the office of Lieutenant-Governor of the North-Western Provinces now under the Presidency of Fort William in Bengal,' a designation then appropriate, but since made inappropriate by the annexation of the Punjab. Power was also given to declare and limit the extent of the territories so placed under a lieutenant-governor, and of the authority to be exercised by him. The arrangements thus temporarily made by the Act of 1835 were continued by the Act of 1853 (16 & 17 Vict. c. 95, s. 15). A lieutenant-governor of the North-Western Provinces was first appointed by notification, dated February 29, 1836 (Calcutta Gazette for March 2, 1836, second supplement). This notification merely gave the lieutenant-governor the powers of the Governor of Agra, and those powers, as defined by 3 & 4 Will. IV, c. 85, did not include any of the powers of the Governor-General in Council under the Bengal Regulations. The power given by the Act of 1835 to define the authority of the lieutenant-governor is probably superseded by the powers under 17 & 18 Vict. c. 77, s. 4.

The Lieutenant-Governor of the North-Western Provinces used to be also Chief Commissioner of Oudh. In 1901, when the North-West Frontier Province was constituted, the old North-Western Provinces were united with Oudh under a lieutenant-governor, and the two provinces were designated the United Provinces of Agra and Oudh. The union was confirmed by Act VII of 1902.

(c) Section 17 of the Act of 1853 (16 & 17 Vict. c. 95) enacts that:—'It shall be lawful for the Court of Directors of the said Company, under such direction and control, if and when they think fit, to constitute one new presidency within the territories subject for the time being to the government of the said Company, and to declare and appoint what part of such territories shall be subject to the government of such new presidency; and unless and until such new presidency be constituted as aforesaid, it shall be lawful for the said Court of Directors, under such direction and control as aforesaid, if and when they think fit, to authorize (in addition to such appointments as are hereinbefore authorized to be continued and made for the territories now and heretofore under the said Presidency of Fort William) the appointment by the said Governor-General in Council of a lieutenant-governor for any part of the territories for the time being subject to the government of the said Company, and to declare for what part of the said territories such lieutenant-governor shall be appointed, and the extent of his authority, and from time to time to revoke or alter any such declaration.'

The power of constituting a new presidency was not exercised, but that of appointing a new lieutenant-governor was exercised in 1859 by the appointment of Sir John Lawrence as Lieutenant-Governor of the Punjab. The rule of construction applied to recent Acts of Parliament by s. 32 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), does not apply to the Act of 1853, and, apart from this, the power of appointing fresh lieutenant-governors under the Act of 1853 was probably exhausted by the constitution of a lieutenant-governor-

ship of the Punjab. Further powers of constituting lieutenant-governorships are given by s. 46 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67), but apparently are exercisable only when a new legislative council is established. See the note on s. 74 below. It was under these further powers that in 1897 Burma, and in 1905 Eastern Bengal and Assam, were constituted lieutenant-governorships.

(*d*) See 21 & 22 Vict. c. 106, s. 29.

(*e*) This provision applies in terms only to the lieutenant-governors of Bengal and the North-Western Provinces (now united with Oudh), but its operation has been perhaps extended by the final words of 21 & 22 Vict. c. 106, s. 29.

(*f*) This sub-section reproduces s. 4 of the Act of 1854 (17 & 18 Vict. c. 77), which, however, applies in terms only to the two older lieutenant-governorships, the language being: 'It shall be lawful for the said Governor-General of India in Council, with the like sanction and approbation [i. e. of the Court of Directors and the Board of Control], from time to time to declare and limit the extent of the authority of the Governor in Council, Governor, or Lieutenant-Governor of Bengal, or of Agra, or the North-Western Provinces, who is now, or may be hereafter, appointed.' But a power to alter the limits of provinces is given by other enactments. See s. 57 below.

Power to place territory under authority of Governor-General in Council. [17 & 18 Vict. c. 77, s. 3.]

56. The Governor-General in Council may, with the approval of the Secretary of State, and by notification in the Gazette of India, take any part of British India under the immediate authority and management of the Governor-General in Council, and thereupon give all necessary orders and directions respecting the administration of that part, or otherwise provide for the administration thereof.

There is reason to believe that the enactment reproduced by this section was passed in consequence of a minute of Sir Barnes Peacock, forming an enclosure to a dispatch from the Government of India, dated July 16, 1852, and that it was mainly designed to give the Governor-General in Council the power which, according to Sir Barnes Peacock, he had not, of taking under his immediate executive control territory which formed part of some one of the presidencies. The section has been thus applied in various cases. Thus Arakan, which was originally annexed to Lower Bengal, was under this section taken into the hands of the Governor-General in Council and annexed to British Burma (Foreign Department Notification, No. 30 (Political), dated January 16, 1862). The province of Assam (now united with Eastern Bengal) was constituted by removing it under this section from the lieutenant-governorship of Bengal, taking it under the Governor-General in Council, and constituting it a chief commissionership, the regulation district of Sylhet being subsequently added to it in the same manner (Home Department Proclamation, No. 379,

February 6, 1874; and Notification No. 380, of same date; also Notification No. 2344 of September 12, 1874).

On the other hand, when the chief commissionerships of Oudh, the Central Provinces, and British (now Lower) Burma were constituted out of territories vested in the Governor-General in Council, the procedure was merely the issue of a resolution reciting the reasons for establishing the chief commissionership, defining the territories included in it, and specifying the staff appointed, no reference being made to any statute (Foreign Department letter to Chief Commissioner of Oudh, No. 12, dated February 4, 1856, and Foreign Department Resolution, No. 9, dated November 2, 1861, and No. 212, dated January 31, 1862). In the same way repeated changes have been made by executive orders in the government of the Andaman Islands.

The view taken by the Government of India is that the section does not apply to territories already included in a chief commissionership, this description of territory being, according to the practice of the Indian Legislature, always treated as already under the immediate authority and management of the Governor-General in Council, and therefore not capable of being placed under his authority and management by proclamation. A chief commissioner merely administers territory on behalf of the Governor-General in Council, and the Governor-General in Council does not divest himself of any of his powers in making over the local administration to a chief commissioner.

Although, however, the territory comprised in a chief commissionership may be technically under the immediate authority and management of the Governor-General in Council, yet the chief commissioner would ordinarily be the local Government within the meaning of Act X of 1897, s. 3 (29), and he is defined as a local Government by this Digest.

The result appears to be—

(1) The section must be used when it is desired to transfer the administration of territory from a governor in council or a lieutenant-governor to a chief commissioner;

(2) The section need not be used, and is not ordinarily used, when the administration of territory already under the administration of the Governor-General in Council is transferred from one local agency to another.

The transfer of territory under this section does not change the law in force in the territory (see below, s. 58). Consequently supplemental legislation will usually be necessary.

Power to alter limits of provinces. [3 & 4 Will. IV. c. 85, s. 38.

57. The Governor-General in Council may, by notification in the Gazette of India, declare, appoint, or alter the boundaries of any of the provinces into which British India is for the time being divided, and distribute the territories of British India among the several provinces thereof in such

manner as may seem expedient, subject to these qualifications, namely— 28 & 29 Vict. c. 17, ss. 4, 5.]

(1) An entire district may not be transferred from one province to another without the previous sanction of the Crown, signified by the Secretary of State in Council; and

(2) Any notification under this section may be disallowed by the Secretary of State in Council (*a*).

(*a*) This section is intended to reproduce the effect of the following enactments:—

3 & 4 WILL. IV, c. 85, s. 38.

'It shall be lawful for the said Court of Directors, under the control by this Act provided, and they are hereby required, to declare and appoint what part or parts of any of the territories under the government of the said Company shall from time to time be subject to the government of each of the several presidencies now subsisting or to be established as aforesaid, and from time to time, as occasion may require, to revoke and alter, in the whole or in part, such appointment, and such new distribution of the same, as shall be deemed expedient.'

28 & 29 VICT. c. 17, ss. 4, 5.

It shall be lawful for the Governor-General of India in Council from time to time to declare and appoint, by proclamation, what part or parts of the Indian territories for the time being under the dominion of Her Majesty shall be or continue subject to each of the presidencies and lieutenant-governorships for the time being subsisting in such territories, and to make such distribution and arrangement, or new distribution and arrangement, of such territories into or among such presidencies and lieutenant-governorships as to the said Governor-General in Council may seem expedient.

'Provided always, that it shall be lawful for the Secretary of State in Council to signify to the said Governor-General in Council his disallowance of any such proclamation. And provided further, that no such proclamation for the purpose of transferring an entire zillah or district from one presidency to another, or from one lieutenant-governorship to another, shall have any force or validity until the sanction of Her Majesty to the same shall have been previously signified by the Secretary of State in Council to the governor-general.'

The power given by the Indian Councils Act, 1861 (24 & 25 Vict. c. 67, s. 47), would appear from the context to be intended to be exercised for legislative purposes only, and is therefore reproduced below, s. 74. That given by the Act of 1865 (28 & 29 Vict. c. 17, s. 4) is wider. The Government of India were advised in 1878 that the Act of 1865 enables the Governor-General in Council to transfer territory from a chief commissionership to a presidency or lieutenant-governorship,

but does not allow the converse. Parliament, it was thought, having enacted 17 & 18 Vict. c. 77, s. 3, must be taken to have been aware of the existence of territories called chief commissionerships, and to have deliberately omitted any mention of these in the Act of 1865.

On April 24, 1883, a proclamation was issued under 28 & 29 Vict. c. 17, s. 4, placing the villages of Shaikh-Othman and Imad, near Aden, under the Government of Bombay. The section has since then been applied to Perim.

Saving as to laws. [17 & 18 Vict. c. 77, s. 3. 24 & 25 Vict. c. 67, s. 47.]

58. An alteration in pursuance of the foregoing provisions of the mode of administration of any part of British India, or of the boundaries of any part of British India, does not affect the law for the time being in force in that part.

The power to take territory under the immediate authority of the Governor-General in Council (reproduced by s. 56 above) is qualified by the proviso that no law or regulation in force at any such time as regards any such portions of territory shall be altered or repealed except by law or regulation made by the Governor-General of India in Council (17 & 18 Vict. c. 77, s. 3).

The power to fix the limits of a province given by 24 & 25 Vict. c. 67, s. 47, and reproduced by s. 57 above, is qualified by a similar proviso, 'that any law or regulation made by the Governor or Lieutenant-Governor in Council of any presidency, division, province, or territory shall continue in force in any part thereof which may be severed therefrom by any such proclamation, until superseded by law or regulation of the Governor-General in Council, or of the Governor or Lieutenant-Governor in Council of the presidency, division, province, or territory to which such parts have become annexed.'

The power exercisable under 28 & 29 Vict. c. 17, s. 4, is not qualified by a similar proviso.

Power to extend boundaries of presidency towns. [55 Geo. III, c. 84, s. 1.]

59. The Governor-General in Council, the Governor of Madras in Council, and the Governor of Bombay in Council may, with the approval of the Secretary of State in Council, extend the limits of the towns of Calcutta, Madras, and Bombay respectively; and any Act of Parliament, charter, law, or usage having effect only within the limits of those towns respectively will have effect within the limits as so extended.

This power, which was given by an Act of 1815, appears to be still in force, and not to be superseded by the later enactments reproduced above.

PART VI.

INDIAN LEGISLATION.

Legislation by Governor-General in Council.

Additional members of council for legislative purposes. [24 & 25 Vict. c. 67, ss. 9, 10, 11. 33 & 34 Vict. c. 3, s. 3. 55 & 56 Vict. c. 14, s. 1.]

60.—(1) For the purposes of legislation, the governor-general nominates persons resident in India to be additional members of his council (*a*).

(2) The number of the additional members of the governor-general's council is such as to the governor-general from time to time seems expedient, but must be not less than ten and not greater than sixteen (*b*).

(3) At least one-half of the additional members of the governor-general's council must be persons not in the civil or military service of the Crown in India, and if any such additional member accepts office under the Crown in India his seat as an additional member thereupon becomes vacant.

(4) The term of office of an additional member of the governor-general's council is two years.

(5) When and so long as the governor-general and his council are in a province administered by a lieutenant-governor or chief commissioner, that lieutenant-governor or chief commissioner is an additional member of the council, in excess, if necessary, of the maximum number hereinbefore specified of additional members.

(6) The additional members of the governor-general's council are entitled to be present at the legislative meetings of the council, and at no others.

(7) The Governor-General in Council may, with the approval of the Secretary of State in Council, make regulations as to the conditions under which nominations may be made in accordance with this section, and prescribe the manner in which such regulations are to be carried into effect (*c*).

(*a*) The Legislative Council of the Government of India is an expansion of the Governor-General's executive council. Its cumbrous

statutory description is 'the Governor-General in Council at meetings for the purpose of making laws and regulations.' It was constituted by the Indian Councils Act, 1861, in supersession of the legislative body established under the Act of 1853, and its constitution was modified by the Indian Councils Act, 1892 (55 & 56 Vict. c. 14). The qualification of residence in India was added by the Act of 1892.

(*b*) The number under the Act of 1861 was not less than six nor more than twelve. It was increased by the Act of 1892.

(*c*) As to the effect of these regulations, see above, pp. 115, 116.

Times and places of legislative meetings. [24 & 25 Vict. c. 67, s. 17.]

61.—(1) The legislative meetings of the governor-general's council are held at such times and places as the Governor-General in Council appoints (*a*).

(2) Any such meeting may be adjourned by the governor-general, or by the person presiding at the meeting if so authorized by the governor-general (*b*).

(*a*) In practice the meetings are held at Calcutta and Simla. There are no legislative sessions, but meetings are held whenever it is considered convenient. A Bill remains in life until it is passed or withdrawn, or is treated under the rules of business as dropped. All the Acts passed in any one calendar year are numbered in consecutive order (Act I of 1897 and so on).

(*b*) It would be more convenient to make the power of adjournment exercisable by the person presiding, without further authority.

Constitution of legislative meetings of council. [24 & 25 Vict. c. 67, s. 15.]

62.—(1) At every legislative meeting of the governor-general's council the governor-general, or the president of the governor-general's council (*a*), or some other ordinary member of the governor-general's council, and at least six other members, ordinary or additional, of that council, must be present.

(2) At every such meeting the governor-general, or in his absence the president of the governor-general's council, or if there is no president, or if the president is absent, the senior ordinary member of the governor-general's council present at the meeting presides.

(3) The person presiding at a legislative meeting of the governor-general's council has a second or casting vote.

(*a*) See s. 45.

63.—(1) The Governor-General in Council has power at legislative meetings to make laws (*a*)— Legislative power of Governor-General in Council. [3 & 4 Will. IV, c. 85, ss. 46, 51, 73. 24 & 25 Vict. c. 67, s. 22. 28 & 29 Vict. c. 17, ss. 1, 2 32 & 33 Vict. c. 98, s. 1. 33 & 34 Vict. c. 3, s. 2. 47 & 48 Vict. c. 38, ss. 2, 3, 5. 55 & 56 Vict. c. 14, s. 3.]

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

(*b*) for all British subjects of His Majesty and servants of the Government of India within other parts of India (*c*); and

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

(*d*) for all persons employed or serving in or belonging to His Majesty's Indian Marine Service (*e*); and

(*e*) for repealing or altering any laws or regulations for the time being in force in any part of British India [or over any persons for whom the Governor-General in Council has power to make laws] (*f*).

(2) Provided that the Governor-General in Council has not power to make any law repealing or affecting (*g*)— 3 & 4 Will. IV, c. 85. 16 & 17 Vict. c. 95. 17 & 18 Vict. c. 77 21 & 22 Vict. c. 106. 22 & 23 Vict. c. 46. 24 & 25 Vict. c. 67.

(*a*) any provisions of the Government of India Act, 1833, except sections eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, and eighty-six of that Act, or any provisions of the Government of India Act, 1853, or the Government of India Act, 1854, or the Government of India Act, 1858, or the Government of India Act, 1859, or the Indian Councils Act, 1861 (*h*); or

(*b*) any Act of Parliament passed after the year one thousand eight hundred and sixty, and extending to British India (*i*); or

(*c*) any Act enabling the Secretary of State in Council to raise money in the United Kingdom for the government of India; or

(*d*) the Army Act (*j*), or any Act amending the same;

and has not power to make any law affecting the authority of Parliament (*k*), or any part of the unwritten laws or con-

stitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom (*l*), or the sovereignty or dominion of the Crown over any part of British India (*m*).

(3) The Governor-General in Council has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any court, other than a high court within the meaning of this Digest (*n*), to sentence to the punishment of death any of His Majesty's natural-born subjects born in Europe, or the children of such subjects, or abolishing any high court within the meaning of this Digest (*o*).

(4) Any law made in accordance with this section controls and supersedes any other law or regulation repugnant thereto which may have been previously made by any authority in India (*p*).

(5) A law made in accordance with this section for His Majesty's Indian Marine Service does not apply to any offence unless the vessel to which the offender belongs is at the time of the commission of the offence within the limits of Indian waters, that is to say, the high seas between the Cape of Good Hope on the West and the Straits of Magellan on the East (*q*), and any territorial waters between those limits.

(6) The punishments imposed by any such law as last aforesaid for offences must be similar in character to, and not in excess of, the punishments which may at the time of making the law be imposed for similar offences under the Acts relating to His Majesty's Navy, except that in the case of persons other than Europeans or Americans imprisonment for any term not exceeding fourteen years or transportation for life or any less term may be substituted for penal servitude.

(*a*) The legislative powers of the Governor-General in Council are derived from a series of enactments.

Under s. 73 of the Government of India Act, 1833 (3 & 4 Will. IV, c. 85), 'it is lawful for the said Governor-General in Council from time to time to make articles of war for the government of the native

officers and soldiers in the military service of the Company, and for the administration of justice by courts-martial to be holden on such officers and soldiers, and such articles of war from time to time to repeal or vary and amend; and such articles of war shall be made and taken notice of in the same manner as all other the laws and regulations to be made by the said Governor-General in Council under this Act, and shall prevail and be in force, and shall be of exclusive authority over all the native officers and soldiers in the said military service, to whatever presidency such officers and soldiers may belong, or wheresoever they may be serving: Provided nevertheless, that until such articles of war shall be made by the said Governor-General in Council, any articles of war for or relating to the government of the Company's native forces, which at the time of this Act coming into operation shall be in force and use in any part or parts of the said territories, shall remain in force.'

By s. 22 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67), the Governor-General in Council was empowered at meetings for the purpose of making laws and regulations as aforesaid, and subject to the provisions therein contained, 'to make laws and regulations for repealing, amending, or altering any laws or regulations whatever now in force or hereafter to be in force in the Indian territories now under the dominion of Her Majesty, and to make laws and regulations for all persons, whether British or native, foreigners or others, and for all courts of justice whatever, and for all places and things whatever within the said territories, and for all servants of the Government of India within the dominions of princes and States in alliance with Her Majesty; and the laws and regulations so to be made by the Governor-General in Council shall control and supersede all laws and regulations in anywise repugnant thereto which shall have been made prior thereto by the governors of the presidencies of Fort Saint George and Bombay respectively in Council, or the Governor or Lieutenant-Governor in Council of any presidency or other territory for which a council may be appointed, with power to make laws and regulations, under and by virtue of this Act: Provided always, that the said Governor-General in Council shall not have the power of making any laws or regulations which shall repeal or in any way affect any of the provisions of this Act:

'Or any of the provisions of the Government of India Act, 1833, and of the Government of India Act, 1853, and of the Government of India Act, 1854, which after the passing of this Act shall remain in force:

'Or any provisions of the Government of India Act, 1858, or of the Government of India Act, 1859:

'Or of any Act enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India:

'Or of the Acts for punishing mutiny and desertion in Her Majesty's Army or in Her Majesty's Indian forces respectively; but subject to the provision contained in the Government of India Act, 1833, s. 73, respecting the Indian articles of war:

Or any provisions of any Act passed in this present session of Parliament, or hereafter to be passed, or anywise affecting Her Majesty's Indian territories, or the inhabitants thereof:

Or which may affect the authority of Parliament, or the constitution and rights of the East India Company, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or the sovereignty or dominion of the Crown over any part of the said territories.'

By s. 1 of the Government of India Act, 1865 (28 & 29 Vict. c. 15), the Governor-General of India was empowered, at meetings for the purpose of making laws and regulations, to make laws and regulations for all British subjects of Her Majesty within the dominions of princes and States in India in alliance with Her Majesty, whether in the service of the Government of India or otherwise.

By s. 1 of the Indian Councils Act, 1869 (32 & 33 Vict. c. 98), the Governor-General of India in Council was empowered, at meetings for the purpose of making laws and regulations, to make laws and regulations for all persons being native Indian subjects of Her Majesty without and beyond as well as within the Indian territories under the dominions of Her Majesty. And under s. 3 of the same Act a law or regulation so made is not to be invalid by reason only of its repealing or affecting ss. 81, 82, 83, 84, 85, or 86 of the Government of India Act, 1833.

The Indian Marine Service Act, 1884 (47 & 48 Vict. c. 38), gives power to make laws for the Indian Marine Service.

Section 45 of the Government of India Act, 1833 (3 & 4 Will. IV, c. 85), enacts that all laws and regulations made under that Act, so long as they remain unrepealed, shall be of the same force and effect within and throughout the Indian territories as any Act of Parliament would or ought to be within the same territories, and shall be taken notice of by all courts of justice whatsoever within the same territories in the same manner as any public Act of Parliament would or ought to be taken notice of, and it shall not be necessary to register or publish in any court of justice any laws or regulations made by the said Governor-General in Council. This enactment has not been repealed, but the first part of it applies in terms only to laws made under the powers given by the Act of 1833, and is not reproduced in the Act of 1861, or expressly made applicable to laws made under the powers given by that Act. Its repetition or application was probably considered unnecessary in 1861. The exemption from the obligation to register, which is in general terms, was enacted with reference to the questions which had arisen as to the necessity for registering enactments made under various statutory powers conferred before 1833. (See above, p. 59.)

The powers of legislation reproduced in this Digest are not exhaustive. Under various Acts of Parliament the Indian Legislature, like other

British legislatures with limited powers, has power to make laws on particular subjects with more extensive operation than laws made under its ordinary powers. See e. g. the Extradition Act, 1870 (33 & 34 Vict. c. 52, s. 18); the Slave Trade Act, 1876 (39 & 40 Vict. c. 46, s. 2), the Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69, s. 32), the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), the Colonial Probates Act, 1892 (55 & 56 Vict. c. 6, s. 1), and the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60, ss. 264, 368, 735, 736).

The leading case on the general powers of the Indian Legislature is *The Queen* v. *Burah* (1878), L. R. 3 App. Cas. 889. The Indian Legislature had passed an Act (XXII of 1869) purporting:—First, to remove the Garo Hills from the jurisdiction of the ordinary civil and criminal courts, and from the law applicable to those courts, and, secondly, to vest the administration of civil and criminal justice in those territories in officers appointed by the Lieutenant-Governor of Bengal. The Act was to come into operation on a date to be fixed by the lieutenant-governor. By the ninth section the lieutenant-governor was empowered, by notification in the Calcutta Gazette, to extend all or any of the provisions of the Act to certain neighbouring mountainous districts. The validity of the Act, and particularly of the ninth section, was questioned, but was maintained by the Judicial Committee of the Privy Council, who held (1) that the Act was not inconsistent with the Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), or with the Charter of the Calcutta High Court; (2) that it was in its general scope within the legislative powers of the Governor-General in Council; (3) that the ninth section was conditional legislation and not a delegation of legislative power, and (4) that where plenary powers of legislation exist as to particular subjects, whether in an imperial or in a provincial legislature, they may be well exercised, either absolutely or conditionally; in the latter case leaving to some external authority the time and manner of carrying its legislation into effect, and the area over which it is to extend.

Lord Selborne, in delivering the judgement of the Judicial Committee, expressed himself as follows:—

'The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But, when acting within these limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself. The established courts of justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so is by looking to the terms of the instrument, by which affirmatively the legislative powers were created, and by which negatively they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which

that power is limited (in which category would of course be included any Act of the Imperial Parliament at variance with it), it is not for any court of justice to inquire further, or to enlarge constructively those conditions and restrictions.'

The same principles have been since laid down with respect to colonial legislatures in the case of *Powell* v. *Apollo Candle Company* (1885), 10 App. Cas. 282. See also *Harris* v. *Davies* (1885), 10 App. Cas. 279, and *Musgrove* v. *Chun Teeong Toy*, [1891] L. R. A. C. 274 (the Chinese immigration case).

In *Sprigg* v. *Siggan*, [1897] A. C. 238, it was held on appeal from the Cape that a power for the governor to add to the existing laws already proclaimed and in force in Pondoland such laws as he should from time to time by proclamation declare to be in force in those territories, did not authorize the issue of a proclamation for the arrest and imprisonment of a particular chief.

(*b*) The expression used in the Indian Councils Act, 1861, is 'the Indian territories *now* under the dominion of Her Majesty.' But s. 3 of the Indian Councils Act, 1892 (55 & 56 Vict. c. 14), explains that this is to be read as if the words 'or hereafter' were inserted after 'now.' Consequently it is represented by British India, which means the territories for the time being constituting British India (see s. 124 and the notes thereon).

(*c*) The Act of 1861 gave power to make laws 'for all servants of the Government of India within the dominions of princes and States in alliance with Her Majesty.' The Act of 1865 gave power to make laws 'for all British subjects of Her Majesty within the dominions of princes or States *in India* in alliance with Her Majesty, whether in the service of the Government of India or not.' Consequently it may be argued that the power to make laws for servants of the Government of India, as distinguished from British subjects generally, extends beyond the Native States of India. But, having regard to the sense in which the phrase 'princes and States in alliance with Her Majesty' is commonly used in Acts relating to India, it seems safer to adopt the narrower construction and to treat the expressions in the Act of 1861 and in the Act of 1865 as synonymous [1].

The expression 'Government of India' is defined by the Indian General Clauses Act (X of 1897), in terms which would exclude the local Governments. But this definition does not apply to the construction of an English Act of Parliament, and the expression 'servants of the Government of India' in the Act of 1861 would doubtless be held to include all servants of the Crown employed by or under the Government of India, whether directly employed by the Government of India in its narrower sense, or by or under a local Government, and

[1] On general principles, there would seem to be no objection to legislation conferring jurisdiction in respect of an offence committed by a servant of the Crown in any foreign country, where the offence consists of *a breach of his duty to the Crown*.

whether British subjects or not. See the definition of 'Government in Act X of 1897, s. 3 (21).

It has been argued that the expression 'British subjects of Her Majesty' was used in the Act of 1865 in its older and narrower sense, as not including persons of Asiatic descent. If so, there would be no power under this enactment to legislate for natives of Ceylon in the Nizam's territories. In practice, however, the questions referred to in this note do not cause difficulty because a wider power to legislate for persons and things outside British India can be exercised under the Foreign Jurisdiction Act. See below, ch. v.

(*d*) The Indian Articles of War are contained in Act V of 1869, as amended by Act XII of 1894. The words 'or followers' do not occur in the Act of 1833, but their insertion seems to be justified by the Army Act, which, after a saving for Indian military law respecting officers or soldiers or followers in Her Majesty's Indian forces, being natives of India, enacts (s. 180 (2) (*b*)) that, 'For the purposes of this Act, the expression "Indian military law" means the Articles of War or other matters made, enacted, or in force, or which may hereafter be made, enacted, or in force, under the authority of the Government of India; and such articles or other matters shall extend to such native officers, soldiers, and followers, wherever serving.'

(*e*) The East India Company used to keep a small naval force, known first as the Bombay Marine, and afterwards as the Indian Navy. This force was abolished in 1863, when it was decided that the Royal Navy should undertake the defence of India against serious attack by sea, and should also provide for the performance of the duties in the Persian Gulf which had been previously undertaken by the Indian Navy. After the abolition of the Indian Navy, two small services, the Bengal Marine and the Bombay Marine, came into existence for local purposes, but were found to be expensive and inefficient, and accordingly the Government of India amalgamated them into the force now known as the Indian Marine. According to the preamble to the Indian Marine Service Act, 1884 (47 & 48 Vict. c. 38), this force was 'employed under the direction of the Governor-General in Council for the transport of troops, the guarding of convict settlements, the suppression of piracy, the survey of coasts and harbours, the visiting of lighthouses, the relief of distressed or wrecked vessels, and other local objects,' and was maintained out of the revenues of India.

The ships on this establishment were Government ships, but did not form part of the Royal Navy, and consequently did not fall within the provisions either of the Merchant Shipping Acts on the one hand, or of the Naval Discipline Act (29 & 30 Vict. c. 109) on the other, or of any corresponding Indian enactments. They were in fact in the same kind of position as some of the vessels employed by the Board of Trade and by the Post Office in British waters. Under these circumstances it was thought expedient that the Governor-General in Council should have power to make laws for the maintenance of discipline in their service; and, accordingly, the Indian Marine Service

Act, 1884, was passed for this purpose. It enabled the Governor-General in Council, at legislative meetings, to make laws for all persons employed or serving in or belonging to Her Majesty's Indian Marine Service, but the punishments were to be of the same character as those under the Navy Acts, and the Act was not to operate beyond the limits of Indian waters as defined by the Act, i. e. the old limits of the East India Company's charter. The reasons for the limitation to Indian waters were, doubtless, that it was desirable to maintain the local character of the objects for which, according to the preamble, the establishment was maintained; that if, under exceptional circumstances, a ship belonging to the establishment was sent to English waters, on transport service or otherwise, no practical difficulties in maintaining discipline were likely to arise; and that it was not desirable to give to these ships and to their officers, outside Indian waters, their proper sphere of operations, a status practically equivalent to that of the Royal Navy. The officers of the Indian Marine Service are appointed by the Governor-General in Council, but do not hold commissions from the King, and consequently cannot exercise powers of command over officers and men of the Royal Navy. The ships are unarmed, and therefore are practically of no use for the suppression of piracy. In time of war, however, the King may, by Proclamation or Order in Council, direct that any vessel belonging to the Indian Marine Service, and the men and officers serving therein, shall be under the command of the senior naval officer of the station where the vessel is, and while the vessel is under such command, it is to be deemed, to all intents, a vessel of war of the Royal Navy, and the men and officers are to be under the Naval Discipline Act, and subject to regulations issued by the Admiralty with the concurrence of the Secretary of State for India in Council (47 & 48 Vict. c. 38, s. 6).

Under the power conferred by the Indian Marine Service Act, 1884, the Indian Legislature passed the Indian Marine Act, 1887 (Act XIV of 1887), which established for the Indian Marine Service a code of discipline corresponding to that in force for the Royal Navy, and declared that Chapter VII of the Indian Penal Code, 'as to offences relating to the Army and Navy,' was to apply as if Her Majesty's Indian Marine Service were comprised in the Navy of the Queen (s. 79).

On the relations between the Royal Navy and the Indian Marine Service, see the evidence given by Sir John Hext and others in the First Report of the Royal Commission on the administration of the expenditure of India (1896).

(*f*) The words 'or over any persons for whom the Governor-General in Council has power to make laws' are not in the Act of 1861, but seem to be implied by the context.

(*g*) 'Affecting' would probably be construed as equivalent to 'altering.'

(*h*) The short titles given by the Short Titles Act, 1896, are substituted in the text for the longer titles used in the Act of 1861. It will be observed that, subject to the exceptions here specified, the

Parliamentary enactments relating to India may be repealed or altered by Indian legislation. This power is saved by the language used in producing these enactments in the Digest. See e. g. ss. 101, 103, 105.

(*i*) The language of the Act of 1861 is: 'any provisions of any Act passed in this present session of Parliament, or hereafter to be passed, in anywise affecting Her Majesty's Indian territories, or the inhabitants thereof.' See *R.* v. *Meares*, 14 Bengal Law Reports, 106, 112.

(*j*) 44 & 45 Vict. c. 58. Under s. 136 of this Act as amended by s. 4 of the Army (Amendment) Act, 1895 (58 & 59 Vict. c. 7), the pay of an officer or soldier of Her Majesty's regular forces must be paid without any deduction other than the deductions authorized by this or by any other Act, or by any Royal warrant for the time being, or by any law passed by the Governor-General of India in Council. Thus the Indian Legislature has power to authorize deductions from military pay, but this power can hardly be treated as power to amend the Army Act.

(*k*) After these words followed in the Act of 1861 the words 'or the constitution and rights of the East India Company.' It will be remembered that the Company was not formally dissolved until 1874.

(*l*) 'Whereon may depend . . . United Kingdom.' These words are somewhat indefinite, and a wide meaning was attributed to them by Mr. Justice Norman in the case of *In the matter of Ameer Khan*, 6 Bengal Law Reports, 392, 456, 459. In this case, which turned on the validity of an arrest under Regulation III of 1818, the powers of the Indian Legislature under successive charters and enactments were fully discussed.

(*m*) Are the words 'or the sovereignty,' &c., to be connected with 'whereon may depend,' or with 'affecting'? Probably the latter. If so, legislation to authorize or confirm the cession of territory is placed by these words beyond the powers of the Indian Legislature. The power of the Crown to cede territory in India and elsewhere was fully discussed in the Bhaunagar case, *Damodhar Khan* v. *Deoram Khanji*, I. L. R. 1 Bom. 367, L. R. 2 App. Cas. 332, where the Judicial Committee, without expressly deciding the main question at issue, clearly intimated that in their opinion the Crown possessed the power. This opinion was followed by the high court at Allahabad in the case of *Lachmi Narayan* v. *Raja Pratab Singh*, I. L. R. 2 All. 1. See further, Sir H. S. Maine's Minute of 1868 on the Rampore Cession case (No. 79), and the debates in Parliament in 1890 on the Anglo-German Agreement Bill, by which the assent of Parliament was given to the agreement for the cession of Heligoland, and in 1904 (June 1) on the Anglo-French Convention Bill.

(*n*) i. e. a chartered high court. See s. 124.

(*o*) This reproduces 3 & 4 Will. IV, c. 85, s. 46, and is the reason why the sanction of the Secretary of State in Council is recited in the preamble to the Punjab Courts Act, 1884 (XVIII of 1884, printed in the Punjab Code).

(*p*) 'Any authority in India.' The words of the Act are: 'the Governors of the Presidencies of Fort St. George and Bombay respectively in Council, or the Governor or Lieutenant-Governor in Council of any presidency or other territory for which a council may be appointed, with power to make laws and regulations by virtue of this Act.'

(*q*) These were the old limits of the East India Company's charter.

Business at legislative meetings [24 & 25 Vict. c 67, s 19. 55 & 56 Vict. c. 14, s. 2]

64.—(1) (*a*) At a legislative meeting of the governor-general's council no business shall be transacted other than the consideration of measures introduced [or proposed to be introduced] (*b*) into the Council for the purpose of enactment, or the alteration of rules for the conduct of business at legislative meetings.

(2) At a legislative meeting of the governor-general's council no motion shall be entertained other than a motion for leave to introduce a measure into the council for the purpose of enactment, or having reference to a measure introduced [or proposed to be introduced] (*b*) into the council for that purpose, [or having reference to some rule for the conduct of business] (*b*).

(3) It shall not be lawful, without the previous sanction of the governor-general, to introduce at any legislative meeting of the governor-general's council any measure affecting—

(*a*) The public debt or public revenues of India or imposing any charge on the revenues of India (*c*) : or

(*b*) The religion or religious rites and usages of any class of His Majesty's subjects in India ; or

(*c*) The discipline or maintenance of any part of His Majesty's military or naval forces ; or

(*d*) The relations of the Government with foreign princes or States.

(4) Provided that the Governor-General in Council may, with the sanction of the Secretary of State in Council, make rules authorizing at any legislative meeting of the governor-general's council a discussion of the annual financial state-

ment of the Governor-General in Council and the asking of questions, but under such conditions and restrictions as to subject or otherwise as may be in the said rules prescribed and declared. No member at any such meeting of the council shall have power to submit or propose any resolution or to divide the council in respect of any such financial discussion or the answer to any question asked under the authority of this section or the rules made under this sub-section. Rules made under this sub-section shall not be subject to alteration or amendment at legislative meetings of the council (*d*).

(*a*) As to the object with which this section was framed, see par. 24 of Sir C. Wood's dispatch of August 9, 1861.

(*b*) The words 'or proposed to be introduced' and 'or having reference to some rule for the conduct of business' are not in the Act of 1861, but represent the existing practice.

(*c*) The words 'or imposing any charge on the revenues of India' might perhaps be omitted as unnecessary.

(*d*) This proviso reproduces the alterations made by the Act of 1892. Under the existing rules the financial statement must be explained in council every year, and a printed copy must be given to every member. Any member may offer observations on the explanatory statement, the finance member has the right of reply, and the discussion is closed by any observations the president may think fit to make.

Assent of governor-general to Acts. [24 & 25 Vict. c. 67, s. 20.]

65.—(1) When an Act has been passed by the governor-general's council at a legislative meeting, the governor-general, whether he was or was not present in council at the passing thereof, may declare that he assents to the Act, or that he withholds assent from the Act, or that he reserves the Act for the signification of His Majesty's pleasure thereon.

(2) An Act of the Governor-General in Council has not validity until the governor-general has declared his assent thereto, or, in the case of an Act reserved for the signification of His Majesty's pleasure, until His Majesty has signified his assent to the governor-general through the Secretary of State in Council, and that assent has been notified in the Gazette of India.

Power of Crown to disallow Acts. [24 & 25 Vict. c. 67, s. 21.]

66.—(1) When an Act of the Governor-General in Council has been assented to by the governor-general he must send to the Secretary of State an authentic copy thereof.

(2) It is lawful for His Majesty to signify through the Secretary of State in Council his disallowance of any such Act.

(3) Where the disallowance of any such Act has been so signified, the governor-general must forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, becomes void accordingly (*a*).

(*a*) When an Act has been passed by the Governor-General in Council the Secretary of State usually sends a dispatch intimating that the Act has been considered in council and will be left to its operation. But this formal expression of approval is not essential to the validity of the Act.

Rules for conduct of business. [24 & 25 Vict. c. 67, s. 18.]

67. The Governor-General in Council may at legislative meetings of the governor-general's council, subject to the assent of the governor-general, make rules for the conduct of business at legislative meetings of the council, and for prescribing the mode of promulgation and authentication of Acts made at such meetings; but any such rule may be disallowed by the Secretary of State in Council, and if so disallowed has no effect.

A bill, when introduced, is published in the official gazettes in English and the local vernacular, with a 'Statement of Objects and Reasons,' and a similar course is usually adopted after every subsequent stage of the bill at which important amendments have been made. Thus a bill as amended in committee is published with the report of the committee explaining the nature of, and reasons for the amendment. The draft of a bill is in some cases published for the purpose of eliciting opinion, before its introduction into the council.

When a bill is introduced, or on some subsequent occasion, the member in charge of it makes one or more of the following motions—

(1) That it be referred to a select committee; or

(2) That it be taken into consideration by the council, either at once or on some future day to be then mentioned; or

(3) That it be circulated for the purpose of eliciting opinion thereon.

The usual course is to refer a bill after introduction to a select committee. It is then considered in council after it is reported by the committee, with or without amendments, and is passed, either with or without further amendments made by the council.

68.—(1) (*a*) The local Government (*b*) of any part of British India to which this section for the time being applies may propose to the Governor-General in Council the draft of any regulation for the peace and government of that part, with the reasons for proposing the regulation. Power to make regulations. [33 Vict. c. 3, ss. 1, 2.]

(2) Thereupon the Governor-General in Council may take any such draft and reasons into consideration, and when any such draft has been approved by the Governor-General in Council and assented to by the governor-general (*c*), it must be published in the Gazette of India, and in the local official gazette, if any, and thereupon has the like force of law and is subject to the like disallowance as if it had been made by the Governor-General in Council at a legislative meeting.

(3) The governor-general must send to the Secretary of State an authentic copy of every regulation to which he has assented under this section.

(4) The Secretary of State may by resolution in council apply this section to any part of British India as from a date to be fixed in the resolution, and withdraw the application of this section from any part to which it has been applied (*d*).

(*a*) This power was conferred by the Act of 1870, with the object of providing a more summary legislative procedure for the more backward parts of British India. The enactment conferring the power was passed in consequence of a dispatch from the Government of India drafted by Sir H. S. Maine. (See Minutes by Sir H. S. Maine, Nos. 67, 69.) The regulations made under it must be distinguished from the old Madras, Bengal, and Bombay regulations, which were made before 1833 by the Governments of the three presidencies, and some of which are still in force.

(*b*) 'Local Government' is defined by s. 124.

(*c*) It will be observed that the Governor-General in Council cannot amend the draft.

(*d*) The Indian Statute Book has from the earliest times contained 'deregulationizing' enactments, i.e. enactments barring, completely or partially, the application in the more backward and less civilized parts of the country of the ordinary law, which was at first contained in the old 'regulations.' These enactments took varied and sometimes very complicated forms, so that, in course of time, doubts arose, and it became occasionally a matter of considerable difficulty to ascertain what laws were and what were not in force in the different 'deregu-

lationized' tracts. The main object of the Scheduled Districts Act, 1874 (XIV of 1874), was to provide a method of removing these doubts by means of notifications to be issued by the Executive Government. The preamble refers to the fact that 'various parts of British India had never been brought within, or had from time to time been removed from, the operation of the general Acts and regulations, and the jurisdiction of the ordinary Courts of Judicature'; that 'doubts had arisen in some cases as to which Acts or regulations were in force in such parts, and in other cases as to what were the boundaries of such parts'; and that 'it was expedient to provide readier means for ascertaining the enactments in force in such territories and the boundaries thereof, and for administering the law therein.' The Act then proceeds to specify and constitute a number of deregulationized tracts as 'scheduled districts,' to give the power of declaring by notification what enactments are, or are not, actually in force in any scheduled district, and to provide for extending by notification to any 'scheduled district,' with or without modifications or restrictions, any enactment in force in any part of British India at the date of the extension. The Act also gives powers to appoint officers for the administration of a scheduled district, and to regulate their procedure and the exercise of their powers therein, and also to settle questions as to the boundaries of any such tract. A large number of declaratory and extending notifications have been issued under the Act.

Every district to which 33 Vict. c. 3, s. 1 (reproduced by this section of the Digest), is made applicable thereupon becomes by virtue of s. 1 of the Indian Scheduled Districts Act, 1874 (XIV of 1874), a scheduled district within the meaning of that Act and of the Indian General Clauses Act, 1897 (X of 1897, s. 3 (49)).

The Scheduled Districts Act, 1874, is immediately followed in the Indian Statute Book by the Laws Local Extent Act, 1874 (XV of 1874), the object of which is to remove doubts as to the application of certain enactments to the whole or particular parts of British India. This Act also uses the expression 'scheduled districts,' but in a sense which has in the course of time become different from that in which the term is used in the Scheduled Districts Act. The lists of scheduled districts appended to the two Acts were originally identical, but since 1874 Acts have been passed which have amended or partially repealed the list in Act XIV, but have not in all cases made corresponding alterations in the list annexed to Act XV. Moreover, certain regions not included in the original schedule have, by reason of the application to them of 33 Vict. c. 3, s. 1, become *ipso facto* scheduled districts. The Legislative Department of the Government of India has published lists of the 'territories which are "deregulationized," "scheduled," and subject to the statute 33 Vict. c. 3, s. 1, respectively.'

Power to make ordinances in

69. The governor-general may in cases of emergency make and promulgate ordinances for the peace and good government of British India, or any part thereof, and any

ordinance so made has, for such period not exceeding six months from its promulgation as may be declared in the notification, the like force of law to a law made by the Governor-General in Council at a legislative meeting; but the power of making ordinances under this section is subject to the like restrictions as the power of making laws at legislative meetings; and any ordinance made under this section is subject to the like disallowance as a law passed at a legislative meeting, and may be controlled or superseded by any such law.

cases of emergency. [24 & 25 Vict. c. 67, s. 23.]

The power given by this section has rarely been exercised, and should be called into action only on urgent occasions. The reasons for a resort to it should always be recorded, and these, together with the Ordinance itself, should be submitted without loss of time to His Majesty's Government.

Local Legislatures.

70. The Governor of Madras in Council, the Governor of Bombay in Council, the Lieutenant-Governors in Council, of Bengal, the United Provinces of Agra and Oudh, the Punjab, Burma, and Eastern Bengal and Assam, and any local legislature which may be hereafter constituted in pursuance of the Indian Councils Act, 1861, are local legislatures within the meaning of this Digest.

Meaning of local legislatures. [See 55 & 56 Vict. c 14, s 6.] 24 & 25 Vict c 67.

This section follows substantially the definition of 'local legislature' in the Indian Councils Act, 1892 (55 & 56 Vict. c. 14, s. 6), with the modifications required by the local legislatures constituted since its passing.

71.—(1) (*a*) The legislative powers of the Governor of Madras in Council and the Governor of Bombay in Council are exercised at legislative meetings of their respective councils.

Constitution of legislative council in Madras and Bombay. [24 & 25 Vict. c. 67, ss. 29, 30. 55 & 56 Vict. c. 14, ss. 1, 4.]

(2) For the exercise of those powers the governors of Madras and Bombay respectively must nominate persons resident in India to be additional members of their councils.

(3) The number of the additional members of each of the said councils (besides the advocate-general of the province

or officer acting in that capacity) is such as to the governors of Madras and Bombay respectively from time to time seems expedient, but must be not less than eight nor more than twenty (*b*).

(4) The advocate-general or acting advocate-general for the time being of the province must be appointed one of the additional members of the council of the governor of that province.

(5) Of the additional members of each of the said councils at least one-half (*c*) must be persons who are not in the civil or military service of the Crown in India, and if any such additional member accepts office under the Crown in India, his seat as an additional member thereupon becomes vacant.

(6) The term of office of an additional member of either of the said councils [other than the advocate-general or acting advocate-general] (*d*) is two years.

(7) An additional member of either of the said councils is entitled to be present at legislative meetings of the council, and at no others.

(8) The Governor-General in Council may, with the approval of the Secretary of State in Council, make regulations (*e*) as to the conditions under which nominations are to be made under this section, and prescribe the manner in which such regulations are to be carried into effect.

(*a*) This section reproduces the provisions of the Act of 1861, as modified by the Act of 1892.

(*b*) The number under the Act of 1861 was not less than four nor more than eight.

(*c*) 'One-half.' Does this include the advocate-general? The point does not seem clear.

(*d*) The words in square brackets probably express the effect of the existing law, but the construction is not clear.

(*e*) The effect of these regulations is summarized above, pp. 119, 120.

Procedure at legislative meetings of councils of Madras

72.—(1) At every legislative meeting of the council of the Governor of Madras, or of the Governor of Bombay, the governor or some ordinary member of his council, and at least four other members of the council, must be present.

(2) The governor, if present, and in his absence the senior ordinary member (*a*) of his council, presides. and Bombay. [24 & 25 Vict. c. 67, ss. 34, 36.

(3) In case of difference of opinion at any such legislative meeting, the opinion of the majority prevails.

(4) In case of an equality of votes, the governor, or in his absence the member presiding, has a second or casting vote.

(5) Any such legislative meeting must be held at such time and place as the governor appoints, and may be adjourned by the governor or by the person presiding at the meeting if so authorized by the governor.

(*a*) The expression in the Act of 1861 is 'senior civil ordinary member,' and the word 'civil' was perhaps intended to exclude the local commander-in-chief, who, however, was an extraordinary member If so, the word has become unnecessary since the passing of the Madras and Bombay Armies Act (56 & 57 Vict. c. 62).

73.—(1) The members of the councils of the Lieutenant-Governors of Bengal (*a*), of the United Provinces of Agra and Oudh (*b*), of the Punjab (*b*), of Burma (*b*), of Eastern Bengal and Assam, and of any lieutenant-governor for whose province a local legislature is hereafter constituted, must be such persons resident in India as the lieutenant-governor, with the approval of the governor-general, nominates, subject to this qualification, that not less than one-third of the members of each council must be persons who are not in the civil or military service of the Crown in India. Constitution of legislative councils of lieutenant-governors. [24 & 25 Vict. c. 67, ss. 45, 48. 55 & 56 Vict. c 14, s 1]

(2) The number of the members of the councils of the lieutenant-governors of Bengal, the United Provinces of Agra and Oudh, of the Punjab, and of Burma respectively is such as the Governor-General in Council may from time to time fix by proclamation, but must not be more than twenty for Bengal and not more than fifteen for the United Provinces of Agra and Oudh (*c*).

(3) The number of the members of any other council of a lieutenant-governor constituted for legislative purposes must be that fixed by the notification under which the council is constituted.

(4) The term of office of a member of a lieutenant-governor in council is two years.

(5) The Governor-General in Council may, with the approval of the Secretary of State in Council, make regulations as to the conditions under which nominations are to be made under this section, and prescribe the manner in which such regulations are to be carried into effect (*d*).

(*a*) Section 44 of the Indian Councils Act, 1861, enacted that the Governor-General in Council, so soon as it should appear to him expedient, should, by proclamation, extend the provisions of the Act touching the making of laws and regulations for the peace and good government of the presidencies of Fort Saint George and Bombay to the Bengal division of the Presidency of Fort William, and should specify in such proclamation the period at which such provisions should have effect, and the number of councillors which the lieutenant-governor of the said division might nominate for his assistance in making laws and regulations. Accordingly a legislative council was established for Bengal by proclamation of January 18, 1862. Calcutta Gazette, 1862, pp. 227, 228.

(*b*) By s. 44 of the Indian Councils Act, 1861, the Governor-General in Council was also empowered to extend the provisions of the Act to the territories known as the North-Western Provinces and the Punjab respectively. A legislative council was established for the North-Western Provinces and Oudh together (see the powers under the next section), by proclamation of November 26, 1886, and the name of the province for which the council was established was in 1901 altered to the United Provinces of Agra and Oudh. Legislative councils were established for the Punjab and Burma by proclamation of April 9, 1897, and for the province of Eastern Bengal and Assam by proclamation of September 1, 1905. *See* Act VII of 1905. The number of councillors to be nominated was fixed at nine for the Punjab and Burma respectively, and fifteen for Eastern Bengal and Assam.

(*c*) By the Act of 1892 (55 & 56 Vict. c. 14, s. 1) the Governor-General in Council was empowered to increase by proclamation the number of legislative councillors for Bengal and for the North-Western Provinces and Oudh, subject to the maximum limit of twenty and fifteen. The number for Bengal was, by proclamation of March 16, 1893, fixed at twenty. The number for the North-Western Provinces and Oudh (now the United Provinces of Agra and Oudh) was, by proclamation of the same date, fixed at fifteen.

(*d*) This power was given by the Act of 1892. The regulations are to the same general effect as those for Madras and Bombay. See above, pp. 119, 120.

Power to constitute

74.—(1) The Governor-General in Council may, with the previous approval of the Secretary of State in Council, and

by notification in the Gazette of India, constitute a new province for legislative purposes, and, if necessary, appoint a lieutenant-governor for any such province; and constitute the Lieutenant-Governor in Council of the province, as from a date specified in the notification, a local legislature for that province, and fix the number of the lieutenant-governor in Council, and define the limits of the province for which the Lieutenant-Governor in Council is to exercise legislative powers. new local legislatures. [24 & 25 Vict. c. 67, ss 46-49.]

(2) Any law made by the local legislature of any province shall continue in force in any part of the province severed therefrom in pursuance of this section until suspended by a law of the governor-general or of the local legislature to whose province the part is annexed (*a*).

(*a*) This section is intended to give the effect of the existing enactments in the Act of 1861 (24 & 25 Vict. c. 67, ss. 46-49), which run as follows:—

'46. It shall be lawful for the governor-general, by proclamation as aforesaid, to constitute from time to time new provinces for the purposes of this Act, to which the like provisions shall be applicable; and, further, to appoint from time to time a lieutenant-governor to any province so constituted as aforesaid, and from time to time to declare and limit the extent of the authority of such lieutenant-governor, in like manner as is provided by the Government of India Act, 1854, respecting the lieutenant-governors of Bengal and the North-Western Provinces.

'47. It shall be lawful for the Governor-General in Council, by such proclamation as aforesaid, to fix the limits of any presidency, division, province, or territory in India for the purposes of this Act, and further by proclamation to divide or alter from time to time the limits of any such presidency, division, province, or territory, for the said purposes. Provided always, that any law or regulation made by the Governor or Lieutenant-Governor in Council of any presidency, division, province, or territory shall continue in force in any part thereof which may be severed therefrom by any such proclamation, until superseded by law or regulation of the Governor-General in Council, or of the Governor or Lieutenant-Governor in Council of the presidency, division, province, or territory to which such parts may become annexed.

'48. It shall be lawful for every such Lieutenant-Governor in Council thus constituted to make laws for the peace and good government of his respective division, province, or territory; and, except as otherwise hereinbefore specially provided, all the provisions in this Act contained

respecting the nomination of additional members for the purpose of making laws and regulations for the presidencies of Fort Saint George and Bombay, and limiting the power of the Governors in Council of Fort Saint George and Bombay, for the purpose of making laws and regulations, and respecting the conduct of business in the meetings of such councils for that purpose, and respecting the power of the governor-general to declare or withhold his assent to laws or regulations made by the Goverpor in Council of Fort Saint George and Bombay, and respecting the power of Her Majesty to disallow the same, shall apply to laws or regulations to be so made by any such Lieutenant-Governor in Council.

'49. Provided always, that no proclamation to be made by the Governor-General in Council under the provisions of this Act, for the purpose of constituting any council for any presidency, division, provinces, or territories hereinbefore named, or any other provinces, or for altering the boundaries of any presidency, division, province, or territory, or constituting any new province for the purpose of this Act, shall have any force or validity until the sanction of Her Majesty to the same shall been have previously signified by the Secretary of State in Council to the governor-general.'

It was under these enactments that local legislatures were established for the North-Western Provinces and Oudh (1886), for Burma (1897), and for Eastern Bengal and Assam (1905). *See* Act VII of 1905.

The effect of the enactments appears to be that a new lieutenant-governorship cannot be created unless a local legislature is created at the same time, as was done in the last two cases mentioned above.

Procedure at meetings of lieutenant-governor's council. [24 & 25 Vict. c. 67, s. 45.]

75.—(1) At every meeting of a lieutenant-governor's council the lieutenant-governor, or in his absence the member of the council highest in official rank among those holding office under the Crown, presides.

(2) The legislative powers of the council may be exercised only at meetings at which the lieutenant-governor or some other member holding office under the Crown, and not less than one-half of the members of the council, are present.

(3) In case of difference of opinion at any meeting of the lieutenant-governor's council, if there is an equality of votes, the lieutenant-governor or other person presiding has a second or casting vote.

Powers of local legislature. [24 & 25 Vict. c. 67,

76.—(1) The local legislature of any province in India may, subject to the provisions of this Digest, make laws for the peace and good government of the territories for the time being constituting that province (*a*)

(2) The local legislature of any province may, with the previous sanction of the governor-general, but not otherwise, repeal or amend as to that province any law or regulation made by any authority in India other than that local legislature (*b*). ss. 42, 43, 48. 55 & 56 Vict. c. 14, s. 5.]

(3) The local legislature of any province may not, without the previous sanction of the governor-general, make or take into consideration any law—

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

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

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

(*d*) altering in any way the Indian Penal Code (*c*) ; or

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

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

(*g*) regulating patents or copyright ; or

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

(4) The local legislature of any province has not power to make any law affecting any Act of Parliament for the time being in force in the province (*d*).

(5) Provided that an Act or a provision of an Act made by a local legislature, and subsequently assented to by the governor-general in pursuance of the provisions contained in this Digest, is not to be deemed invalid by reason only of its requiring the previous sanction of the governor-general under this section.

(*a*) The Governor-General in Council has concurrent power to legislate for a province under a local legislature. In practice, however, this power is not, unless under very exceptional circumstances, exercised as to matters within the competency of the local legislature

(*b*) Under the Act of 1861 a local legislature could not alter an Act of the Government of India passed after the Act of 1861 came into operation. Consequently the sphere of operations of the local legislatures was often inconveniently restricted by the numerous Acts passed by the Governor-General in Council since 1861, particularly by such general Acts as the Evidence Act and the Easements Act. The provision reproduced in sub-section (2) was inserted in the Act of 1892 for the purpose of removing this inconvenience.

(*c*) Sir Charles Wood, when Secretary of State for India, in a dispatch dated December 1, 1862, addressed the Government of India as follows:—

'Cases, no doubt, will occasionally occur when special legislation by the local Governments for offences not included in the Penal Code will be required. In these cases the general rule should be to place such offences under penalties already assigned in the Code to acts of a similar character. This mode of legislation, though an addition to, cannot be deemed an alteration of the Penal Code; but if any deviation is considered necessary, then the law requires that your previous sanction should be obtained.

'It was the intention of Her Majesty's Government that, except in local and peculiar circumstances, the Code should contain the whole body of penal legislation, and that all additions or modifications suggested by experience should from time to time be incorporated in it. And the duty of maintaining this uniformity, of course, devolves upon your Excellency in Council.

'As a general rule, for the guidance of the local councils, it would probably be expedient—and this appears also to be your own view—that all bills containing penal clauses should be submitted for your previous sanction.'

In consequence of this dispatch all Bills introduced into a local legislature and containing penal clauses are required to be sent to the Government of India for consideration as to the penal clauses.

As to what would amount to an alteration of the Penal Code, see Minutes by Sir H. S. Maine, Nos. 5 and 6.

(*d*) Among the Acts which a local legislature cannot 'affect' is the Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), and, consequently, questions have arisen as to the validity of laws affecting the jurisdiction of the chartered high court. It has been held that the Governor of Bombay in Council has power to pass Acts limiting or regulating the jurisdiction of the courts established by the local legislature, and that such Acts are not void merely because their indirect effect may be to increase or diminish the occasions for the exercise of the appellate jurisdiction of the high court (*Premshankar Raghunathji* v. *Government of Bombay*, 8 Bom. H. C. Rep. A. C. I. 195). Also that the Bombay Legislative Council has authority to make laws regulating the rights and obligations of the subjects of the Bombay Government, but not to affect the authority of the high court in dealing with those rights and obligations (*Collector of Thana* v. *Bhaskar Mahadev Rheth*, I. L. R., 8 Bom. 264).

The power of the Governor-General in Council to affect by legislation the prerogative of the Crown is expressly recognized by statute (see below, s. 79). It may perhaps be inferred that the local legislatures do not possess this power. But see *Bell* v. *Municipality of Madras*, 25 Mad. 474.

Business at legislative meetings. [24 & 25 Vict. c. 67. ss. 37, 38, 48. 55 & 56 Vict. c. 14, s. 2.]

77.—(1) At a legislative meeting of the Governor of Madras in Council or of the Governor of Bombay in Council, and at a meeting of a Lieutenant-Governor in Council, no business may be transacted other than the consideration of measures introduced [or proposed to be introduced] (*a*) into the council for the purpose of enactment, or the alteration of rules for the conduct of business at legislative meetings.

(2) At any such meeting no motion may be entertained other than a motion for leave to introduce a measure into the council for the purpose of enactment, or having reference to a measure introduced [or proposed to be introduced into the council for that purpose, or having reference to some rule for the conduct of business] (*a*).

(3) Provided that the Governors in Council of Madras and Bombay respectively, and the lieutenant-governor of any province having a local legislature, may, with the sanction of the Governor-General in Council, make rules for authorizing at any legislative meeting of their respective councils the discussion of the annual financial statement of their respective local Governments and the asking of questions, but under such conditions and restrictions as to subject or otherwise as may in the rules applicable to those councils respectively be prescribed or declared. But no member at any legislative meeting of any such council has power to submit or propose any resolution or to divide the council in respect of any such financial discussion or the answer to any question asked under the authority of this sub-section or the rules made under this sub-section (*b*).

(4) It is not lawful for any member of any such council to introduce, without the previous sanction of the governor or lieutenant-governor, any measure affecting the public revenues of the province or imposing any charge on those revenues.

(5) Rules for the conduct of business at legislative meetings of the Governor of Madras in Council, or of the Governor of Bombay in Council, or of any Lieutenant-Governor in Council, may be made and amended at legislative meetings of the council, subject to the assent of that governor or lieutenant-governor, but any such rule may be disallowed by the Governor-General in Council, and if so disallowed shall have no effect: *Provided* that rules made under this section with respect to the discussion of the annual financial statement and the asking of questions are not to be subject to amendment as aforesaid.

(*a*) The words in square brackets are not in the Act of 1861, but represent the existing practice.

(*b*) This qualification on the restrictions imposed by the Act of 1861 was introduced by the Act of 1892.

Assent to Acts of local legislatures.

78.—(1) When an Act has been passed by the council of a governor at a legislative meeting thereof, or by the council of a lieutenant-governor, the governor or lieutenant-governor, whether he was or was not present in council at the passing of the Act, may declare that he assents to or withholds his assent from the Act.

(2) If the governor or lieutenant-governor withholds his assent from any such Act, the Act has no effect.

(3) If the governor or lieutenant-governor assents to any such Act he must forthwith send an authentic copy of the Act to the governor-general, and the Act has not validity until the governor-general has assented thereto, and that assent has been signified by the governor-general to the governor or lieutenant-governor, and published by the governor or lieutenant-governor.

(4) Where the governor-general withholds his assent from any such Act he must signify to the governor or lieutenant-governor in writing his reason for so withholding his assent (*a*).

(5) When any such Act has been assented to by the governor-general, he must send to the Secretary of State an authentic copy thereof, and it is lawful for His Majesty to signify through the Secretary of State in Council his disallowance of any such Act.

(6) Where the disallowance of any such Act has been so signified the governor or lieutenant-governor must forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, becomes void accordingly.

(*a*) Assent has been withheld on one or more of the following grounds:—

(1) that the principle or policy of the Act, or of some particular provision of the Act, is unsound;

(2) that the Act, or some provision of the Act, is *ultra vires* of the local legislature;

(3) that the Act is defective in form.

With respect to (3) the recent practice of the Government of India has, it is believed, been to avoid as much as possible criticism of the drafting of local Bills or Acts.

Validity of Indian Laws.

Removal of doubts as to validity of certain laws. [24 & 25 Vict. c. 67, ss. 14, 24, 33, 48. 34 & 35 Vict. c 34, s. 1.]

79. A law made by any authority in India is not invalid solely on account of any one or more of the following reasons:—

(*a*) in the case of a law made by the Governor-General in Council, because it affects the prerogative of the Crown (*a*):

(*b*) in the case of any law, because the requisite proportion of members not holding office under the Crown in India was not complete at the date of its introduction to the Council or its enactment:

(*c*) in the case of a law made by a local legislature, because it confers on magistrates, being justices of the peace, the same jurisdiction over European British subjects as that legislature by Acts duly made could lawfully confer on magistrates in the exercise of authority over natives in the like cases (*b*).

(*a*) This saving does not appear to apply to the local legislatures. See note (*c*) on s. 76. As to the prerogatives of the Crown, see note (*a*) on s. 36.

(*b*) An Indian Act (XXII of 1870) was passed to confirm certain previous Acts of the Madras and Bombay legislatures which had been adjudged invalid on the ground of interference with the rights of European British subjects. See *R.* v. *Reay*, 7 Bom. Cr. 6, and the speeches of Mr. FitzJames Stephen in the Legislative Council in 1870, Proceedings, pp. 362, 384. As Indian legislation could not confer on local legislatures the requisite power in the future, it was conferred by an Act of Parliament in 1871 (34 & 35 Vict. c. 34).

PART VII.

SALARIES, LEAVE OF ABSENCE, VACATION OF OFFICE, TEMPORARY APPOINTMENTS, ETC.

Salaries and allowances of governor-general and certain other officials in India. [33 Geo. III, c. 52, s. 32. 3 & 4 Will. IV, c. 85, ss. 76, 77. 16 & 17 Vict. c. 95, s. 35. 24 & 25 Vict. c. 67, s. 4. 43 Vict. c. 3, ss. 2, 4.]

80.—(1) There are to be paid to the Governor-General of India and to the other persons mentioned in the First Schedule to this Digest, out of the revenues of India, such salaries, not exceeding in any case the maximum specified in that behalf in the said schedule, and such allowances (if any) for equipment and voyage, as the Secretary of State in Council may by order fix in that behalf, and subject to or in default of any such order, as are now payable.

(2) Provided as follows :—

(*a*) An order affecting salaries of members of the Governor-General's council may not be made without the concurrence of a majority of votes at a meeting of the Council of India ;

(*b*) If any person to whom this section applies holds or enjoys any pension or salary, or any office of profit under the Crown or under any public office, his salary under this section must be reduced by the amount of the pension, salary, or profits of office so held or enjoyed by him ;

(*c*) Nothing in the provisions of this section with respect to allowances authorizes the imposition of any additional charge on the revenues of India.

(3) The salary payable to a person under this section commences on his taking upon himself the execution of the office to which the salary is attached, and is to be the whole profit or advantage which he enjoys during his continuance in the office (*a*).

(*a*) The salaries of the governor-general, governors, and members of council were fixed at what is shown as the maximum in the First Schedule by 3 & 4 Will. IV, c. 85, s. 76 ; but were there declared to be subject to such reduction as the Court of Directors, with the sanction of the Board of Control, might at any time think fit.

The salary of the commander-in-chief and of lieutenant-governors was fixed at 100,000 Company's rupees by 16 & 17 Vict. c. 95, s. 35, but the salaries so fixed were declared to be subject to the provisions and regulations of the Government of India Act, 1833 (3 Will. IV, c. 85), concerning the salaries thereby appointed.

The view adopted in this Digest is that these salaries can be fixed at any amount not exceeding the amounts specified in the Acts of 1833 and 1853. The power to reduce has been exercised more than once, but it is open to argument whether the power to reduce involves a power to raise subsequently.

The allowances for equipment and voyage of the officers mentioned in the First Schedule (and also of the bishops and archdeacons of Calcutta, Madras, and Bombay) may, under the Indian Salaries and Allowances Act, 1880 (43 Vict. c. 3), be fixed, altered or abolished by the Secretary of State in Council. But nothing in that Act was to authorize the imposition of any additional charge on the revenues of India.

Sub-section (3) is taken from s. 76 of the Act of 1833.

Under 33 Geo. III, c. 52, s. 32, a commander-in-chief was not to be entitled to any salary or emolument as member of council, unless it was specially granted by the Court of Directors.

The salaries and allowances now paid under the enactments reproduced in this Digest are as follows :—

Officer	*Salary.*	*Equipment and Voyage*[1].
	Rs.	£
Viceroy and Governor-General .	2,50,800	3,500
Governors of Bombay and Madras	1,20,000	1,000
Commander-in-Chief	1,00,000	500
Lieutenant-Governor	1,00,000	—
Member of Governor-General's Council	76,800	300
Member of Council, Madras and Bombay	61,440	—
Chief Justice, Calcutta	72,000	300
Puisne Judges, Calcutta	45,000	
Chief Justice, Madras	60,000	
Puisne Judges, Madras	45,000	
Chief Justice, Bombay	60,000	
Puisne Judges, Bombay	45,000	
Bishop of Calcutta . .	45,977	300
Bishops of Madras and Bombay	25,000	
Archdeacon, Calcutta	Pay as Senior Chaplains	
,, Madras		
,, Bombay . . .	Rs 3,200	

[1] These allowances are not payable unless the officer is resident in Europe at the time of the appointment.

Leave of absence to members of council. [24 & 25 Vict. c. 67, s. 26.]

81.—(1) The Governor-General in Council and the Governors of Madras and Bombay in Council respectively may grant to any of the ordinary members of their respective councils leave of absence under medical certificate for a period not exceeding six months.

(2) Where an ordinary member of council obtains leave of absence in pursuance of this section, he retains his office during his absence, and on his return and resumption of his duties is entitled to receive half his salary for the period of his absence; but if his absence exceeds six months his office becomes vacant.

Provision as to absence from India or province [33 Geo. III, c. 52, s. 37. 7 Geo. IV, c. 56, s. 31. 3 & 4 Will. IV, c. 85, s. 79. 7 Will. IV, and 1 Vict. c 47]

82.—(1) If the governor-general, the Governor of Madras, the Governor of Bombay, or the commander-in-chief of His Majesty's forces in India, and, subject to the foregoing provisions of this Digest as to leave of absence, if any ordinary member of the council of the governor-general, or of the Governor of Madras or Bombay, departs from India intending to return to Europe, his office thereupon becomes vacant (*a*).

[(2) No act or declaration of any governor-general, governor, or member of council, other than as aforesaid, except a declaration in writing under hand and seal, delivered to the secretary for the public department of the presidency wherein he is, in order to its being recorded, shall be deemed or held as a resignation or surrender of his office (*b*).]

[(3) If the governor-general, or any ordinary member of the governor-general's council, leaves India otherwise than in the known actual service of the Crown, and if any governor, lieutenant-governor, or ordinary member of a governor's council leaves the presidency to which he belongs otherwise than as aforesaid, his salary and allowances are not payable during his absence to any person for his use (*c*).]

[(4) If any such officer, not having proceeded or intended to proceed to Europe, dies during his absence and whilst intending to return to India or to his presidency, his salary and

allowances, will, subject to any rules in that behalf made by the Secretary of State in Council, be paid to his personal representatives.

(5) If any such officer does not return to India or his presidency, or returns to Europe, his salary and allowances will be deemed to have ceased on the day of his leaving India or his presidency (*d*).]

(*a*) Under 33 Geo. III, c. 52, s. 37, 'the departure from India of any governor-general, governor, member of council, or commander-in-chief, with intent to return to Europe, shall be deemed in law a resignation and avoidance of his office,' and his arrival in any part of Europe is to be a sufficient indication of such intent. The Act of 1833 (3 & 4 Will. IV, c. 85, s. 79) enacts in almost identical words that the return to Europe, or departure from India with intent to return to Europe, of any Governor-General of India, governor, member of council, or commander-in-chief, is to be deemed in law a resignation and avoidance of his office or employment. These provisions have been qualified as to members of council by the power to grant sick leave under the Act of 1861 (see s. 82). But when the Duke of Connaught wished to visit England in the Jubilee year during his term of office as commander-in-chief in the Bombay Presidency a special Act had to be passed (50 Vict. sess. 2, c. 10).

(*b*) This sub-section reproduces a provision in s. 79 of the Act of 1833, which was copied from a similar provision in the Act of 1793. The provision possibly arose out of the circumstances attending Warren Hastings' resignation in 1776 (see above, p. 64), but does not appear to be observed in practice.

(*c*) This sub-section is intended to reproduce as far as practicable the effect of the enactments still in force on this subject, but their language is not clear, and was framed with reference to circumstances which no longer exist.

Section 37 of the Act of 1793 enacts that 'if any such governor-general or any other officer whatever in the service of the said Company shall quit or leave the presidency or settlement to which he shall belong, other than in the known actual service of the said Company, the salary and allowances appertaining to his office shall not be paid or payable during his absence to any agent or other person for his use, and in the event of his not returning back to his station at such presidency or settlement, or of his coming to Europe, his salary and allowances shall be deemed to have ceased from the day of his quitting such presidency or settlement, any law or usage to the contrary notwithstanding.'

An Act of 1826 (7 Geo. IV, c. 56. s. 3), after referring to this provision, enacts that the 'Company may cause payment to be made to the representatives of officers in their service, civil or military, who, having

quitted or left their stations and not having proceeded or intended to proceed to Europe, intending to return to their stations, have died or may hereafter happen to die during their temporary absence within the limits of the said Company's charter or at the Cape of Good Hope, of such salaries and allowances, or of such portions of salaries and allowances, as the officers so dying would have been entitled to if they had returned to their station.'

Section 79 of the Act of 1833 enacts that 'if any such governor-general or member of council of India shall leave the said territories, or if any governor or other officer whatever in the service of the said Company shall leave the presidency to which he shall belong, other than in the known actual service of the said Company, the salary and allowances appertaining to his office shall not be paid or payable during his absence to any agent or other person for his use, and in the event of his not returning or of his coming to Europe, his salary and allowances shall be deemed to have ceased from the day of his leaving the said territories or the presidency to which he may have belonged. Provided that it shall be lawful for the said Company to make such payment as is now by law permitted to be made to the representatives of their officers or servants who, having left their stations intending to return thereto, shall die during their absence.'

An Act of 1837 (7 Will. IV, c. 47) enacts that these provisions in the Acts of 1793 and 1833 are 'not to extend to the case of any officer or servant of the Company under the rank of governor or member of council who shall quit the presidency to which he shall belong in consequence of sickness under such rules as may from time to time be established by the Governor-General of India in Council, or by the Governor in Council of such presidency, as the case may be, and who shall proceed to any place within the limits of the East India Company's charter, or to the Mauritius, or to the island of St. Helena, nor to the case of any officer or servant of the said Company under such rank as aforesaid who, with the permission of the Government of the presidency to which he shall belong, shall quit such presidency in order to proceed to another presidency for the purpose of embarking thence for Europe, until the departure of such officer or servant from such last-mentioned presidency with a view to return to Europe, so as that the port of such departure for Europe shall not be more distant from the place which he shall have quitted in his own presidency than any port of embarkation within such presidency.'

These rules were to require the approval of the Court of Directors and the Board of Control.

Finally, s. 32 of the Act of 1853 (see s. 89 of the Digest) declared that 'Nothing in any enactment now in force, or any charter relating to the said Company, shall be taken to prevent the establishment, by the Court of Directors (under the direction and control of the said Board of Commissioners), from time to time, of any regulations which they may deem expedient in relation to the absence on sick leave or furlough of all or any officers and persons in the service of the said Company in

India, or receiving salaries from the said Company there, under which they respectively may be authorized to repair to and reside in Europe or elsewhere out of the limits of the said Company's charter, without forfeiture of pay or salary, during the times and under the circumstances during and under which they may now be permitted (while absent from their duty) to reside in places out of India within the limits of the said Company's charter, or during such times and under such circumstances as by such regulations may be permitted.'

The powers conferred by the Act of 1853 would seem to over-ride the previous provisions as to salary, but not the previous provisions as to vacation of office.

(*d*) The last two sub-sections are inserted as a rough reproduction of the Act of 1826, and of an enactment in the Act of 1853, but it is doubtful whether these enactments are still law, and whether they are not superseded by regulations under the Act of 1853.

Conditional appointments. [3 & 4 Will. IV, c. 85, s. 61. 24 & 25 Vict. c. 67, ss. 2, 5.]

83.—(1) His Majesty may by warrant under his Sign Manual appoint any person conditionally to succeed to any of the offices of governor-general, governor, or ordinary member of the council of the governor-general or of the Governor of Madras or Governor of Bombay, in the event of the office becoming vacant, or in any other event or contingency expressed in the appointment, and to revoke any such conditional appointment (*a*).

(2) A person so conditionally appointed is not entitled to any authority, salary, or emolument appertaining to the office to which he is appointed, until he is in the actual possession of the office.

(*a*) By 3 & 4 Will. IV, c. 85, the power of making conditional appointments to the offices of governor-general, governor, and member of the Council of Madras and Bombay was vested in the Court of Directors, and consequently is now vested in the Secretary of State (21 & 22 Vict. c. 106, s. 3).

Under 24 & 25 Vict. c. 67, s. 5, the power of making conditional appointments to the office of ordinary member of the governor-general's council is apparently exercisable either by the King, or by the Secretary of State with the concurrence of a majority of the Council of India.

In practice, the power is in all these cases exercised by the King only.

Power for governor-general to exercise powers before taking

84.—(1) If any person entitled under a conditional appointment to succeed to the office of governor-general on the occurrence of a vacancy therein, or appointed absolutely to that office, is in India on or after the occurrence of the vacancy, or on or after the receipt of the absolute appoint-

seat. [21 & 22 Vict. c. 106, s. 63.]

ment, as the case may be, and thinks it necessary to exercise the powers of governor-general before he takes his seat in council, he may make known by proclamation his appointment, and his intention to assume the office of governor-general.

(2) After the proclamation, and thenceforth until he repairs to the place where the council may assemble, he may exercise alone all or any of the powers which might be exercised by the Governor-General in Council, except the power of making laws at legislative meetings.

(3) All acts done in the council after the date of the proclamation, but before the communication thereof to the council, are valid, subject, nevertheless, to revocation or alteration by the person who has so assumed the office of governor-general.

(4) When the office of governor-general is assumed under the foregoing provision, if there is, at any time before the governor-general takes his seat in council no president of the Council authorized to preside at legislative meetings, the senior ordinary member of council then present presides therein, with the same powers as if a president had been appointed and were absent.

Provision for temporary vacancy in office of governor-general. [3 & 4 Will. IV, c. 85, s. 62. 24 & 25 Vict. c. 67, ss. 50, 51.]

85.—(1) If a vacancy occurs in the office of governor-general when there is no conditional or other successor in India to supply the vacancy, the Governor of Madras, or the Governor of Bombay, whichever has been first appointed to the office of governor by His Majesty, is to hold and execute the office of governor-general until a successor arrives or until some person in India is duly appointed thereto.

(2) Every such acting governor-general, while acting as such, has and may exercise all the rights and powers of the office of governor-general, and is entitled to receive the emoluments and advantages appertaining to the office, forgoing the salary and allowances appertaining to his office of governor; and his office of governor is supplied for the

time during which he acts as governor-general in the manner directed by law with respect to vacancies in the office of governor.

(3) If, on the vacancy occurring, it appears to the governor who by virtue of this provision holds and executes the office of governor-general necessary to exercise the powers thereof before he takes his seat in council, he may make known by proclamation his appointment, and his intention to assume the office of governor-general, and thereupon the provisions of this Digest respecting the assumption of the office by a person conditionally appointed to succeed thereto apply.

(4) Until such a governor has assumed the office of governor-general, if no conditional or other successor is on the spot to supply such vacancy, the senior ordinary member of council holds the office of governor-general until the vacancy is filled in accordance with the provisions of this Digest (*a*).

(5) Every ordinary member of council so acting as governor-general, while so acting, has and may exercise all the rights and powers of the office of governor-general, and is entitled to receive the emoluments and advantages appertaining to the office, forgoing his salary and allowances as member of council for that period.

(*a*) Thus, on Lord Mayo's death in 1872, Sir John Strachey acted as governor-general from February 9 until the arrival of Lord Napier of Merchistoun on February 23.

Provision for temporary vacancy in office of Governor of Madras or Bombay. [3 & 4 Will. IV, c. 85, s. 63]

86.—(1) If a vacancy occurs in the office of Governor of Madras or Bombay when no conditional or other successor is on the spot to supply the vacancy, the senior ordinary member of the governor's council, or, if there is no council, the senior secretary to the local Government (*a*), holds and executes the office of governor until a successor arrives, or until some other person on the spot is duly appointed thereto.

(2) Every such acting governor is, while acting as such, entitled to receive the emoluments and advantages appertaining

to the office of governor, forgoing the salary and allowances appertaining to his office of member of council or secretary.

(*a*) The Act of 1833 contained a power to abolish these councils.

Provision for temporary vacancy in office of ordinary member of council. [3 & 4 Will. IV. c. 85, s. 64. 24 & 25 Vict. c. 67, s. 2.]

87.—(1) If a vacancy occurs in the office of an ordinary member of the council of the governor-general, or of the council of the Governor of Madras or Bombay, when no person conditionally appointed to succeed thereto is present on the spot, the vacancy is to be supplied by the appointment of the Governor-General in Council or Governor in Council, as the case may be.

(2) Until a successor arrives the person so appointed executes the office to which he has been appointed, and has and exercises all the rights and powers thereof, and is entitled to receive the emoluments and advantages appertaining to the office during his continuance therein, forgoing all salaries and allowances by him held and enjoyed at the time of his being appointed to that office.

(3) If any ordinary member of any of the said councils is, by infirmity or otherwise, rendered incapable of acting or of attending to act as such, or is absent on leave, and if any person has been conditionally appointed as aforesaid, the place of the member so incapable or absent is to be supplied by that person.

(4) If no person conditionally appointed to succeed to the office is on the spot, the Governor-General in Council or Governor in Council, as the case may be, is to appoint some person to be a temporary member of council, and, until the return to duty (*a*) of the member so incapable or absent, the person conditionally or temporarily appointed executes the office to which he has been appointed, and has and exercises all the rights and powers thereof, and receives half the salary of the member of council whose place he supplies, and also half the salary of any other office he may hold, if he hold any such office, the remaining half of such last-named salary being at the disposal of the Governor-General in Council or Governor in Council, whichever may appoint to the office.

(5) Provided as follows :—

(*a*) No person may be appointed a temporary member of council who might not have been appointed as hereinbefore provided to fill the vacancy supplied by the temporary appointment, and

(*b*) If the Secretary of State informs the governor-general that it is not the intention of His Majesty to fill a vacancy in the council of the governor general, no temporary appointment may be made under this section to fill the vacancy, and if any such temporary appointment has been made before the date of the receipt of the information by the governor-general, the tenure of the person temporarily appointed ceases from that date

(*a*) The words 'to duty' are not in the Act, but seem to express the intention

Vacancies amongst additional members of council [24 & 25 Vict c 67, ss 12, 31 55 & 56 Vict c 14, s 4]

88.—(1) An additional member of the council of the governor-general or of a governor, or a member of the council of a lieutenant governor may resign his office to the governor-general or to the governor or lieutenant-governor, and on the acceptance of the resignation the office becomes vacant

(2) If any such additional member or member is absent from India or unable to attend to the duties of his office for a period of two consecutive months, the governor-general, governor, or lieutenant-governor, as the case may be, may declare by a notification published in the Government Gazette, that the seat in council of that additional member or member has become vacant

(3) In the event of a vacancy occurring by reason of the absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted of any such additional member or member, the governor-general, governor, or lieutenant-governor, as the case may be, may nominate any person as an additional member or member, as the case may be, in his place, and every additional member or member so nominated must be summoned to all meetings of the

legislative council to which he belongs for the term of two years from the date of his nomination: Provided that it is not lawful by any such nomination to diminish the proportion of non-official members required by law (*a*).

(*a*) The provisions in the Act of 1861 as to the resignation of additional members were modified and supplemented by the Act of 1892.

Leave on furlough. [16 & 17 Vict. c 95, s. 32.]

89. The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make regulations as to the absence on sick leave or furlough of persons in the service of the Crown in India, and the terms as to continuance or diminution of pay, salary, and allowances on which any such sick leave or furlough may be granted.

Power to make regulations as to Indian appointments. [3 & 4 Will. IV, c. 85, s. 78. 21 & 22 Vict. c. 106, ss. 30, 37.]

90. The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make regulations for distributing between the several authorities in India the power of making appointments to and promotions in offices, commands, and employments under the Crown in India

PART VIII.

THE CIVIL SERVICE OF INDIA.

No disabilities in respect of religion, colour, or place of birth. [3 & 4 Will. IV, c. 85, s. 17.]

91. No native of British India, nor any natural-born subject of His Majesty resident therein, is, by reason only of his religion, place of birth, descent, or colour, or any of them, disabled from holding any place, office, or employment under His Majesty in India.

This reproduces s. 87 of the Act of 1833, with the substitution of 'British India' for 'the said territories,' and 'His Majesty in India' for 'the said Company.' See the comments on this enactment in pars. 103–109 of the dispatch of December 10, 1834.

Regulations for admission to civil

92.—(1) The Secretary of State in Council may, with the advice and assistance of the Civil Service Commissioners, make regulations for the examination of natural-born subjects of

His Majesty desirous of becoming candidates for appointment to the Civil Service of India. [21 & 22 Vict. c. 106, s. 32.] service.

(2) The regulations prescribe the age and qualifications of the candidates, and the subjects of examination.

(3) Every regulation made in pursuance of this section must be forthwith laid before Parliament.

(4) The candidates certified to be entitled under the regulations must be recommended for appointment according to the order of their proficiency as shown by their examination.

(5) Such persons only as are so certified may be appointed or admitted to the Civil Service of India by the Secretary of State in Council (*a*).

(*a*) The civil service referred to in these sections is the service which used to be known as the covenanted civil service, but which, under the rules framed in pursuance of Sir Charles Aitchison's Commission, is designated the Civil Service of India. See above, p. 125.

Where a child of a father or mother who has been naturalized under the Naturalization Act, 1870 (33 & 34 Vict. c. 14), has during infancy become resident with the father or mother in any part of the United Kingdom he is, by virtue of s. 10 (5) of that Act, a naturalized British subject, and is entitled to be treated under the enactment reproduced by this clause as if he were a natural-born British subject. The expression includes a native of British India, but would, apparently, not include a subject of a Native State in India.

93. Subject to the provisions of this Digest, all vacancies happening in any of the offices specified or referred to in the Second Schedule to this Digest, and all such offices which may be created hereafter, must be filled from amongst the members of the Civil Service of India belonging to the presidency wherein the vacancy occurs. [24 & 25 Vict. c. 54, s. 2. 33 Geo. III, c. 52, s. 57.] Offices reserved to civil servants.

The provision of the Act of 1793 as to filling vacancies from among members belonging to the same presidency appears to be still in force, but has given rise to practical difficulties, and seems inapplicable to such offices as that of secretary to the Government of India.

94.—(1) The authorities in India by whom appointments are made to offices in the Civil Service of India may appoint any native of India of proved merit and ability to any such office, although he has not been admitted to that service in accordance with the foregoing provisions of this Digest. [33 & 34 Power to appoint natives of India to reserved offices.

Vict. c. 3, s. 6.]

(2) Every such appointment must be made subject to such rules as may be prescribed by the Governor-General in Council, and sanctioned by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council of India.

(3) For the purposes of this section the expression 'native of India' includes any person born and domiciled in British India, of parents habitually resident in British India, and not established there for temporary purposes only; and the Governor-General in Council may by resolution define and limit the qualification of natives of India thus expressed; but every resolution made by him for that purpose will be subject to the sanction of the Secretary of State in Council, and will not have force until it has been laid for thirty days before both Houses of Parliament.

The enactment reproduced by this section is not very clearly expressed, and runs as follows:—

'Whereas it is expedient that additional facilities should be given for the employment of natives in India, of proved merit and ability, in the civil service of Her Majesty in India: Be it enacted, that nothing in the Government of India Act, 1858, or in the Indian Civil Service Act, 1861, or in any other Act of Parliament or other law now in force in India, shall restrain the authorities in India by whom appointments are or may be made to offices, places, and employments in the civil service of Her Majesty in India from appointing any native of India to any such office, place, or employment, although such native shall not have been admitted to the said Civil Service of India in manner in s. 32 of the first-mentioned Act provided, but subject to such rules as may be from time to time prescribed by the Governor-General in Council and sanctioned by the Secretary of State in Council, with the concurrence of a majority of members present; and that for the purpose of this Act the words "natives of India" shall include any person born or domiciled within the dominions of Her Majesty in India, of parents habitually resident in India, and not established there for temporary purposes only; and that it shall be lawful for the Governor-General in Council to define and limit from time to time the qualification of natives of India thus expressed; provided that every resolution made by him for such purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for thirty days before both Houses of Parliament.'

For the history of the successive rules made under this section, see above, p. 124. The expression 'native of India' as defined by the section is construed as including persons born or domiciled in a Native State.

95.—(1) Where it appears to the authority in India by whom an appointment is to be made to any office reserved to members of the Civil Service of India, that a person not being a member of that service ought, under the special circumstances of the case, to be appointed thereto, the authority may appoint thereto any person who has resided for at least seven years in India, and who has, before his appointment, fulfilled all the tests (if any) which would be imposed in the like case on a member of that service. Power to make provisional appointments in certain cases. [24 & 25 Vict. c. 54, ss. 3, 4.]

(2) Every such appointment is provisional only, and must forthwith be reported to the Secretary of State in Council, with the special reasons for making it; and unless the Secretary of State in Council approves the appointment, with the concurrence of a majority of votes at a meeting of the Council of India, and within twelve months from the date of the appointment notifies such approval to the authority by whom the appointment was made, the appointment must be cancelled.

PART IX.

The Indian High Courts.

Constitution.

96.—(1) (*a*) Each high court consists of a chief justice, and as many judges, not exceeding fifteen (*b*), as His Majesty may think fit to appoint. Constitution of high courts. [24 & 25 Vict. c. 104, ss. 2, 19.]

(2) A judge of a high court must be—

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

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

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

(*d*) A person having been a pleader (*c*) of a high court for a period of not less than ten years.

(3) Provided that not less than one-third of the judges of a high court, including the chief justice, must be such barristers or advocates as aforesaid, and that not less than one-third must be members of the Civil Service of India.

(*a*) There are four chartered high courts: at Calcutta, Madras, Bombay, and Allahabad.

(*b*) There is power in all cases to raise the number to this maximum.

(*c*) The word 'pleader' in the enactment reproduced by this section apparently includes every one who has for ten years been allowed to 'plead' in the Indian sense, i. e. to act as a barrister in the high court, though not a barrister or member of the Faculty of Advocates.

Tenure of office of judges of high courts. [24 & 25 Vict. c. 104, s. 4.]

97.—(1) Every judge of a high court holds his office during His Majesty's pleasure (*a*).

(2) Any such judge may resign his office, in the case of the high court at Calcutta, to the Governor-General in Council, and in the case of any other high court to the local Government of the province in which the high court is established.

(*a*) As to tenure during pleasure, see the note on s. 21 above.

Precedence of judges of high courts. [24 & 25 Vict. c. 104, s. 5.]

98.—(1) The chief justice of a high court has rank and precedence before the other judges of the same court.

(2) All the other judges of a high court have rank and precedence according to the seniority of their appointments, unless otherwise provided by the terms of their appointment.

Salaries, &c., of judges of high courts. [24 & 25 Vict. c. 104, s. 6.]

99. The Secretary of State in Council may fix the salaries, allowances, furloughs, retiring pensions, and (where necessary) expenses for equipment and voyage of the chief justices and judges of the several high courts, and from time to time alter them, but any such alteration does not affect the salary of any judge appointed before the date thereof.

For existing salaries and allowances, see note on s. 80.

Provision for vacancy in the office of chief justice or

100.—(1) On the occurrence of a vacancy in the office of chief justice of a high court, and during any absence of such a chief justice, the Governor-General in Council in the case of the high court at Calcutta, and the local Govern-

ment in other cases, is to appoint one of the judges of the same high court to perform the duties of chief justice of the court until some person has been appointed by His Majesty to the office of chief justice of the court, and has entered on the discharge of the duties of that office, or until the chief justice has returned from his absence, as the case requires (*a*). other judge. [24 & 25 Vict. c. 104, s. 7.]

(2) On the occurrence of a vacancy in the office of any other judge of any such high court, and during any absence of any such judge, or on the appointment of any such judge to act as chief justice, the Governor-General in Council or local Government, as the case may be, may appoint a person, with such qualifications as are required in persons to be appointed to the high court, to act as a judge of the high court; and the person so appointed may sit and perform the duties of a judge of the court until some person has been appointed by His Majesty to the office of judge of the court, and has entered on the discharge of the duties of the office, or until the absent judge has returned from his absence, or until the Governor-General in Council or local Government sees cause to cancel the appointment of the acting judge (*b*).

(*a*) Apparently the person appointed to act for the chief justice need not be a barrister-judge, though the chief justice himself must be a barrister. See s. 97 above.

(*b*) The appointment remains in force until the occurrence of one of the contingencies mentioned in this sub-section, and hence cannot be made for a specified time. Probably the 'acting judge' referred to at the end of the sub-section is the judge acting as chief justice referred to above. There is no limit of time within which the appointment must be made. See *Rao Balwant Singh* v. *Rani Kishori* L. R. 25 I. A. 54, 76.

Jurisdiction.

101.—(1) Subject to any law made by the Governor-General in Council (*a*), the several high courts have such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make Jurisdiction of high courts. [13 Geo. III, c. 63, ss. 13, 14. 21 Geo. III, c. 70, s. 8. 33 Geo. III, c. 52,

s. 156. 37 Geo. III, c. 142, s. 11. 39 & 40 Geo. III, c. 79, ss. 2, 5. 4 Geo. IV, c. 71, ss. 7, 17. 24 & 25 Vict. c. 104, s. 9.]

rules for regulating the practice of the court, as are vested in them by charter, and subject to the provisions of any such law or charter, all such jurisdiction, powers, and authority as were vested in any of the courts in the same presidency abolished by the Indian High Courts Act, 1861, at the date of their abolition (*b*).

(2) Each of the high courts at Calcutta, Madras, and Bombay is a court of record and a court of oyer and terminer and gaol delivery for the territories under its jurisdiction.

(3) Subject to any law which may be made by the Governor-General in Council, the said high courts have not and may not exercise any original jurisdiction in any matter concerning the revenue or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the regulations for the time being in force (*c*).

(*a*) This power is reserved by s. 9 of the Indian High Courts Act, 1861.

(*b*) The jurisdiction of the chartered high courts in India is based partly on their charters, and partly on parliamentary enactments applying either to the high courts themselves or to their predecessors.

The charters are to be found in the Statutory Rules and Orders Revised, Vol. VI.

The statutory enactments still unrepealed with respect to the jurisdiction of the high court are as follows :—

By s. 13 of the Regulating Act of 1773 (13 Geo. III, c. 63) the Supreme Court of Judicature at Fort William was declared to have full power and authority to exercise and perform all civil, criminal, admiralty, and ecclesiastical jurisdiction, and to appoint clerks and other ministerial officers, and to form and establish such rules of practice, and such rules for the process of the court, and to do all such things as might be found necessary for the administration of justice and the due execution of all or any of the powers which by the charter might be granted and committed to the court. It was also to be at all times a court of record and a court of oyer and terminer and gaol delivery in and for the town of Calcutta and factory of Fort William, and the limits thereof, and the factories subordinate thereto.

Under s. 14 of the same Act, the new charter of the court, and the jurisdiction, powers, and authorities to be thereby established, were to extend to all British subjects who should reside in the kingdoms or provinces of Bengal, Behar, and Orissa, or any of them, under the protection of the Company, and the court was to have full power and authority to hear and determine all complaints against any of His Majesty's subjects for any crime, misdemeanours, or oppressions, and

to entertain, hear, and determine any suits or actions whatsoever against any of His Majesty's subjects in Bengal, Behar, and Orissa, and any suit, action, or complaint against any person who at the time when the debt or cause of action or complaint had arisen had been employed by, or been directly or indirectly in the service of, the Company, or of any of His Majesty's subjects.

Section 156 of the East India Company Act, 1793 (33 Geo. III, c. 52), enacted and declared that the power and authority of the supreme court at Calcutta extended to the high seas, and that the court should have full power and authority to inquire, hear, try, examine, and determine, by the oaths of honest and lawful men, being British subjects resident in the town of Calcutta, all treasons, murders, piracies, robberies, felonies, maimings, forestallings, extortions, trespasses, misdemeanours, offences, excesses, and enormities, and maritime causes whatsoever, according to the laws and customs of the Admiralty of England, done, perpetrated, or committed upon any of the high seas, and to fine, imprison, correct, punish, chastise, and reform parties guilty and violators of the laws, in like and in as ample manner to all intents and purposes as the said court might or could do if the same were done, perpetrated, or committed within the limits prescribed by the charter, and not otherwise or in any other manner.

The East India Act, 1797 (37 Geo. III, c. 142), after providing for the erection of courts of judicature at Madras and Bombay, gave those courts, by s. 11, the jurisdiction formerly exercisable by the mayor's court at Madras and at Bombay, or by the courts of oyer and terminer or gaol delivery there, and declared, by s. 13, that these courts were to have full power to hear and determine all suits and actions that might be brought against the inhabitants of Madras and Bombay respectively in manner provided by the charter, subject however to the proviso in s. 108 of this Digest.

The Government of India Act, 1800 (39 & 40 Geo. III, c. 78), authorized the grant of a charter for the establishment of a supreme court at Madras. It was (s. 2) to have full power to exercise such civil, criminal, admiralty, and ecclesiastical jurisdiction, both as to natives and British subjects, and to be invested with such powers and authorities, privileges and immunities, for the better administration of the same, and to be subject to the same limitations, restrictions, and control within Fort St. George and the town of Madras, and the limits thereof, and the factories subordinate thereto, and within the territories subject to or dependent on the Government of Madras, as the supreme court at Fort William was invested with or subject to within Fort William or the kingdoms or provinces of Bengal, Behar, and Orissa.

The Indian Bishops and Courts Act, 1823 (4 Geo. IV, c. 71, s. 7), authorized the grant of a charter for the establishment of a supreme court at Bombay with jurisdiction corresponding to that previously given to the supreme court at Madras, and declared, by s. 17, that the supreme courts at Madras and Bombay were to have the same powers as the supreme court at Fort William in Bengal.

In 1828 an Act (9 Geo. IV, c. 74) was passed for improving the administration of criminal justice in the East Indies. The only sections now unrepealed in this Act are ss. 1, 7, 8, 9, 25, 26, 56, and 110. By s. 1 the Act is declared to extend to all persons and all places, as well on land as on the high seas, over whom or which the criminal jurisdiction of any of His Majesty's courts of justice erected or to be erected within the British territories under the government of the United Company of Merchants of England trading to the East Indies does or shall hereafter extend. Sections 7, 8, and 9, which relate to accessories, and s. 52, which relates to punishments, are apparently superseded as to admiralty cases by the Admiralty Offences (Colonial) Act, 1849 (12 & 13 Vict. c. 96), and the Admiralty Jurisdiction (India) Act. 1860 (23 & 24 Vict. c. 88) (see *The Queen Empress* v. *Barton*, I. L. R. 16 Cal. 238), and as to other cases by the Indian Codes.

Section 26 lays down a rule for interpreting criminal statutes, corresponding to the rule embodied for India in the General Clauses Act of 1897, and for the United Kingdom in the Interpretation Act, 1889.

Section 56 extends to British India the provisions previously enacted for England by 9 Geo. IV, c. 31, s. 8, with respect to offences committed in two different places, or partially committed in one place and completed in another, but has been held not to make any person liable to punishment for a complete offence who would not have been so liable before. See *Nga Hoong* v. *Reg.*, 7 Moo. Ind. App. 72, 7 Cox C.C. 489. In this case some Burmese native subjects of the East India Company committed a murder on the Cocos Islands, which were then uninhabited islands in the Bay of Bengal, within the limits of the Company's charter. They were convicted under the Act of 1828 by the supreme court of Calcutta, but the conviction was reversed by the Privy Council. It was held that the place in which the offence was committed was, but the offenders personally were not, within the jurisdiction conferred by the statute, and that the object of the statute was only to apply to the East Indies the enactment previously passed for England.

Section 110 of the Act of 1828 has been repealed, except so far as it is in force in the Straits Settlements.

The Admiralty Offences (Colonial) Act, 1849 (12 & 13 Vict. c. 96), enacts that if any person within any colony (which is to include British India, 23 & 24 Vict. c. 88, s. 1) is charged with the commission of any offence committed upon the sea or in any haven, river, creek, or place where the admiral has jurisdiction, or being so charged is brought for trial to any colony, all magistrates, justices of the peace, public prosecutors, juries, judges, courts, public officers, and other persons in the colony are to have the same jurisdiction and authority with respect to the offence as if the offence had been committed upon any waters situate within the limits of the local jurisdiction of the courts of criminal justice of the colony.

The Act further enacts (s. 3) that where any person dies in any colony of any stroke, poisoning, or hurt, having been feloniously stricken, poisoned, or hurt upon the sea, or in any haven, river, creek, or place

where the admiral has jurisdiction, or at any place out of the colony, every offence committed in respect of any such case, whether amounting to the offence of murder or of manslaughter, or of being accessory before the fact to murder, or after the fact to murder or manslaughter, may be dealt with and punished in the colony as if the offence had been wholly committed in the colony; and if any person is charged in any colony with any such offence resulting in death on the sea, or in any such haven, &c., the offence is to be held for the purposes of the Act to have been wholly committed upon the sea.

The Admiralty Jurisdiction (India) Act, 1860 (23 & 24 Vict. c. 88), provides (s. 2) that where any person within any place in India is charged with the commission of any offence in respect of which jurisdiction is given by the Act of 1849, or, being so charged, is brought for trial under that Act to any place in India, if before his trial he makes it appear that if the offence charged had been committed in that place he could have been tried only in the supreme court of one of the three presidencies in India, and claims to be so tried, the fact is to be certified, and he is to be sent for trial and tried accordingly.

The Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), abolished the supreme courts at Calcutta, Madras, and Bombay, and the Company's courts of appeal at those places, and provided for the establishment by charter of high courts at those places.

Under s. 9, 'each of the high courts to be established under this Act shall have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the presidency for which it is established, as Her Majesty may by such letters patent as aforesaid grant and direct; subject, however, to such directions and limitations as to the exercise of original, civil, and criminal jurisdiction beyond the limits of the presidency towns as may be prescribed thereby, and save as by such letters patent may be otherwise directed; and, subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the high court to be established in each presidency shall have and exercise all jurisdiction, and every power and authority whatsoever in any manner vested in any of the courts in the same presidency abolished under this Act at the time of the abolition of such last-mentioned courts.'

Section 11 declares that the existing provisions applicable to the supreme courts are to apply to the high courts.

The Courts (Colonial) Jurisdiction Act, 1874 (37 & 38 Vict. c. 27), enacts, by s. 3, that when, by virtue of any Act of Parliament, a person is tried in a court of any colony (which by s. 2 is to include British India) for any crime or offence committed upon the high seas or elsewhere out of the territorial limits of the colony and of the local jurisdiction of the court, or, if committed within that local jurisdiction, made punishable by that Act, he shall, upon conviction, be liable to

such punishment as might have been inflicted upon him if the crime or offence had been committed within the limits of the colony and of the local jurisdiction of the court, and to no other. Provided that if the crime or offence is not punishable by the law of the colony in which the trial takes place, the person shall, on conviction, be liable to such punishment (other than capital punishment) as seems to the court most nearly to correspond to the punishment to which he would have been liable if the crime or offence had been tried in England.

The Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), which was passed in consequence of the decision in the *Franconia* case (*R.* v. *Keyn*, 2 Ex. 169), and which extends to India, declares that an offence committed by a person, whether he is or is not a subject of Her Majesty, on the open sea within the territorial waters of Her Majesty's dominions, is an offence within the jurisdiction of the admiral, although it may have been committed on board or by means of a foreign ship, and the person who committed the offence may be arrested, tried, and punished accordingly. Proceedings for the trial and punishment of a person who is not a subject of Her Majesty, and is charged with any such offence as is declared by the Act to be within the jurisdiction of the admiral, are not to be instituted in British India except with the leave of the governor-general or the governor of the presidency. For the purpose of any offence declared by the Act to be within the jurisdiction of the admiral, any part of the sea within one marine league of the coast, measured from low-water mark, is to be deemed to be open sea within the territorial waters of Her Majesty's dominions.

Under the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), the Legislature of British India may declare certain courts to be colonial courts of admiralty, and courts so declared have the admiralty jurisdiction described in the Act. Under this power the Legislature of India has, by Act XVI of 1891, s. 2, declared the high courts at Calcutta, Madras, and Bombay, as well as the courts of the recorder at Rangoon, the Resident at Aden, and the district court of Karachi, to be colonial courts of admiralty.

The Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), provides, by s. 686, that 'where any person, being a British subject, is charged with having committed any offence on board any British ship on the high seas or in any foreign port or harbour, or on board any foreign ship to which he does not belong, or, not being a British subject, is charged with having committed any offence on board any British ship on the high seas, and that person is found within the jurisdiction of any court in Her Majesty's dominions which would have had cognizance of the offence if it had been committed on board a British ship within the limits of its ordinary jurisdiction, that court shall have jurisdiction to try the offence as if it had been so committed; but nothing in this section is to affect the Admiralty Offences (Colonial) Act, 1849.'

Section 687 of the same Act provides that 'all offences against property or person committed in or at any place, either ashore or afloat, out of Her Majesty's dominions by any master, seaman, or

apprentice who, at the time when the offence is committed, is, or within three months previously has been, employed in any British ship, shall be deemed to be offences of the same nature respectively, and be liable to the same punishments respectively, and be inquired of, heard, tried, determined, and adjudged in the same manner and by the same courts and in the same places as if those offences had been committed within the jurisdiction of the Admiralty of England; and the costs and expenses of the prosecution of any such offence may be directed to be paid as in the case of costs and expenses of prosecutions for offences committed within the jurisdiction of the Admiralty of England.'

It seems to follow from these several enactments, and from pars. 29 and 32 of the Charters, that where a chartered high court exercises jurisdiction in respect of—

(1) an offence committed on land, both the procedure and the substantive law to be applied are those of British India, i. e. both the Code of Criminal Procedure and the Penal Code apply;

(2) an offence committed at sea by a native of British India, the position is the same;

(3) an offence committed at sea by any other person, whether within territorial waters or beyond them, the procedure is regulated by British Indian law, but the nature of the crime and the punishment are determined by English law.

See *Queen Empress* v. *Barton*, I. L. R. 16 Cal. 238, and Mayne, *Criminal Law of India*, chap. ii.

(*c*) The enactment reproduced by this sub-section was probably suggested by the Patna case, as to which see Stephen's *Nuncomar and Impey*, chap. xii. In 1873 certain licensed liquor-vendors moved the high court at Calcutta for a mandamus to compel the Board of Revenue to issue rules prescribing the fees payable for liquor licences, but it was held that the matter related wholly to the revenue, and that therefore by 21 Geo. III. c. 70, s. 8, the high court had no jurisdiction (*Re Audur Chundra Shaw*, 11 Beng. L. R. 250). In a later Madras case (1876) doubts were expressed as to the extent to which the enactment was still in force, and, in particular, whether it had not been repealed except as to land revenue. See *Collector of Sea Customs* v. *Panniar Chithambaram*, I. L. R. 1 Mad. 89. In any case it applies only to the jurisdiction derived from the supreme court, i. e. to the original jurisdiction.

102. Each of the high courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things; that is to say— Powers of high court with respect to subordinate courts.

(*a*) call for returns;

(*b*) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction; [24 & 25 Vict. c. 104, s. 15.]