

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

In the seventeenth century the conditions under which private trade is now carried on with the East did not exist. Beyond certain narrow territorial limits international law did not run, diplomatic relations had no existence.<sup>1</sup> Outside those limits force alone ruled, and trade competition meant war. At the present day territories are annexed for the sake of developing and securing trade. The annexations of the sixteenth century were annexations not of territory, but of trading-grounds. The pressure was the same, the objects were the same, the methods were different. For the successful prosecution of Eastern trade it was necessary to have an association powerful enough to negotiate with native princes, to enforce discipline among its agents and servants, and to drive off European rivals with the strong hand. No Western State could afford to support more than one such association without dissipating its strength. The independent trader, or interloper, was, through his weakness, at the mercy of the foreigner, and, through his irresponsibility, a source of danger to his countrymen. It was because the trade monopoly of the East India Company had outlived the conditions out of which it arose that its extinction in the nineteenth century was greeted with general and just approval.

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

Legisla-  
tive  
powers of  
Company.

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

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

Resem-  
blance to  
Massa-  
chusetts  
Company.

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

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

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

The Massachusetts Company may be taken as the type of the bodies of adventurers who during the early part of the seventeenth century were trading and settling in the newly discovered continent of the West. It may be worth while to glance at the associations of English merchants who, at the date of the foundation of the East India Company, were trading towards the East. Of these the most important were the Russia or Muscovy Company and the Levant or Turkey Company.<sup>1</sup>

Other  
English  
trading  
com-  
panies.

The foundations of the Russia Company<sup>2</sup> were laid by the discoveries of Richard Chancellor. In 1553-4 they were incorporated by charter of Philip and Mary under the name of 'the Merchants and Adventurers for the discovery of lands not before known or frequented by any English.' They were to be governed by a court consisting of one governor (the first to be Sebastian Cabot) and twenty-eight of the most sad, discreet, and learned of the fellowships, of whom four were to be called consuls, and the others assistants. They were to have liberty to resort, not only to all parts of the dominions of 'our cousin and brother, Lord John Bazilowitz, Emperor of all Russia, but to all other parts not known to our subjects.' And none but such as were free of or licensed by the Company were to frequent the parts aforesaid, under forfeiture of ships and merchandise—a comprehensive monopoly.

Russia  
Company.

In 1566 the adventurers were again incorporated, not by charter, but by Act of Parliament, under the name of 'the fellowship of English Merchants for discovery of new trade,'<sup>3</sup> with a monopoly of trade in Russia, and in the countries

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

<sup>2</sup> As to the Russia Company, see the Introduction to *Early Voyages to Russia* in the publications of the Haldyut Society.

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

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

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

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

Grant of  
1615.

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

Grant of  
1623.

By 1623 the increase in the number of the Company's settlements, and the disorderliness of their servants, had drawn attention to the need for further coercive powers. Accordingly King James I, by a grant of February 4, 1623<sup>2</sup>, gave the Company the power of issuing similar commissions to their presidents and other chief officers, authorizing them to punish in like manner offences committed by the Company's servants on land, subject to the like proviso as to the submission of capital cases to the verdict of a jury.

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

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



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

Contests with Dutch and English rivals.

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

Massacre of Amboyna.

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

Courten's Association.

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

Cromwell's relations to the Company.

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

Cromwell's charter of 1657.

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

The Com-  
pany after  
the Re-  
storation.

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

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

Charles  
II's  
charter of  
1661.

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

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

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

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

With regard to the administration of justice, nothing appears to have been done towards carrying into effect the provisions of the charter of 1661 till the year 1678. At Madras, which was at that time the chief of the Company's settlements in India,<sup>1</sup> two or more officers of the Company used before 1678 to sit as justices in the 'choultry' to dispose of petty cases, but there was no machinery for dealing with serious crimes.<sup>2</sup>

Arrangements for administration of justice at Madras in seventeenth century.

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

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

<sup>2</sup> See Wheeler, *Madras in Olden Times*.

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

Grant of  
Bombay  
to the  
Company.

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

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

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

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

Further attributes of sovereignty were soon afterwards conferred.

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

Charter of 1677 granting powers of coinage.

The commissioners sent from Surat<sup>1</sup> to take possession of Bombay on behalf of the Company made a report in which they requested that a judge-advocate might be appointed, as the people were accustomed to civil law. Apparently, as a temporary measure, two courts of judicature were formed, the inferior court consisting of a Company's civil officer assisted by two native officers, and having limited jurisdiction, and the supreme court consisting of the deputy governor and council, whose decisions were to be final and without appeal, except in cases of the greatest necessity.

Administration of justice at Bombay in seventeenth century.

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

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

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

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

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

The only person learned in the civil law who was sent out to India in pursuance of the charter of 1683 was Dr. John St. John. By a commission from the king, supplemented by a commission from the Company, he was appointed judge of the court at Surat. But he soon became involved in disputes with the governor, Sir John Child<sup>1</sup>, who limited his jurisdiction to maritime cases, and appointed a separate judge for civil actions.

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

Charter of  
1686.

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

<sup>1</sup> A brother of Sir Josiah Child.



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

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

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

Establish-  
ment of  
municipi-  
pality at  
Madras.

Charter of  
1687.

Accordingly the charter of 1687, which established a municipality and mayor's court at Madras, proceeds from the Company, and not from the Crown. It recites 'the approbation of the king, declared in His Majesty's Cabinet Council<sup>1</sup> the eleventh day of this instant December,' and then goes on to constitute a municipality according to the approved English type. The municipal corporation is to consist of a mayor, twelve aldermen, and sixty or more burgesses. The mayor and aldermen are to have power to levy taxes for the building of a convenient town house or guild hall, of a public jail, and of a school-house 'for the teaching of the Gentues or native children to speak, read, and write the English tongue, and to understand arethmetick and merchants' accompts, and for such further ornaments and edifices as shall be thought convenient for the honour, interest, ornament, security, and defence' of the corporation, and of the inhabitants of Madras, and for the payment of the salaries of the necessary municipal officers, including a schoolmaster. The mayor and aldermen are to be a court of record, with power to try civil and criminal causes, and the mayor and three of the aldermen are to be justices of the peace. There is to be an appeal in civil and criminal cases from the mayor's court to 'our supreme court of judicature, commonly called our court of admiralty.' There is to be a recorder, who must be a discreet person, skilful in the laws and constitutions of the place, and who is to assist the mayor in trying, judging, and sentencing causes of any considerable value or intricacy. And there is to be a town clerk and clerk of the peace, an able and discreet person, who must always be an Englishman born, but well skilled in the language of East India, and who is to be esteemed a notary public.

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

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

ence from the common people,' the mayor is to 'always have carried before him when he goes to the guild hall or other place of assembly, two silver maces gilt, not exceeding three feet and a half in length,' and the mayor and aldermen may 'always upon such solemn occasions wear scarlet serge gowns, all made after one form or fashion, such as shall be thought most convenient for that hot country.' The burgesses are, on these occasions, to wear white 'pelong,' or other silk gowns. Moreover, the mayor and aldermen are 'to have and for ever enjoy the honour and privilege of having rundelloes and kattysols<sup>1</sup> borne over them when they walk or ride abroad on these necessary occasions within the limits of the said corporation, and, when they go to the guild hall or upon any other solemn occasion, they may ride on horseback in the same order as is used by the Lord Mayor and aldermen of London, having their horses decently furnished with saddles, bridles, and other trimmings after one form and manner as shall be devised and directed by our President and Council of Fort St. George.'

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

Com-  
pany's  
resolution  
of 1689.

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

<sup>1</sup> Umbrellas and parasols.

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

Con-  
troversies  
after  
Revolution of  
1688.

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

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

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

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

Charters  
of 1693  
and 1694.

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

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

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

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

The affair  
of the  
*Redbridge*  
and its  
results.

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

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

The first Act of Parliament for regulating the trade to



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

Incorporation of English Company.

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

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

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

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

<sup>1</sup> Charter of September 3, 1698.

<sup>2</sup> Charter of September 5, 1698.

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

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

Union of  
Old and  
New Com-  
panies.

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

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

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

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

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

Period  
between  
1708 and  
1765.

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

An Act of 1711<sup>2</sup> provided that the privileges of the United Company were not to be determined by the repayment of the loan of two millions.

The exclusive privileges of the United Company were

<sup>1</sup> 6 Anne, c. 71.

<sup>2</sup> 10 Anne, c. 35.

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

Extension  
of Com-  
pany's  
charter.

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

Provisions  
against  
inter-  
lopers.

In 1726 a charter was granted establishing or reconstituting

<sup>1</sup> 3 Geo. II, c. 14.

<sup>2</sup> 17 Geo. II, c. 17.

<sup>3</sup> 3 Geo. II, c. 20.

<sup>4</sup> 23 Geo. II, c. 22.

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

<sup>6</sup> Charter granted by the Emperor Charles VI in 1722, but withdrawn in 1725.

Judicial  
charters  
of 1726  
and 1753.

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

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

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

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

<sup>1</sup> Morley's *Digest*, Introduction, p. clxix.



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

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

Mutiny  
Act and  
Articles of  
War for  
Indian  
Forces.

<sup>1</sup> Morley's *Digest*, Introduction, pp. xi, xxiii.

<sup>2</sup> *Indian Polity* (3rd ed.), ch. xii, which contains an interesting sketch of the rise and development of the Indian Army. The nucleus of a European force had been formed at Bombay in 1669, *supra*, p. 18.

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

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

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

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

<sup>1</sup> 27 Geo. II, c. 9.

<sup>2</sup> 1 Geo. III, c. 14.

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

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

sustain or have just and well-grounded cause to fear any injury, loss, or damage, or upon any people who should interrupt, wrong, or injure them in their trade within the limits of the charters, or should in a hostile manner invade or attempt to weaken or destroy the settlements of the Company or to injure the king's subjects or others trading or residing within the Company's settlements or in any manner under the king's protection within the limits of the Company. The booty must also have been taken in wars or hostilities or expeditions begun, carried on, and completed by the forces raised and paid by the Company alone or by the ships employed at their sole expense. And there was a saving for the royal prerogative to distribute the booty in such manner as the Crown should think fit in all cases where any of the king's forces should be appointed and commanded to act in conjunction with the ships or forces of the Company. There was also an exception for goods taken from the king's subjects, which were to be restored on payment of reasonable salvage. These provisions, though they gave rise to difficult questions at various subsequent times, have now become obsolete. But the charter contained a further power which is still of practical importance. It expressly granted to the Company power, by any treaty of peace made between the Company, or any of their officers, servants, or agents, and any of the Indian princes or Governments, to cede, restore, or dispose of any fortresses, districts, or territories acquired by conquest from any of the Indian princes or Governments during the late troubles between the Company and the Nabob of Bengal, or which should be acquired by conquest in time coming, subject to a proviso that the Company should not have power to cede, restore, or dispose of any territory acquired from the subjects of any European Power without the special licence and approbation of the Crown. This power has been relied on as the foundation, or one of the foundations, of the power of the Government of India to cede territory.<sup>1</sup>

<sup>1</sup> *Lachmi Narayan v. Raja Pratab Singh*, I. L. R. 2 All. 1.

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

The Company as territorial sovereign.

This object was obtained by the grant from Shah Alam of the Diwani or fiscal administration of Bengal, Bihar, and Orissa.<sup>2</sup>

Grant of the Diwani.

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

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

The great events of 1765 produced immediate results in

<sup>1</sup> Plassey (Clive), June 23, 1757; Baxar (Munro), October 23, 1764.

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

England. The eyes of the proprietors of the Company were dazzled by golden visions. On the dispatch bearing the grant of the Diwani being read to the Court of Proprietors they began to clamour for an increase of dividend, and, in spite of the Company's debts and the opposition of the directors, they insisted on raising the dividend in 1766 from 6 to 10 per cent., and in 1767 to  $12\frac{1}{2}$  per cent. .

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

Legisla-  
tion of  
1767.

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

<sup>1</sup> For the arguments on this question, see Lecky, ch. xii.

<sup>2</sup> 7 Geo. III, c. 48.    <sup>3</sup> 7 Geo. III, c. 49.    <sup>4</sup> 7 Geo. III, cc. 56, 57.



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

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

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

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

<sup>2</sup> 8 Geo. III, c. 1.

<sup>3</sup> 9 Geo. III, c. 24.

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

Pecuniary  
embar-  
rassments  
in 1772.

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

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

Legisla-  
tion of  
1773.

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

<sup>1</sup> Lecky, iv. 273.

<sup>2</sup> 13 Geo III, c. 9.

of the situation to introduce extensive alterations into the system of governing the Company's Indian possessions.<sup>1</sup>

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

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

The Regulating Act of 1773.

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

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

<sup>2</sup> 13 Geo. III, c. 64.

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

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

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

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

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

<sup>1</sup> They were usually from twelve to sixteen.

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

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

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

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

<sup>1</sup> See Lecky, iv. 266, 270.

<sup>2</sup> Letter of August 28, 1771.

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

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

Provisions  
of Regu-  
lating Act.

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

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



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

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

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

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

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



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

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

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

<sup>1</sup> This was the first assertion of Parliamentary control over the treaty relations of the Company.

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

But on this jurisdiction two important limitations were imposed.

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

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

<sup>1</sup> Could it then try the governor-general for treason or felony?

<sup>2</sup> The saving appears to be limited to civil proceedings. It would exempt against arrest on mesne process.

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

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

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

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

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

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

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

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

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

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

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

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

(If any governor-general, governor, member of council, judge of the supreme court, or any other person) for the time being employed (in the service of the Company committed any offence against the Act,) or was guilty of any crime, misdemeanour, or offence against any of His Majesty's subjects, or any of the inhabitants of India, (he might be tried and punished by the Court of King's Bench in England.)

Charter  
of 1774  
constitut-  
ing  
supreme  
court at  
Calcutta.

The charter of justice authorized by the Regulating Act was dated March 26, 1774, and remained the foundation of the jurisdiction exercised by the supreme court at Calcutta until the establishment of the present high court under the Act of 1861.<sup>1</sup> The first chief justice was Sir Elijah Impey. His three colleagues were Chambers, Lemaistre, and Hyde.

Diffi-  
culties  
arising out  
of Regu-  
lating Act.

Warren Hastings retained the office of governor-general until 1785, when he was succeeded temporarily by Sir John Macpherson, and, eventually, by Lord Cornwallis. His appointment, which was originally for a term of five years, was continued by successive Acts of Parliament. His administration was distracted by conflicts between himself and his colleagues on the supreme council, and between the supreme council and the supreme court, conflicts traceable to the defective provisions of the Regulating Act.

Diffi-  
culties  
in the  
council.

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

Barwell usually supported Hastings. Francis, Clavering, and Monson usually opposed him. Whilst they acted together, Hastings was in a minority, and found his policy thwarted and his decisions overruled. In 1776 he was reduced to such depression that he gave his agents in England a conditional authority to tender his resignation. The Court of Directors accepted his resignation on this authority, and took steps to supply his place. But in the meantime Clavering died

<sup>1</sup> Copy printed in Morley's *Digest*, ii. 549.

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

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

Difficulties between supreme council and supreme court.

<sup>1</sup> See 3 & 4 Will. IV, c. 85, s. 79. Digest, s. 82.

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



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

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

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

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



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

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

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

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

provinces, except such of them as were resident in the town of Calcutta. But the point was by no means clear.<sup>1</sup>

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

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

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

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

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

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

<sup>1</sup> See *In the matter of Ameer Khan*, 6 Bengal Law Reports, 392, 443.

<sup>2</sup> *Nuncomar and Impey*, ii. 237.

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

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

Amending  
Act of  
1781.

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

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

<sup>1</sup> 21 Geo. III, c. 70.

<sup>2</sup> See Digest, s. 106.

<sup>3</sup> Ibid. s. 101.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>1</sup> *Nuncomar and Impey*, ii. 192.



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

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

Further  
legislation  
of 1781.

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

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

<sup>3</sup> 19 Geo. III, c. 61.

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



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

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

Parliamentary  
inquiries  
of 1781.

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

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