

when the public should come to know of their transactions, it should be able to apportion the blame or the merit to the right persons. Hence it follows that the position of the Secretary of State carries with it great powers which practically make him absolute in the government of India. He has an advisory council, but the peculiar position of that body prevents it from being of any effective check upon the powers of the Secretary of State. But though by tradition, convention, as well as by specific legislative enactment, the margin of powers still left to the Secretary of State is very considerable, it is evident that the tendency of the day is rather to restrict than to exaggerate these powers. S. 19 A of the latest Constitutional Act relative to the Governance of India enjoins upon the Secretary of State to make rules and restrict his own powers of superintendence, direction and control of the Government; and it would be no undue stretch of the imagination to conclude that, should the political evolution of India continue on the course hitherto followed, the powers and authority of the Secretary of State for India must necessarily suffer a decline as representative institutions and responsible Government grow in India.

VII. Control of the Secretary of State over the Council.

The Secretary of State can control the council in more than one way.

1. He has the right to fill any vacancy that may be caused in the council by the death, or resignation, or the expiry of the term of office of a councillor [S. 3 (2)]. True, he has not the right to remove a councillor, and he cannot therefore at any given time create his council to suit his views. It is also probable that the security of tenure given to the India councillors makes it impossible that during the tenure of office of the Secretary of State by one individual, the whole council would

or could be renovated by that individual to suit his tastes. The fluctuations in English politics, and the continual transfer of the leading politicians from department to department, make the average tenure of office of a Secretary of State by any one individual never longer than the tenure of his councillors. Including reappointments of the same individual, there have been in the sixtyfive years that have elapsed since the transfer of the Government to the Crown, twenty such Secretaries of State, or an average duration of office of each Secretary of State for slightly over two years and a half, while the normal duration of a councillor's office is now five years. But still if all allowance is made for this, the fact remains that the power of appointment vested in the Secretary of State gives him a great influence on his council. Apart from gratitude, the force of which in the cases of such independent men as the councillors of India may be negligible, there is always the possibility of similarity of views influencing a Secretary of State in choosing his councillors. And particularly his power to appoint experts in his council is bound to give him a great influence on his Council.

[N. B.—This power to appoint experts to the council is not specifically given by this Act. But it was conferred on the Secretary of State by 39 & 40 Viet. c. 7; and as this Act has not been repealed by the present Act we may take it that the power remains. The provisions of that Act have been thus summed up by Courtney Ilbert:—

“ The Secretary of State may also, if he thinks fit, appoint any person having professional or other peculiar qualifications, to be a member of the Council of India during good behaviour. (In view of the very general language of S. 3 (4) of this Act it would seem as though such a member also can only be appointed for a period of 7 years, or re-appointed for special reasons for another period of 5 years, or in all twelve years, and not for life.) The special reasons for every such appointment must be stated in a minute signed by the Secretary of State and laid

before both Houses of Parliament. Not more than three persons so appointed may be members of the council at the same time. If a member so appointed resigns his office, and has at the date of his resignation been a member of the council for more than ten years, the King may, by warrant under his sign manual, countersigned by the Chancellor of the Exchequer, grant to him, out of the revenues of India, a retiring pension during life of five hundred pounds." He adds in a note, "This exceptional power was exercised in the case of Sir H. S. Maine, and was probably conferred with special reference to his case."

(2) The mode of conducting the business in the Council also helps to increase the powers of the Secretary of State. As a rule the council is divided into committees as nearly as possible corresponding to the departments of Government. To each committee are appointed four or five councillors, with some consideration of their special aptitude for the subjects allotted to each particular committee. It is easier to influence a small body of men, however experienced or obstinate they may be, than to influence a larger body, especially if they all agree in a particular opinion, and are men of status. And even if this was not always feasible, the system of working by committees is the surest way of creating difference of opinion and using that for one's own object. Provided the Secretary of State can find either the council as a whole to agree with him, or the committee to adopt his side of the question, he can always have his way; for the support of the council may be represented, if it suits him so to represent it, as the support of common sense against the narrow-minded view of the experts, the committee being regarded as experts of the narrowest views; and if the committee agrees with him and the council as a whole differs from him, he can claim the support of what would now be represented as the sound practical opinion of the men who know their business. The council meets at least once a month, and a quorum of such members as may be prescribed by the general direction of the Secretary of State is required. At these

meetings the reports of the different committees on different questions are considered in the council. This procedure of transacting business through the committees is of course convenient, but it does weaken the practical utility of the council as a check upon the Secretary of State. The proposal in July 1914 to give this procedure, a matter of convenience, the force of law would have perpetuated a system resulting in the practical impotence of the council. It still remains a matter of convenience regulated by rules made by the Secretary of State.

3. Apart from these modes of controlling the council, the Secretary of State has large reserves of powers behind him which would in any case render the council's opposition, even if it makes one, nugatory. In some of the most important questions, such as making war or peace, or conducting foreign relations, or cases of urgent emergencies, the Secretary of State need not consult his council, or even if he does so, he is not bound to accept the advice of his council. Such powers cannot but make the Secretary of State the absolute chief of his department, even though he has been furnished with constitutional advisers.

4. His position is further strengthened by the monopoly of information. The members of the council have no means of collecting materials for pronouncing an opinion upon any question beyond the information that the Secretary of State places at their disposal, or beyond such information as they can get in common with the ordinary public from the periodical press. Says Sir John Strachey. "Such questions as the Afghan war, negotiations with Russia and the Amir of Kabul regarding the affairs of Afghanistan, or the annexation of Burma do not come before the council. Its members have not only no powers of interference, but they have no recognised means of obtaining information in regard to such subjects other than those of the general public." Wanting in information, they can never make up their minds on some of the most important questions. In this respect, the present position of the council differs radically from that of the

Court of Directors of the East India Company, even after they were superceded by the Board of Control from 1784. The present Council of India can only offer an opinion on matters which the Secretary of State chooses to bring before them, while the Court of Directors received in the first instance all despatches sent from India, and sent in their own name all the despatches from England to India.

5. The Secretary of State, in all matters when he goes counter to the opinion of a majority of his council, can always make a show of independent, unbiassed judgment. The fact that at least half the members of the council have been for a long time connected with India, and have had, in their period of service or residence in India, occasions for crystallising their information on certain matters,—perhaps for becoming partisans on certain questions,—can often be adduced by the Secretary of State as a reason to discredit their judgment. Unlike them he comes to his office with an open mind. A partisan himself in English politics, he claims an entirely unbiassed judgment in Indian affairs. For he comes to his office with no preconceived notions, nor prejudices nor pre-posessions. Such a man, himself of assured status and acknowledged experience in the politics of his own country, may reasonably claim that on questions of fundamental principles, he is a better judge than men who are likely to be partisan, or prejudiced. Besides, his position as the representative of the English democracy at the head of the Indian bureaucracy may well induce him to discount the opinion of a body of men, who could not be in touch with the latest information about Indian questions, in spite of their long experience; who have perhaps left India some years ago, and whose experience therefore of India is likely to be five years out of date; while he himself, coming new to his office, has all the desire to study at first hand all the questions of his department and has every facility to make his knowledge upto date.

6. But the causes which make the Secretary of State supreme in the council are still deeper. His power over appoint-

ments, his monopoly of information, the peculiar mode of conducting business, and of using an independent judgment are all but indications of those deeper springs of action, which, because they are seldom brought to light, not the less exist. The Secretary of State is a member of the British Cabinet, and also of the British Parliament. To his department, he brings not only an open mind, but the long experience and wider outlook of the Imperial Cabinet, and the democratic temperament of the British Parliament. If an occasion should ever arise when the Secretary of State finds himself obliged to disagree with a majority of his council, he can always in the last resource plead in his favour the support of the Cabinet, and also if necessary that of the British Parliament.* In questions of policy a man who can speak before his colleagues, who have no other ways of making their opinion known to the public, with the united authority of the Cabinet and the Parliament behind his back, who can refuse to justify or explain a policy, when questioned in Parliament or when criticised by the Government, unless his view of the case is accepted, is bound to create a deep impression upon those colleagues. Hence even in those cases where the Secretary of State is by law bound to have a majority of the council supporting him, his views, should they differ from those of the majority of the council, are bound to command respect, if not from the intrinsic value of those views, at least from the position and the power of the man who maintains them.

*When Bamfield Fuller, the Lieutenant Governor of Eastern Bengal and Assam, followed a policy of his own which was not approved of by the Secretary of State, he was forced by the latter to resign. Lord Morley was a staunch upholder of the rights of the Secretary of State, and elaborated the idea that the Government of India were merely the agents of the Home Government. Several Viceroys have strongly objected to this attitude; and rightly so: for as Mill wrote "The executive Government of India is and must be seated in India itself."

VIII. The Future of the Council.

The question has been widely debated as to whether it is beneficial to India to leave such vast powers in the absolute control of a man who, however experienced in English politics, is admittedly an amateur in Indian questions. If it was deemed wise by those who were responsible for the act of 1858, transferring the Government of the country to the Crown, to provide this responsible officer of the State with some checks, would it not be as well to make those checks effective? At the present day, the council, whenever it disagrees with the Secretary of State, however much its views may be favourable to India, is unable to make its views appreciated or respected by the Secretary of State. And there is no means by which the Council could be so reformed as to be entrusted with wider powers. Even if we suppose that the elective element were to predominate in the Council of India, or to become the sole basis of the constitution of that council, its powers would not be appreciably increased. And if they increased, the increase would not necessarily be beneficial to India. For, the questions of Indian politics are so intricate that no body of men—whether the elected representatives of India, or expert or experienced nominees of any other authority, would ever be able to give satisfactory solutions, if they are located at a distance from India. As Mill wrote "The Executive Government of India is and must be seated in India itself. The principal function of the Home Government is not to direct the details of administration, but to criticise or review the past Acts of the Indian Government; to lay down principles and issue general instructions for their future guidance, and to give or refuse sanction to great political measures which are referred Home for approval." Citing this opinion with approval, Sir John Strachey adds, "The work of the Secretary of State is mainly confined to answering references made to him by the Government in India; and apart from great political and financial questions, the number and nature of those references mainly depend on the character of the Governor-General for the time being. Some men in that position like to minimise personal

responsibility and to ask for orders of the Home Government before taking action. Others prefer to act on their own judgment, and on that of their councillors. **The Secretary of State initiates almost nothing.**" It is true Lord Minto said that the last instalment of reforms were initiated in India by the Government of India, and not by Lord Morley; but there are instances also on the other side, when the Home Government has initiated and enforced measures upon India, such as the first Afgan War or the existing tariff policy of the Government of India, or the traffic in opium.* On the whole, however, it is still true that the Secretary of State for India-in-Council confines himself ordinarily to reviewing, revising or refusing his sanction to measures or proposals referred to him from India. With this view of the functions of the Home authorities of the Indian Government, every student of political science cannot but agree. It may happen, and it has frequently happened in history, that the governing authorities of one people are situated in another; but if the ideal of government is good government,—government in the interests of the governed,—in whatever form it may be organised, that ideal would never be realised so long as it is hoped to rule a distant dependency from one headquarters in all the details of administration. And especially is this true of a dependency like India which is so utterly dissimilar to England in every respect. The authors of the transfer of the Government of India to the Crown well understood this, and so they left to the Home authorities the power to advise, to criticise, to reject acts and proposals of the Government of India. The idea of providing an advisory council to the chief

The Secretary of State has a large reserve of powers of direct Government which may be and has on occasions been exercised by him; for example :—

- (1) The first Afghan War was forced upon the Government of India, by their Home authorities because of the Anglo Russian conflict.
- (2) The Tariff policy based on Free Trade Principles was forced upon India in the face of opposition from the India Council; or again
- (3) The British Government insisted on putting an end to the traffic in opium as being an immoral traffic, even though all the Indian Governors and rulers had protested against this sacrifice of their revenue.

authority in England was not to strengthen the hands of the Secretary of State at the expense of the local powers, but to enable him to exercise all the better his powers of supervision, direction and control. Another reason, of which the authors of the transfer were barely conscious, was the distrust of every English statesman of the time of all bureaucracies. The Council of India was to be a check, not so much on the Secretary of State, as on the Government of India. The reason for introducing such a deliberate check was obvious. The Government of India was in reality a bureaucracy; bureaucracies are bound to go astray,—at any rate to ignore the views of the people; to bring about good Government some popular check,—preferably of the English type, of course,—was indispensable; but the people of India were not in a position to exert that check; hence the establishment of the Council of India consisting of men whom it would be dangerous for any power to thwart. Some such train of reasoning must have guided the men who fixed the first constitution of India under the Crown. The Council of India according to this view does duty for the people of India in checking the otherwise all-powerful Government of India. Any reform in the constitution of that council, any increase in its power, can be allowed only if we admit that the people of India are yet unfit, or unable to provide their own effective check on their Government. The need for the Council of India must disappear when the governing authorities in India become amenable to the control of the people of the country. And yet, strange to say, the principle of this reasoning does not seem to be given effect to in the Reforming Act of 1919. It is true India does not yet enjoy full responsible Government and that the Act of 1919 has made a few changes in the constitution and the powers of the India Council; but these are more or less unimportant changes, and may hardly be considered a step in the direction of the abolition of the council altogether.

We shall now just touch upon that abortive attempt made a few years ago to amend the constitution of the India Council. The Bill in question tried to reduce the number of the council-

lors, to make the inclusion of at least two Indian members a statutory requirement, to secure the appointment of the Indian members by a system of indirect election by the non-official members of the Indian legislatures, to increase the salaries of the members to £ 1200 a year together with an additional allowance, in the case of Indian members, of £ 600, to appoint one expert for a period and on conditions to be specially laid down in each case ; to simplify the procedure of the council by rules made by the Secretary of State—subject to approval by Parliament, to dispense with the meetings of the council once a week and to increase the list of “ secret ” cases with which the Secretary of State may deal without consulting his council. The Bill evoked a strong opposition both in England and in India, and it was eventually dropped. But all the same, we find many of the suggestions included in the Act of 1919. A few years after the failure of the Bill, an India Office Committee presided over by Lord Crewe revived the whole question, and made almost similar recommendations, most of which are incorporated in the reforming Act.

The reasoning, however which leads one to discount the importance of the India Council should not be construed to mean that, the people of India being able to provide their own check, there should be no connection with England in the future. Even when the people of India will be governing themselves in name as well as in fact, there will remain a strong case of keeping up connection with England; and, therefore, maintaining the Secretary of State for India, as well as, quite probably, his council. Only, in the event of the people of this country being able to impose their will on their Government, there will be no occasion for an outside power like the India Council to act their guardian. The Home authorities, under that supposition, would have no need to interfere in the internal affairs of India, their powers of direction and control being ordinarily confined to inter-colonial or foreign questions, in other words to truly Imperial matters.

IX. Indian Appointments.

As regards Indian appointments, under the Company the Court of Directors had the power to make all appointments to every office in the state in India. Since Pitt's India Act of 1784, the Directors were required to obtain the approval of the Crown in making certain appointments to the highest posts in India, though this clause was removed by an Act of 1786. The Crown, however, retained its powers of recalling, by a sign-manual order, any public officer in India; and this power was confirmed by the Charter Act of 1793 and subsequent legislation. The Directors also had a similar power of recall, and they often exercised it, as for instance in the case of Lord Ellenborough. With the transfer of the Government to the Crown, the provision was introduced as regards the power to make rules for the admission of persons to the public service of the country, which is now embodied in s. 19 of the present Act. Two points in that section call for comment. First as regards the provision about appointments in the Indian army. At least one-tenth of the total cadetships in any year are reserved for the sons of those who had served in India in the time of the Company. This is due to historical reasons. At the time of transfer the officers of the Indian army were recruited in two ways:—A certain number of cadets was appointed to Addiscombe, from which, according to their success at the college examinations, they went out to India in the engineers, artillery or infantry. Others received direct cadetships and went to India without any previous training. The Indian army was reorganised in 1860. The European army, which till then had been a separate body, was abolished; and the abolishing Act (23 & 24 Vict., c. 100) laid down that the same or equal provision for the sons of persons who had served in India shall be maintained in any scheme for the reorganisation of the Indian army. The mode of appointments to the native army was meanwhile also altered, and an order was made in 1862 by which the Secretary of State makes 20 annual appointments, from among the sons of Indian military officers to cadetships at Sandhurst.

The expenses of these cadets are paid out of the revenues of India if their pecuniary circumstances are such as to require such payment. The cadets, it may be noted, need not join the Indian army after they leave Sandhurst. Another concession was also granted to the Indians by the Act of 1919 as a result of the world war. Indians may now be admitted to commissioned ranks in the army which were previously closed to them.

Another point requiring comment in this section about appointments is that all the appointments are made during the pleasure of the sovereign, though in practice the Secretary of State enters into a formal contract with persons appointed in England to the various branches of public service in India. Many of these contracts contain a clause by which the men appointed to the service are appointed for a definite term of years. The question whether, during the continuance of the stipulated term of service, the Crown can remove any public officer from his office, on the principles laid down in many cases, "in the present state of the authorities, cannot be considered free from doubt," says Sir C. Ilbert. A case in point is *Grant V. the Secretary of State for India in Council*. Grant was an officer in the service of the East India Company since 1840. On the transfer of the Indian army to the Crown, he was continued in the Indian army, and was afterwards placed compulsorily on the Pension List, being thereby obliged to retire from the army. He brought an action for damages against the defendant, but it was held that there was no cause of action as the Crown, acting through the defendant, had a general power to dismiss a military officer at its will, and no contract could be made in derogation of that power. If this case holds good the Crown can presumably dismiss any public officer at its will. This question of contracts with the Secretary of State on behalf of the Crown is considered more fully below in the comments on ss. 20-32.

PART II.

The Revenues of India.

20. (1) The revenues of India shall be received for and in the name of His Majesty, and shall, subject to the provisions of this Act, be applied for the purposes of the Government of India alone.

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

(a) All the debts of the East India company; and

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

(c) All expenses, debts and liabilities lawfully contracted and incurred on account of the Government of India; and

(d) All payments under this Act, except so far as is otherwise provided for under this act.

(3) The expression "The Revenues of India" in this Act shall include all the territorial and other revenues of or arising in British India; and in particular

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

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

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

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

21. Subject to the provisions of this Act and rules made thereunder, the expenditure of the revenues of India, both in British India and elsewhere, shall

be subject to the control of the Secretary of State in Council ; and no grant or appropriation of any part of these revenues, or of any property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, or this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council of India.

* 22. Except for preventing or repelling actual invasion of His Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India shall not, without the consent of both Houses of Parliament, be applicable to defraying the expenses of any military operation carried on beyond the external frontiers of those possessions by His Majesty's forces, charged upon these revenues.

23. (1) Such part of the revenues of India as are remitted to the United Kingdom and all money arising or accruing in the United Kingdom from any property or right vested in His Majesty for the purposes of the Government of India Act or from the sale or disposal thereof, shall be paid to the Secretary of State in Council, to be applied for the purposes of the Act.

(2) All such revenues and money shall, except as by this section provided, be paid into the Bank of England to the credit of an account entitled "The account of the Secretary of State in Council of India."

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

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

(5) There shall be raised in the books of the Bank of England such accounts as may be necessary in respect of stock vested in the Secretary of State in Council; and every such account shall be entitled "The stock account of the Secretary of State in Council of India."

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

24. The Secretary of State in Council, by power of attorney executed by two members of the Council of India and countersigned by the Secretary of

State or one of his undersecretaries, or his assistant undersecretary, may authorise all or any of the cashiers of the Bank of England :

- (a) to sell and transfer all or any part of any stock standing in the books of the Bank to the account of the Secretary of State in Council, and
 - b) to purchase and accept stock for any such account, and
 - (c) to receive dividends on any stock standing to any such account;
- and by any writing signed by two members of the Council of India and countersigned as aforesaid, may direct the application of the money to be received in respect of any of the sale or dividend.

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

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

26. The Secretary of State in Council shall within the first fourteen days during which Parliament is sitting next after the first day of May in every year, lay before both Houses of Parliament:

- (a) an account, for the financial year preceding that last completed, of the annual produce of the revenues of India, distinguishing the same under the respective heads thereof, in each of the several provinces; and of all the annual receipts and disbursements at home and abroad for the purposes of the Government of India, distinguishing the same under the respective heads thereof;
- (b) the latest estimate of the same for the financial year last completed;
- (c) accounts of stocks, loans, debts and liabilities chargeable on the revenues of India, at home and abroad, at the commencement and close of the financial year preceding that last completed, the loans, debts and liabilities raised or incurred within that year, the amounts paid off or discharged during that year, the rates of interest borne by those loans, debts and liabilities respectively, and the annual amount of that interest;
- (d) a list of the establishment of the Secretary of State in Council, and the salaries and allowances payable in respect thereof.

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

(3) The account shall be accompanied by a statement, prepared from detailed reports from each province, in such form as best exhibits the moral and material progress and condition of India.

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

(2) The auditor shall examine and audit the accounts of the receipt, expenditure and disposal in the United Kingdom of all money, stores and property applicable for the purposes of this Act.

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

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

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

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

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

(8) The auditor shall hold office during good behaviour.

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

(10) The auditor and his assistants (notwithstanding that some of them do not hold certificates from the Civil Service Commissioners) shall, for the purposes of superannuation allowance, be in the same position as if the auditor and his assistants were on the establishment of the Secretary of State in Council.

PART III.

Property, Contracts and Liabilities.

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

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

(3) All property acquired in pursuance of this section shall vest in His Majesty for the purposes of the government of India.

29. (1) Subject to the provisions of this Act regarding the appointment of a High Commissioner for India the Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make any contract for the purposes of this Act.

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

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

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

(5) Provided that any contract for or relating to the manufacture, sale, purchase, or supply of goods, or for or relating to affreightment or the carriage of goods, or to insurance, may, subject to such rules and restrictions as the Secretary of State in Council prescribes, be made and signed on behalf of the Secretary of State in Council by any person upon the permanent establishment of the Secretary of State in Council who is duly empowered by the Secretary of State in Council in this behalf. Contracts so made and signed shall be as valid and effectual as if made as prescribed by the foregoing provisions of this section. Particulars of all contracts so made and signed shall be laid before

the Secretary of State in Council in such manner and form and within such times as the Secretary of State in Council prescribes.

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

29 (A) His Majesty may by order in Council make provision for the appointment of a High Commissioner for India in the United Kingdom and for the pay, pension, powers, duties, and conditions of employment of the High Commissioner and of his assistants; and the Order may further provide for delegating to the High Commissioner any of the powers previously exercised by the Secretary of State or the Secretary of State in Council, whether under this Act or otherwise, in relation to making contracts, and may prescribe the conditions under which he shall act on behalf of the Governor-General in Council or any local Government.

30. (1) The Governor-General in Council and any local Government may, on behalf and in the name of the Secretary of State in Council, and subject to such provisions or restrictions as the Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council of India, prescribes, sell and dispose of any real or personal estate whatsoever in British India, within the limits of their respective Governments, for the time being vested in His Majesty for the purposes of the government of India, or raise money on any such real or personal estate by way of mortgage, or otherwise and make proper assurances for any of those purposes, and purchase or acquire any property in British India within the said respective limits, and make any contract for the purposes of this Act.

(1) (a) A local Government may on behalf and in the name of the Secretary of State in Council raise money on the Security of revenues allocated to it under this Act, and make proper assurances for that purpose and rules made under this Act may provide for the conditions under which this power shall be exercisable.

(2) Every Assurance and contract made for the purposes of subsection 1 of this section shall be executed by such person and in such manner as the Governor-General in Council by resolution directs or authorises, and if so executed may be enforced by or against the Secretary of State in Council for the time being.

(3) All property acquired in pursuance of this section shall vest in His Majesty for the purposes of the government of India.

31. The Governor-General in Council, and any other person authorised by any Act passed in that behalf by the Indian Legislature may make any grant or disposition of any property in British India accruing to His Majesty by forfeiture, escheat or lapse, or by devolution as bona vacantia, to or in

favour of any relative or connection of the person from whom the property has accrued, or to or in favour of any other person.

32. (1) The Secretary of State in Council may sue and be sued by the name of the Secretary of State in Council, as a body corporate.

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

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

(4) Neither the Secretary of State nor any member of the Council of India shall be personally liable in respect of any assurance or contract made by or on behalf of the Secretary of State in Council, or any other liability incurred by the Secretary of State or the Secretary of State in Council in his or their official capacity, nor in respect of any contract, covenant or engagement of the East India Company; nor shall any person executing any assurance or contract on behalf of the Secretary of State in Council be personally liable in respect thereof, but all such liabilities and all costs and damages in respect thereof, shall be borne by the revenues of India.

Comments

The Act speaks throughout of the revenues of India, when it would be more accurate to speak of the revenues of British India. It is true subsection 3 defines the revenues to include "all tributes and other payments ; but those tributes are not by nature of the ordinary revenues" of the Government, and therefore should not be regarded as part of the revenues of India. All the debts and liabilities of the East India Company in 1858 were charged against the revenues of India, and this provision of the Act of 1858 has been repeated in this Act. When we recall that the East India Company's debts were incurred for accomplishing the conquest of India, we cannot help feeling that it is unfair to charge those debts on the Indian revenues ; and critics of British administration in India may complain, with some show of justice, that while the British Crown got the rich patrimony of India, the people of India had to pay the purchase price. Again there have been charged on the revenues of India all pensions to the dispossessed princes whose territories were annexed by the British. This amount, once formidable, is now dwindling, because since 1857, many of these pensions have been discontinued on the plea that the adopted or natural heir of an original pensioner had no right to the pensions. Still even at the present day, a considerable amount is being paid by way of pension to the families of Murshidabad and Oudh in Bengal, the descendants of the Nawab of the Carnatic in Madras, and of Ranjit Singh in the Punjab, as liabilities inherited from the East India Company ; and are included under the budget of the Government of India under the head of political pensions. Payments like the subsidy to the Amir of Afghanistan are in a class by themselves ; while the pensions now decreed to the deposed rulers of Baroda or Nabha are essentially different, as they are charged on the revenues of their states which still remain non-British territory.

Under the Company Parliament had frequently passed laws to restrain what the great Canning described as "the irrepressible tendency of our Eastern empire to expand;" but they were more frequently ignored than obeyed. The revenues of India were squandered in ceaseless and costly wars, and the Company was almost always in financial difficulties. To safeguard against this irrepressible tendency again asserting itself, it was provided by the Act of 1858 that the expenditure of the revenues of India, in India or outside India, shall be subject to the control of the Secretary of State. The latter was prohibited by the same Act from making any grant of these revenues or appropriating any part thereof, or assigning any property vesting in the Crown, except by the consent of a majority of the India Council. This provision has also been incorporated in the present Act. But in practice this restraint on the powers of the Secretary of State cannot be effectively asserted. In Imperial questions, like the making of war, the Secretary of State, as member of the British Cabinet, acts in accordance with the decision of the latter; and the India Council, even if it be unanimously against such a war, has to bow to the will of the Cabinet; and cannot refuse to sanction the expenditure for war forced upon them by the Secretary of State. Thus the control of the India Council on the revenues of India is only nominal so long as the Secretary of State has the support of the British Cabinet. One wonders what would happen if the India Council remained obdurate, and refused to sanction the expenses of such a war. Would the Secretary of State, acting on his own authority, and under the plea of a sudden and urgent necessity, defray the expenses from the Indian revenues in defiance of the Council?

Another assurance, and a stronger one, against a misuse by the Secretary of State of the revenues of India for military purposes has also been made by the Act. It has been provided that without the consent of Parliament the revenues of India cannot be employed for military operations beyond the frontiers of India except for preventing or repelling an actual

invasion (s. 22.) But this is also a sufficiently vague provision to leave a margin of discretion to the Government of India and to the Secretary of State. Since* the transfer of the Government of India to the Crown, there have been numerous occasions on which the spirit of this section, if not the letter, has been infringed upon. In the Afghan War of 1878, in the Burma struggle of 1886, in the Soudan campaign, and lastly during the Tibet expedition of 1904, this section and its effects were discussed in Parliament. It is not yet quite clear whether the consent of Parliament is required before the actual declaration of war; we are inclined to think it is not. The power to declare war is, by the general principle of the British constitution, vested in the Crown; and in the case of the Government of India, is vested in the crown acting through the Secretary of State and the Viceroy (S. 44 of the Act). The consent of Parliament is only needed to appropriate the revenues of India for the purpose of a war already declared. Under the circumstances, it is not unlikely that Parliament would have to give its consent even if it disapproved of the war as such.*

And all this is apart from the saving clause "except for preventing or repelling an actual invasion" for which presumably, the consent of Parliament is not required. Fighting with neighbouring tribes, especially the ever-turbulent neighbours of India, may easily be represented as an attempt to prevent a possible or to repel an actual invasion.

The revenues of India that are remitted to England, or that arise in England are to be paid into the account of the Secretary of State for India in Council at the Bank of England. This was permissible during the period when there was no Indian public bank in England. The privilege to the Bank of England of acting as the Secretary of State's bankers costs India directly and indirectly, considerable amounts: (a) directly for

*In the 2nd Afghan War (1881) Parliament subsequently voted 5 millions sterling out of a total expenditure of twenty-three crores of rupees, even though it disapproved of the war.

payment to be made on account of public debt as well as such other services as printing of currency notes, postage and judicial stamps, water-mark stamp paper, dyes, etc. for the same; (b) indirectly through loss of interest on the balances and reserves deposited in the Bank of England, which, at 3 per cent per annum on ten millions on an average, would amount to £300,000. Together with direct payments, this would aggregate over half a million sterling per annum. Since the creation of the Imperial Bank with a branch in England, there is now no reason why all this banking business should not be entrusted to that Indian institution in preference to the Bank of England.

The account of the Secretary of State for India in Council cannot be drawn upon except by a draft or an order signed either by two members of the Council, and countersigned by the Secretary of State, or by one of his under-secretaries, or by the assistant under-secretary, or signed by the accountant-general of the India Office or by one of the two senior clerks in that department, and countersigned in the manner prescribed by the Secretary of State. There should also be a separate account for the stocks and property held by the Secretary of State for India in Council, that is for the securities in the Gold Standard Reserve, and the Paper Currency Reserve, or any portion of these reserves which are held in English securities. The financial accounts of India, together with a general statement of the moral and material progress of India, must be laid before Parliament at one time or another during the session; and, by the new practice, are so submitted some time between April and July, which is a considerable improvement on the previous practice of submitting them at the fag end of the Parliamentary Session. But even so, on the finances of India as a whole, there is no control of any democratic nature in or outside India. The accounts that are laid before the Parliament are for the financial year preceding that last completed, and Parliament would scarcely worry itself about revenues

expended two years back. Even if it had the time to interest itself in Indian affairs, all that it can do is to notify to the Secretary of State its disapproval of certain measures. The only serious temptation to parliament to intervene in Indian affairs is provided by S. 2 (3) of the act. The accounts of the Secretary of State are to be audited by an independent officer who must submit an independent account to both the Houses of Parliament, and whose appointment is during good behaviour. The auditor specifies in details in his reports, all sums of money, stores and property which are not accounted for, or have not been appropriated in conformity with the provisions of the law; and since all such reports are laid before the Houses of Parliament, there is thus an indirect control over the Secretary of State.

As regards the contracts by the Secretary of State several points of legal and general importance have to be noted. (1) Contracts, which by English law, if made by private individuals, would have to be made under seal, should be made under the hand and seal of two members of the Council. (2) For making all such contracts the Secretary of State must have a majority of votes with him in his Council. (3) For contracts so made the Secretary of State for India in Council is regarded as a corporation and may sue and be sued upon these contracts. (4) Neither the Secretary of State nor any member of Council is personally responsible for these contracts. (5) The Secretary of State is not in the position of a body corporate for the purpose of holding property which vests directly in the Crown, though he is in the position of a body corporate for making contracts and for suing or being sued. (6) There is a statutory remedy against the Secretary of State, which is not confined to those cases for which a petition of right will lie in England; but it would seem that only such suits,—apart from special statutory provision—may be brought against the Secretary of State as are in respect of acts done in the conduct of undertakings which might be carried on by private individuals without so-

vereign powers. (7) Hence a suit or action against the Secretary of State may sometimes be met by the plea that the act complained of was an act of state. All these points are illustrated by a few cases given below.

According to a maxim of the constitutional law of England the King can do no wrong, and so the subject in England has no remedy, not even by a petition of right. For a wrong committed in obedience or professed obedience to the Crown the remedy is against the wrong-doer himself, and not his official superior, since the ultimate superior, the Crown, is not responsible. Even for a breach of contract the remedy is not by an ordinary action, but by a petition of right, which, since the case of *R. vs. Thomas* in 1874, has been allowed in all cases of breach of contract. In the case of *Frith vs. Regina* in 1872, Frith, representing the creditor of the King of Oudh, whose territory was annexed by the East India Company in 1856, sought to recover the debt by a petition of right from the Queen as the successor of the East India Company. It was held that assuming the East India Company became liable by reason of the annexation to pay the debt, the remedy of the suppliant was against the Secretary of State for India in Council, who, under the act of 1858, was the successor of the Company, and not the Crown. It was further pointed out that even if a judgment was given for the suppliant, it would be barren since the revenues of England could not be liable to pay the claim. In the Tanjore case, (*Secretary of State in Council of India vs. Kamachee Bye Saheba 1856. 13 Moore P.C. 22*) a bill was filed on the Equity side of the Supreme Court at Madras to establish a claim as private property to certain property of which the Government had taken possession and for an account. The acts in question were done by a commissioner on behalf on the Government for taking over the administration of the Tanjore State on the death of the Raja without heirs. It was held that the annexation was made by the British Government as a sovereign power, acting through its delegate the East India Company. As such it was an act of

state to inquire into the propriety of which no court,—not even the Judicial Committee—was competent. Lord Kingsdown giving judgement in the Privy Council in that case remarked: "It is sufficient to say that even if a wrong has been done, it is a wrong for which no municipal court can afford a remedy." The principle was slightly different in *Forester & others vs. the Secretary of State for India in Council*. There the Government of India had resumed the property of Begum Sumroo on her death, and the legality of that act was questioned by her heirs. It appeared that the Begum was not quite an independent sovereign at the time of her death, but a British subject. Hence the annexation of her estate was not the annexation by arbitrary power of the territories of one sovereign power by another, but the resumption, under colour of legal title, of lands previously held from the Government by a subject under a particular tenure, on the alleged determination of that tenure. The questions in that suit, therefore, were regarded as cognisable by a municipal court. The facts in Dhulip Sing's case were very nearly the same as in the Tanjore case, and the same principles were upheld. (*Saluman vs. the Secretary of State for India in Council, 1905, I. K. B. 613*).

Apart from the acts of state, the Secretary of State as a corporate body is able to sue and be sued in respect of contracts; but in contracts of service regard must be had also to the principles regulating the tenure of a servant under the Crown. In the case of *Jehangir M. Cursetji vs. the Secretary of State for India in Council (I. L. R. 27 Bom. 189)* the plaintiff was a Huzur Deputy Collector of Poona, and for certain acts done by him he was censured by a resolution of the Government of Bombay, dated 6th November, 1899. This censure was construed by the plaintiff into a defamation, and he sued the Secretary of State for the same. It was held: (a) that the Governor of Bombay and the members of his Council are exempt by law from the jurisdiction of the High Court of Bombay for acts done in their public capacity. Hence no action lies against the

Secretary of State in respect of such acts. (b) The Secretary of State could only be sued in respect of those matters for which the East India Company could have been sued, *i. e.* matters for which private individuals and trading corporation could be sued and those matters for which there is express statutory provision. No suit would lie against the East India Company in respect of acts of state, and so no suit lies against the Secretary of State for such matters. (c) The plaintiff was a public officer, whose employment was one which could only be given to him by the sovereign or the agents of the sovereign. Such public servants hold their office at the pleasure of the sovereign, being liable to dismissal at his will and pleasure, if that power is not limited by statutory provision, as for instance, in the case of the members of the Council of India. The power of dismissal includes all others powers of censure or reprimand.

We may, at the cost of some repetition, but for the sake of clearness, sum up once again the position of the Secretary of State in respect of contracts as follows:—

For the purpose making contracts the Secretary of State is a body corporate—or in the same position as a body corporate, though he is not such for holding property. Such property, as would have formerly vested in the East India Company, now vests in the Crown. [*Kinlock vs. the Secretary of States in Council* 1880, *L. S. 15 Ch. D.*] The debts due to the Secretary of State in India rank in priority of all other debts. There is a statutory remedy provided against the Secretary of State, and that remedy is not confined to those cases for which a petition of right would lie in England. But, apart from special statutory provisions, the only suits which could have been brought against the East India Company, and which can now be brought against the Secretary of State in Council, are suits in respect of acts done in the conduct of undertakings which might be carried on by private individuals. Hence if an act complained of was an act done by Secretary of State in the exercise of the sovereign power of the Crown, and on behalf of the Crown, no

court of justice would have jurisdiction to try that case. In suits or actions against the Secretary of State for breach of contracts of service, regard must also be had to the principles regulating the tenure of servants under the Crown. And the liability of the Secretary of State in Council to be sued does not deprive the Crown of its privileges by virtue of its prerogatives.

Before commencing an action against the Secretary of State notice of 2 months must be given according to S. 80 of the Civil Procedure Code of 1908.

CHAPTER III.

The Governor-General in Council.

33. Subject to the provisions of this Act and rules made thereunder, the superintendence, direction and control of the civil and military government of India is vested in the Governor-General in Council, who is required to pay due obedience to all such orders as he may receive from the Secretary of State.

The Governor-General.

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

35. Omitted.

The Governor-General's Executive Council.

36. (1) The members of the Governor-General's Executive Council shall be appointed by His Majesty by warrant under the Royal Sign Manual.

(2) The number of the members of the Council shall be such as His Majesty thinks fit to appoint.

(3) Three at least of them must be persons who have been for at least ten years in the service of the Crown in India, and one must be a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, or a pleader of a High Court of not less than ten years' standing.

(4) If any member of the Council, other than the Commander-in-chief for the time being of His Majesty's forces in India, is at the time of his appointment in the military service of the Crown, he shall not, during his continuance in office as such member, hold any military command or be employed in actual military duties.

(5) Provision may be made by rules under this Act as to the qualifications to be required in respect of the members of the Governor-General's Executive Council in any case where, such provision is not made by the foregoing provisions of this section.

37. If the Commander-in-chief for the time being of His Majesty's forces in India is a member of the Governor-General's Executive Council, he shall, subject to the provisions of this Act, have rank and precedence in the council next after the Governor-General.

38. The Governor-General shall appoint a member of his Executive Council to be Vice-president thereof.

39. (1) The Governor-General's Executive Council shall assemble at such places in India as the Governor-General in Council appoints.

(2) At any meeting of the council the Governor-General or other person presiding and one member of the council other than the Commander-in-chief may exercise all the functions of the Governor-General in Council.

40. (1) All orders and other proceedings of the Governor-General in Council shall be expressed to be made by the Governor-General in Council, and shall be signed by a secretary to the Government of India, or otherwise as the Governor-General in Council may direct and when so signed shall not be called into question in any legal proceeding on the ground that they were not duly made by the Governor-General in council.

(2) The Governor-General may make rules and orders for the more convenient transaction of business in his executive council, and every order made, or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the Governor-General in Council.

41. (1) If any difference of opinion arises on any question brought before a meeting of the Governor-General's Executive Council, the Governor-General in Council shall be bound by the opinion and decision of the majority of those present, and, if they are equally divided, the Governor-General or other person presiding shall have a second or casting vote.

(2) Provided that whenever any measure is proposed before the Governor-General in Council whereby the safety, tranquillity or interests of British India, or any part thereof, are or may be, in the judgement of the Governor-General, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the council dissent from that opinion, the Governor-General may on his own authority and responsibility, adopt, suspend or reject the measure, in whole or in part.

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

(4) Nothing in this section shall empower the Governor-General to do anything which he could not have lawfully done with the concurrence of his council.

42. If the Governor-General is obliged to absent himself from any meeting of the council, by indisposition or any other cause, the vice-president,

or, if he is absent, the senior member other than the Commander-in-Chief present at the meeting, shall preside thereat, with the like powers as the Governor-General would have had if present:

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

43. (1) Whenever the Governor-General in Council declares that it is expedient that the Governor-General should visit any part of India unaccompanied by his executive council, the Governor-General in Council may, by order, authorize the Governor-General alone to exercise, in his discretion, all or any of the powers which might be exercised by the Governor-General in Council at meetings of the council.

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

(3) The Secretary of State in Council may, by order, suspend until further order all or any of the powers of the Governor-General under the last foregoing subsection; and those powers shall accordingly be suspended as from the time of the receipt by the Governor-General of the order of the Secretary of State in Council.

43 (4) The Governor-General may, at his discretion, appoint from among the members of the Legislative Assembly, Council Secretaries, who shall hold office during his pleasure and discharge such duties in assisting the members of his executive Council as he may assign to them.

(3) There shall be paid to Council secretaries so appointed such salary as may be provided by the Indian legislature.

(3) A council secretary shall cease to hold office if he ceases for more than six months to be a member of the Legislative Assembly.

War and Treaties.

44. (1) The Governor-General in Council may not, without the express order of the Secretary of State in Council, in any case except where hostilities have been actually commenced, or preparations for the commencement of hostilities have been actually made against the British Government in India or against any prince or State dependent thereon, or against any prince or state whose territories His Majesty is bound by any subsisting treaty to defend or guarantee, either declare war or commence hostilities or enter into any treaty for making war against any prince or state in India or enter into any treaty for guaranteeing the possessions of any such prince or state.

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

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

COMMENTS.

Ss. 33-44 (both inclusive).

1. Position of the Governor-General.

The provisions of this consolidating Act do not give an exhaustive statement of the powers of the Governor-General-in-Council. (1) The powers, for instance, of the Government of India, as the paramount power in India, extend beyond the limits of British India. (2) Again the Governor-General-in-Council, as representing the Crown in India, enjoys all those powers, privileges, prerogatives, and immunities appertaining to the Crown, as are appropriate to the case and consistent with the local legal system. Thus the rule is maintained that the Crown debts rank in priority of all other debts, or that the Crown is not bound by a statute unless expressly mentioned therein. *Ganpat Putaya vs. the Collector of Canara* (I. *L. §.

1, Bom. 7.) West J. said "It is a universal rule that the prerogative and the advantages it affords cannot be taken away except by the consent of the Crown embodied in statute. This rule of interpretation is well established, and applies not only to the statutes passed by the British, but also to the Acts of the Indian legislature framed with constant reference to the rules recognised in England." (3) The Governor-General in Council has also by delegation powers of making treaties and arrangements with Asiatic states, of exercising jurisdiction in foreign territory, and of acquiring and ceding territory. It is not quite free from doubt whether the Crown in England can cede territory to foreign powers without the consent of Parliament, though the Crown has undoubtedly the power to make treaties. It is admitted that a treaty made by the Crown in England, if it imposes any financial obligations upon the British citizens, will not be carried out unless its provisions are given effect to by an Act of Parliament. As regards other treaties involving cession of territory, recent practice has been to seek the approval of Parliament. In India, however, the power of the Governor-General-in-Council to make treaties and to cede or acquire territory thereunder has been long since recognised [*Damodar Khan vs. Deoram Kanji*, I. L. S. 1 Bom. 367; *The Taluka of Kotda Sangani vs. the State of Gondal*, A. C. 1906]. (4) The Government of India, moreover, derive certain of their powers not from the English Crown, but from the native rulers of the country whose place they have taken. Thus the rights of the Government in India in respect of lands and minerals in India are different from the similar rights of the Crown in England. The Governor-General may also be said to have the great Royal prerogative of pardoning criminals, though Ilbert says that power is doubted, since it has not been expressly conferred upon him by his warrant of appointment. This power is possessed by all colonial Governors; and the Viceroy, who is a representative of the King-Emperor par excellence, must be taken to have that power.

The Code of Criminal Procedure gives power to remit sentence, and so the question is of little practical importance.

The present authority of the Governor-General in Council is thus not the result entirely of Parliamentary enactments. No doubt the Government of India have to work under the orders of the Home Government. Pitt's India Bill laid down that the Governor-General could not, without the express authority of the Court of Directors, or of the Secret Committee, declare war or commence hostilities except for the protection of our own territories or those of the allied native rulers, and subsequent acts have made very little modification in this section; so that even at the present day, the Governor-General cannot, without the authority of the Secretary of State, declare war or enter into a treaty for making war against any state in India, or for guaranteeing the possession of any such native state. Again in such matters as the reduction or increase of taxation, or measures which substantially affect the revenues; changes in the general financial policy regarding currency or debt; matters raising important administrative issues, or involving considerable, unusual or novel expenditure, the previous sanction of the Secretary of State in Council is required. But when all allowance is made for these, it still remains true that the Governor-General is the immediate ruler of the Country. He enjoys powers, as the representative of the English Crown, as the successor of the great Mughal, which few Secretaries of State can control; and besides the day his opinion can be made to appear as the opinion of the people of India, the domination of the Secretary of State must cease altogether. Again the Secretary of State is too far away from the actual seat of Government to exercise an effective control over the Viceroy; but for all that, much depends on the personality of these two entities. Owing to improved means of communication, it is now easier for the Secretary of State, if he is a masterful personality, and has a policy of his own, to make his authority felt. There are several instances

in which even strong-minded Viceroys have had to submit to the rulings of the Secretary of State, or to resign. In 1870, there was a dispute between Lord Mayo and the Duke of Argyll, who was then Secretary of State for India, on the subject of the Punjab Canal and Drainage Bill which was not approved of by the latter. There was a hot discussion; but the battle was not fought to a finish, because of the sudden death of the Viceroy. There is no doubt, however, that the Secretary of State would have compelled the Viceroy either to submit or to resign.

Another controversy between the Secretary of State and the Viceroy took place during the administration of Lord Northbrook. The Government of India, owing to the falling exchange, passed a Customs Act imposing duties on cotton goods imported from England. The Secretary of State was indignant, because his consent had not been previously asked, and because the act was in direct opposition to the views publicly expressed by him. He censured the Government of India, who, however, pleaded that the measure was an urgent one and delay would only mean danger to the trade of the country. But the Secretary of State remained obdurate, and called upon the Government of India to reverse their tariff policy. Lord Northbrook refused, and had to resign; and his successor Lord Lytton exercising his extraordinary powers in overriding the Council, the measure was repealed.

Even so late as during the Viceroyalty of Lord Curzon, there was a dispute between the Viceroy and the Secretary of State about the relative authority of the Governor-General and the Commander-in-Chief. Lord Curzon, finding himself overruled, had to resign. And in our own times, the decisions of the Governor-General in Council on the subject of the Turkish peace, and the rights of Indians in Kenya, were set at naught by the Secretary of State, who, as a member of the British cabinet, was acting in harmony with that august body. But the defeat or the resignation of a Viceroy

only emphasises the powers of the Secretary of State. So long as these two authorities agree, the Viceroy has a free hand, but if the Secretary of State means to assert himself, he has so far always been able to bring even the most powerful and popular Viceroy to his knees, or compel him to resign.

The Governor-General is an Imperial Officer appointed on the advice of the Prime Minister, and not on the advice of the Secretary of State, by the Crown. He is also called the Viceroy, a title frequently used in ordinary speech; but yet it has no legal authority, since it has never been employed in any act of Parliament. The first time that title was used was in the proclamation of 1858 which announced the assumption of the Government of India by the Crown. In the course of the proclamation, Lord Canning was referred to as the first Viceroy and the Governor-General. This title of Viceroy is employed frequently in the statutes of Indian Orders and public notification; and may be regarded as a title of ceremony used appropriately in connection with the said functions of the representative of His Majesty in India. He has a salary of Rs. 256,000 a year.

On his appointment, and during his tenure, the Viceroy is ex-officio Grand Master of the Indian Orders of the Star and Empire of India; and on his retirement becomes Grand Commander of either (G.C.S.I. and G.C.I.E.)

The Governor-General is usually a man who has already made his reputation in English public life. He is either a diplomatist of experience or one who has served as governor in some of the British colonies. Thus there have been diplomats like Lord Dufferin or Lord Harding; English politicians like Lords Ripon, Lansdowne, Curzon; and ex-governors of self-governing colonies like Lords Elgin and Minto. Lord Reading is an exception, being an English business-man, lawyer and politician, who had risen to the highest legal and judicial office before his appointment, and had even served

as an ambassador extraordinary to the United States during the war. Though no definite qualifications for this office have been laid down, it seems to be generally understood that the highest executive office in India shall be given to a man who has already served his apprenticeship in the service of the Crown in one department or another. It is also understood in the same way that the Governor-General shall be a man who has had previously no connection with India. Like the Secretary of State, he comes to his task perfectly new and entirely unprejudiced.

Since the transfer of the Government of this country to the Crown, the only permanent Governor-General, who had had previous experience of India, was Sir John Lawrence. But the case of Sir John stands apart. Even at the time of his appointment there was a strong opposition to the idea of an ex-civilian, with all the prejudices and preconceptions of the service, being appointed to the highest executive post under the Crown in India. That the opposition was well-founded is evident from the fact that since the time of Lord Lawrence the experiment has not been repeated. Among his successors, Lord Curzon seems to be the only man who has had any knowledge of the country and its people, prior to his appointment as Governor-General. Not as a servant of the Crown in India, but as a traveller and a student, a writer and a minister at home, he had gathered information relative to this country long before there was any chance of the greatest ambition of his life being realised. Says his historian, "Lord Curzon embarked with an equipment for his task such as few Viceroys have possessed. He had spent nearly one year at the India Office and three years at the Foreign Office. He had visited India four times and had travelled widely within its borders. He knew at first hand the North-West frontier always an object of deep anxiety." And yet even in his case some critics of his appointment argued that the very greatness of his qualifications disqualified him. The same writer con-

tinues, "Reduced to a simple formula, their contention is that the less a Viceroy-elect knows about India, the better ruler he would make, provided he has an open mind and a balanced sense of judgment. The proposition hardly bears serious examination, but it is typical of a certain school of British thought. No one maintains that a man would be a better admiral, or a better general, or better surgeon if he was entirely without learning or special knowledge; but the task of steering the government of India through the vast and complex issues which constantly beset it, is supposed by these publicists to be best accomplished by an unprepared man with a cross-bench mind. **India cannot be properly governed upon such theories in these stormy days.....it is a mistake to think of a Viceroy as a judicial referee,** surrounded by men necessarily far more competent than himself. **A good Viceroy will initiate as well as adjudge.** The Indian Civil Service is the best service in the Empire, but its effect upon its members is to kill initiative in all, save the men of very strong individuality, who rarely rise to the highest place. **The head of the government must not only decide; he should also on occasion lead and direct;** and a Viceroy who realises that his office is something more than a Court of Appeal, therefore, starts with a very long advantage if he has made, as Lord Curzon had made, a serious and detailed study of Indian questions."

This long extract is adduced to show that there are two schools of opinion with regard to the qualifications of a Viceroy. One believes that only such men-selected from among the prominent public men in England-will be a success as Viceroys of India, who have had no previous knowledge of the country and its questions. The other regards only those Viceroys likely to be the best rulers for a country, with all its maze of racial and social and political and economic problems, each peculiar to itself,—who have had previous experience of the country and who have studied its problems. Between these two views, the policy of the Imperial Cabinet has fluctuated, though the weight of opinion is in favour of the former course. Driven to

its logical conclusion, the ideas of the second school would lead to the appointment only of retired Civil Servants of the Crown in India. It may, however, be safely asserted at this time that this course will never be adopted, notwithstanding the precedent of a very successful Viceroyalty under Sir John Lawrence. And there are good reasons. Thirty years of service in a country like India leaves a man—however strong-minded he may be—with strong habits of obedience and of dependence upon others for final orders. Besides, the sound principle of the British constitution, whereby the head of even such departments as the Army and the Navy are civilians without technical skill or knowledge, is equally necessary in India; and it is realised, only if the Viceroy is unacquainted with India. If the ideal of Ministerial responsibility is ever to be realised in this country, it can only be if the highest officers of the State are neither pedants nor experts. The Viceroy is the only man to-day, with the exception of his Indian colleagues in the executive Council, who brings the democratic atmosphere of the English or Colonial public life in the bureaucratic Government of India. A Viceroy who knows too much about India would never know enough to make a good chief of a nascent democracy. It is because the signs of the times have begun to be appreciated by the powers that be, that the Viceroys are chosen from among English diplomats like Lord Hardinge, or the proconsuls of the great English colonies. And the latter class of men are by far the most suitable. The hopes and aspirations of new India can be encouraged and guided only by men who have had some experience of constitutional rule in British democracies over seas.

We might here add a few words as to the social rank of the Viceroy. They are usually distinguished men drawn from the peerage, though we have an exception in the case of Sir John Lawrence, who was created a peer after his term of Viceroyalty was over, and of Lords Curzon and Hardinge who were not peers at the date of their appointment, but were created such, just before, they left England to take

up the Viceroyalty. It is fitting that the highest officer of the Crown in India, the man, who, as his title implies, is a representative of the King-Emperor himself, should have a social position of his own that would enable him to deal with the highest and the noblest in the country, on a footing of equality. In spite of all democratic notions, people would naturally respect more a man who held a high position in English Society, than one who has no social status, and yet presumes to dictate to the Princes and Nobles of the land.

The idea of the Viceroys for India being selected from the Royal family of England has already been abandoned too long to require a lengthy consideration. The experiment, however, of the Duke of Connaught as the Governor-General of the Dominion of Canada, and of his son in a similar position in Africa, is too great a success, judging from reports, not to give rise to apprehension for a repetition of the same on the Indian field. The government of this country is a charge vast enough to tempt the ambition or the imagination of a Royal Prince. The traditions of constitutional rule of the English Royal family are long enough to reconcile the radical opponents of Royal Viceroys of India merely on constitutional grounds. The days, besides, are long gone by, when reasonable fears could be entertained of an ambitious and imaginative Prince of the Blood creating an independent kingdom for himself in India, if once appointed a Viceroy. And yet there are strong reasons why a Royal Viceroy might be unacceptable in India under her present circumstances. For one thing the control of the Secretary of State for India would not be so easy over a Royal Viceroy of India as over other English gentlemen—whether peers or commoners. The Government of India is yet an ill-disguised autocracy. The only check on that autocracy is that of the Secretary of State. If that check should in any way be weakened, the interests of the people of India might seriously be endangered. Even if a Royal Prince proves successful in colonies like Canada or Australia, that success

would be no reason to repeat the experiment, for in the self-governing colonies democracy is an accomplished fact; the Governor or the Governor-General is only a constitutional monarch who can never do wrong, because he never does anything save through his constitutional advisers. In India democracy has still to grow, and the Viceroy can do much more than we are apt to think to promote or retard that growth. Besides, public criticism of Royal personages is bound to be moderate. And the Indian people—above all others—are likely to carry their moderation in this respect to extremes. At the time, therefore, when high hopes are entertained in all quarters for a new, healthy democracy in India, it would be most inopportune to appoint Royal Viceroys who quite unconsciously, quite unwillingly, perhaps in spite of themselves, might lend themselves to stifle or repress the growth of a new democracy in this old land.

II. *The Duties of the Viceroy.*

In one of his last speeches in India, Lord Hardinge said that to his mind the rôle of the Viceroy consisted in interpreting before the people of India the traditions of self-government of the people of England; and to interpret before the people of Great Britain—the legal and political Sovereign of India,—the wishes and aspirations of the people of this country. Though by law he is vested with the superintendence, direction and control of the whole government of India under the order of the Secretary of State, his real functions have well been summarised in this remark of Lord Hardinge's. The Viceroy does, no doubt, initiate measures whenever he is clever and hard-working as Lord Curzon, or working under special orders from Home as Lord Lytton. But the greater portion of his daily work consists in supervising, with the aid

of his Council, the work of the various provincial governments; and in directing and controlling those departments for which the Governor-General-in-Council is primarily responsible. It would be impossible for him, even if he was capable of it, to conduct in person the whole administration of this vast Empire. The actual administration is—and must be left to the various provincial and departmental authorities. He, as the highest executive officer, with his experience of other peoples and other Governments, with his broader outlook and unprejudiced mind, must be ever ready, if not to initiate, at least to advise. He must conciliate and placate and harmonise the discordant elements of this machine. He must combine the *savoir faire* of the diplomat with the constitutional temperament of the colonial Governor. In a thousand ways a good Viceroy can fulfil his duties—besides those of actual government. He must discountenance the rapacity and turbulence of some members of the ruling race in India outside the official classes; he must encourage the native princes in improving their administration, appreciate their efforts as well as their difficulties, restrain their waywardness and punish—when necessary—their mis-rule; he must animate the dead routine of departmental work, impress upon the officials their duties as servants of the country where their position has made them masters; he must eliminate friction and promote good-will among the various races of this continent and above all, undaunted by temporary ebullition of temper, undismayed by criticism or abuse, uninfluenced by flattery, he must ever promote the true interests—social and political—of the new India. All this is outside government, and yet indispensable to make a good Viceroy a great ruler.

III. The Executive Council of the Governor-General.

The History of the Council.

The Governor-General's Council dates from 1773, if not from the earliest days of the East India Company's rule in India. Under the Regulating Act the Governor of Fort William in Bengal was made the Governor-General of Bengal, and was given a council of 4 members appointed from England to hold office for 5 years. Each of the members had the same voting power, with the exception of the Governor-General, who, as President of the council, had a casting vote. The council of the Governor-General, or to speak in technical terms, the Governor-General-in-Council, was made supreme over the other two Presidencies, which also had each their own Governor-in-council, which considerably hampered the task of administration; and so, when Lord Cornwallis was appointed Governor-General, he stipulated that he should also be made the Commander-in-chief, and that the council should be reduced to two members. Thus voting as the Commander-in-chief and as the Viceroy, he had two votes, which, with the addition of the casting vote, gave him supremacy in the council. However, provision was also made for the appointment of a Commander-in-chief in cases of emergency; and therefore, as a further safeguard, the Governor-General was given the right to overrule his council in cases of emergency. The number of the ordinary members of the council was fixed at 3 in 1793, and the Commander-in-chief could be added as an extraordinary member if specially appointed. The act of 1833 added a special member for legislation, who was entitled to sit and vote only when the council of the Governor-General (which from that day becomes the sole legislative authority for the whole of British India) met for the purpose of passing rules and regulations. In 1853 he was made a full member of the council, *i. e.* he was entitled to sit and vote at every meeting of the council no matter what the

question before the council. This feature of the council having special members for certain departments, was further extended in 1859, when the disordered state of the finances of the country required and obtained a trained financier. In 1874, the Governor-General-in-Council obtained the power, under an Act of Parliament, to appoint another member for the Public Works Department only if he thought fit. This power was not always exercised, and in 1904 the restriction limiting it to Public Works purposes was removed. In 1905 the Public Works Department was abolished, and a new Department of Commerce and Industry was created, to which was made over the bulk of the Public Works Department, *viz.*, the Railway matters, while Irrigation works were placed under the charge of the Revenue and Agriculture member. The Commander-in-Chief under the present Act may be appointed by the Secretary of State in Council as a member of the council. In practice, he is always so appointed. Before 1905 the Commander-in-chief had no department under him. In virtue of the changes made in that year, the Military Department of the council was replaced by the Army and Military Supply Departments. The former was placed under the Commander-in-chief, who thus for the first time received the charge of a department. The latter was in charge of a separate member, who replaced the member in charge of the Military department. In 1909, the Military Supply Department was abolished, and the responsibility for the whole military administration passed to the Commander-in-Chief as member in charge of the Army Department. Finally, in November 1910 a sixth ordinary member was again added to take charge of the newly constituted Education Department.

At present there are seven members in the Viceroy's council.

They are :—(1) General Baron Rawlinson (Commander-in-Chief).

(2) Sir Basil Blackett K.B.E. (Finance member)

- (3) A. C. Chatterjee, C.I.E., I.C.S. (Education.)
- (4) Sir W. M. Hailey K.C.S.I., C.I.E. (Home)
- (5) Sir B. N. Sarma (Revenue & Agriculture.)
- (6) Sir Mian Mahmud Shafi K.C.S.I., C.I.E. (Law).
- (7) C. A. Innes C.S.I., C.I.E. (Commerce and Industry).

For the more convenient transaction of business, the Governor-General assigns specific departments to special members of the council. But each member is not therefore alone responsible for his own department. Macaulay could refuse to take upon himself the responsibility of the Afghan war, because, though he was the Law Member, he did not form part of the council. But at the present day, the council has a collective responsibility, and this practice of departmental heads is only for the sake of convenience and to secure efficiency. Formerly when all matters had to come before the whole council, some matters had to wait for twenty and thirty years before a solution could be arrived at, and the present system goes a great way in securing efficiency.

IV. Qualifications of the Members.

The qualifications of the members according to this Act are:—(1) Three of them at least must have been in the service of the Crown for at least 10 years at the date of their appointment. (2) One must be a barrister of England or Ireland or a pleader of a High Court of not less than ten years' standing or a member of the Faculty of Advocates of Scotland. (3) No ordinary member of the council can be a military officer other than the Commander-in-Chief for the time being of His Majesty's Forces in India. If, at the time of his appointment, a member is a military officer, he must resign his command; he cannot be employed in military duties during the tenure of his

office as member of the Viceregal Council. The qualifications of only 4 members are thus laid down by law, so that there is a discretion in the appointment of the remaining, who may be chosen for different qualifications. The members are appointed by Royal warrant and usually hold office for five years.

The presence of Indian gentlemen in the Viceroy's Council is not secured by any legal provision. On the other hand Indians are not by law debarred from holding these offices. There is nothing in this Act or any other Act to prevent the majority or even the entirety of the Council being composed of Indians, provided of course, they fulfil the requirements about service etc. And yet till 1910, there was not a single Indian member on the Viceroy's Council. Said Lord Morley in 1908, "The absence of an Indian member from the Viceroy's Executive Council can no longer, I think, be defended. **There is no legal obstacle or statutory exclusion.** The Secretary of State can, tomorrow, if he likes, if there be a vacancy on the Viceroy's Council, recommend His Majesty to appoint an Indian member." Lord Morley added that he would feel it his duty to advise the King to appoint an Indian, and Lord Minto, the then Viceroy, concurring in, and even suggesting the step himself, an Indian gentleman was appointed for the first time in 1910. The number has since then been increased so that we have at the present day three Indian members on the Viceroy's Council. But these are all officials acting collectively and not at all responsible to the Indian public or their elected representatives. Discretion is given to the Governor-General to appoint members of the Legislature to the post of Secretaries to the various departments, but this is only for purposes of training, and has not so far been used.

V. Character of the Council.

The council thus consists of a number of men who have distinguished themselves in the task of administration long before their appointment. At least three of the members must have been connected directly with the task of administration in India; and the others also must in one way or another have long experience of Indian problems, or special qualifications for some special department like Sir Blackett. They thus form a body of eminent men of experience and reputation, entrusted with the task of advising and assisting the Governor-General in the administration of India. The Governor-General is, as we have seen already, a novice as regards Indian problems. His councillors on the other hand are admittedly experienced in Indian questions. For those unconnected with the Government it is difficult to say what is the exact influence of the Governor-General and his councillors in the actual administration of India. Arguing on abstract principles, it would seem that in matters of every day routine, it is not probable that the Governor-General would take it upon himself to go against the considered opinion of his experienced advisers, and especially if that opinion is the opinion of the majority of his colleagues. The Governor-General has a right to overrule his Council under certain circumstances. But it is very doubtful if he ever feels the need of exercising this extraordinary power. Lord Lytton did overrule his council in the matter of the tariff policy; but that was because he was pledged to carry out the policy of the Home Government at any cost. Besides, that incident was of too peculiar a character to form a valid precedent. Again Lord Dufferin and Lord Elgin used their extraordinary powers to overrule the council on the questions of army increase and cotton excise respectively; but even so, the power is resorted to only on rare occasions. It is true the mere disuse of a legal power does not amount to its abolition; but all the same, it does show its abeyance. The prerogative of the King in England to veto Bills sent up

by Parliament, has not been specifically abolished by any Act of Parliament, and yet almost every writer on the English constitution takes it for granted that the royal veto is dead. The prerogative has been in abeyance—as far as England is concerned—for more than two centuries. It must be admitted that the presence of such a clause shows, more than anything else, the absolute, autocratic nature of the Government of India. In proportion, however, as the principles of representative Government are extended, bringing in their train the ideas of responsible government, such powers in the supreme head of the Government, however closely circumscribed, would be found to be incompatible if not altogether useless.

VI. The Council at Work.

By sub-clause (2), s. 40, power is given to the Governor-General to make rules and orders for the more convenient transaction of business in his executive council. This power, first given by the Indian Councils Act 1861, was utilised by Lord Canning to introduce some division of work in the Council. Before 1861 every question of administration had to go through the whole council, no matter what the department in which it had originated, because the council worked as a collective board, and left no power to individual members to work each for a separate department. Under the Indian Councils Act of 1861, the provisions of which have been incorporated in Sec. 40 (2) of this Act, the Governor-General can, for the more convenient transaction of business, parcel out the work of administration amongst his colleagues. By that method can be secured more convenient as well as expeditious transaction of business, though the authority of the council as a body is diminished in proportion to the increase in individual responsibility. Each member of the council is thus also the head of a Department. At the present time business of the Government of India, it

may be said, is conducted in a manner analogous to the Cabinet administration prevalent in England. The papers regarding any subject which comes up for consideration are prepared by the department concerned, and are first submitted to the member in charge of that department. The member passes his own orders in all minor cases; but in important cases, and especially in cases which concern more than one department, and where the two departments differ in opinion, or when it is proposed to overrule a Provincial Government, the member cannot pass final orders by himself. Such cases are, therefore, referred to the Governor-General. He may pass final orders in consultation only with the member in whose department the question originally arose. If he concurs with the member in charge, and the question is relatively a minor one, the usual practice would be for the Governor-General to pass the final orders, and to give the necessary directions to the secretary of the department to be worked up into a resolution. Questions involving large issues of general policy, or questions which cannot be decided without legislation of the Government of India, are referred to the whole council, and are decided by a majority in case of a difference of opinion. The council usually meets once a week but it may meet more frequently. The meetings are private and the decisions arrived at are always represented as the decisions of the Governor-General-in-Council.

The council is divided into 8 departments. They are: (1) the Foreign Department, usually in charge of the Governor-General himself, (2) the Army Department in charge of the Commander-in-Chief since 1909, (3) the Home Department, (4) the Revenue and Agricultural Department, (5) the Commerce and Industry Department, (6) the Education Department, (7) the Finance Department and (8) the Legislative Department. Each of these six latter departments is in the hands of one or the other members of the Council.

VII. The Work of each Department.

The Foreign Department transacts all business relating to the foreign policy of the Government of India, to the frontier tribes, and to the Native States in India. It also controls the general administration of such provinces as Ajmer-Merwara, Coorg, the North-West Frontier Province, and British Baluchistan. The Government of India have really speaking very little control over their external relations; and such control as they have is confined to the relations with the frontier powers in the North-West, such as Afghanistan and Persia; and in the North-East such as Tibet, China and Siam. The Foreign Department also deals with questions of ceremonial, and those relating to the Indian Orders, the Imperial Service Troops, the Cadet Corps, and the Chiefs' Colleges.

The **Home Department** is concerned with the work of general administration, and deals with internal politics, law and justice, police, hospitals, public houses, municipalities, Local Boards and a number of other subjects. Matters ecclesiastical are also under this department. As all these matters fall primarily within the jurisdiction of Local Governments, the work of the Home Department consists chiefly in controlling and supervising the Provincial Governments. Its share of actual administration is confined to the Government of the penal settlement of Port Blair.

The department of **Revenue and Agriculture**, created in 1871 and abolished in 1879, and reconstituted in 1881, is concerned with the administration of land revenue and agricultural enquiry, agricultural means and famine relief. The organisation of economic and scientific investigation and of measures of agricultural improvement is also in the charge of this department. The mere enunciation of its branches *e. g.* the Meteorological Department, the Survey Department, the Civil Veterinary Department, the Forest Department, will suffice to show its multifarious activities. As in the case of the Home Department

the functions here again are primarily falling within the jurisdiction of Local Governments, and so the functions of the Revenue and Agricultural Department are mainly of a supervising and controlling character, Since 1905, it has also received charge of the Irrigation branch of the Public Works Department.

The **Commerce and Industry Department**, formed in 1905, has taken over some portion of the work from other departments, and is concerned with the questions relating to the trade and manufactures of the country. It is also the department which represents the railways in the council of the Governor-General. It is concerned with the administration of the Factories, Petroleum, and Explosives Acts. Postal business, customs, statistics, printing and stationary; and everything relating to ports, shipping, and trade generally have been transferred to this from the finance department. Other functions directly connected with the trade and under this department are the Merchandise Marks Act. It controls the Post-office—an Imperial Department under a Director-General under whom are the Provincial Post-Masters—and also the Telegraph Department. It considers all labour questions, including emigration to foreign countries, as also to Assam. The control of expert mining staff, including inspection of all mines, and the matters relating to geological enquiries are made over to that department.

The **Legislative Department** was formerly a branch of the Home Department, but was constituted a separate department in 1869. It is responsible for all matters connected with the conduct of the legislative council of the Governor-General. It is also entrusted with drafting of enactments and of publishing and revising the Statute book. It also supervises the legislation of the provincial councils, and assists the other departments of the Government of India with advice on legal questions and principles. The Law-member of the council is in charge of some of the bills introduced into the Governor-

General's Council, and is a member, and usually Chairman, of the Select Committees to which those bills are referred.

The **Army Department**, is under the sole charge, since 1909, of the Commander-in-Chief. It deals with all questions relating to enlistment, pay and promotion of soldiers, volunteers, and the Royal Indian Marine, and the Indian Medical Service, ordnance and stores.

The **Education Department**, created in 1909, deals with all educational matters such as the control and establishment of universities and technical institutions, the grants-in-aid, the establishment of schools and their equipment, the extension of education etc. As all these matters fall within the jurisdiction of the various provincial governments, the work of the Department is chiefly of a supervising and controlling nature, besides the main question of formulating the educational policy of the Government of India.

The **Finance Department** deals with the general administration of Imperial Finance, with questions relating to the salaries, leave and pensions of public officers, and with currency and banking. It supervises and controls such sources of revenue as opium, excise, stamps, salt and assessed taxes. It also administers the Mint, and the Government Treasuries. One single department manages the civil accounts of both the supreme and the provincial governments. At the head of this department is the Comptroller and Auditor General who is also the Head Commissioner of paper currency. A separate branch, called the Military Finance Department, is entrusted with all questions relating to the financial administration of the Army.

VIII. The Indian Council and the English Cabinet.

Is the Council a Cabinet? Says Sir J. Strachey : "Although the separation of departments is less complete than in England, and the authority of the member of Council much less extensive and exclusive than that of an English Secretary of State, **the members of Council are now virtually cabinet ministers**, each of whom has charge of one of the great departments of Government. Their ordinary duties are rather those of administrators than of Councillors." In spite of the writer's intimate experience of the system of the Government of India, it is difficult to accept the opinion that the Indian Council is a Cabinet in miniature. Apart from the delegation to each member of a specific department, there is no resemblance between the Council of the Governor-General and the Cabinet of Western democratic countries. On the other hand, the differences between the two are many and striking. (1) The authority of a Cabinet Minister in England or France is much wider - as Sir John himself admits - than that of a Councillor of the Viceroy of India. (2) The public actions of a Cabinet Minister in those countries, moreover, are taken by each Minister by himself, while the similar actions of the Councillors in India are invariably expressed as being the acts of the collective entity, the Governor-General-in-Council. (3) It is true that these Councillors, like the Cabinet Ministers in European countries, are members of the Legislature, apparently pursuing a uniform, pre-concerted policy, but there the resemblance ends. The councillors in India by no means hold their position in the Council, as do the Cabinet Ministers in democratic countries, because they are the acknowledged leaders of the dominant party in the Legislature. There are as yet no officially recognised parties in politics in this country. There is also no duty imposed upon Councillors to hold themselves answerable to the legislature for their acts, and to resign in the event of their acts or policies not finding favour with the legislature. (4) Hence though their acts are expressed to be in their collective names, there is no

collective responsibility. Sir Thomas Holland, it is true, resigned after the munitions affair, but though he was reported to have been advised in that transaction by two of his colleagues, no other resignations followed. There is also no Prime Minister in India—unless, indeed, we take the Viceroy to be his own Prime Minister—as is usual in all cabinets; and even if we take the Viceroy to be his own premier, there is not that bond of union between him and his colleagues as is always found between the prime minister and his cabinet colleagues in England or France, the bond of identical opinions on leading political questions of the day and of sympathetic changes of political fortune. The Viceroy is a new comer, while his colleagues are all veterans in the service of India. The Viceroy is immeasurably their superior in social position and theoretical powers, and they are his superiors in local knowledge. They do not, by any means, come to their work at the same moment, and leave it also at the same. Beyond the fact that the Viceroy usually takes charge of a department of State, and that he regulates the distribution of work among his colleagues, there is really no similarity between an English Prime Minister and the Viceroy of India. (5) The English Cabinet is a body quite unknown to the constitutional law of England. In other countries they have legal existence; but no where has constitutional law invested them with that corporate capacity which we find in the case of the Executive Council of the Viceroy. (6) The fancied resemblance to a Cabinet breaks down even when we look to points merely of detail. Thus the position of the Secretary in an Indian Department has been compared to that of the permanent Under Secretary in England. But there are important differences between the Indian Secretary to the Government and the English permanent (of course he cannot be compared to the Parliamentary) Under Secretary of State. The report of the Royal Commission on Decentralisation says:—

“ The Secretary, as above stated, is present at Council meetings. He attends on the Viceroy, usually once a

week, and discusses with him all matters arising in his department, and he has the right of bringing to the Viceroy's special notice any case in which he considers that His Excellency's concurrence should be obtained to action proposed by the departmental member of Council. His tenure of office is usually limited to three years".

In all these respects, the position of the English permanent Under-Secretary is radically different. He cannot be present at Cabinet meetings; he has no direct access to the Prime Minister nor the right to appeal against his departmental chief;* It is thus impossible to regard the Government of India in the same light as the Cabinet Government in England. The principles which guide the working of the Indian Council have been well summarised by J. S. Mill.

"The Councils" he says in his Representative Government, "should be consultative merely in this sense, that the ultimate decision should rest undividedly with the Minister himself: but neither ought they to be looked upon, or to look upon themselves, as ciphers, or as capable of being reduced to such at his pleasure. The advisers attached to a powerful and perhaps self-willed man ought to be placed under conditions which make it impossible for them, without discredit, not to express an opinion; and impossible for him not to listen to and consider their recommendations, whether he adopts them or not. The relation which ought to exist between a chief and this description of advisers is very accurately hit by the councils of the Governor-General and those of the different presidencies in India. As a

* (Sec: 43A. of the Act of 1919, which provides for a Parliamentary Secretary in India; but the provisions of that section have not yet been given effect to; and we are therefore unable at this stage to realize how it will work in practice.

rule every member is expected to give an opinion, which is, of course, very often a simple acquiescence; but if there is difference of opinion, it is at the option of every member, and is the invariable practice, to record the reasons of his opinion; the Governor-General or Governor doing the same. In ordinary cases the decision is according to the sense of the majority. The Council, therefore, has a substantial part in the government, but if the Governor-General or Governor thinks fit, he may set aside even their unanimous opinions recording his reasons. **The result is that the chief is, individually and effectually, responsible for every act of the government?"**

No apology is needed to record at length the opinion of one of the most eminent political thinkers of the last century, who was himself for a long time in the service of the East India Company. At the time when Mill was writing this, however, the council was working as a collective board, each member in which shared equally in every act of administration. The distribution of the work of the council in different departments, each in the charge of one member, was introduced subsequently. But the principles he has laid down still hold good. It is even now recognised as a fundamental principle of the Government of India that while the Governor-General of India possesses in the last resort power to act upon his judgment, even against the unanimous opinion of his colleagues, he is also obliged to hear the opinion of his experienced councillors. And those councillors have the right to make known their opinion, not merely as regards their particular departments, but on all questions coming before the council. On account, however, of the cumbrousness of the system of collective working, the practice which prevailed under the Company was abandoned in 1861, though in form the acts of the Government of India are even now the acts of the Governor-General in Council.

It is impossible, therefore, to accept the opinion that the Indian Council is for all practical purposes a Cabinet like that of England. Those who are entitled to as much deference as Sir John Strachey have declared that the Government of India is even now conducted by a collective board or committee, in which every member—even the Viceroy—has the same powers. Says Lord Curzon:

“Never let it be forgotten that the Government of India is conducted not by an individual but by a committee.” No important act can be taken without the assent of a majority of that committee. In practice this cuts both ways. The Viceroy is constantly spoken of as though he and he alone were the Government. This is, of course, unjust to his colleagues, who are equally responsible with himself, and very often deserve the credit which he unfairly obtains. On the other hand, it is sometimes unfair to him, for he may have to bear the entire responsibility for administrative acts or policies which were participated in or originated by them. **The Viceroy has no more weight in his council than any individual member of it.**”

If such a strong-willed ruler as Lord Curzon could publicly utter such sentiments, there is every reason to believe that the growth of departmentalism has by no means diminished the importance of the council, or displaced old theories of Government.

The councillors must be made responsible to the legislature jointly and severally since the admitted goal of Indian Government is responsible Government. The members should only be allowed to hold office while they have the confidence of the legislature, and should be responsible to that body, and retire on a vote of censure or want of confidence by that body. They should be selected only from that party which has a majority in the Legislature.

IX. The Councils of the Governor-General and of the Secretary of State compared.

A comparison of the powers of these two great bodies shows that, while in theory the council of the superior authority, the Secretary of State, appears to have wider powers, in practice, the Council of the Governor-General, the man on the spot, must of necessity have the more effective powers. (1) It is true the councillors of the Governor-General may be overruled by him in any case whenever the tranquillity, safety and interests of British India, in his opinion, require him to do so, while the India Council cannot be overruled by the Secretary of State in certain specified matters. (2) At the same time, it must be remembered that the council of the Governor-General is not excluded from any matters whether secret or urgent. (3) Again, though the tenure of office of an India councillor is definite, and though he is not removeable from office except by a joint address of both the Houses of Parliament, thus apparently enjoying a more independent position, he does not in reality enjoy the same position as the viceregal councillor whose tenure of office is less secure, because the latter is never confronted by the opposition of a man, with the influence and importance of the Secretary of State, whenever he differs from his chief. (4) The Secretary of State, moreover, in most matters, is not bound to accept the opinion of the majority of his council, even when he consults them, while the Viceroy must in most cases abide by the decision of a majority of his council.

The legal liability of the Governor-General and his councillors—and of all Governors and their councillors—is very different from those of the colonial Governor. For acts done in their official capacity the Indian Governors and their councillors are immune from any liability. They can in no way be proceeded against, or arrested or imprisoned before

the Indian High Courts. For certain specified offences, however, such as engaging in trade on their own account or receiving presents, they may be prosecuted before the King's Bench division of the High Court in London.

CHAPTER IV.

PART V.

LOCAL GOVERNMENTS.

General.

45. (1) Subject to the provisions of this Act and rules made thereunder every local government shall obey the orders of the Governor-General in Council, and keep him constantly and diligently informed of its proceedings and of all matters which ought, in its opinion, to be reported to him, or as to which he requires information, and is under his superintendence, direction and control in all matters relating to the government of its province.

(3) The authority of a local government is not superseded by the presence in its province of the Governor-General.

45 A. (1) Provision may be made by rules under this Act:

- (a) for the classification of subjects, in relation to the functions of government, as central and provincial subjects, for the purpose of distinguishing the functions of local governments and legislatures from the functions of the Governor-General in Council and the Indian legislature;
- (b) for the devolution of authority in respect of provincial subjects to local governments, and for the allocation of revenues or other moneys to those governments;
- (c) for the use under the authority of the Governor-General in Council of the agency of local governments in relation to central subjects, in so far as such agency may be found convenient, and for determining the financial conditions of such agency; and
- (d) for the transfer from among the provincial subjects of subjects (in this Act referred to as "transferred subjects" to the administration of the Governor acting with ministers appointed under this Act, and for the allocation of revenues or moneys for the purpose of such administration.

(2) Without prejudice to the generality of the foregoing powers, rules made for the above-mentioned purposes may

- (i) regulate the extent and conditions of such devolution, allocation, and transfer;
- (ii) provide for fixing the contributions payable by local governments to the Governor-General in Council, and making such contributions a first charge on allocated revenues or moneys;

- (iii) provide for constituting a finance department in any province, and regulating the functions of that department;
- (iv) provide for regulating the exercise of the authority vested in the local government of a province over members of the public services therein;
- (v) provide for the settlement of doubts arising as to whether any matter does or does not relate to a provincial subject or a transferred subject, and for the treatment of matters which affect both a transferred subject and a subject which is not transferred; and
- (vi) make such consequential and supplemental provisions as appear necessary or expedient:

Provided that without prejudice to any general power of revoking or altering rules under this Act, the rules shall not authorise the revocation or suspension of the transfer of any subject except with the sanction of the Secretary of State in Council.

(3) The powers of superintendence, direction, and control over local governments vested in the Governor-General in Council under this Act shall, in relation to transferred subjects, be exercised only for such purposes as may be specified in rules made under this Act, but the Governor-General in Council shall be the sole judge as to whether the purpose of the exercise of such powers in any particular case comes within the purposes so specified.

(4) The expressions "central subjects" and "provincial subjects" as used in this Act mean subjects so classified under the rules.

Provincial subjects, other than transferred subjects, are in this Act referred to as "reserved subjects."

Governorships.

48. [(1) The presidencies of Fort William in Bengal, Fort St. George, and Bombay, and the provinces known as the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, and Assam, shall each be governed, in relation to reserved subjects, by a governor in council, and in relation to transferred subjects (save as otherwise provided by this Act) by the governor acting with ministers appointed under this Act.

The said presidencies and provinces are in this Act referred to as "governors' provinces" and the two first named presidencies are in this Act referred to as the presidencies of Bengal and Madras.

(2) The governors of the said presidencies are appointed by His Majesty by warrant under the Royal Sign Manual, and the governors of the said provinces shall be so appointed after consultation with the Governor-General.

(3) The Secretary of State may, if he thinks fit, by order revoke or suspend, for such period as he may direct, the appointment of a council for any or all of the governors' provinces; and whilst any such order is in force the governor of the province to which the order refers shall have all the powers of the Governor thereof in Council.

47. (1) The members of a governor's executive council shall be appointed by His Majesty by warrant under the Royal Sign Manual, and shall be of such number, not exceeding four, as the Secretary of State in Council directs.

(2) One at least of them must be a person who at the time of his appointment has been for at least twelve years in the service of the Crown in India.

(3) Provision may be made by rules under this Act as to the qualifications to be required in respect of members of the executive council of the governor of a province in any case where such provision is not made by the foregoing provisions of this section.

48. Every governor of a province shall appoint a member of his executive council to be vice-president thereof.

49. (1) All orders and other proceedings of the government of a governor's province shall be expressed to be made by the government of the province, and shall be authenticated as the governor may by rule direct, so, however, that provision shall be made by rule for distinguishing orders and other proceedings relating to transferred subjects from other orders and proceedings.

Orders and proceedings authenticated as aforesaid shall not be called into question in any legal proceeding on the ground that they were not duly made by the government of the province.

(2) The governor may make rules and orders for the more convenient transaction of business in his executive council and with his ministers, and every order made or act done in accordance with those rules and orders shall be treated as being the order or the act of the government of the province.

The governor may also make rules and orders for regulating the relations between his executive council and his ministers for the purpose of the transaction of the business of the local government:

Provided that any rules or orders made for the purposes specified in this section which are repugnant to the provisions of any other rules made under this Act shall, to the extent of that repugnancy, but not otherwise, be void.

50. (1) If any difference of opinion arises on any question brought before a meeting of a governor's executive council, the Governor in Council shall be bound by the opinion and decision of the majority of those present, and if they

are equally divided the governor or other person presiding shall have a second or casting vote.

(2) Provided that, whenever any measure is proposed before a Governor in Council whereby the safety, tranquillity or interests of his province, or of any part thereof, are or may be, in the judgment of the governor, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the council dissent from that opinion, the governor may, on his own authority and responsibility, by order in writing, adopt, suspend or reject the measure, in whole or in part.

(3) In every such case the governor and the members of the council present at the meeting shall mutually exchange written communications (to be recorded at large in their secret proceedings) stating the grounds of their respective opinions, and the order of the governor shall be signed by the governor and by those members.

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

51. If a governor is obliged to absent himself from any meeting of his executive council, by indisposition or any other cause, the vice-president, or, if he is absent, the senior member present at the meeting, shall preside thereat, with the like powers as the governor would have had if present :

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

52. (1) The governor of a governor's province may, by notification, appoint ministers, not being members of his executive council or other officials, to administer transferred subjects, and any ministers so appointed shall hold office during his pleasure.

There may be paid to any minister so appointed in any province the same salary as is payable to a member of the executive council in that province, unless a smaller salary is provided by vote of the legislative council of the province.

(2) No minister shall hold office for a longer period than six months, unless he is or becomes an elected member of the local legislature.

(3) In relation to transferred subjects, the governor shall be guided by the advice of his ministers, unless he sees sufficient cause to dissent from their opinion, in which case he may require action to be taken otherwise than in accordance with that advice :

Provided that rules may be made under this Act for the temporary administration of a [transferred subject where, in cases of emergency, owing to a vacancy, there is no minister in charge of the subject, by such authority and in such manner as may be prescribed by the rules.

(4) The governor of a governor's province may at his discretion appoint from among the non-official members of the local legislature, council secretaries who shall hold office during his pleasure, and discharge such duties in assisting members of the executive council and ministers as he may assign to them.

There shall be paid to council secretaries so appointed such salary as may be provided by vote of the legislative council.

A council secretary shall cease to hold office if he ceases for more than six months to be a member of the legislative council.

52A. (1) The Governor-General in Council may, after obtaining an expression of opinion from the local government and the local legislature affected, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute a new governor's province, or place part of a governor's province under the administration of a deputy-governor to be appointed by the Governor-General, and may in such case apply, with such modifications as appear necessary or desirable, all or any of the provisions of this Act relating to governor's provinces, or provinces under a lieutenant-governor or chief commissioner, to any such new province or part of a province.

(2) The Governor-General in Council may declare any territory in British India to be a "backward tract," and may, by notification, with such sanction as aforesaid, direct that this Act shall apply to that territory subject to such exceptions and modifications as may be prescribed in the notification.

Where the Governor-General in Council has, by notification, directed as aforesaid, he may, by the same or subsequent notification, direct that any Act of the Indian legislature shall not apply to the territory in question or any part thereof, or shall apply to the territory or any part thereof subject to such exceptions or modifications as the Governor-General thinks fit, or may authorise the governor in council to give similar directions as respects any Act of the local legislature.

52B. (1) The validity of any order made or action taken after the commencement of the Government of India Act, 1919, by the Governor-General in Council or by a local government which would have been within the powers of the Governor-General in Council or of such local government if that Act had not been passed, shall not be open to question in any legal proceedings on the ground that by reason of any provision of that Act or this Act, or of

any rule made by virtue of any such provision, such order or action has ceased to be within the powers of the Governor-General in Council or of the government concerned.

(2) The validity of any order made or action taken by a governor acting with his ministers shall not be open to question in any legal proceedings on the ground that such order or action relates or does not relate to a transferred subject, or relates to a transferred subject of which the minister is not in charge.

Lieutenant-Governorships and other Provinces.

53. (1) The province of Burma is, subject to the provisions of this Act, governed by a lieutenant-governor.

(2) The Governor-General in Council may, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute a new province under a lieutenant-governor.

54. (1) A lieutenant-governor is appointed by the Governor-General with the approval of His Majesty.

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

55. (1) The Governor-General in Council, with the approval of the Secretary of State in Council, may, by notification, create a council in any province under a lieutenant-governor, for the purpose of assisting the lieutenant-governor in the executive government of the province, and by such notification—

(a) make provision for determining what shall be the number (not exceeding four) and qualifications of the members of the Council; and

(b) make provision for the appointment of temporary or acting members of the council during the absence of any member from illness or otherwise, and for supplying a vacancy until it is permanently filled, and for the procedure to be adopted in case of a difference of opinion between a lieutenant-governor and his council, and in the case of equality of votes, and in the case of a lieutenant-governor being obliged to absent himself from his council by indisposition or any other cause:

Provided that, before any such notification is published, a draft thereof shall be laid before each House of Parliament for not less than sixty days during the session of Parliament, and if, before the expiration of that time, an address is presented to His Majesty by either House of Parliament against

the draft or any part thereof, no further proceedings shall be taken thereon without prejudice to the making of any new draft.

(2) Every notification under this section shall be laid before both Houses of Parliament as soon as may be after it is made.

(3) Every member of a lieutenant-governor's executive council shall be appointed by the Governor-General, with the approval of His Majesty.

56. A lieutenant-governor who has an executive council shall appoint a member of the council to be vice-president thereof, and that vice-president shall preside at meetings of the council in the absence of the lieutenant-governor.

57. A lieutenant-governor who has an executive council may, with the consent of the Governor-General in Council, make rules and orders for more convenient transaction of business in the council, and every order made, or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the lieutenant-governor in Council. An order made as aforesaid shall not be called into question in any legal proceedings on the ground that it was not duly made by the lieutenant-governor in council.

58. Each of the following provinces, namely, those known as the North-West Frontier Province, British Baluchistan, Delhi, Ajmer-Merwara, Coorg, and the Andaman and Nicobar Islands, is, subject to the provisions of this Act, administered by a chief commissioner.

59. The Governor-General in Council may, with the approval of the Secretary of State, and by notification, take any part of British India under the immediate authority and management of the Governor-General in Council, and thereupon give all necessary orders and directions respecting the administration of that part, by placing it under a chief commissioner or by otherwise providing for its administration.

Boundaries.

60. The Governor-General in Council may, by notification, declare, appoint or alter the boundaries of any of the provinces into which British India is for the time being divided, and distribute the territories of British India among the several provinces thereof in such manner as may seem expedient, subject to these qualifications, namely:—

- (1) an entire district may not be transferred from one province to another without the previous sanction of the Crown, signified by the Secretary of State in Council; and
- (2) any notification under this section may be disallowed by the Secretary of State in Council.

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

62. The Governor of Bengal in Council, the Governor of Madras in Council, and the Governor of Bombay in Council may, with the approval of the Secretary of State in Council, and by notification, extend the limits of the towns of Calcutta, Madras and Bombay, respectively; and any Act of Parliament, letters patent, charter, law or usage [conferring jurisdiction, power or authority within the limits of those towns respectively, shall have effect within the limits as so extended.

I. The Development of the Provincial Governments in India.

British India is divided into 8 large provinces and 7 lesser charges, each of which is termed a Local Government. The provinces are the two old Presidencies of Madras and Bombay, to which, since 1912, has been added the Presidency of Bengal; the four old Lieutenant-Governorships of the United Provinces, the Punjab, Burma, and Bihar and Orissa; the Chief Commissionerships of the Central Provinces, Assam, Ajmere-Merwara, Coorg; and the Penal Settlement of Andaman and Nicobar Islands. With the exception of Burma, which, though brought under the new regime, still remains in name and style a Lieutenant-Governorship; and of the North West Frontier Province, Ajmer, Coorg and the Andamans, all these Provinces have been raised to an equality of status as **governor's provinces**. To these was added in 1912 the Commissionership of Delhi, when that city was made the capital of the Government of India. The new Chief Commissionership was a charge created by separating the district of Delhi and the enclave of territory around it from the Punjab, and placing it under the Government of India.

Originally, the three Presidencies of Fort St. George or Madras, of Fort William or Bengal, and Bombay were centres of the East India Company, politically independent of one another. Though in point of history Madras was the oldest of the East India Company's possessions in India, the acquisition by Clive in 1765 of the Diwani of Bengal, Bihar and Orissa from the Mogul Emperor made the Presidency of Fort William the premier Presidency in India. From 1773 this practical importance was recognised also in theory, the Governor of Fort William being made the Governor-General of Bengal, and being given supremacy over other provinces, and over the Governors of Bombay and Madras. This supremacy of the Governor-General of Bengal was carried a step further in 1785, and was made permanent in 1833, when the Governor-General of Bengal was declared to be the Governor-General of India, though the same officer was also the Governor of Bengal.

The year 1833 is also remarkable in the history of the provinces in India, because in that year Parliament permitted the East India Company to erect a fourth Presidency out of the territories acquired by the Company on the north-west frontiers of Bengal, and comprising a great portion of the modern provinces of Agra and Oudh. This permissive clause of the Charter Act of 1833 was not carried into execution till 3 years later; and even then in a modified form. The territories on the north-west frontier of Bengal were erected into a Lieutenant-Governorship by notification in the gazette of February 21, 1836. They were styled the North-West Provinces upto 1901, when, in order to distinguish them from the North-West Frontier Province, formed in that year, they came to be known as the United Provinces of Agra and Oudh.

Another change came 20 years later in 1853, when the Governor-General of India was relieved from the immediate administration of the Presidency of Bengal, and a new Lieutenant Governorship was created to administer that province. Here also s. 16 of the Government of India Act gave power

to the Court of Directors, subject to the sanction of the Board of Control, to appoint a Governor for the Presidency of Fort William. Until, however, a separate Governor was appointed under that Act, the Governor-General was given power to appoint a Lieutenant-Governor. The Governor-General exercised this alternative power, and Bengal remained a Lieutenant-Governorship till 1912. The Governor-General becomes from that date, both in name as well as in fact, the Governor-General of India, and not immediately of any particular province.

The Punjab, annexed in 1849, was governed first by a board, afterwards by a Chief Commissioner; and was made a Lieutenant-Governorship in 1859. Oudh, which was annexed in 1856, was first placed in charge of a Chief Commissioner; but was later on merged in the Lieutenant-Governorship of the then North Western Province, and the modern United Provinces of Agra and Oudh. Burma was the next Lieutenant-Governorship. In 1862 the Burma provinces were known as British Burma and were administered by a Chief Commissioner. After the war of 1886 the whole province was styled Burma, and was raised to the status of a Lieutenant-Governorship in 1897. On their annexation in 1853 the territories of the Raja of Nagpur were made a separate administration, and placed under the charge of a Chief Commissioner in 1861. To them was added the district of Berar ceded by the Nizam in 1903. Assam was at first added to Bengal on its annexation in 1876; but in the same year it was detached and placed under the charge of a Chief Commissioner. In 1905 it was combined with the short-lived province of Eastern Bengal and Assam. Seven years later, however, by the decree of the King-Emperor, the partition of Bengal of 1905 was rescinded. Bengal became once more the Presidency that it was before 1833. The provinces of Bihar and Orissa became a new Lieutenant-Governorship; and Assam was once more made a separate Chief Commissioner-ship. The North-West Frontier province was created in 1901 and consisted of the districts detached from the Punjab, partly