

(2) Thereupon the Governor-General in Council may take any such draft and reasons into consideration; and when any such draft has been approved by the Governor-General in Council and assented to by the Governor-General, it shall be published in the Gazette of India and in the local official gazette, if any, and shall thereupon have the like force of law and be subject to the like disallowance as if it were an Act of the ¹[Indian legislature].

(3) The Governor-General shall send to the Secretary of State in Council an authentic copy of every regulation to which he has assented under this section.

²[(3A) A regulation made under this section for any territory shall not be invalid by reason only that it confers or delegates power to confer on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers or delegates power to confer appellate jurisdiction or functions on courts or administrative authorities sitting or acting outside the territory.]

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

¹ These words were substituted for the words "Governor-General in Legislative Council" by the Government of India Act, 1919.

² This sub-section was inserted by section 2 (1) of the Government of India (Amendment) Act, 1926.

72.—The Governor-General may, in cases of emergency, make and promulgate ordinances for the peace and good government of British India or any part thereof, and any ordinance so made shall, for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the ¹[Indian legislature] but the power of making ordinances under this section is subject to the like restrictions as the power of the ¹[Indian legislature] to make laws; and any ordinance made under this section is subject to the like disallowance as an Act passed by the ¹[Indian legislature] and may be controlled or superseded by any such Act.

Power to make ordinances in case of emergency.

LOCAL LEGISLATURES.

(a) Governor's Provinces.

²[72A.—(1) There shall be a legislative council in every governor's province, which shall consist of the members of the executive council and of the members nominated or elected as provided by this Act.

Composition of Governors' legislative councils.

The governor shall not be a member of the legislative council, but shall have the right of addressing the council, and may for that purpose require the attendance of its members.

¹ These words were substituted for the words "Governor-General in Legislative Council" by Part II of Sch. II of the Government of India Act, 1919.

² Section 72A was inserted by Part I of *ibid.*

(2) The number of members of the governors' legislative councils shall be in accordance with the table set out in the First Schedule to this Act; and of the members of each council not more than twenty per cent. shall be official members, and at least seventy per cent. shall be elected members :

Provided that—

- (a) subject to the maintenance of the above proportions, rules under this Act may provide for increasing the number of members of any council, as specified in that schedule; and
- (b) the governor may, for the purposes of any Bill introduced or proposed to be introduced in this legislative council, nominate, in the case of Assam one person, and in the case of other provinces not more than two persons, having special knowledge or experience of the subject-matter of the Bill, and those persons shall in relation to the Bill, have for the period for which they are nominated all the rights of members of the council, and shall be in addition to the numbers above referred to; and
- (c) members nominated to the legislative council of the Central Provinces by the governor as the result of elections held in the Assigned Districts of Berar shall be deem-

ed to be elected members of the legislative council of the Central Provinces.

(3) The powers of a governor's legislative council may be exercised notwithstanding any vacancy in the council.

(4) Subject as aforesaid, provision may be made by rules under this Act as to—

- (a) the term of office of nominated members of governors' legislative councils, and the manner of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, resignation duly accepted, or otherwise; and
- (b) the conditions under which and manner in which persons may be nominated as members of governors' legislative councils; and
- (c) the qualification of electors, the constitution of constituencies, and the method of election for governors' legislative councils, including the number of members to be elected by communal and other electorates, and any matters incidental or ancillary thereto; and
- (d) the qualifications for being and for being nominated or elected a member of any such council; and

- (e) the final decision of doubts or disputes as to the validity of any election ; and
- (f) the manner in which the rules are to be carried into effect :

Provided that rules as to any such matters as aforesaid may provide for delegating to the local government such power as may be specified in the rules of making subsidiary regulations affecting the same matters.

(5) Subject to any such rules any person who is a ruler or subject of any State in India may be nominated as a member of a governor's legislative council.]

See notes under s. 7 Act (1919).

¹[72B.—(1) Every governor's legislative council shall continue for three years from its first meeting :

Sessions and duration of governors' legislative councils

Provided that—

- (a) the council may be sooner dissolved by the governor ; and
- (b) the said period may be extended by the governor for a period not exceeding one year, by notification in the official gazette of the province, if in special circumstances (to be specified in the notification) he so think fit ; and
- (c) after the dissolution of the council the gov-

¹ Sections 72B & 72C were inserted by Part I of Sch. II of the Government of India Act, 1919.

ernor shall appoint a date not more than six months or, with the sanction of the Secretary of State, not more than nine months from the date of dissolution for the next session of the council.

(2) A governor may appoint such times and places for holding the sessions of his legislative council as he thinks fit, and may also, by notification or otherwise, prorogue the council.

(3) Any meeting of a governor's legislative council may be adjourned by the person presiding.

(4) All questions in a governor's legislative council shall be determined by a majority of votes of the members present other than the person presiding, who shall, however, have and exercise a casting vote in the case of an equality of votes.]

See notes under s. 8 Act (1919).

<sup>Presidents of
governors' legis-
lative councils.</sup> 1[72C.—(1) There shall be a president of a governor's legislative council, who shall, until the expiration of a period of four years from the first meeting of the council as constituted under this Act, be a person appointed by the governor, and shall thereafter be a member of the council elected by the council and approved by the governor :

Provided that, if at the expiration of such period of four years the council is in session, the president then in office shall continue in office until the end of

¹ See foot note on page 177 *supra*.

the current session, and the first election of a president shall take place at the commencement of the next ensuing session.

(2) There shall be a deputy-president of a governor's legislative council who shall preside at meetings of the council in the absence of the president, and who shall be a member of the council elected by the council and approved by the governor.

(3) The appointed president of a council shall hold office until the date of the first election of a president by the council under this section, but he may resign office by writing under his hand addressed to the governor, or may be removed from office by order of the governor, and any vacancy occurring before the expiration of the term of office of an appointed president shall be filled by similar appointment for the remainder of such term.

(4) An elected president and a deputy-president shall cease to hold office on ceasing to be members of the council. They may resign office by writing under their hands addressed to the governor, and may be removed from office by a vote of the council with the concurrence of the governor.

(5) The president and the deputy-president shall receive such salaries as may be determined, in the case of an appointed president, by the governor, and in the case of an elected president or deputy-president, by Act of the local legislature.]

See notes under s. 9 Act (1919).

1[72D.—(1) The provisions contained in this section shall have effect with respect to business and procedure in governors' legislative councils.

(2) The estimated annual expenditure and revenue of the province shall be laid in the form of a statement before the council in each year, and the proposals of the local government for the appropriation of provincial revenues and other moneys in any year shall be submitted to the vote of the council in the form of demands for grants. The council may assent, or refuse its assent, to a demand, or may reduce the amount therein referred to either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed :

Provided that—

- (a) the local government shall have power, in relation to any such demand, to act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, if the demand relates to a reserved subject, and the governor certifies that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject ; and

¹ Section 72D was inserted by Part I of Sch. II of Government of India Act, 1919.

- (b) the governor shall have power in cases of emergency to authorise such expenditure as may be in his opinion necessary for the safety or tranquillity of the province, or for the carrying on of any department ; and
- (c) no proposal for the appropriation of any such revenues or other moneys for any purpose shall be made except on the recommendation of the governor, communicated to the council.

(3) Nothing in the foregoing sub-section shall require proposals to be submitted to the council relating to the following heads of expenditure :—

- (i) contributions payable by the local government to the Governor-General in Council and
- (ii) interest and sinking fund charges on loans ; and
- (iii) expenditure of which the amount is prescribed by or under any law ; and
- (iv) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council ; and
- (v) salaries of judges of the high court of the province and of the advocate-general.

(4) If any question arises whether any proposed appropriation of moneys does or does not relate to the

above heads of expenditure, the decision of the governor shall be final.

(5) Where any Bill has been introduced or is proposed to be introduced, or any amendment to a Bill is moved or proposed to be moved, the governor may certify that the Bill or any clause of it or the amendment affects the safety or tranquillity of his province or any part of it or of another province, and may direct that no proceedings or no further proceedings shall be taken by the council in relation to the Bill, clause or amendment, and effect shall be given to any such direction.

(6) Provision may be made by rules under this Act for the purpose of carrying into effect the foregoing provisions of this section and for regulating the course of business in the council, and as to the persons to preside over meetings thereof in the absence of the president and deputy-president, and the preservation of order at meetings; and the rules may provide for the number of members required to constitute a quorum and for prohibiting or regulating the asking of questions on and the discussion of any subject specified in the rules.

(7) Standing orders may be made providing for the conduct of business and the procedure to be followed in the council, in so far as these matters are not provided for by rules made under this Act. The first standing orders shall be made by the governor in council, but may, subject to the assent of the gov-

error, be altered by the local legislatures. Any standing order made as aforesaid, which is repugnant to the provisions of any rules made under this Act, shall, to the extent of that repugnancy but not otherwise, be void.

(8) Subject to the rules and standing orders affecting the council, there shall be freedom of speech in the governors' legislative councils. No person shall be liable to any proceedings in any court by reason of his speech or vote in any such council, or by reason of anything contained in any official report of the proceedings of any such council.]

See notes under s. 11 Act (1919).

¹[72E. (1) Where a governor's legislative council has refused leave to introduce, or has failed to pass in a form recommended by the governor, any Bill relating to a reserved subject, the governor may certify that the passage of the Bill is essential for the discharge of his responsibility for the subject, and thereupon the Bill shall, notwithstanding that the council have not consented thereto, be deemed to have passed, and shall on signature by the governor become an Act of the local legislature in the form of the Bill as originally introduced or

Provision for
case of failure to
pass legislation in
governors' councils.

¹ Section 72E was inserted by Part I of Sch. II of the Government of India Act, 1919.

proposed to be introduced in the council or (as the case may be) in the form recommended to the council by the governor.

(2) Every such Act shall be expressed to be made by the governor, and the governor shall forthwith send an authentic copy thereof to the Governor-General, who shall reserve the Act for the signification of His Majesty's pleasure, and upon the signification of such assent by His Majesty in Council, and the notification thereof by the Governor-General, the Act shall have the same force and effect as an Act passed by the local legislature and duly assented to :

Provided that where in the opinion of the Governor-General a state of emergency exists which justifies such action, he may, instead of reserving such Act, signify his assent thereto, and thereupon the Act shall have such force and effect as aforesaid, subject however to disallowance by His Majesty in Council.

(3) An Act made under this section shall as soon as practicable after being made be laid before each House of Parliament, and an Act which is required to be presented for His Majesty's assent shall not be so presented until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat.]

(b) *Lieutenant-Governors' and Chief Commissioners' Provinces.*

73. (1) For purposes of legislation, the council of ¹[* * *] a lieutenant-governor having an executive council, shall consist of the members of his executive council ²[and of members nominated or elected as hereinafter provided].

Legislative councils of lieutenant-governors and chief commissioners.

³(2)

(3) The legislative council of a lieutenant-governor not having an executive council, or of a chief commissioner, shall consist of members nominated or elected ⁴[as hereinafter provided].

⁵(4)

74. [*Constitution of legislative councils in Bengal, Madras and Bombay.*—Omitted by Part II of Schedule II of 9 and 10 Geo. 5, Ch. 101. (*Government of India Act 1919*).

75. [*Meetings of legislative councils of Bengal, Madras and Bombay.*—Omitted by Part II of Schedule II of 9 and 10 Geo. 5, Ch. 101. (*Government of India Act, 1919*).

¹ The words "a governor, or of" were omitted by Part II of Sch. II of the Government of India Act 1919.

² These words were substituted for the words "with the addition of members nominated or elected in accordance with rules made under this Act" by *ibid.*

³ Sub-section (2) was omitted by part III of *ibid.*

⁴ These words were substituted for the words "in accordance with rules made under this Act" by Part II of *ibid.*

⁵ Sub-section (4) was omitted by *ibid.*

76. (1) The number of members nominated or elected to the legislative council of a lieutenant-governor or chief commissioner, the number of such members required to constitute a quorum, the term of office of such members, and the manner of filling casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise shall, in the case of each such council, be such as may be prescribed by rules made under this ¹[section].

²[Provided that the number of members so nominated or elected shall not, in the case of the legislative council of a lieutenant-governor, exceed one hundred.]

(2) At least one-third of the persons so nominated or elected to the legislative council of a lieutenant-governor or chief commissioner must be ³[non-officials].

(3) The Governor-General in Council may, with the approval of the Secretary of State in Council, make rules as to the conditions under which and manner in which persons resident in India may be nominated or elected members of any of those legis-

¹ This word was substituted for the word "Act" by Part II of Sch. II of the Government of India Act, 1919.

² This proviso was substituted by *ibid.*

³ This word was substituted for the words "persons not in the civil or military service of the Crown in India" by *ibid.*

lative councils, and as to the qualifications for being, and for being nominated or elected, a member of any of those councils, and as to any other matter for which rules are authorised to be made under this section, and as to the manner in which those rules are to be carried into effect.

¹[(3a) Rules made under this section may provide for the final decision of doubts or disputes as to the validity of an election.]

¹[(3b) Subject to any rules made under this section, any person who is a ruler or subject of any state in India shall be eligible to be nominated a member of a legislative council.]

(4) All rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and those rules shall not be subject to repeal or alternation by the ²[Indian legislature or the local legislature] :

77. (1) When a new lieutenant-governorship is constituted under this Act, the Governor-General in Council may, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute the lieutenant-Governor in legislative council of the pro-

Power to constitute local legislatures in lieutenant-governors' and chief commissioners' provinces.

¹ Sub-sections (3a) and (3b) were inserted by section 1 (2) of the Government of India (Amendment) Act, 1916.

² These words were substituted for the words "Governor-General in Legislative Council" by Part II of Sch. II of the Government of India Act, 1919.

vince, as from a date specified in the notification, a local legislature for that province, and define the limits of the province for which the lieutenant-governor in legislative council is to exercise legislative powers.

(2) The Governor-General in Council may, by notification, extend the provisions of this Act relating to legislative councils of lieutenant-governors, subject to such modifications and adaptations as he may consider necessary, to any province for the time being under a chief commissioner.

78. (1) ¹[A lieutenant-governor or a chief commissioner who has a legislative council may appoint such times and places for holding the sessions of his legislative council as he thinks fit, and may also, by notification or otherwise, prorogue the council, and any meeting of the legislative council of a lieutenant-governor or chief commissioner may be adjourned by the person presiding.] Every lieutenant-governor who has no executive council, and every chief commissioner who has a legislative council, shall appoint a member of his legislative council to be vice-president thereof.

(2) In the absence of the lieutenant-governor or chief commissioner from any meeting of his legislative council the person to preside thereat shall be the vice-president of the council, or, in his absence, the

¹ These words were inserted by Part II of Sch. II of the Government of India Act, 1919.

member of the council who is highest in official rank among those holding office under the Crown who are present at the meeting, or, during the discussion of the annual financial statement or of any matter of general public interest, ¹[or when questions are asked] the vice-president, or the member appointed to preside ²[* * * *].

³[(3) All questions at a meeting of the legislative council of a lieutenant-governor or chief commissioner shall be determined by a majority of votes of the members present other than the lieutenant-governor, chief commissioner, or presiding member, who shall, however, have and exercise a casting vote in case of an equality of votes.]

³[(4) Subject to rules affecting the council, there shall be freedom of speech in the legislative councils of lieutenant-governors and chief commissioners. No person shall be liable to any proceedings in any court by reason of his speech or vote in those councils, or by reason of anything contained in any official report of the proceedings of those councils.]

79. [*Powers of local legislatures.*—Omitted by Part II of Sch. II of 9 and 10 Geo. 5, Ch. 101. (*Government of India Act, 1919.*)

¹ These words were inserted by Sch. I of the Government of India (Amendment) Act, 1916.

² The words "in accordance with rules made under this Act" were omitted by Part II of Sch. II of the Government of India Act, 1919.

³ Sub-sections (3) and (1) were substituted for sub-section (3) by *ibid.*

80. (1) At a meeting of a local legislative council ¹[(other than a governor's legislative council)] no motion shall be entertained other than a motion for leave to introduce a measure into the council for the purpose of enactment, or having reference to a measure introduced or proposed to be introduced into the council for that purpose, or having reference to some rule for the conduct of business in the council, and no business shall be transacted other than the consideration of those motions or the alteration of those rules.

²(2) * * * * *

(3) Notwithstanding anything in the foregoing provisions of this section, the local government ³[of a province other than a governor's province] may, with the sanction of the Governor-General in Council, make rules authorising, at any meeting of the local legislative council, the discussion of the annual financial statement of the local government, and of any matter of general public interest, and the asking of questions, under such conditions and restrictions as may be prescribed in the rules. Rules made under this sub-section for any council may provide for the appointment of a member of the council to preside

¹ These words were inserted by Part II of Sch. II of the Government of India Act, 1919.

² Sub-section (2) was omitted by *ibid.*

³ These words were inserted by *ibid.*

at any such discussion ¹[or when questions are asked] in the place of the ²[*] lieutenant-governor or chief commissioner, as the case may be, and of the vice-president and shall be laid before both Houses of Parliament as soon as may be after they are made, and shall not be subject to repeal or alteration by the ³[Indian legislature] or the local legislature.

⁴[(4) The local government of any province (other than a governor's province) for which a local legislative council is hereafter constituted under this Act shall, before the first meeting of that council, and with the sanction of the Governor-General in Council, make rules for the conduct of legislative business in that council (including rules for prescribing the mode of promulgation and authentication of laws passed by that council)].

⁵[(5) The local legislature of any such province may, subject to the assent of the lieutenant-governor or chief commissioner, alter the rules for the conduct of legislative business in the local council (including rules prescribing the mode of promulgation and authentication of laws passed by the council), but

¹ These words were inserted by Sch. I of the Government of India (Amendment) Act, 1916.

² The word "governor" was omitted by Part II of Sch. II of the Government of India Act, 1919.

³ These words were substituted for the words "Governor-General in Legislative Council" by *ibid.*

⁴ Sub-section (4) was inserted by *ibid.*

⁵ Sub-section (5) was inserted by Part II of Sch. II of the Government of India Act, 1919.

any alteration so made may be disallowed by the Governor-General in Council, and if so disallowed shall have no effect.]

(c) *General.*

¹[80A. (1) The local legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province.

Powers of local legislatures.

(2) The local legislature of any province may, subject to the provisions of the sub-section next following, repeal or alter as to that province any law made either before or after the commencement of this Act by any authority in British India other than that local legislature.

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

(a) imposing or authorising the imposition of any new tax unless the tax is a tax scheduled as exempted from this provision by rules made under this Act; or

(b) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-

¹ Section 80A was inserted by Part I of Sch. II of the Government of India Act, 1919.

General in Council for the general purposes of the government of India, provided that the imposition or alteration of a tax scheduled as aforesaid shall not be deemed to affect any such tax or duty ;
or

- (c) affecting the discipline or maintenance of any part of His Majesty's naval, military, or air forces ; or
- (d) affecting the relations of the government with foreign princes or states ; or
- (e) regulating any central subject ; or
- (f) regulating any provincial subject which has been declared by rules under this Act to be, either in whole or in part, subject to legislation by the Indian legislature, in respect of any matter to which such declaration applies ; or
- (g) affecting any power expressly reserved to the Governor-General in Council by any law for the time being in force ; or
- (h) altering or repealing the provisions of any law which, having been made before the commencement of the Government of India Act, 1919, by any authority in British India other than that local legislature, is declared by rules under this Act to be a law which cannot be re-

pealed or altered by the local legislature without previous sanction ; or

- (i) altering or repealing any provision of an Act of the Indian Legislature made after the commencement of the Government of India Act, 1919, which by the provisions of such first-mentioned Act may not be repealed or altered by the local legislature without previous sanction :

Provided that an Act or a provision of an Act made by a local legislature, and subsequently assented to by the Governor-General in pursuance of this Act, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under this Act.

(4) The local legislature of any province has not power to make any law affecting any Act of Parliament.]

See notes under s. 10 Act (1919).

¹[80B. An official shall not be qualified for election as a member of a local legislative council, and if any non-official member of a local legislative council, whether elected or nominated, accepts any office in the service of the Crown in India, his seat on the council shall become vacant :

Vacation of seats
in local legislative
council.

Provided that for the purposes of this provision

¹ Sections 80B and 80C were inserted by Part I of Sch. II of the Government of India Act, 1919.

a minister shall not be deemed to be an official and a person shall not be deemed to accept office on appointment as a minister.]

See notes under s. 14 Act (1919).

¹[80C. It shall not be lawful for any member of any local legislative council to introduce, without the previous sanction of the governor, lieutenant-governor or chief commissioner, any measure affecting the public revenues of a province, or imposing any charge on those revenues.]

Financial
proposals.

81. (1) When ²[A Bill] has been passed ³[by] a local legislative council, the governor, lieutenant-governor or chief commissioner, ⁴[* * * *] may declare that he assents to or withholds his assent from the ⁵[Bill].

Assent to
Bills.

(2) If the governor, lieutenant-governor or chief commissioner withholds his assent from any such ⁵[Bill], the ⁵[Bill] ⁶[shall not become an Act].

¹ See foot-note p. 194 *Supra*.

² These words were substituted for the words "an Act" by Part II of Sch. II of the Government of India Act, 1919.

³ This word was substituted for the words "at a meeting of" by *ibid.*

⁴ The words "whether he was or was not present in council at the passing of the Act" were omitted by Part III of *ibid.*

⁵ This word was substituted for the word "Act" by Part II of *ibid.*

⁶ These words were substituted for the words "has no effect" by Part II of *ibid.*

(3) If the governor, lieutenant-governor or chief commissioner assents to any such ¹[Bill], he shall forthwith send an authentic copy of the Act to the Governor-General, and the Act shall not have validity until the Governor-General has assented thereto and that assent has been signified by the Governor-General to, and published by, the governor, lieutenant-governor or chief commissioner.

(4) Where the Governor-General withholds his assent from any such Act, he shall signify to the governor, lieutenant-governor or chief commissioner in writing his reason for so withholding his assent.

²[81A. (1) Where a Bill has been passed by a local legislative council, the governor, lieutenant-governor or chief commissioner may, instead of declaring that he assents to or withholds his assent from the Bill, return the Bill to the council for reconsideration, either in whole or in part, together with any amendments which he may recommend, or, in cases prescribed by rules under this Act, may, and if the rules so require, shall, reserve the Bill for the consideration of the Governor-General.

(2) Where a Bill is reserved for the consideration of the Governor-General, the following provisions shall apply :—

¹ This word was substituted for the word " Act " by Part II of Sch. II of the Government of India Act, 1919.

² Section 81A was inserted by Part I of *ibid.*

- (a) The governor, lieutenant-governor or chief commissioner may, at any time within six months from the date of the reservation of the Bill, with the consent of the Governor-General, return the Bill for further consideration by the council with a recommendation that the council shall consider amendments thereto :
- (b) After any Bill so returned has been further considered by the council, together with any recommendations made by the governor, lieutenant-governor or chief commissioner relating thereto, the Bill, if re-affirmed with or without amendment, may be again presented to the governor, lieutenant-governor or chief commissioner :
- (c) Any Bill reserved for the consideration of the Governor-General shall, if assented to by the Governor-General within a period of six months from the date of such reservation, become law on due publication of such assent, in the same way as a Bill assented to by the governor, lieutenant-governor or chief commissioner, but if not assented to by the Governor-General within such period of six months, shall lapse and be of no effect

unless before the expiration of that period either—

- (i) the Bill has been returned by the governor, lieutenant-governor or chief commissioner for further consideration by the council; or
- (ii) in the case of the council not being in session, a notification has been published of an intention so to return the Bill at the commencement of the next session.

(3) The Governor-General may (except where the Bill has been reserved for his consideration) instead of assenting to or withholding his assent from any Act passed by a local legislature, declare that he reserves the Act for the signification of His Majesty's pleasure thereon, and in such case the Act shall not have validity until His Majesty in Council has signified his assent and his assent has been notified by the Governor-General.]

See notes under s. 12 Act. (1919).

82. (1) When ¹[an Act] has been assented to by the Governor-General, he shall send to the Secretary of State an authentic copy thereof, and it shall be

Power of
Crown to disallow
Acts of local legis-
latures.

¹ These words were substituted for the words "any such Act" by Part II of Sch. II of the Government of India Act 1919.

lawful for His Majesty ¹[in Council] to signify ²[**] his disallowance of ³[the Act].

(2) Where the disallowance of ¹[an Act] has been so signified, the governor, lieutenant-governor or chief commissioner shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

83. [*Rules for conduct of legislative business.*]—Omitted by Part II of Schedule II of 9 and 10 Geo. 5, Ch. 101. (*Government of India Act, 1919.*)

Validity of Indian Laws.

84. (1) A law made by any authority in British India shall not be deemed invalid solely on account of any one or more of the following reasons :—

Removal of doubts
as to validity of
certain Indian
laws.

- (a) in the case of ⁴[an Act of the Indian legislature] ⁵[or a local legislature], because it affects the prerogative of the Crown ; or
- (b) in the case of any law, because the requisite

¹ These words were inserted by Part II of Sch. II of the Government of India Act, 1919.

² The words " through the Secretary of State in Council " were omitted by *ibid.*

³ These words were substituted for the words " any such Act " by *ibid.*

⁴ These words were substituted for the words " a law made by the Governor-General in Legislative Council " by *ibid.*

⁵ These words were inserted by section 2 (2) of the Government of India (Amendment) Act, 1916.

proportion of ¹[non-official members] was not complete at the date of its introduction into the council or its enactment; or

- (c) in the case of ²[an Act of] a local legislature, because it confers on magistrates, being justices of the peace, the same jurisdiction over European British subjects as that legislature, by Acts duly made, could lawfully confer on magistrates in the exercise of authority over other British subjects in the like cases.

³[A law made by any authority in British India and repugnant to any provision of this or any other Act of Parliament shall, to the extent of that repugnancy, but not otherwise, be void.]

⁴[(2) Nothing in the Government of India Act, 1919, or this Act, or in any rule made thereunder, shall be construed as diminishing in any respect the powers of the Indian legislature as laid down in section sixty-five of this Act, and the validity of any Act of the Indian legislature or any local legislature shall not be open to question in any legal proceed-

¹ These words were substituted for the words "members not holding office under the Crown in India" by Part II of Sch. II of the Government of India Act, 1919.

² These words were substituted for the words "a law made by" by *ibid.*

³ These words were inserted by section 2 (2) of the Government of India (Amendment) Act, 1916.

⁴ This sub-section was inserted by Part I of Sch. II of the Government of India Act, 1919.

ings on the ground that the Act affects a provincial subject, or a central subject, as the case may be, and the validity of any Act made by the governor of a province shall not be so open to question on the ground that it does not relate to a reserved subject.]

See notes under s. 16 (2) Act. (1919).

PART VIA.

STATUTORY COMMISSION.

1[84A. (1) At the expiration of ten years after the passing of the Government of India Act, 1919, the Secretary of State with the concurrence of both Houses of Parliament shall submit for the approval of His Majesty the names of persons to act as a commission for the purposes of this section.

(2) The persons whose names are so submitted, if approved by His Majesty, shall be a commission for the purpose of inquiring into the working of the system of government, the growth of education, and the development of representative institutions, in British India, and matters connected therewith, and the commission shall report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify, or restrict the degree of responsible government, then existing therein, including the question whether the

¹ Section 84A was inserted by Part I of Sch. II of the Government of India Act, 1919.

establishment of second chambers of the local legislature is or is not desirable.

(3) The commission shall also inquire into and report on any other matter affecting British India and the provinces, which may be referred to the commission by His Majesty.]

See note under s. 41 Act. (1919).

PART VII.

SALARIES, LEAVE OF ABSENCE, VACATION OF OFFICE, APPOINTMENTS, &c.

85. (1) There shall be paid to the Governor-General of India, and to the other persons mentioned in the Second Schedule to this Act, out of the revenues of India, such salaries, not exceeding in any case the maximum specified in that behalf in that Schedule, and such allowances (if any) for equipment and voyage, as the Secretary of State in Council may by order fix in that behalf, and, subject to or in default of any such order, as are payable at the commencement of this Act :

Salaries and allowances of Governor-General and certain other officials in India.

(2) Provided as follows :—

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

- (b) if any person to whom this section applies holds or enjoys any pension or salary, or any office of profit under the Crown or under any public office, his salary under this section shall be reduced by the amount of the pension, salary or profits of office so held or enjoyed by him ;
- (c) nothing in the provisions of this section with respect to allowances shall authorise the imposition of any additional charge on the revenues of India.

(3) The remuneration payable to a person under this section shall commence on his taking upon himself the execution of his office, and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein :

¹[Provided that nothing in this sub-section shall apply to the allowances or other forms of profit and advantage which may have been sanctioned for such persons by the Secretary of State in Council.]

86. (1) The Governor-General in Council may grant to any of the ²[*] members of his executive council ³[(other than the Commander-in-Chief)], and a governor in council ⁴[and a lieutenant-governor in

Leave of
absence to mem-
bers of executive
councils.

¹ This proviso was inserted by Part III of Sch. II of the Government of India Act, 1919.

² The word " ordinary " was omitted by Part II of *ibid.*

³ These words were inserted by *ibid.*

⁴ These words were inserted by Sch. I of the Government of India (Amendment) Act, 1916.

council] may grant to any member of his executive council, leave of absence under medical certificate for a period not exceeding six months.

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

87. (1) If the Governor-General, or a governor, or the Commander-in-Chief of His Majesty's forces in India, and, ¹[save in the case of absence on special duty or on leave under a medical certificate] if any ²[*] member of the executive council of the Governor-General, ³[(other than the Commander-in-Chief) ⁴] or any member of the executive council of a governor ⁴[or of a lieutenant-governor] departs from India, intending to return to Europe, his office shall thereupon become vacant.

5(2)—(5)

* * * *

¹ These words were substituted for the words "subject to the foregoing provisions of this Act as to leave of absence" by Part III of Sch. II of the Government of India Act, 1919.

² The word "ordinary" was omitted by Part II of *ibid.*

³ These words were inserted by Part II of *ibid.*

⁴ These words were inserted by Part III of *ibid.*

⁵ Subsections (2), (3), (4) and (5) were repealed by Sch. II of the Government of India (Amendment) Act, 1916.

88. [*Conditional appointments*].—Omitted by Pt. III of Sch. II of 9 and 10 Geo. 5, Ch. 101. (*Government of India Act, 1919*).

89. (1) If any person ¹[***] appointed ²[*] to ³[the office of Governor-General], is in India on or after the event on which he is to succeed, and thinks it necessary to exercise the powers of Governor-General before he takes his seat in council, he may make known by notification his appointment and his intention to assume the office of Governor-General.

Power for Governor-General to exercise powers before taking seat.

(2) After the notification, and thenceforth until he repairs to the place where the council may assemble, he may exercise alone all or any of the powers which might be exercised by the Governor-General in Council.

(3) All acts done in the Council after the date of the notification, but before the communication thereof to the Council, shall be valid, subject, nevertheless, to revocation or alteration by the person who has so assumed the office of Governor-General.

(4) When the office of Governor-General is assumed under the foregoing provision, the vice-pre-

¹ The words "entitled under a conditional appointment to succeed to the office of Governor-General or" were omitted by Part III of Sch. II of the Government of India Act, 1919.

² The word "absolutely" was omitted by Part III of *ibid*.

³ These words were substituted for the words "that office" by Part III of *ibid*.

sident, or, if he is absent, the senior ¹[member of the council (other than the Commander-in-Chief)] then present, shall preside therein, with the same powers as the Governor-General would have had if present.

90. (1) If a vacancy occurs in the office of Governor-General when there is no ²[***] successor in India to supply the vacancy, the governor ³[of a presidency] who was first appointed to the office of governor ³[of a presidency] by His Majesty shall hold and execute the office of Governor-General until a successor arrives or until some person in India is duly appointed thereto.

(2) Every such acting Governor-General, while acting as such, shall have and may exercise all the rights and powers of the office of Governor-General, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing the salary and allowances appertaining to his office of governor; and his office of governor shall be supplied, for the time during which he acts as Governor-General, in the manner directed by this Act with respect to vacancies in the office of governor.

(3) If, on the vacancy occurring, it appears to the governor, who by virtue of this section holds and

¹ These words were substituted for the words "ordinary member of the Council" by Part II of the Government of India Act, 1919.

² The words "conditional or other" were omitted by Part III of *ibid.*

³ These words were inserted by Part II of *ibid.*

executes the office of Governor-General, necessary to exercise the powers thereof before he takes his seat in council, he may make known by notification his appointment, and his intention to assume the office of Governor-General, and thereupon the provisions of ¹[section eighty-nine of this Act] ²[***] shall apply.

(4) Until such a governor has assumed the office of Governor-General, if no ³[***] successor is on the spot to supply such vacancy, the vice-president, or, if he is absent, the senior ⁴[*] member of the executive council ⁵[(other than the Commander-in-Chief)] shall hold and execute the office of Governor-General until the vacancy is filled in accordance with the provisions of this Act.

(5) Every vice-president or other member of Council so acting as Governor-General, while so acting, shall have and may exercise all the rights and powers of the office of Governor-General and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing his salary and allowances as member of council for that period.

¹ These words were substituted for the words "this Act" by Part III of Sch. II of the Government of India Act, 1919.

² The words "respecting the assumption of the office by a person conditionally appointed to succeed thereto" were omitted by Part III of *ibid.*

³ The words "conditional or other" were omitted by Part III of *ibid.*

⁴ The word "ordinary" was omitted by Part II of *ibid.*

⁵ These words were inserted by *ibid.*

91. (1) If a vacancy occurs in the office of governor when no ¹[***] successor is on the spot to supply the vacancy, the vice-president, or, if he is absent, the senior member of the governor's executive council, or, if there is no council, the chief secretary to the local Government, shall hold and execute the office of governor until a successor arrives, or until some other person on the spot is duly appointed thereto.

(2) Every such acting governor shall, while acting as such, be entitled to receive the emoluments and advantages appertaining to the office of governor, foregoing the salary and allowances appertaining to his office of member of council or secretary.

92. (1) If a vacancy occurs in the office of ²[a member] of the executive council of the Governor-General council of the Governor-General ³[(other than the Commander-in-Chief)], or a member of the executive council of a governor, and there is no ¹[***] successor present on the spot, the Governor-General in Council, or governor in council, as the case may be, shall supply the vacancy by appointing a temporary member of council.

(2) Until a successor arrives the person so ap-

¹ The words "conditional or other" were omitted by Part III of Sch. II of the Government of India Act, 1919.

² These words were substituted for the words "an ordinary member" by Part II of *ibid.*

³ These words were inserted by Part II of *ibid.*

pointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing all emoluments and advantages to which he was entitled at the time of his being appointed to that office.

(3) If ¹[a member] of the executive council of the Governor-General ²[(other than the Commander-in-Chief)], or any member of the executive council of a governor is, by infirmity or otherwise, rendered incapable of acting or of attending to act as such, or is absent on leave, ³[or special duty] ⁴[***] the Governor-General in Council or governor in council, as the case may be, shall appoint some person to be a temporary member of council.

(4) Until the return to duty of the member so incapable or absent, the person ⁵[**] temporarily appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive half the salary of the member of council whose place he fills, and also half the salary of any other office which he may hold, if he hold any

¹ These words were substituted for the words "any ordinary member" by Part II of Sch. II of the Government of India Act, 1919.

² These words were inserted by *ibid.*

³ These words were inserted by Sch. I of the Government of India (Amendment) Act, 1916.

⁴ Certain words were omitted by Part III of Sch. II of the Government of India Act, 1919.

⁵ The words "conditionally or" were omitted by *ibid.*

such office, the remaining half of such last-named salary being at the disposal of the Governor-General in Council or governor in council, as the case may be.

(5) Provided as follows :—

(a) no person may be appointed a temporary member of council who might not have been appointed ¹[***] to fill the vacancy supplied by the temporary appointment ; and

(b) if the Secretary of State informs the Governor-General that it is not the intention of His Majesty to fill a vacancy in the Governor-General's executive council, no temporary appointment may be made under this section to fill the vacancy, and if any such temporary appointment has been made before the date of the receipt of the information by the Governor-General, the tenure of the person temporarily appointed shall cease from that date.

93. (1) A nominated or elected member of ²[either chamber of the Indian legislature] or of a local legislative council may resign his office to the Gov-

Vacancies in legislative councils.

¹ The words " under this Act " were omitted by Part II of Sch. II of the Government of India Act, 1919.

² These words were substituted for the words " the Indian Legislative Council " by *ibid.*

ernor-General or to the governor, lieutenant-governor or chief commissioner, as the case may be, and on the acceptance of the resignation the office shall become vacant.

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

94. Subject to the provisions of this Act, the Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make rules as to the absence on leave ¹[or special duty] of persons in the service of the Crown in India, and the terms as to continuance, variation or cessation of pay, salary and allowances on which any such ²[absence may be permitted].

95. (1) The Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council of India, may make rules for distributing between the several authorities in India the power of making appointments to and promotions

Power to make rules as to Indian military appointments.

¹ These words were inserted by Sch. I of the Government of India (Amendment) Act, 1916.

² These words were substituted for the words "leave may be granted" by Sch. I of *ibid.*

in ¹[military] offices under the Crown in India, and may reinstate ¹[military] officers and servants suspended or removed by any of those authorities.

(2) Subject to such rules, all appointments to ¹[military] offices and commands in India, and all ¹[military] promotions, which, by law, or under any regulations, usage or custom, are, at the commencement of this Act, made by any authority in India, shall, subject to the qualifications, conditions, and restrictions then affecting such appointments and promotions, respectively, continue to be made in India by the like authority.

96. No native of British India, nor any subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them be disabled from holding any office under the Crown in India.

No disabilities
in respect of religion,
colour or
place of birth.

²[96A. Notwithstanding anything in any other enactment, the Governor-General in Council, with the approval of the Secretary of State in Council, may, by notification, declare that, subject to any conditions or restrictions prescribed in the notification, any named ruler or subject of any state in India shall be

Qualification of
rulers and subjects
of certain states
for office.

¹ This word was inserted by Part II of Sch. II of the Government of India Act, 1919.

² Section 96A was inserted by section 3 of the Government of India (Amendment) Act, 1916.

eligible for appointment to any civil or military office under the Crown to which a native of British India may be appointed, or any named subject of any state, or any named member of any independent race or tribe, in territory adjacent to India, shall be eligible for appointment to any such military office.]

PART VII A.

THE CIVIL SERVICES IN INDIA.

¹[96B. (1) Subject to the provision of this Act and of rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasure, and may be employed in any manner required by a proper authority within the scope of his duty, but no person in that service may be dismissed by any authority subordinate to that by which he was appointed, and the Secretary of State in Council may (except so far as he may provide by rules to the contrary) reinstate any person in that service who has been dismissed.

If any such person appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in a governor's province, and on due application made to that superior does not receive the redress to which he may consider himself

¹ Section 96B was inserted by Part I of Sch. II of the Government of India Act, 1919.

entitled, he may, without prejudice to any other right of redress, complain to the governor of the province in order to obtain justice, and the governor is hereby directed to examine such complaint and require such action to be taken thereon as may appear to him to be just and equitable.

(2) The Secretary of State in Council may make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct. Such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor-General in Council or to local governments, or authorise the Indian legislature or local legislatures to make laws regulating the public services :

Provided that every person appointed before the commencement of the Government of India Act, 1919, by the Secretary of State in Council to the civil service of the Crown in India shall retain all his existing or accruing rights, or shall receive such compensation for the loss of any of them as the Secretary of State in Council may consider just and equitable.

(3) The right to pensions and the scale and conditions of pensions of all persons in the civil service of the Crown in India appointed by the Secretary of State in Council shall be regulated in accordance with the rules in force at the time of the passing of the Government of India Act, 1919. Any such rules

may be varied or added to by the Secretary of State in Council and shall have effect as so varied or added to, but any such variation or addition shall not adversely affect the pension of any member of the service appointed before the date thereof.

Nothing in this section or in any rule thereunder shall prejudice the rights to which any person may, or may have, become entitled under the provisions in relation to pensions contained in the East India Annuity Funds Act, 1874. (37 and 38 Vict., c. 12.)

(4) For the removal of doubts it is hereby declared that all rules or other provisions in operation at the time of the passing of the Government of India Act, 1919, whether made by the Secretary of State in Council or by any other authority, relating to the civil service of the Crown in India, were duly made in accordance with the powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied or added to by rules or laws made under this section.]

See notes under s. 36 Act (1919).

¹[96C. (1) There shall be established in India a public service commission, consisting of not more than five members, of whom one shall be chairman, appointed by the Secretary of State in Council. Each member shall hold office for five years, and may

Public service
commission.

¹ Sections 96C and 96D were inserted by Part I of Sch. II of the Government of India Act, 1919.

be re-appointed. No member shall be removed before the expiry of his term of office, except by order of the Secretary of State in Council. The qualifications for appointment, and the pay and pension (if any) attaching to the office of chairman and member, shall be prescribed by rules made by the Secretary of State in Council.

(2) The public service commission shall discharge, in regard to recruitment and control of the public services in India, such functions as may be assigned thereto by rules made by the Secretary of State in Council.]

See notes under s. 38 Act (1919).

Financial
control. 1[96D. An auditor-general in India shall be appointed by the Secretary of State in Council, and shall hold office during His Majesty's pleasure. The Secretary of State in Council shall, by rules, make provision for his pay, powers, duties, and conditions of employment, or for the discharge of his duties in the case of a temporary vacancy or absence from duty.

(2) Subject to any rules made by the Secretary of State in Council, no office may be added to or withdrawn from the public service, and the emoluments of no post may be varied, except after consultation with such finance authority as may be designated in the rules, being an authority of the province

¹ See foot-note, page 215 *supra*.

or of the Government of India, according as the post is or is not under the control of a local government.]

See notes under s. 39 Act (1919).

¹[96E. Rules made under this Part of this Act shall not be made except with the concurrence of the majority of votes at a meeting of the Council of India.]

Rules under
Part VII A.

See s. 40 Act (1919).

PART VIII.

THE INDIAN CIVIL SERVICE.

97. * (1) The Secretary of State in Council may, with the advice and assistance of the Civil Service Commissioners, make rules for the examination, under the superintendence of those Commissioners, of British subjects ²[and of persons in respect of whom a declaration has been made under ³section 96A of this Act] who are desirous of becoming candidates for appointment to the Indian Civil Service.

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

* Section 96E was inserted by Part I of Sch. II of the Government of India Act, 1919.

² These words were inserted by section 4 of the Government of India (Amendment) Act, 1916.

³ The words "Section 96A" were substituted for "the last foregoing section" by Part II of Sch. II of the Government of India Act, 1919.

¹[(2a) The admission to the Indian Civil Service of a British subject who or whose father or mother was not born within His Majesty's dominions shall be subject to such restrictions as the Secretary of State in Council, with the advice and assistance of the Civil Service Commissioners, may think fit to prescribe, and all such restrictions shall be included in the rules.]

(3) All rules made in pursuance of this section shall be laid before Parliament within fourteen days after the making thereof, or, if Parliament is not then sitting, then within fourteen days after the next meeting of Parliament.

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

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

²[(6). Notwithstanding anything in this section, the Secretary of State may make appointments to the Indian Civil Service of persons domiciled in India, in accordance with such rules as may be prescribed by the Secretary of State in Council with the

¹ This sub-section was inserted by section 4 of the Government of India (Amendment) Act, 1916.

² This sub-section was inserted by Part I of Sch. II of the Government of India Act, 1919.

concurrence of the majority of votes at a meeting of the Council of India.

Any rules made under this sub-section shall not have force until they have been laid for thirty days before both Houses of Parliament.]

See notes under s. 37 Act (1919).

98. Subject to the provisions of this Act, all vacancies happening in any of the offices specified or referred to in the Third Schedule to this Act, and all such offices which may be created hereafter, shall be filled from amongst the members of the Indian Civil Service.

Offices reserved to the Indian Civil Service.
Power to appoint certain persons to reserved offices.

99. (1) The authorities in India, by whom appointments are made to offices in the Indian Civil Service, may appoint to any such office any person of proved merit and ability domiciled in British India and born ¹[***] of parents habitually resident in India and not established there for temporary purposes only, although the person so appointed has not been admitted to that service in accordance with the foregoing provisions of this Act.

(2) Every such appointment shall be made subject to such rules as may be prescribed by the Governor-General in Council and sanctioned by the Secretary of State in Council with the concurrence

¹ The words "in British India" were repealed by Sch. I of the Government of India (Amendment) Act, 1916.

of a majority of votes at a meeting of the Council of India.

(3) The Governor-General in Council may, by resolution, define and limit the qualification of persons who may be appointed under this section, but every resolution made for that purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for thirty days before both Houses of Parliament.

100. (1) Where it appears to the authority in India by whom an appointment is to be made to any office reserved to members of the Indian Civil Service, that a person not being a member of that service ought, under the special circumstances of the case, to be appointed thereto, the authority may appoint thereto any person who has resided for at least seven years in India and who has, before his appointment, fulfilled all the tests (if any) which would be imposed in the like case on a member of that service.

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

Power to make
provisional ap-
pointments in cer-
tain cases.

whom the appointment was made, the appointment shall be cancelled.

PART IX.

THE INDIAN HIGH COURTS.

Constitution.

101.—(1) The high courts referred to in this Act are the high courts of judicature for the time being established in British India by letters patent.

Constitution of
high courts.

(2) Each high court shall consist of a chief justice and as many other judges at His Majesty may think fit to appoint :

Provided as follows :—

- (i) the Governor-General in Council may appoint persons to act as additional judges of any high court, for such period, not exceeding two years, as may be required; and the judges so appointed shall, whilst so acting, have all the powers of a judge of the high court appointed by His Majesty under this Act;
 - (ii) the maximum number of judges of a high court including the chief justice and additional judges, shall be twenty.
- (3) A judge of a high court must be—
- (a) a barrister of England or Ireland, or a member of the Faculty of Advocates in

Scotland, of not less than five years' standing; or

- (b) a member of the Indian Civil Service of not less than ten years' standing, and having for at least three years served as, or exercised the powers of, a district judge; or
- (c) a person having held judicial office, not inferior to that of a subordinate judge or a judge of a small cause court, for a period of not less than five years; or
- (d) a person having been a pleader of a high court for a period of not less than ten years.

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

(5) The high court for the North-Western Provinces may be styled the high court of judicature at Allahabad, and the high court at Fort William in Bengal is in this Act referred to as the high court at Calcutta.

102.—(1) Every judge of a high court shall hold
Tenure of office of judges of high courts. his office during His Majesty's pleasure.

(2) Any such judge may resign his office, in the case of the high court at Calcutta, to the Governor-

General in Council, and in other cases to the local Government.

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

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

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

(2) The remuneration fixed for a judge under this section shall commence on his taking upon himself the execution of his office, and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein.

(3) If a judge of a high court dies during his voyage to India, or within six months after his arrival there, for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, such a sum of money as will, with the amount received by or due to him at the time

of his death on account of salary, make up the amount of one year's salary.

(4) If a judge of a high court dies while in possession of his office and after the expiration of six months from his arrival in India for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, over and above the sum due to him at the time of his death, a sum equal to six months' salary.

105.—(1) On the occurrence of a vacancy in the office of chief justice of a high court, and during any absence of such a chief justice the Governor-General in Council in the case of the high court at Calcutta, and the local Government in other cases, shall appoint one of the other judges of the same high court to perform the duties to chief justice of the court, until some person has been appointed by His Majesty to the office of chief justice of the court, and has entered on the discharge of the duties of that office, or until the chief justice has returned from his absence, as the case requires.

(2) On the occurrence of a vacancy in the office of any other judge of a high court, and during any absence of any such judge, or on the appointment of any such judge to act as chief justice, the Governor-General in Council in the case of the high court at Calcutta, and the local Government in other cases,

Provision for vacancy in the office of chief justice or other judge.

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

Jurisdiction.

106.—(1) The several high courts are courts of record and have such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in them by letters patent, and, subject to the provisions of any such letters patent, all such jurisdictions, powers and authority as are vested in those courts respectively at the commencement of this Act.

Jurisdiction of high courts.

¹[(1a) The letters patent establishing, or vesting jurisdiction, powers or authority in a high court may be amended from time to time by His Majesty by further letters patent.]

(2) The high courts have not and may not exercise any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

107.—Each of the high courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say :—

Powers of high court with respect to subordinate courts.

- (a) call for returns ;
- (b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction ;
- (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts ;
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts ; and
- (e) settle tables of fees to be allowed to the

¹ This sub-section was inserted by Sch. I of the Government of India (Amendment) Act, 1916.

sheriff, attorneys, and all clerks and officers of courts :

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any ¹[law] for the time being in force, and shall require the previous approval, in the case of the high court at Calcutta, of the Governor-General in Council, and in other cases of the local Government.

108.—(1) Each high court may by its own rules provide as it thinks fit for the exercise, by one or more judges, or by division courts constituted by two or more judges, of the high court, of the original and appellate jurisdiction vested in the court.

Exercise of jurisdiction by single judges or division courts.

(2) The chief justice of each high court shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the chief justice, are to constitute the several division courts.

109.—(1) The Governor-General in Council may, by order, transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the high courts, and authorise any high court to exercise all or any portion of its jurisdiction in any part of British India not included within the limits for which the high court

Power for Governor-General in Council to alter local limits of jurisdiction of high courts.

¹ This word was substituted for the word " Act " by Sch. I of the Government of India (Amendment) Act, 1916.