have the same force and effect as an Act passed by the Indian legislature and duly assented to:

"Provided that, where in the opinion of the Governor-General a state of emergency exists which justifies such action, the Governor-General may direct that any such Act shall come into operation forthwith, and thereupon the Act shall have such force and effect as aforesaid, subject, however, to disallowance by His Majesty in Council".

The proposal in the Montagu-Chelmsford Report (para 279) was that the Governor-General should be empowered to certify that the passage of a Bill is essential for the safety, tranquillity or interests of British India, or that a case of emergency has arisen, and that, on such certificate being given, the Council of State should be empowered, without obtaining the concurrence of the Legislative Assembly, to pass laws which were to have effect as if passed by both Chambers.

The Joint Select Committee, however, thoroughly changed this proposal into the one embodied in this section (see Notes under sec. 67 (2A): it contains two safe-guards against the possible misuse of the certifying power viz. (1) that a Bill passed by the Governor-General under the certifying power must be laid before each House of Parliament for not less than eight days on which that House has sat; (2) that it must receive His Majesty's assent: it is only upon the signification of such assent by His Majesty in Council and the notification thereof by the Governor-General, that the Act will be deemed to be an Act passed by the Indian Legislature and duly assented to.

The proviso to this Section, however, empowers the Governor-General —in case of emergency—to direct that any such Act shall come into operation forthwith: the Act is, however, later subject to disallowance by His Majesty in Council.

68. (1) When a Bill has been passed "by both chambers of the Indian legislature." the Governor-General, may declare that he assents to the "Bill" or that

Assent of Governor-General to Acts. [1861, c. 67, s. 20; 1919, 2nd Sch., Pt. II.]

he withholds assent from the "Bill," or that he reserves the "Bill" for the signification of His Majesty's pleasure thereon.

(2) "A Bill passed by both chambers of the Indian legislature shall not become an Act" until the Governor-General has declared his assent thereto, or, in the case of a "Bill" reserved for the signification of His Majesty's pleasure, until His Majesty "in Council" has signified his assent and that assent has been notified by the Governor-General.

All legislative measures passed by the legislatures in India are subject to the power of veto on the part of the Crown and of the authorities representing the Crown in India, as in the case of all colonial legislatures. When a bill passed by both Houses of the Indian legislature is presented to the Governor-General for his assent, he may do one of the following three things—

(1) He may assent to the Bill ; and thereupon it becomes law and remains law unless it is expressly disallowed by His Majesty in Council (sec. 69).

(2) He may withhold assent, that is absolutely veto the Bill, and thereupon it is lost for the time being.

(3) He may receive the Bill for the signification of His Majesty's pleasure thereon ; such a Bill cannot become an Act until His Majesty in Council has signified his assent, and that assent has been notified by the Governor-General.

69. (1) When an Act of the "Indian legislature has been assented to by the Governor-General, he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for His Majesty "in Council" to signify his disallowance of any such Act.

Power of Crown to disallow Acts. [1772, s. 37 ; 1861, c. 67, s.21 ; 1919, 2nd Sch., Pt. II.]

(2) Where the disallowance of any such Act has been so signified, the Governor-General shall forth-

with notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

70. *Repealed by the Government of India Act, 1919.*

REGULATIONS AND ORDINANCES.

Power to make regulations, [1870, c, 3, s. 1, para 1.]

71. (1) The Local Government of any part of British India to which this section for the time being applies may propose to the Governor-General in Council the draft of any regulation for the peace and good government of that part, with the reasons for proposing the regulation.

[1870 c. 3, s. 1, para, 2.]

(2) Thereupon the Governor-General in Council may take any such draft and reasons into consideration; and, when any such draft has been approved by the Governor-General in Council and assented to by the Governor-General, 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 "Indian legislature."

[1870, c. 3, s. 2.]

(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.

(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.

[1916, s. 2.]

(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.

[1870, c. 3, s. 1, paras 1, 3.]

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

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

Power to make ordinances in cases of emergency. [1861, c. 67, s 23; 1919, 2nd Sch., Pt. II.]

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 "Indian Legislature"; but the power of making ordinances under this section is subject to the like restrictions as the power of the "Indian Legislature" to make laws; and any ordinance made under this section is subject to the like disallowance as an Act passed by the "Indian Legislature," and may be controlled or superseded by any such Act.

The ordinances made and promulgated under this section, like Bills passed by both Houses of the Indian Legislature, are subject to disallowance by His Majesty in Council. Whenever the Governor-General is persuaded that an emergency exists, he may legislate independently of the Legislature, and the Ordinances so made have full force for six months, provided they are not, prior to the expiry of the period of six months, disallowed by His Majesty in Council or controlled or superseded by an Act of the Indian Legislature. The competence of the Governor-General to make and promulgate such Ordinances has recently been upheld by the Judicial Committee of the Privy Council.

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

GOVERNOR'S LEGISLATIVE COUNCILS.

Composition of governors' legislative councils. [1919, s. 7.]

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

"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.

"(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[2]:

Provided that—

(a) subject to the maintenance of the above proportions, rules under the principal Act may provide for increasing the number of members[3] 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 his 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 deemed 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[4] of governors' legislative councils, and the manner of filling casual vacancies[5] 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[6], the constitution of constituencies[7], and the method of election[8] 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[9]; and

(*e*) the final decision of doubts or disputes as to the validity of any election[10]; 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."

§ 1. "A Legislative Council in every Governor's Province."

Provisions with regard to the constitution of all provincial legislative councils were contained in sections 73 to 76 of the Government of India Acts, 1915-16; these provisions did not fix the proportion of elected members, but elected and nominated members were dealt with together and it was laid down that of the total membership of the Councils at least half in the case of the Presidencies, and at least one-third in the case of other Provinces, should be non-official members. This section and the first Schedule to the Act provide for the composition of the enlarged councils. Each province gets "an enlarged legislative council, differing in size and composition from province to province, with a substantial elected majority, elected by direct election on a broad franchise, with such communal and special representation as may be necessary."—*M. C. R. para 225.* In the course of the debate in the House of Commons the Rt.-Hon. Mr. Montagu thus described the object of reconstituting the provincial legislative councils.

"I give the House the assurance that what we want to get in these Councils is the largest possible numbers of elected members, but there must be sufficient nominated members to represent those people whom we wish represented. There must be some nominations, as suggested by the Joint Committee, for representatives. There must also be a suffi-

cient number of officials to make sure that business is properly transacted, and to make sure that the case is properly presented. Nobody knows better than my Hon. and gallant Friend opposite the dislocation of business which has gone on in India during the past few years from the necessity of having in the Councils more officials than needed for voting purposes. It prevented them doing the work for which they were appointed. Under this scheme every Governor will desire to nominate only as many officials as are required."—*P. D. H. C., Dec. 3, 1919.*

The desirability of having a bi-cameral legislature in the Provinces.—In nearly all modern states that possess anything resembling the English Parliamentary system the legislature is divided into two chambers. With the exception of Bulgaria and Greece there is no important State in the world which does not follow this regular rule. This division of the legislature serves the important purpose of tending to check overhasty action. It affords time for re-consideration, while it leaves the reconsideration to be undertaken by a different body of men. It is usually the case that this second body is composed of legislators who, compared with the members of the more important House, are less liable to hasty action (either because they are older, wealthier or more experienced) and less afraid of popular passion (because their tenure of power is comparatively stable). Mill claims another advantage for the bi-cameral system—"The consideration which tells most in my judgment in favour of two Chambers is the evil effect produced upon the mind of any holder of power whether an individual or an assembly, by the consciousness of having only themselves to consult." According to Sidgwick a second chamber not only checks hasty legislation, but impedes combination of sinister interests and supplements the deficiencies, of the primary representative assembly.

In paragraph 258 of the Montagu-Chelmsford Report is discussed the question of establishing upper houses in the provincial legislatures. The view taken by the authors is that while the idea had some theoretical advantage the practical objection was serious. It was thought that most provinces would be unable to provide suitable members for two chambers; an upper chamber largely composed of the representatives of landed and moneyed interests might prove too conservative; landed proprietors might be discouraged from seeking the votes of the electorates; and the delays attendant on legislation in two houses would be troublesome.

Yet it was recognized that, when provincial Councils approached nearer to parliamentary form the need for revising chambers might be the more felt, for which reason it was suggested that the Statutory Commission should examine the question further. "These suggestions have attracted comparatively little notice in the opinions received. Some of the landowner's associations have urged the establishment of second chambers in which their interests would be strongly represented. Progressive opinion on the other hand inclines to regard a second chamber as an inconvenient encumbrance. It is apparent that a bi-cameral system would throw additional burdens on the local government and complicate the business of administration, which may partly account for the lack of interest shown by local Governments in the idea. It is, however, fairly clear to us that at the present stage the proposal is not a practical one ; and the only point for consideration is whether, as two local governments have suggested, powers should be taken from the outset of the reforms to establish second chambers at some future date when the need for them has become clear."

"It is argued that sooner or later the necessity must arise, and that unless provision is made for it from the beginning any subsequent attempt to do so will excite opposition. It seems to us probable, however, that the constitutional development of India may hereafter necessitate legislation by Parliament, at all events after the report of the first Statutory Commission. We have at present very little ground for saying that second houses will be required for the provinces We do not think that in omitting to provide for their establishment now we are foregoing any material safe-guard." (*G. I. D.*)

The question of the desirability or otherwise of establishing second chambers in local legislatures in India has, therefore, been left for the consideration of the First Statutory Commission to be appointed ten years hence : for the present all Local Legislatures in India will continue to remain uni-cameral. (*See sec. 84A.*)

The New Constitution of the Governor's Legislative Councils will be clearly understood from the following two tables compiled from the Rules published in the Gazette of India Extraordinary, July 29, 1920.—

Table I.

Total Strength of Governors' Legislative Councils.

Provinces.	Members of Executive Council (ex-officio) + maximum number of nominated officials.	Number of elected members.	Number of nominated non-officials.	Percentage of elected members.	Total number of members.	Statutory number of members (according to Schedule I of this Act.)
Bengal ...	18	113	8	81·2	139	125
Madras ...	19	98	10	77·1	127	118
Bombay ...	16	86	9	77·4	111	111
United Provinces ...	16	100	7	81·2	123	118
The Punjab ...	14	71	8	76·3	93	83
Bihar & Orissa ...	18	76	9	73·7	103	98
Central Provinces	8	54*	8	77·1	70	70
Assam ...	7	39	7	73·5	53	53
Total for all Provinces.	116	637	66	77·8	819	776

* Of these 17 will be nominated as the result of elections held in Berar. According to sec. 72A (2) (c) these members are deemed to be elected members of the Legislative Council of the Central Provinces.

Table II

Distribution of elected members in Governors' Legislative Councils.

Provinces.	Non-Mahomedan.	Mahomedan.	European	Anglo-Indian.	Land holder.	University.	Planting.	Commerce & Industry.	Sikh.	Reserved.	Mining.	Christian	General Urban.	Total number of elected members.
Bengal	46	39	5	2	5	1	...	15	...	...	...	..	...	113
Madras	65	13	1	1	6	1	1	5	..	28*	...	5	...	98
Bombay	46*	27	2	.	3	1	...	7	...	9	...	...	...	86
United Provinces ...	60	29	1	...	6	1	...	3	...	...	...	...	...	100
Bihar and Orissa ...	48	24	...	...	...	1	2	...	...	...	1	...	...	76
Central Provinces ...	28	4	...	...	2	1	...	1	...	...	1	...	...	37
Punjab	20	31	...	...	4	1	...	3	12	...	...	...	...	71
Assam	20	12	...	...	...	...	5	1	...	...	...	...	1	39

The Parliamentary Joint Select Committee make the following general observations on the Governors' Legislative Councils—

The Committee have altered the first schedule to the Bill, so as to show only the total strength of the legislative council in each province. They have retained the provision, now in sub-clause (2), that at least 70 per cent. of the members shall be elected, and not more than 20 per cent.

**Reserved Seats* :—Seats shall be deemed to be reserved seats within the meaning of this Schedule for the purposes of an election if the number of Non-Brahman members already representing the constituency is less than the number of seats specified as reserved seats to the extent only of that deficiency. Provided that, if the number of non-Brahmin candidates at the date of the election is less than the number of reserved seats, the number of reserved seats shall be reduced to the extent of that deficiency.

shall be officials. This general stipulation will govern the distribution of the seats in each province ; but in certain respects the detailed arrangements will require further consideration, and proposals should be called for from the Government of India in regard to them. The points in question, as well as some disputable matters on which the Committee wish to endorse the proposals of the Franchise Committee's report, are dealt with in the following recommendations :—

(*a*) The Committee regard the number of seats allotted to the rural population, as distinct from the urban, as disproportionately low and consider that it should receive a larger share of representation. They also think that an attempt should be made to secure better representation of the urban wage-earning class ; and they are convinced that an effort should be made to remedy in part at least the present disparity between the size of the electorates in the different provinces. In all those matters no definite instructions need be given. The Government of India should be left a wide discretion in adjusting the figures subject, however, to the understanding that the adjustment should be effected in all cases rather by enlargement than by diminution of the representation proposed in the Franchise Committee's report.

(*b*) The Committee are of opinion that the representation proposed for the depressed classes is inadequate. Within this definition are comprised, as shown in the report of the Franchise Committee, a large proportion of the whole population of India. They think that the Government of India should, as it advises, be instructed to give such classes a larger share of representation by nomination, regard being had to the numbers of depressed classes in each province and after consultation with the Local Governments. This representation should, if necessary, be in addition to, but not in diminution of, the general electorate. Whenever possible, other persons than members of the Civil Services should be selected to represent the depressed classes, but if a member of those services, specially qualified for this purpose has to be appointed, his nomination should not operate to increase the maximum ratio of official seats.

(*c*) In the Madras Presidency the Committee consider that the non-Brahmins must be provided with separate representation by means of the reservation of seats. The Brahmins and non-Brahmins should be invited to settle the matter by negotiation among themselves, and it would only be, if agreement cannot be reached in that way, that the

decision should be referred to an arbitrator appointed for the purpose by the Government of India.

(*d*) The Committee would recommend that similar treatment be accorded to the Mahrattas in the Bombay Presidency.

(*e*) The question whether women should or should not be admitted to the franchise* on the same terms as men, should be left to the newly elected legislative council of each province to settle by resolution. The Government of India should be instructed to make rules so that, if a Legislative Council so voted, women might be put upon the register of voters in that province. The Committee have not felt able to settle this question themselves as urged by the majority of witnesses who appeared before them. It seems to them to go deep into the social system and susceptibilities of India, and, therefore, to be a question which can only, with any prudence, be settled in accordance with the wishes of Indians themselves as constitutionally expressed.

(*f*) The Committee are of opinion that the franchise as settled by the rules to be made under this Act should not be altered for the first ten years, and that it should at present be outside the power of the Legislative Councils to make any alteration in the franchise. The recommendation, therefore, in respect of woman suffrage, is to be regarded as altogether exceptional, and as not forming any precedent in respect of proposals for other alterations.

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* The Rt. Hon. Mr. Montagu made the following remarks on the question of Woman's Suffrage in India—

"My hon. and gallant Friend may take it from me as a fact that none the less despite the strong opinion in favour of it in India, in every part of India there is a very strong conservative opinion against it in India, more prevalent in some provinces than in other, but based very largely on the belief in old established customs, sometimes amounting to a religion. That being so, there being on the one hand on a subject of this kind, divergence of opinion going, as the Joint Committee says, deep down into the social life of India, what is the best thing for Parliament to do? I submit it is to maintain the impartiality which has been the characteristic of English Government in India ever since it was founded, and leave it to the people of India as represented to decide for themselves. That is what we have done. That is what we are doing in the case of the Brahmin *versus* non-Brahmin and that is what is suggested by the Joint Committee's Report in the case of women. Let me remind the Committee that this is not a question of enfranchising the women in our own country, living under our own social conditions, a decision which we took only after years of hesitance. It is a question of deciding now and at once whether we shall enfranchise the women of India, who live under different conditions and whose relations to things in India are matters, I would submit, for Indians themselves to decide." *P. D. H. C., Dec. 4, 1919 See para 8 of the Franchise Committee's Report, p. 192 Pt. II, of this book.*

(g) The special representation of landholders in the provinces should be reconsidered by the Government of India in consultation with the local governments.

(h) The franchise for the University seats should be extended to all graduates of over seven years' standing.

(i) The Government of India should be instructed to consult with the Government of Bengal in respect of the representation of Europeans in Bengal. It appears to the Committee that there are good reasons for a readjustment of that representation. The recommendations of the report of the Franchise Committee in respect of European representation in other provinces may be accepted.

(j) The question whether the rulers and subjects of Indian States may be registered as electors or may be elected to the legislative councils should be left to be settled in each case by the Local government of the province.

(k) The Committee are of opinion that dismissal from the service of the government in India should not be a disqualification for election, but that a criminal conviction entailing a sentence of more than six months' imprisonment should be a disqualification for five years from the date of the expiration of the sentence.

(l) The compromise suggested by the Franchise Committee in respect of the residential qualification of candidates for legislative councils whereby the restriction was to be imposed only in the provinces of Bombay, the Punjab, and the Central Provinces may be accepted.

(m) The recommendations of the Franchise Committee in respect of the proportionate representations of Mahomedans, based on the Lucknow compact, may be accepted.

Two further observations must be made on this question of franchise. It seems to the Committee that the principle of proportional representation may be found to be particularly applicable to the circumstances of India, and they recommend that this suggestion be fully explored, so that there may be material for consideration by the Statutory Commission when it sits at the end of ten years. Further it has been strongly represented to the Committee, and the Committee are themselves firmly convinced, that a complete and stringent Corrupt Practices Act should be passed and brought into operation before the first elections for the legislative councils. There is no such Act at present in existence in India,

and the Committee are convinced that it will not be less required in India than it is in other countries.

§ 2. "Not more than 20 p. c. shall be official members and at least 70 p. c. shall be elected members"

Here we have the maximum of official members (20 per cent) and the minimum of elected members (70 per cent) for Governors' Legislative Councils. From the tables given above it will be seen that in all the Governors' Legislative Councils the percentage of elected members is higher than the statutory minimum, the average for all the Provinces being 77·8 per cent. The Bengal and the United Provinces have the highest percentage (81·2) of elected members, while Assam has the lowest. As Mr. Oman pointed out, in the course of the debate on the Government of India Bill, in the House of Commons—"as matters stand at present it is quite possible that 70 per cent. might come up to 99, and that 'not more than 20 per cent.' of 'official members' might be 1 per cent." (*P. D. H. C., December 3, 1919.*)

§ 3 "Increasing the number of members."

Under this proviso the Rules made under the Act may increase the aggregate number of members of any Governor's Legislative Council above the statutory limit prescribed in the First Schedule to this Act, provided that at least 70 per cent of the members of any Council are elected members, and not more than 20 per cent are official members. A glance at Table I above will at once show that in all the provinces except Bombay, the Central Provinces and Assam, the number of members exceeds that provided for by the First Schedule to this Act, and that the proportions required by sub-section 2 are liberaliy maintained.

§ 4. "Term of office of nominated members"

A nominated non-official member holds office for the duration of the Council to which he is nominated.

Nominated official members hold office for the duration of the Council to which they are nominated or for such shorter period as the Governor may, at the time of nomination, determine.

§ 5. "Filling casual vacancies."

According to sec. 93 vacancies in legislative councils occur—

(*a*) if a nominated or elected member resigns his office to the governor, and his resignation is accepted ;

(*b*) if for a period of two consecutive months any such member is absent from India ; or

(*c*) if for a period of two consecutive months he is unable to attend to the duties of his office.

Further, if any person, having been elected or nominated, subsequently becomes liable to any of the disabilities stated in clauses (*a*), (*d*), (*e*), (*g*) and (*h*) of sub-rule (1) or in sub-rules (2), (3), and (4) of the rules describing the general disqualifications for nomination and election (*see notes below*), as the case may be, or fails to make the prescribed oath or affirmation* within such time as the Governor considers reasonable, the Governor shall, by notification in the Gazette, declare his seat to be vacant.

When any such declaration is made, the Governor shall, by notification as aforesaid, call upon the constituency concerned to elect another person within such time as may be prescribed by the notification, or shall nominate another person, as the case may be.

When a vacancy occurs in the case of an elected member by reason of his election being declared void or by reason of absence from India, inability to attend to duty, death, acceptance of office or resignation duly accepted, the Governor shall, by notification in the Gazette, call upon the constituency concerned to elect a person for the purpose of filling the vacancy within such time as may be prescribed by the notification.

If a vacancy occurs in the case of a nominated member, the Governor shall nominate to the vacancy a person having the necessary qualification under these rules.

§ 6. "Qualifications of electors"

7. (1) Every person shall be entitled to have his name registered on the electoral roll of any constituency who has the qualifications prescribed for an elector of that constituency and who is not subject to any of the disqualifications hereinafter set out, namely :—

(*a*) is not a British subject ; or

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* Every person who is elected or nominated to be a member of the Council shall before taking his seat make, at a meeting of the Council, an oath or affirmation of his allegiance to the Crown in the following form, namely :—

I, A. B., having been $\frac{\text{elected}}{\text{nominated}}$ a member of this Council do solemnly swear (*or* affirm) that I will be faithful and bear true allegiance to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter.

(*b*) is a female ; or

(*c*) has been adjudged by a competent court to be of unsound mind ; or

(*d*) is under 21 years of age :

Provided that the local Government may direct that, subject to such conditions as it may prescribe, a Ruler of any State in India or the Rulers of any such States or a subject of any such State or any class of such subjects shall not be disqualified for registration by reason only of not being a British subject or British subjects :

Provided further that, if a resolution is passed by the Council after not less than one month's notice has been given of an intention to move such a resolution recommending that the sex disqualification for registration should be removed either in respect of women generally or in respect of any class of women, the local Government shall make regulations providing that women or a class of women, as the case may be, shall not be disqualified for registration by reason only of their sex :

Provided further that no person shall be entitled to have his name registered on the electoral roll of more than one general constituency.

(2) If any person is convicted of an offence under Chapter IX-A. of the Indian Penal Code punishable with imprisonment for a term exceeding six months or is, after an inquiry by Commissioners appointed under any rules for the time being in force regarding elections to a legislative body constituted under the Act, reported as guilty of a corrupt practice as specified in Part I, or in paragraph 1, 2 or 3 of Part II, of Schedule IV, his name, if on the electoral roll, shall be removed therefrom and shall not be registered thereon for a period of five years from the date of the conviction or the report, as the case may be, or, if not on the electoral roll, shall not be so registered for a like period ; and if any person is reported by any such Commissioners as guilty of any other corrupt practice, his name, if on the electoral roll, shall be removed therefrom and shall not be registered thereon for a period of three years from the date of the report or, if not on the electoral roll, shall not be so registered for a like period :

Provided that the local Government may direct that the name of any person to whom this sub-rule applies shall be registered on the electoral roll.

The qualifications of an elector for a general constituency are those based on—

(1) Community, (*in all provinces except the Shillong Constituency in Assam*).

(2) Residence, (*in all provinces*) and

(3) (*a*) * Occupation of a house or a building, (*in all provinces except Bihar and Orissa and Assam*) or,

(*b*) Payment of municipal taxes, Cantonment taxes or fees, (*in all provinces except Bombay and Madras ; in Madras assessment to property-tax, tax on Company or Profession-tax qualifies a voter for franchise*) or,

(*c*) Payment of cesses under the Cess Act, 1880, (*in Bengal alone*) or,

(*d*) Payment of Chaukidari tax or Union rate under the Village Chaukidari Act, 1870, (*in Bengal and Assam only*) or the Bengal Village Self-Government Act, 1919, (*in Bengal alone*) or,

(*e*) Payment of income tax, (*in all provinces*) or,

(*f*) Military service, (*in all provinces*) or,

(*g*) The holding of land, (*in all provinces*).

(*h*) Enjoyment of an assignment of land-revenue, (*in the Punjab alone*).

(*i*) The holding of a village office, (*in the Central Provinces alone*).

See the Gazette of India Extraordinary, July, 1920, and the Report of the Franchise Committee, paras 7—25, pp. 192—207, Pt. II.

§ 7. "The Constitution of Constituencies."

"A general constituency" means a non-Mahomedan, Mahomedan, Indian Christian, European or Anglo-Indian or a Sikh (in the case of the Punjab) Constituency.

"A Special Constituency" means Land-holders, University, Planters, Commerce and Industries, Planting or Mining (in the case of Bihar and Orissa, the Central Provinces).

(1) (*a*) No person is eligible for election as a member of the Council to represent a general constituency unless his name is registered on the electoral roll of the constituency or of any other constituency in the province ; unles he resides in the constituency for which he desires to be elected (except in Bombay and Madras) and unless in the case of

* In the United Provinces, the Punjab, Central Provinces ownership or tenancy of a building is a qualification for franchise.

a non-Mahomedan, Mahomedan, European or Anglo-Indian constituency he is himself a non-Mahomedan, Mahomedan, European or Anglo-Indian, as the case may be.

(*b*) No person is eligible for election as a member of the Council to represent a special constituency unless his name is registered on the electoral roll of the constituency. The qualifications for electors for special constituencies vary with the different constituencies and with the different provinces.

§ 8. "The method of Election for Governors' Legislative Councils."

The following rules are generally applicable to all Governors' Legislative Councils:—

1. (1) Any person may be nominated as a candidate for election in any constituency for which he is eligible for election under these rules.

(2) On or before the date on which a candidate is nominated the candidate shall make in writing and sign a declaration appointing either himself or some other person, who is not disqualified under these rules for the appointment, to be his election agent, and no candidate shall be deemed to be duly nominated unless such declaration has been made.

(3) A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal or to be renominated as a candidate for the same election.

2. (1) If the number of candidates who are duly nominated and who have not withdrawn their candidature before such time as the local Government may fix in this behalf exceeds that of the vacancies, a poll shall be taken.

(2) If the number of such candidates is equal to the number of vacancies, all such candidates shall be declared to be duly elected.

(3) If the number of such candidates is less than the number of vacancies, all such candidates shall be declared to be elected, and the Governor shall, by a notification in the Gazette, call for fresh nominations for the remaining vacancy or vacancies, and if any such are received, shall call upon the constituency to elect a member or members, as the case may be.

(4) Votes shall be given by ballot and in general and Landholders' constituencies in person. No votes shall be received by proxy.

(5) In plural-member constituencies every elector shall have as many votes as there are members to be elected : provided that no elector shall give more than one vote to any one candidate.

(6) Votes shall be counted by, or under the supervision of, the Returning Officer, and any candidate, or, in the absence of the candidate, a representative duly authorised by him in writing, shall have a right to be present at the time of counting.

(7) When the counting of the votes has been completed, the Returning Officer shall forthwith declare the candidate or candidates, as the case may be, to whom the largest number of votes has been given to be elected :

Provided that, if one or more seats are reserved, the Returning Officer shall first declare to be elected the non-Brahman candidate or candidates, as the case may be, to whom the largest number of votes has been given.

(8) Where an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected the determination of the person or persons to whom such one additional vote shall be deemed to have been given shall be made by lot to be drawn in the presence of the Returning Officer and in such manner as he may determine.

(9) The Returning Officer shall without delay report the result of the election to the Secretary to the Council, and the name or names of the candidate or candidates elected shall be published in the Gazette.

3. (*a*) Subject to the provisions of these rules, the local Government shall make regulations providing—

(*1*) for the form and manner in, and the conditions on, which nominations may be made, and for the scrutiny of nominations ;

(*2*) for the appointment of a Returning Officer for each constituency and for his powers and duties ;

(3) in the case of general and Landholders' constituencies, for the division of the constituencies into polling areas in such manner as to give all electors such reasonable facilities for voting as are practicable in the circumstances, and for the appointment of polling stations for these areas ;

(4) for the appointment of officers to preside at polling stations, and for the duties of such officers ;

(5) for the checking of voters by reference to the electoral roll ;

(6) for the manner in which votes are to be given, and in particular for the case of illiterate voters or voters under physical or other disability ;

(7) for the procedure to be followed in respect of tender of votes by persons representing themselves to be electors after other persons have voted as such electors ;

(8) for the scrutiny of votes ;

(9) for the safe custody of ballot papers and other election papers, for the period for which such papers shall be preserved, and for the inspection and production of such papers ;

and may make such other regulations regarding the conduct of elections as it thinks fit.

(*b*) Notwithstanding any thing in these rules, if a resolution in favour of the introduction of proportional representation is passed by the Council after not less than one month's notice has been given of an intention to move such a resolution, the local Government may for any plural-member constituencies introduce the method of election by means of the single transferable vote and may make all necessary regulations for that purpose and to that end may group together single-member constituencies so as to make new plural-member constituencies.

(*c*) In the exercise of the foregoing power regulations may be made as to elections generally or any class of elections or in regard to constituencies generally or any class of constituency or any particular constituency.

4. (1) If any person is elected by a constituency of the Council and by a constituency of either chamber of the Indian legislature,

the election of such person to the Council shall be void and the Governor shall call upon the constituency concerned to elect another person.

(2) If any person is elected either by more than one constituency of the Council or by a constituency of the Council and a constituency of the Legislative Council of another province, he shall, by notice in writing signed by him and delivered to the Secretary to the Council or the Secretaries to both Councils, as the case may be, within seven days from the date of the publication of the result of such election in the local official Gazette, choose for which of these constituencies he shall serve, and the choice shall be conclusive.

(3) When any such choice has been made, the Governor shall call upon the constituency or constituencies for which such person has not chosen to serve to elect another person or persons.

(4) If the candidate does not make the choice referred to in sub-rule (2) of this rule, the elections of such person shall be void and the Governor shall call upon the constituency or constituencies concerned to elect another person or persons.

General Election.—(1) On the expiration of the duration of a Council or on its dissolution, a general election shall be held in order that a new Council may be constituted.

(2) On such expiration or dissolution, the Governor shall, by notification in the Gazette, call upon the constituencies referred to in rule 4 to elect members in accordance with these rules within such time after the date of expiration or dissolution as may be prescribed by such notification:

Provided that, if the Governor thinks fit, such notification may be issued at any time not being more than three months prior to the date on which the duration of the Council would expire in the ordinary course of events.

(3) Before the day fixed for the first meeting of the Council the Governor shall make such nominations as may be necessary to complete the Council.

As soon as may be after the expiration of the time fixed for the election of members at any general election, the names of the members elected for the various constituencies at such election shall be notified in the Gazette. (*See Gazette of India Extraordinary July 29, 1920.*)

§ 9. "Qualifications for being.....a member."

(1) A person is not eligible for election or nomination as a member of a Governor's Legislative Council if such person—

(*a*) is not a British subject ; or

(*b*) is a female ; or

(*c*) is already a member of the Council or of any other legislative body constituted under the Act ; or

(*d*) having been a legal practitioner has been dismissed or is under suspension from practising as such by order of any competent court ; or

(*e*) has been adjudged by a competent court to be of unsound mind ; or

(*f*) is under 25 years of age ; or

(*g*) is an undischarged insolvent ; or

(*h*) being a discharged insolvent has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part :

Provided that the local Government may direct that, subject to such conditions as it may prescribe, a Ruler of any State in India or the Rulers of any such States or a subject of any such State or any class of such subjects shall not be $\frac{\text{ineligible for election}}{\text{disqualified for nomination}}$ by reason only of not being a British subject or British subjects :

Provided further that the disqualification mentioned in clause (*d*) may be removed by an order of the local Government in this behalf.

(2) A person against whom a conviction by a criminal court involving a sentence of transportation or imprisonment for a period of more than six months is subsisting shall, unless the offence of which he was convicted has been pardoned, not be eligible for $\frac{\text{election}}{\text{nomination}}$ for five years from the date of the expiration of the sentence.

(3) If any person is convicted of an offence under Chapter IX-A. of the Indian Penal Code punishable with imprisonment for a term exceeding six months or is, after an inquiry by Commissioners appointed under any rules for the time being in force regarding elections to a legislative body constituted under the Act, reported as guilty of a corrupt practice as specified in Part I, or in paragraph 1, 2 or 3 of Part II, of

Schedule IV*. Such person shall not be eligible for $\frac{\text{election}}{\text{nomination}}$ for five years from the date of such conviction or of the finding of the Commissioners, as the case may be ; and a person reported by any such Commissioners to be guilty of any other corrupt practice shall be similarly disqualified for three years from such date.

(4) If any person has been a candidate or an election agent at an election to any legislative body constituted under the Act and has failed to lodge any prescribed return of election expenses or has lodged a return which is found, either by Commissioners holding an inquiry into the election or by a Magistrate in a judicial proceeding, to be false in any material particular, such person shall not be eligible for $\frac{\text{election}}{\text{nomination}}$ for five years from the date of such election :

Provided that any disqualification mentioned in sub-rule (3) or sub-rule (4) of this rule may be removed by an order of the local Government in that behalf.

See paras 26-29 of the Franchise Committee's Report, pp. 208-210 of Pt. II of this book.

§ 10. "The final decision of doubts and disputes as to the validity of any election†."

1. In this Part and in Schedule IV, unless there is anything repugnant in the subject or context,—

(*a*) "agent" includes an election agent and any person who is held by Commissioners to have acted as an agent in connection with an election with the knowledge or consent of the candidate ;

(*b*) "candidate" means a person who has been nominated as a candidate at any election or, who claims that he has been so nominated or that his nomination has been improperly refused, and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate at such election, provided that he is subsequently nominated as a candidate at such election ; and

(*c*) "returned candidate" means a candidate whose name has been published under these rules as duly elected.

* *Vide Gazette of India Extraordinary, July 29, 1920.*

† *Vide India Gazette Extraordinary, July 29, 1920.*

2. No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

3. An election petition may be presented to the Governor by any candidate or elector against any returned candidate within fourteen days from the date on which the result of the election has been published in accordance with sub-rule (9) of rule 12.

4. The petition shall contain a statement in concise form of the material facts on which the petitioner relies and the particulars of any corrupt practice which he alleges and shall, where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure, 1908.

5. The petitioner may, if he so desires, in addition to calling in question the election of the returned candidate, claim a declaration that he himself or any other candidate has been duly elected ; in which case he shall join as respondents to his petition all other candidates who were nominated at the election.

6. At the time of presentation of the petition, the petitioner shall deposit with it the sum of one thousand rupees in cash or in Government Promissory Notes of equal value at the market rate of the day as security for the costs of the same.

7. (1) If the provisions of rule 6 are not complied with, the Governor shall dismiss the petition.

(2) Upon compliance with the provisions of rule 6.—

(*a*) the Governor shall appoint as Commissioners for the trial of the petition three persons who are or have been, or are eligible to be appointed, Judges of a High Court within the meaning of section 101 (3) of the Act, and shall appoint one of them to be the President, and thereafter all applications and proceedings in connection therewith shall be dealt with and held by such Commissioners ;

(*b*) the President of the Commission so constituted shall, as soon as may be, cause a copy of the petition to be served on each respondent and to be published in the Gazette, and may call on the petitioner to execute a bond in such amount and with such sureties as he may require for the payment of any further costs. At any time within fourteen days after such publication, any other candidate shall be entitled to be joined

as a respondent on giving security in a like amount and procuring the execution of a like bond.

(3) When in respect of an election in a constituency more petitions than one are presented, the Governor shall refer all such petitions to the same Commissioners, who may at their discretion inquire into the petitions either in one or in more proceedings as they shall think fit.

8. Every election petition shall be inquired into by the Commissioners, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits : provided that it shall only be necessary for the Commissioners to make a memorandum of the substance of the evidence of any witness examined by them.

9. The inquiry shall be held at such place as the Governor may appoint : provided that the Commissioners may in their discretion sit at any other place in the presidency for any part of the inquiry, and may depute any one of their number to take evidence at any place in the presidency.

10. (1) No election petition shall be withdrawn without the leave of the Commissioners.

(2) If there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

(3) When an application for withdrawal is made, notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Gazette.

(4) No application for withdrawal shall be granted if the Commissioners are of opinion that such application has been induced by any bargain or consideration which the Commissioners consider ought not to be allowed.

(5) If the application is granted—

(*a*) the petitioner shall be ordered to pay the costs of the respondent theretofore incurred or such portion thereof as the Commissioners may think fit ;

(*b*) such withdrawal shall be reported to the Governor, who shall publish notice thereof in the Gazette ; and

(c) any person who might himself have been a petitioner may, within seven days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and, upon compliance with the conditions of rule 6 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Commissioners may think fit.

11. (1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners.

(2) Such abatement shall be reported to the Governor, who shall publish notice thereof in the Gazette.

(3) Any person who might himself have been a petitioner may, within seven days of such publication, apply to be substituted as petitioner, and, upon compliance with the conditions of rule 6 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the Commissioners may think fit.

12. If before the conclusion of the trial of an election petition the respondent dies or gives notice that he does not intend to oppose the petition, the Commissioners shall cause notice of such event to be published in the Gazette, and thereupon any person who might have been a petitioner may, within seven days of such publication, apply to be substituted for such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the Commissioners may think fit.

13. Where at an inquiry into an election petition any candidate, other than the returned candidate, claims the seat for himself, the returned candidate, or any other party may give evidence to prove that the election of such candidate would have been void if he had been returned candidate and a petition had been presented complaining of his election.

14. When at an inquiry into an election petition the Commissioners so order, the Advocate General, or the Government Advocate, or a legal practitioner, appointed by the Governor, as the case may be, or some person acting under his instructions shall attend and take such part therein as they may direct.

15. (1) Save as hereinafter provided in this rule, if in the opinion of the Commissioners—

(*a*) the election of a returned candidate has been procured or induced or the result of the election has been materially affected, by a corrupt practice, or,

(*b*) any corrupt practice specified in Part I of Schedule IV has been committed, or,

(*c*) the result of the election has been materially affected by any irregularity in respect of a nomination paper, or by the improper reception or refusal of a vote, or by any non-compliance with the provisions of the Act or the rules or regulations made thereunder, or by any mistake in the use of any form annexed thereto, the election of the returned candidate shall be void.

(2) If the Commissioners report that a returned candidate has been guilty by an agent (other than his election agent) of any corrupt practice specified in Part I of Schedule IV which does not amount to any form of bribery other than treating as hereinafter explained or to the procuring or abetment of personation, and if the Commissioners further report that the candidate has satisfied them that—

(*a*) no corrupt practice was committed at such election by the candidate or his election agent, and the corrupt practices mentioned in the report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent and

(*b*) such candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at such election, and

(*c*) the corrupt practices mentioned in the said report were of a trivial, unimportant and limited character, and

(*d*) in all other respects the election was free from any corrupt practice on the part of such candidate or any of his agents,

then the Commissioners may find that the election of such candidate is not void.

Explanation.—For the purposes of this sub-rule "treating" means the incurring in whole or in part by any person of the expense of giving or providing any food, drink, entertainment or provision to any person with the object, directly or indirectly, of inducing him or any other person to

vote or refrain from voting or as a reward for having voted or refrained from voting.

16. (1) At the conclusion of the inquiry, the Commissioners shall report whether the returned candidate or any other party to the petition who has under the provisions of these rules claimed the seat has been duly elected, and in so reporting shall have regard to the provisions of rule 15.

(2) The report shall be in writing and shall be signed by all the Commissioners. The Commissioners shall forthwith forward their report to the Governor who, on receipt thereof, shall issue orders in accordance with the report and publish the report in the Gazette, and the orders of the Governor shall be final.

17. If either in their report or upon any other matter there is a difference of opinion among the Commissioners, the opinion of the majority shall prevail, and their report shall be expressed in the terms of the views of the majority.

18. Where any charge is made in an election petition of any corrupt practice, the Commissioners shall record in their report—

(*a*) a finding whether a corrupt practice has or has not been proved to have been committed by any candidate or his agent, or with connivance of any candidate or his agent, and the nature of such corrupt practice, and

(*b*) the names of all persons (if any) who have been proved at the inquiry to have been guilty of any corrupt practice and the nature of such corrupt practice with any such recommendations as they may desire to make for the exemption of any such persons from any disqualifications they may have incurred in this connection under these rules.

Sessions and duration of governors' legislative councils. [1919, s. 8.]

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

Provided that—

"(*a*) the council may be sooner dissolved[2] 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 governor 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.

§ 1. **"Shall continue for three years from its first meeting."**

The maximum potential period for a Governor's Legislative Council is three years: it may however, be sooner dissolved: the period may also be extended by the Governor under special circumstances, for a further period not exceeding one year.

§ 2. "May be sooner dissolved."

This sub-section confers upon the Governor the power to dissolve the Legislative Council before the expiration of the three years for which it is elected. Under the full parliamentary system the power of the Executive Head to dissolve the legislature is subject to the constitutional rule that this great power can be exercised only on the advice and approval of a Minister directly responsible to the popular chamber. The granting of a dissolution is, of course, an executive act the ministerial responsibility for which can be easily established. The following have been suggested as the leading considerations which should reasonably support and justify ministerial advice in favour of a dissolution (*Todd, 2nd Ed. p. 771*).'

(1) When a vote of "no confidence" is carried aganist a government which has not already appealed to the country.

(2) When there are reasonable grounds to believe that an adverse vote against the Government does not represent the opinions and wishes of the country and would be reversed by a new Parliament.

(3) When the existing Parliament was elected under the auspices of the opponents of the government.

(4) When the majority against a Government is so small as to make it improbable that a strong Government can be formed from the opposition.

The refusal of a dissolution, recommended by a Minister is not an executive act; it is a refusal to do an executive act. It seems to be generally admitted by constitutional authorities that the Crown has still an undoubted right to withold its consent to the application of a minister for permission to dissolve a Parliament. "If the Minister to whom a dissolution has been refused is not willing to accept the decision of the Sovereign, it is his duty to resign." (*Hearn's Government of England, pp. 163—164*).

"As the representative of the Crown in the dominion, colony, or province, over which he is commissioned to preside, the power of dissolution rests absolutely with the Governor or Lieutenant Governor for the time being. He is personally responsible to the Crown for the lawful exercise of this prerogative but he is likewise bound to take into account the welfare of the people, being unable to divest himself of

a grave moral responsibility towards the colony he is commissioned to govern." (*Todd, Parl. Govt. in the Col. 2nd Ed. p. 800*).

"It is the duty of a Governor to consider the question of a dissolution of the parliament or legislature solely in reference to the general interests of the people and not from a party standpoint. He is under no obligation to sustain the party in power if he believes that the accession to office of their opponent would be more beneficial to the public at large. He is, therefore, justified in witholding a dissolution requested by his ministers, when he is of opinion that it was asked for merely to strengthen a particular party, and not with a view to ascertain the public sentiment upon disputed questions of public policy. These considerations would always warrant a governor in witholding his consent to a dissolution applied for, under such circumstances, by a ministry that had been condemned by a vote of the popular chamber. If he believes that a strong and efficient administration could be formed that would command the confidence of an existing Assembly, he is free to make trial thereof, instead of complying with the request of his Ministers to grant them a dissolution as an alternative to their enforced resignation of office. On the other hand, he may at his discretion grant a dissolution to a ministry defeated in Parliament and desirous of appealing to the constituencies, notwithstanding that one or both branches of the legislature should remonstrate against the proposed appeal, if only he is persuaded that it would be for the public advantage that the appeal should be allowed." (*Todd.*)

Presidents of governors' legislative councils. [1919, s. 9.]

72 C. "(1) There shall be a president of a governor's legislative council[1], 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 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 a 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 an Act of the local legislature.

§ 1. "A President of a Governor's legislative council."

The Committee have considered carefully the question who is to preside over the legislative councils in the provinces. They are of opinion that the Governor should not preside, and they advise that, for a period of four years, the President should be appointed by the Governor. Wherever possible it would be a great advantage if some one could be found for this purpose who had had parliamentary experience. The legislative council should itself elect a Vice-President, and at the end of four years the nominated President would disappear, and the President and Vice-President would be elected by the councils. The Committee attribute the greatest importance to this question of the Presidency of the legislative council. It will, in their opinion, conduce very greatly to the successful working of the new councils if they are imbued from the commencement with the spirit and conventions of parliamentary procedure as developed in the Imperial Parliament.—*J. S. C. R. See Notes under secs. 63A and 63C.*

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

Business and procedure in governors' legislative councils. [1919, s. 11].

"(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[1] 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 of 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 witholding 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

(*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 subsection shall require proposals to be submitted to the council relating to the following heads of expenditure :

(*i*) contributions payable by the local government[2] 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.

"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.

"(4) 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.

"(5) Provision may be made by rules[3] 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[4], and for prohibiting or regulating the asking of questions on and the discussion of any subject specified in the rules.

"(6) 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 governor, 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.

"(7) 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."

§ 1. "Proposals for the appropriation of provincial revenues."

The Council's powers of control over the appropriation of provincial revenues are defined in this sub-section which provides that the local Government is to submit its annual appropriation proposals for the Council's assent in the form of "demands for grant." It is contem-

plated that the provincial estimates comprising the expenditure required both for reserved and transferred subjects will be presented as a whole but that the Governor in Council will be responsible for the estimates in so far as they relate to reserved subjects, and the Governor and Ministers in so far as they relate to transferred subjects. In the case of demands or resolutions relating to a reserved subject, if the Council refuses its assent, the Governor in Council will, nevertheless, have power to incur the expenditure involved if the Governor certifies that such expenditure is essential to the discharge of his responsibility for the subject concerned. In the case of resolutions relating to transferred subjects the assent of the Council will be necessary, but the Governor is entrusted with power in cases of emergency to authorise expenditure which is, in his opinion, necessary for the safety or tranquillity of the Province, or for the carrying on of the administration of any department. By the exercise of this reserve power the Governor will be able to provide funds for any unforeseen emergency, and also in the last resort to prevent the temporary closing down of a transferred department owing to refusal of supplies. Provision is made for declaring by rules that certain expenditure, which includes the Provincial contributions to the Central Government, is a permanent charge on the Provincial revenues, and Local Governments will not be required to include proposals for such expenditure in the resolutions submitted to the Councils. In accordance with the principle of British parliamentary practice, which requires that every grant of money for the public service shall be based on the request or recommendation of the Crown, and with the precedents contained in Dominion constitutions (Australian Commonwealth Act, 1915, section 56, South Africa Act, 1909, section 62), it is laid down that no proposal for the appropriation of the Provincial revenues, or for the increase of any expenditure proposed to be authorised by a resolution, shall be made except on the recommendation of the Governor. This provision will debar private members from moving amendments which would have the effect of increasing the amount of any proposed appropriation.

The provisions in this sub-section as to the control of the Councils over the appropriation of revenues are in substantial accordance with the proposals contained in para 256 of the Montagu-Chelmsford Report as distinguished from that made in para. 73 of the Government of India's First Reforms Despatch.

"The Committee think that the provincial budget should be submitted

to the vote of the legislative council, subject to the exemption from this process of certain charges of a special or recurring character which have been set out in the Bill. In cases where the council alter the provision for a transferred subject, the Committee consider that the Governor would be justified, if so advised by his ministers, in re-submitting the provision to the council for a review of their former decision; but they do not apprehend that any statutory prescription to that effect is required. Where the council have reduced a provision for a reserved subject which the Governor considers essential to the proper administration of the subject concerned, he will have a power of restoration. The Committee wish it to be perfectly clear that this power is real and that its exercise should not be regarded as unusual or arbitrary; unless the Governor has the right to secure supply for those services for which he remains responsible to Parliament, that responsibility cannot justly be fastened upon him."

"Whenever the necessity for new taxation arises, as arise it must, the questions involved should be threshed out by both parts of the Government in consultation together, and it is especially important that in this matter both parts of the Government should if possible, be in agreement when the proposals of the Government are laid before the legislature."—*J. S. C. R. See notes under sec. 67A.*

§ 2. "Contributions payable by the local government".

See note 7 under sec. 45A ante and the Meston Committee's Report on Financial Relations (in Pt. II. of this book).

§ 3. "Provision may be made by rules."

See Rules issued under this sub-section printed in Appendix B to this Part.

§ 4. "Quorum."

"The physical presence of the members in order to form the quorum is necessary. Such has not been the general practice, however, to this time. It has been regarded as necessary that a quorum shall not merely be present, but shall also act."—*Burgess Vol. II, p. 55.*

The constitution of different countries vary widely as to the principle of the quorum and the mode of its determination. In the British colonies the quorum is invariably prescribed in their Constitution Acts.

"In those cases where the quorum is fixed by the constitution there is substantial agreement upon the principle that the presence of a majority of the legal number of members in the House is necessary and sufficient to the transaction of legislative business.....The quorum of the absolute majority, *i.e.*, of the majority of the legal number of members, may be said to be the modern principle of general legislation. Its reason is that the majority represents in this respect the whole, and is vested with the powers of the whole. If this were not the principle, legislative action would be exposed to the tricks and stratagems of the minority to an unbearable degree." (*Burgess, Pol. Science ii 124-5.*)

In the British Parliament, on the other hand, the quorum of the House of Commons has, from very early times, been fixed at 40 and that of the House of Lords at 3, though the Houses now number respectively 707 and 600 members. Dr. Burgess remarks that the fact that, under the British system, legislation is controlled by the Ministry would make it unnecessary, and often inconvenient, to require a majority quorum.

Provision for case of failure to pass legislation in governors' legislative councils. [1919 s. 13.]

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 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."

The original proposal in the draft Bill was for the constitution of Grand Committees on which the Governor was to appoint a majority of the members, with power, in cases referred to them, to pass or reject laws without the assent of the Council; it was also proposed that, by using his certifying power, the Governor was to bring the machinery of the Grand Committee into operation. Those provisions were in conformity with the proposals contained in paras 252 to 254 of the Montagu-Chelmsford Report, as further developed in paras 81 to 83 of the Government of India's First Reforms Despatch.

The effect of the provisions in the draft Bill as to the Governor's certifying power was that the Governor would have been able to use this power, either (1) for the purpose of obtaining necessary legislation in relation to reserved subjects which had been initiated by a member of his Executive Council, and for which he could not obtain a majority in the Legislative Council if he relied on the ordinary procedure ; or (2) for the purpose of blocking, or referring to a Grand Committee, legislative proposals which are, in his opinion, likely to imperil public safety or the maintenance of order, or which encroach on his responsibility for a specified reserved subject ; but in this latter case the alternative course of referring the proposals to a Grand Committee could only be adopted with the assent of the Legislative Council.

The Joint Select Committee have rejected the plan of Grand Committees as drafted originally in the Bill. "They have done so because in their opinion the Grand Committee did not give the Governor the power of securing legislation in a crisis in respect of those matters for which he is held responsible, and because in respect of ordinary legislation about reserved subjects it perpetuated the system of securing legislation by what is known as the 'official bloc,' which has been the cause of great friction and heartburning. The responsibility for legislation on reserved subjects is with the Governor in Council, and, when the 'official bloc' has been put into operation, it has been put into operation by him, and is merely an indirect way of asserting his responsibility. The Committee think it much better that there should be no attempt to conceal the fact that the responsibility is with the Governor in Council, and they recommend a process by which the Governor should be empowered to pass an Act in respect of any reserved subject, if he considers that the Act is necessary for the proper fulfilment of his responsibility to Parliament. He should not do so until he has given every opportunity for the matter to be thoroughly discussed in the legislative council, and as a sensible man he should, of course, endeavour to carry the legislative council with him in the matter by the strength of his case. But, if he finds that cannot be so, then he should have the power to proceed on his own responsibility. Acts passed on his sole responsibility should be reserved by the Governor-General for His Majesty's pleasure, and be laid before Parliament. His Majesty will necessarily be advised by the Secretary of State for India, and the responsibility for the advice to be given to His Majesty can only rest with the Secretary of State. But the Committee

suggest that the Standing Committee of Parliament, whose appointment they have advised, should be specially consulted about Acts of this character. Provision, however, is made in the Bill for the avoidance of delay in case of a grave emergency by giving the Governor-General power to assent to the Act without reserving it, though this of course would not prevent subsequent disallowance by His Majesty in Council." —*J. S. C. R.*

LOCAL LEGISLATURES[1].

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

Local legislatures. [1861, c. 67, ss. 29, 45, 46, 48; 1909 ss. 1 (1), 3 (4); 1912, s. 1 (1); 1919, 2nd Sch., Pt. II.]

(2) *Repealed by the Government of India Act 1919.*

(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 "as hereinafter provided."

[1861, c. 67, ss. 45, 46, 48: 1909, s. 1 (1); 1912, s. 3; 1919, 2nd Sch., Pt. II.]

(4) *Repealed by the Government of India Act, 1919.*

§ 1. "Local Legislature."

Local Legislature means, in the case of a governor's province, the governor and the legislative council of a province, and in the case of any other province, the lieutenant-governor or chief commissioner in legislative council. *See sec. 134 (4).*

§ 2. "Lieutenant-Governor."

See notes under sec. 53 and para 41 M. C. R.

74. } *Repealed by the Government of India*
75. } *Act, 1919.*

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 "section" :

Constitution of legislative councils of lieutenant-governors and chief commissioners. [1909, s. 1 (2); 1912, s. 3; 1919, 2nd Sch., Pt. II.]

"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 "non-officials."

[1861, c. 67, ss. 45, 46; 1909, s. 1 (1); 1912, s. 3; 1919, 2nd Sch. Pt., II.]

(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 the manner in which persons resident in India may be nominated or elected members of any of those legis-

[1909, s. 6; 1912, s. 3.]

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.

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

(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.

[1916, s., 1 (2).]

(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 alteration by the "Indian legislature or the local legislature."

[1909, ss. 6, 7; 1919, and Sch., Pt. II.]

The maximum number of members of a lieutenant-governor's legislative council is one hundred. The actual number may be less according to the rules framed under this section. One third of the total number of elected and nominated members of such legislative councils must be non-official.

The Governor-General in Council with the approval of the Secretary of State is to make rules on the following matters:—(1) the conditions under which and the manner in which persons resident in India may be nominated or elected; (2) the qualifications for being a member of those councils; (3) the qualifications for being nominated and elected as members; (4) the number of members; (5) the number of members to form a

quorum ; (6) the term of office of members, (7) the manner of filling up casual vacancies of members and (8) the manner in which the above rules are to be carried into effect. Rules may also be made for the final decision of doubts and disputes as to the validity of elections.

All rules so made shall have to be laid before both Houses of Parliament and they are not subject to repeal or alteration by the Indian or local legislature.

Power to constitute new local legislatures. [1861, c. 67, ss. 46, 47, 49.]

77. (1) When a new lieutenant-governorship[1] 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 province, as from a date specified in the notification, a local legislature[2] for that province, and define the limits of the province for which the lieutenant-governor in legislative council is to exercise legislative powers.

[1912, s. 3.]

(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[3].

§ 1. "A new lieutenant-governorship."

Sec. 53 (2) lays down the procedure for constituting a new lieutenant-governorship.

§ 2 "Constitute.....a local legislature"

This sub-section is intended to give the effect of secs. 46, 47 and 49 of Indian Council's Act of 1861. (*Documents I, pp. 208-209.*) It was under

these enactments that local legislatures were established for the North-Western Provinces and Oudh (1886), for Burma (1897), for Eastern Bengal and Assam (1905) and for Bihar and Orissa (1912). "The effect of these enactments appears to be that a new lieutenant-governorship cannot be created unless a local legislature is created at the same time." (*Ilbert.*)

§ 3. "Chief Commissioner."

See notes under sec. 58.

78. "(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[1] the council, and any meeting of the legislative council of a lieutenant-governor or a chief commissioner may be adjourned by the person presiding."

Meetings of legislative councils of lieutenant-governors or chief commissioners. [1861, c. 67, ss. 45, 46; 1909, s. 4; 1912 s. 3; 1919, 2nd Sch., Pt. II.]

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 member of the council who is highest in official rank among those holding office under the Crown[2] who are present at the meeting, or during the discussion of the annual

[1916, 1st Sch.]

financial statement or, of any matter of general public interest or when questions are asked, the vice-president or the member appointed to preside.

"(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[3] in case of an equality of votes.

[1919, 2nd Sch., Pt. II.]

"(4) Subject to rules affecting the council, there shall be freedom of speech[4] 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."

§ 1. **"Prorogue."**

See notes under sec. 63D.

§ 2 **"Crown."**

See notes under sec. 1.

§ 3 **"Casting vote."**

See notes under sec. 41.

§ 4. **"Freedom of Speech."**

See notes under sec. 67.

[**79.**] *Repealed by the Government of India Act, 1919.*

80. (1) At a meeting of a local legislative council ("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 alterations of those rules.

Business at meetings. [1861, c. 67, ss. 38, 48; 1912, ss. 1 (1), 3; 1919, 2nd Sch., Pt. II.]

(2) *Repealed by the Government of India Act, 1919.*

(3) Notwithstanding anything in the foregoing provisions of this section, the local government "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 at any such discussion or when questions are asked in the place of

[1909, ss. 5, 7; 1912, ss. 1 (1) 3; 1919, 2nd Sch., Pt. II.]

[1916, 1st Sch.]

the 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 "Indian legislature" or the local legislature.

"(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).

[1919, 2nd Sch., Pt. II.]

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

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[1] of the

Powers of local legislatures. [1919, s. 10.]

territories for the time being constituting that province."

"(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 the Government of India Act, 1919, 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-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[2] ; or

(*f*) regulating any provincial subject[3] 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 repealed 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."

This section deals with the legislative powers of all local legislatures including Governor's legislative councils : it represents sec. 79 of the Government of India Act, 1915, as revised on the lines recommended in the Functions Committee's Report (*paras 28-35. pp. 241 to 247 of Pt. II. of this book.*)

One important object of the revision has been to limit the number of cases in which previous sanction of the Governor-General is required to Provincial Bills, and at the same time to make the statutory list of such cases complete, so as to avoid continuance of the practice whereby Bills not included in such list had to be submitted for previous sanction under "executive order." It will be observed that the section follows the provisions of the hitherto existing law in conferring general powers of legislation on the local legislature of a province subject to the requirement of the Governor-General's previous sanction in the case of certain classes of Provincial Bills. Absence of previous sanction cannot, however, be made a ground for attacking the validity of a Bill which has received the assent of the Governor-General. This arrangement renders possible a distribution of legislative power between the Indian Legislature and the Provincial Legislatures without subjecting the validity of Provincial Acts to challenge in the Courts on the ground that such Acts involve an invasion of the sphere of the Indian Legislature. *See Notes under sec. 65 ante.*

§ 1. "Peace, and good government"

These, or words nearly similar, have been used in most of the Constitutional Acts passed by the Imperial Parliament conferring local legislatures on British Colonies. The local legislature has not general power

to make laws for "the peace, order, and good government" of a province, for this power is subject to the several restrictions enumerated in sub-sections 3 and 4 below. A question may be raised as to whether the words "for the peace and good government of the territories for the time being constituting that province" will prevent the local legislature from passing a law which may be confined in its operation to a particular district.

The judgment of the Privy Council delivered by Lord Halsbury, L. C. in the case *Riel* v. *The Queen*, *10 App. Ca.* 678, 1885 has an important bearing on this sub-section :—

"It appears to be suggested that any provisions differing from the provisions which in this country have been made for administration, peace, order, and good government cannot, as matters of law, be provisions for peace, order and good government in the territories to which the statute relates ; and, further, that if a Court of law should come to the conclusion that a particular enactment was not calculated, as a matter of fact and policy, to secure peace, order, and good government, that they would be entitled to regard any statute directed to these objects, but which a Court should think likely to fail of that effect, as *ultra vires* and beyond the competency of the Dominion Parliament, to enact. Their lordships are of opinion that there is not the least colour for such a contention. The words of the statute are apt to authorize the utmost discretion of enactment for the attainment of the objects pointed to. They are words under which the widest departure from criminal procedure, as is known and practised in this country, have been authorized in Her Majesty's Indian Empire. Forms of procedure unknown to the English Common Law have there been established and acted upon, and to throw the least doubt upon the validity of powers conveyed by those words would be of widely mischievous consequence." (*10 App. Ca. 678, 1885.*)

§ 2. "Regulating any central subject."

See paras 29-33 of the Functions Committee's Report, pp. 242-246, Part II. of this book. See also Part 3 of the Report of the Functions Committee, pp. 252-268 of Part II of this book.

§ 3. "Regulating any provincial subject etc"

See para 40 of the Functions Committee's Report. (*p. 290 of Part II. of this book.*)

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[1] in the service of the Crown in India, his seat on the council shall become vacant:

Vacation of seats in local legislative councils. [1919, s. 14.]

"Provided that for the purposes of this provision 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."

§ 1. "Accepts any office."

Here "office" includes any paid whole-time appointment under the Crown in India except appointments as ministers. This section provides that officials (for definition of "officials" see sec. 134) shall not be qualified for election as members of a local legislative council, and that acceptance of office in the service of the Crown in India by a non-official member of a Legislative Council renders his seat vacant, but for the purpose of this section a minister is not to be deemed an official. Hence if an elected or nominated member of council accepts office on appointment *as minister*, his seat on the council will not become vacant *i. e.*, such a member will not have to seek re-election (as used to be the practice in England) or re-nomination. It appears that ministers *alone* enjoy this privilege of continuing as members of the legislature without having to seek re-election or re-nomination. But the privilege does not extend to Council secretaries where seats become vacant on appointment as such (unless, of course a wider connotation is given to the word "minister" and the Council secretaries who undoubtedly form part of the provincial ministry are taken to fall under the category of ministers): they must have to be re-elected or re-nominated within six months of their appointment, if they are to continue to hold office as Council Secretaries. *See notes under sec. 52.*

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."

Measures affecting public revenue. [1919, 2nd Sch., Pt. I.]

See Notes under sec. 67A.

81. (1) When "Bill" has been passed "by" a local legislative council, the governor, lieutenant-governor or chief commissioner, may declare that he assents to or withholds his assent from the "Bill."

Assent to Acts of local legislatures. [1861, c. 67, s. 39; 1912, ss. 1 (1), 3, 1919, 2nd Sch., Pt. II.]

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

(3) If the governor, lieutenant-governor or chief commissioner assents to any such "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.

[1861, c. 67, ss. 40, 48; 1912, ss. 1 (1) 3; 1919, 2nd Sch., Pt. II.]

(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.

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.

Return and reservation of Bills. [1919, s. 12.]

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

(*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.

This section provides that a Governor, or other head of a Province, may, instead of assenting to or withholding assent from a Bill passed by a Legislative Council, either return such Bill to the Council for reconsideration with suggested ammendments, or reserve the Bill for consideration of the Governor-General. The provisions as to reservation follow the lines proposed by the Functions Committee (*Functions Report, paras, 55 to 59*), and allow of a reserved Bill being returned for reconsideration by the Council which passed it ; the definition of the classes of Bills which are to be subject to reservation is left to rules.

The section further provides (sub-section (3)) that the Governor-General may, instead of himself assenting to or withholding assent from a Provincial Act, reserve such Act "for the signification of His Majesty's pleasure thereon." But this further power of reservation will not apply to a Bill reserved by a governor. The Royal power of veto has never been used, so far as laws passed by Parliament are concerned, ever since 1707 ; it is, however, not infrequently exercised in the case of laws passed by colonial legislatures ; and it is likely that it may have to be frequently exercised in the case of Indian laws.

82. (1) When 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 lawful for His Majesty "in Council" to signify, his disallowance of "the" Act.

Power of Crown to disallow Acts of local legislatures. [1861, c. 67, ss. 41, 48 ; 1912, ss. 1 (1) 3. 1919 2nd sch., Pt. II.]

(2) Where the disallowance of 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.**] *Repealed by the Government of India Act, 1919.*

VALIDITY OF INDIAN LAWS.

Removal of doubts as to validity of certain Indian laws. [1861, c. 67, ss. 14, 24, 33; 1871 c. 34, s. 1.]

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 :—

[1861, c. 67, s. 24; 1916 s. 2(2); 1919, 2nd Sch. Pt. II.]

(a) in the case of "an Act of the Indian legislature" or a local legislature, because it affects the prerogative of the Crown[1]; or

[1861, c. 67, ss. 14, 33; 1912, ss. 1 (1) 3; 1919, 2nd Sch. Pt. II.]

(b) in the case of any law, because the requisite proportion of "non-official" members was not complete at the date of its introduction into the council or its enactment; or

[1871, c. 34, s. 1; 1912 ss. 1 (1), 3; 1919, 2nd Sch. Pt. II.]

(c) in the case of "an Act of" a local legislature, because it confers[2] on magistrates, being justices of the peace[3] 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.

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.

[1916, s. 2 (2).]

"(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[4] 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 proceedings[5] 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."

[1919, s., 16 (2).]

§ 1. "The prerogative of the Crown."

"Prerogatives" are the residuary fractions and remnants of the sovereign power which, unimpaired by legislation and revolution, remain vested in the Crown. They are the products and survivals of the Common Law and are not the creatures of statutes. Statute law tends gradually to invade and diminish the domain of prerogative. Among the examples of prerogatives the following may be mentioned :—

(1) The exercise of the ordinary executive authority by the Crown, through Ministers of State; subject to certain legal and customary restraints such as the control of the House of Commons by virtue of its power to refuse supplies.

(2) Dissolution and Prorogation of Parliament.
(3) The administration of justice in the name of the Crown, through judges and counsel appointed by the Crown.
(4) The pardon of offenders.
(5) Command of the Army and Navy.
(6) Foreign affairs : peace and war.
(7) Accrediting and receiving Ambassadors.
(8) Entering into treaties with foreign nations.
(9) Recognition of foreign states.
(10) Appropriating prizes of war.
(11) Sharing legislation ; right to veto.
(12) Allegiance, right of the Crown to the allegiance and service of its subjects.
(13) Ecclesiastical authority with respect to the Church of England.
(14) Control over titles, honours, precedence, franchises, etc., coining money, superintendence over infants, lunatics, and idiots.
(15) Special remedies against the subject, such as intrusion, distress, *escheat*, extent.
(16) Lordship of the soil.

A number of these prerogatives have become obsolete through disuetude, although they have never been swept away by Act of Parliament. Others of them have been cut down and reduced to matters of form or denuded of most of their former vigour and activity.—*Quick and Garran.*

§ 2. "Because it confers etc ....."

The Madras and Bombay legislatures passed certain Acts which were adjudged invalid on the ground of interference with the rights of European British subjects. (*See R. vs. Reay*, 7 *Bom. Cr.* 6) : to confirm these provincial Acts an Indian Act (XXII of 1870) was passed in 1870. As Indian legislation could not confer on local legislatures the requisite power in future, it was conferred by an Act of Parliament in 1871.

§ 3. "Justices of the Peace."

In England these Justices of the Peace are appointed by the Lord Chancellor in the name of the Crown. They are chosen out of the county gentlemen who have a certain amount of property, and who, at their Court of Quarter Sessions, have command over all the money collected by taxes for the general use of the county—as for instance, for building

gaols, prosecuting offenders, and payment of salaries to county officials.

In India it was the judicial charter of 1726 that enabled the governor or president and the five seniors of the council to be justices of the peace who were to hold quarter sessions four times in the year, with jurisdiction over all offences except high treason. The Regulating Act of 1773 empowered the Governor-General and council and the chief justice and other judges of the Supreme Court to act as justices of the peace, and for that purpose to hold quarter sessions. The Charter Act of 1813 enacted that these justices were to have jurisdiction in cases of assault or trespass committed by British-born subjects on Indians, and also in cases of small debts due to Indians from British-born subjects. An Act of 1832 (2 & 3 Will IV, c. 117) authorized the appointment of persons other than covenanted civilians to be justices of the peace in India. "A judge or magistrate cannot try a European British subject unless he is a justice of the peace. High Court judges, sessions judges, district magistrates, and presidency magistrates are justices of the peace *ex-officio*. In other cases a justice of the peace must be a European British subject."—*Ilbert.*

§ 4. "Nothing.....diminishing...powers of the Indian Legislature."

As regards the Indian Legislature no formal limitation is proposed of the general powers of legislation conferred by sec. 65 of this Act, but it is contemplated that the Indian Legislature will, as a matter of custom and convention, abstain from legislating on Provincial subjects, except where those subjects are declared by the Rules of classification made under sec. 45A to be subject to Indian Legislation (*Functions Report, para 33*).

§ 5. "Shall not be open to question in any legal proceedings."

It is important to note that, though the Act provides for a division of functions between the Central Government and Provincial Governments similar to that which is to be found in Federal Constitutions, it is not contemplated that questions as to the dividing line between the spheres of the central and provincial authorities shall be the subject of legal decision in the Courts (M. C. Report, para. 212, 239). Provision is made by sec. 45A for the making of rules which will provide for the settlement of doubts as to whether "any matter does or does not belong to a Provincial subject," and the intention is that the Rules framed shall provide for such doubts being decided by administrative authority, *i.e.*, by the

Governor-General in Council subject to the control of the Secretary of State, whose duty it will be to check any tendency on the part of the Central Government to take too restrictive a view as to the subjects included in the Provincial sphere.

This subsection expressly provides that the validity of any Act of the Indian legislature or of a local legislature shall not be questioned in any legal proceedings by reason of the distinction now made between central and provincial subjects.

PART VI A.

STATUTORY COMMISSION.

Statutory commission. [1919, s. 41.]

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

establishment of second chambers of the local legislatures 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.

This is an entirely new section which provides for the appointment of the first of the Commissions which are to survey periodically the political situation in India, to investigate the working of the changes introduced by the Government of India Act, 1919, and to advise as to the future. (*See M. C. R. paras 261, 264, 288 quoted below.*)

The names of the proposed Commissioners are to be submitted, when the time comes for their appointment, for the approval of both Houses of Parliament. This periodical survey of conditions in India by Commissions appointed with the approval of Parliament is a vital element in the scheme for the gradual transfer of responsibility outlined in the M. C. Report, and it has therefore been considered essential to make definite provision now for the appointment of the first Commissioners (in 1929) ten years from the date of the passing of the Government of India Act, 1919, so that the prospect of their appointment may be kept steadily in view, and the enquiry which they are to conduct may be recognised from the inception of the reforms as an important factor in the process of future development.

"We regard it as essential, if the terms of the announcement of August 20 are to be made good, that there should from time to time come into being some outside authority charged with the duty of re-surveying the political situation in India and of readjusting the machinery to the new requirements. We would provide, therefore, that ten years after the first meeting of the new councils established under the Statute a commission should be appointed to review the position. Criticism has been expressed in the past of the composition of Royal Commissions, and it is our intention that the commission which we suggest should be regarded as authoritative and should derive its authority from Parliament itself. The names of the commissioners, therefore, should be submitted by the Secretary of State to both Houses of Parliament for approval by resolution. The Commissioners' mandate should be to consider whether by

the end of the term of the legislature then in existence it would be possible to establish complete responsible government in any province or provinces, or how far it would be possible to approximate to it in others ; to advise on the continued reservation of any departments for the transfer of which to popular control it has been proved to their satisfaction that the time had not yet come ; to recommend the retransfer of other matters to the control of the Governor in Council if serious mal-administration were established ; and to make any recommendations for the working of responsible government or the improvement of the constitutional machinery which experience of the systems in operation may show to be desirable. We intend these propositions to be read rather as an indication of our general intentions than as an attempt to draft the actual terms of the reference to the commission."—*M. C. R. para 261.*

"Inasmuch as complete responsible government essentially depends upon the existence of an electorate sufficiently active and cognisant of affairs to hold their representatives effectively to account we think that one of the most important duties of the commission will be to examine the growth of capacity and responsibility in the electorates. The approximation to complete responsibility must depend, among other things, on the growth of the electorate and on the measure in which they give evidence of an active and intelligent use of the franchise. We wish to attain complete responsibility where we can and as early as we can, and we intend that its attainment should depend upon the efforts of the Indian people themselves. It would not be fair to give it to them till they fulfil the necessary conditions."—*M. C. R. para 264.*

"It should equally be the duty of the Commission to examine and report upon the new constitution of the Government of India, with particular reference to the working of the machinery for representation, the procedure by certificate, and the results of joint sessions. The commission will, doubtless, if they see fit, have proposals to make for further changes in the light of the experience gained."—*M. C. R., para 238.*

The Committee are of opinion that the Statutory Commission should not be appointed until the expiration of ten years, and that no changes of substance in the constitution, whether in the franchise or in the lists of reserved and transferred subjects or otherwise, should be made in the interval. The Commission will be fully empowered to examine the working of the constitutions in all their details in the provinces, and to advise whether the time has come for full responsible government in each pro-

vince, or in the alternative whether and to what extent the powers of self-government already granted should be extended, or modified, or restricted. It should be clearly understood, also, that the Commission should be empowered to examine into the working of the Government of India and to advise in respect of the Government of India no less than in respect of the provincial governments."—*J. S. C. R.*

PART VII.

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

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. [1793, s. 32; 1833, s. 76; 1853, s. 35; 1861, c. 67, s. 4; 1880, s. 2, Sch. 1; 1912, s. 1 (1).]

(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:

[1861, c. 67, s. 4.]

(*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 ;

[1833, s. 77 ; 1853, s. 35 ; 1912, s. 1 (1)]

(*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.

[1880, s. 4]

(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.

[1813, s. 89 ; 1833, s. 76 ; 1853, s. 35 ; 1912, s. 1 (1) ; 1919, 2nd. Sch. Pt. III.]

"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 members of his executive council "other than the commander-in-chief" and a governor in council and a lieutenant-governor in council may grant to any member of his executive council, leave of absence under medical certificate for a period not exceeding six months.

Leave of absence to members of executive Councils. [1861, c. 67, s. 26 ; 1912, s. 1 (1) 1916, 1919, 2nd Sch, Pt. II.]

(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 "save in the case of absence on special duty or on leave under a medical certificate", if any member of the Executive Council of the Governor-General, "other than the commander-in-chief" or any member of the executive council of a governor, "or of a lieutenant-governor" departs from India, intending to return to Europe, his office shall thereupon become vacant.

Provisions as to absence from India or presidency. [1793 s. 37; 1833 s. 79; 1912, s. 1 (1), 1919, 2nd Sch. Pt. II, I-II.]

2. *Sub-sections (2), (3), (4) and (5) of this section were repealed by the Second Schedule to the Government of India (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 37).*

[**88.**] *Repealed by the Second Schedule (Pt. III) of the Government of India Act, 1919.*

89. (1) If any person appointed to "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

Power for Governor-General to exercise powers before taking seat, [1858, s. 63; 1919 2nd Sch, Pt, III.]

notification his appointment and his intention to assume the office of Governor-General.

(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-president, or, if he is absent, the senior 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.

[1858, s. 63, 1909, s. 4, 1919, 2nd Sch., Pt. II.]

90. (1) If a vacancy occurs in the office of Governor-General when there is no successor in India to supply the vacancy, the Governor "of a Presidency," who was first appointed to the office of Governor 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.

Temporary vacancy in office of Governor-General. [1861, c. 67, s. 50; 1912, s. 4. (1) 1919, 2nd Sch. Pt. III.]

(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.

[1793, s. 50 ; 1861, c. 67, s. 50.]

(3) If, on the vacancy occurring, it appears to the governor, who by virtue of this section holds and executes the office of Governor-General, necessary to exercise the powers thereof before he takes his seat in council, he may make known by notification his appointment, and his intention to assume the office of Governor-General, and thereupon the provisions of "section eighty-nine of" this Act shall apply.

[1861, c. 67, s. 51 ; 1919, 2nd. Sch. Pt. III.]

(4) Until such a Governor has assumed the office of Governor-General, if no successor is on the spot to supply such vacancy, the vice-president, or, if he is absent, the senior member of the executive council, ("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.

[1793, ss. 29, 30 ; 1833, s. 62 ; 1861, c. 67, s. 51 ; 1909, s. 4 (1), 1919, 2nd Sch. Pts. II-III.]

(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.

[1793, s. 29; 1833, s. 62; 1861, c. 27, s. 51; 1909, s. 4.]

91. (1) If a vacancy occurs in the office of governor when no 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.

Temporary vacancy in office of governor.

[1793, ss. 29, 30, 50; 1833, s. 63; 1909, s. 4; 1912, s. 1 (1); 1919, 2nd Sch. Pt. III.]

(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.

[1793, s. 29; 1833, s. 63; 1912, s. 1 (1).]

92. (1) If a vacancy occurs in the office of a

member of the executive council of the Governor-General ("other than the commander-in-chief") or a member of the executive council of a governor, and there is no 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.

Temporary vacancy in office of member of an executive council. [1793, ss. 31, 34; 1861, c. 67, s. 27; 1912, s. 1 (1); 1919, 2nd Sch. Pt. II.]

(2) Until a successor arrives the person so 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 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 a member of the executive council of the Governor-General ("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 or special duty, 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.

[1919, 2nd Sch., Pts. II.-III.]

(4) Until the return to duty of the member so incapable or absent, the person temporarily appointed shall hold and

[1919, 2nd Sch., Pt. III.]

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 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 to fill the vacancy supplied by the temporary appointment; and

[1919, 2nd Sch., Pt. II.]

(*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.

[1874, c. 91 s. 2.]

93. (1) A nominated or elected member of "either chamber of" the Indian "Legislature" or of a local legislative council may resign his office to the Governor-General or to the gover-

Vacancies in legislative councils. [1861, c. 67, ss. 12, 31, 48; 1912 ss. 1 (1) 3; 1919, 2nd Sch., Pt. II.]

nor, 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.

[1892, s. 4 (1); 1912, ss. 1 (1), 3.]

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 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 absence may be permitted.

Leave. [1837, ss. 1, 2, 3; 1853, s. 32, 1916, 1st. Sch.]

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 in "military" offices under the Crown in India, and may reinstate "military" officers and

Power to make rules as to Indian appointments. [1833, s. 78, 1858, s. 30, 1919; and Sch.; Pt. II.]

servants suspended or removed by any of those authorities.

(2) Subject to such rules, all appointments to offices and commands in India, and all "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. [1858, s. 30.]

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. [1833, s. 87; 1914, s. 3.]

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 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 Qualification of rulers and subjects of certain states for office. [1916, s. 3.]

tribe, in territory adjacent to India, shall be eligible for appointment to any such military office.

PART VII A

THE CIVIL SERVICES IN INDIA.

96 B. "(1) Subject to the provisions 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.

[The civil services in India. 1919, s. 36.]

"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 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 com-

plaint 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 & 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."

This Part deals with questions affecting the Public Service on the lines recommended by the Government of India in their Despatch of 5th March (*paras. 43 to 55, pp. 62—72 of Pt. II. of this book*). Hitherto the regulation of the services had been dependent in a great measure on executive orders, many of which were uncodified. In order to give effect to the principles laid down in the M. C. Report (*para. 325*) as to safeguarding the position of public servants, the Government of India proposed that the main rights and duties of the services in India should be reduced to statutory form. This section makes provision to this effect. It is contemplated that under the rules to be made for classification of services, three main divisions will be recognised : All-India services, provincial and subordinate. Members of All-India services will continue as at present to be appointed by the Secretary of State in Council, and the conditions of

their service will be regulated by the same authority, which alone will have power to dismiss them. It is contemplated that pensions of provincial services will be secured by legislation to be passed in the Indian Legislature, that power to make rules relating to the provincial and subordinate services will be delegated to local governments, and that eventually local legislatures will regulate these services by Public Service Acts, which will in part take the place of the rules (*Functions Report, para. 70*; *Despatch of 5th March, paras. 52-54*).

"The Committee do not conceal from themselves that the position of the public services in working the new constitutions in the provinces will, in certain circumstances, be difficult. They are of opinion that these services have deserved the admiration and gratitude of the whole Empire. They know that some members of the services regard the wisdom of the proposed changes with grave misgiving, and that some fear that those changes will not tend to the welfare of the Indian masses. They are convinced, however, that the services will accept the changing conditions and the inevitable alteration in their own position, and devote themselves in all loyalty to making a success, so far as in them lies, of the new constitution.

In the provinces, officers serving in a reserved department will be controlled by the Governor in Council, and in a transferred department by the Governor acting with ministers, but in both cases alike the personal concurrence of the Governor should be regarded as essential in the case of all orders of any importance prejudicially affecting the position or prospects of officers appointed by the Secretary of State.

The Committee think that every precaution should be taken to secure to the public servants the career in life to which they looked forward when they were recruited, and they have introduced fresh provisions into this clause to that end. If friction occurs, a re-adjustment of persons and places may often get over the difficulty, and the Governor must always regard it as one of his most important duties to establish a complete understanding between his ministers and the officers through whom they will have to work. But if there are members of the service whose doubts as to the changes to be made are so deeply-rooted that they feel they cannot usefully endeavour to take part in them, then the Committee think it would only be fair to those officers that they should be offered an equivalent career elsewhere, if it is in the power of His Majesty's Government to do so, or, in the last resort, that they should be allowed to retire on

such pension as the Secretary of State in Council may consider suitable to their period of service."—*J. S. C. R.*

See M. C. R. paras. 323, 325, etc.

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 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.

Public service commission. [1916, s. 3.]

"(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."

Provision is made by this section for the appointment of a Public Service Commission which is to deal with matters affecting recruitment and control of the public services in India under rules made by the Secretary of State in Council. The Government of India recommended the appointment of such a Commission for which they are precedents in the Dominions, with a view to securing that the public services should not suffer through being exposed to political influences *G. I. First Reforms. Despatch, 5th March, para. 55, pp. 71-72 : Pt. II, of this book.*

96D. "(1) An auditor-general in India shall be appointed by the Secretary of State in Council, and shall hold office during

Financial control. [1919, s. 39.]

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

This section gives effect to two proposals made by the Government of India in their First Reforms Despatch of March 5, 1919 :— (1) that the Auditor-General be given a statutory position in order to secure his independence (*Despatch, Para. 77; pp. 100-102 Pt. II. of this book*). (2) that statutory provision be made requiring prior consultation with the Finance Department of the Government concerned before any new post is added to the public service, or the emoluments of any existing post are varied (*Despatch, para. 75 pp. 97-99, Pt. II. of this book*).

96 E. "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 1919 s. 40.

PART VIII.

THE INDIAN CIVIL SERVICE.

Rules for admission to the Indian Civil Service. [1858, s. 32; 1914, s. 3.]

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 and of persons in respect of whom a declaration has been made under "section 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.

[1916, s. 4.]

(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.

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

Appointments to the Indian Civil Service. [1919, s. 37 (1).]

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

The purpose of sub-section 6 of this section is to give effect to the recommendations of the Public Services Commission and those contained in following paragraph of the M. C. Report in respect of recruitment in India.

"We have not been able to examine the question of the percentage of recruitment to be made in India for any service other than the Indian Civil Service. The Commission recommended that 25 per cent. of the superior posts of that service should be recruited for in India. We consider that changed conditions warrant some increase in that proportion, and we suggest that 33 per cent. of the superior posts should be recruited for in India, and that this percentage should be increased by 1½ per cent. annually until the periodic commission is appointed which will re-examine the whole subject. We prefer this proposal to the possible alternative of fixing a somewhat higher percentage at once and of making no increase

to it until the periodic commission which we propose has reported. We cannot at present foresee the reorganization that may take place in the Indian Civil Service as a result of new conditions. For this reason we think it unwise to aim at attaining any definite percentages after a specified time. We prefer to fix a percentage applicable to present conditions and to commit ourselves only to a growing proportion, which will be subject to reconsideration and revision by the commission.

"We have dealt only with the Indian Civil Service, but our intention is that there should be in all other services now recruited from England a fixed percentage of recruitment in India increasing annually. The per centage will not be uniform for all services as the particular figures must depend upon their distinctive characters and functions".—*M. C. R. para. 317.*

Offices reserved to the Indian Civil Service. [1861, c. 54, s. 2.]

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.

Power to appoint certain persons to reserved offices. [1870, c. 3, s. 6; 1916, 1st Sch.]

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 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 Gover-

nor-General in Council and sanctioned by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council of India.

(3) 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.

Power to make provisional appointments in certain cases. [1861. c. 54; s. 3.]

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.

[1861, c. 54, s. 4.]

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

PART IX.

THE INDIAN HIGH COURTS.

Constitution.

101. (1) The high courts[1] referred to in this Act are the high courts of judicature for the time being established[2] in British India by letters patent[3].

Constitution of high courts.

[1861, c. 104, ss. 2, 16; 1911, c. 18 ss. 1, 3.]

(2) Each high court shall consist of a chief justice and as many other judges as 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

[1861, c. 104 ; ss. 2, 16, 19.]

(*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

[1861, c. 104, ss. 2. 16.]

(*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.

[1861, c. 104, ss. 2, 16 ; 1911, c. 18, s. 3.]

(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.

§ 1. "The High Courts."

1. *Leading stages in the evolution of the Indian Judiciary.*—The Royal Charter of Charles II of the year 1661 gave to the Governor and Council power "to judge all persons belonging to the said Governor and Company or that shall be under them, in all causes, whether civil or criminal, according to the laws of this kingdom, and to execute judgment accordingly."

2. The above provisions of the Charter of 1661 were not, however, carried into effect before 1678. At Madras which was then the chief of the Company's settlements in India, two or more officers of the Company used before 1678 to sit as justices to dispose of petty cases but there was no machinery for dealing with serious crimes. In 1678 the agent and Council at Madras resolved that, under the Charter of 1661, they had power to judge all persons living under them in all cases, whether criminal or civil, according to the English laws, and to execute judgment accordingly and it was determined that the Governor and Council should sit in the chapel in the fort on every Wednesday and Saturday to hear and judge all causes. But this Court was not to supersede the formerly existing justices who were still to hear and decide petty cases.

3. By a Charter of 1683 the King established a Court of Admiralty to be held at such place or places as the Company might direct and to consist of "one person learned in civil law and two assistants" to be appointed by the Company. The first such Court was held at Surat.

4. The Charter of 1687 proceeding from the Company, not from the Crown—which established a municipality—also created a Mayor's Court (consisting of the Mayor and 12 aldermen) which was to be a Court of Record with power to try civil and criminal causes in which an appeal was to lie to "our Supreme Court of Judicature commonly called our Court of Admiralty."

5. In 1726 a Charter was granted establishing or reconstituting municipalities at Madras, Bombay and Calcutta, and setting up or remodelling Mayor's and other Courts at each of these places. At each place the Mayor and Aldermen were to constitute a Mayor's Court with civil jurisdiction, subject to an appeal to the Governor or President in Council, and to a further appeal in more important cases to the King in Council.

6. The constitution of these Courts was amended in 1753 when a Court of Request at each of the said places was established for petty cases. The Charter of 1753 also expressly excepted from the jurisdiction

of the Mayor's Court all suits and actions between Indians only, and directed that the suits and actions should be determined among themselves, unless both parties submitted them to the determination of the Mayor's Courts.

7. The Regulating Act of 1773 established the Supreme Court. This Supreme Court was intended to be an independent and effectual check upon the executive government. The latter was still composed of the Company's servants entirely, but the Supreme Court consisted of Judges appointed by the Crown and it was made a King's Court and not a Company's Court ; the Court held jurisdiction over "His Majesty's subjects" in the provinces of Bengal, Behar and Orissa ; it consisted of a Chief Justice and (at first) three judges (subsequently reduced by 37 Geo. Ch. 142 sec. 1 to a Chief Justice and two Judges) ; and was constituted by a Charter framed under the authority of the Regulating Act. The King in Council further retained the right to disallow or alter any rule or regulation framed by the Government of India ; and in civil cases an appeal lay to the Privy Council. The intention was to secure to the Crown the supremacy in the whole administration of justice, and to place an effective check upon the affairs of the East India Company.

The arrangement, however, was soon found to be impracticable. The Act established in India two independent and rival powers *viz.*, the Supreme Government, comprising the Governor-General and his Council, and the Supreme Court ; the boundaries between them were altogether undefined, one deriving its authority from the Crown, and the other from the Company. The wording of the statute and Charter in regard to the Supreme Court was extremely loose and unsatisfactory ; and the immediate result was a conflict of authority which raged for seven years, and which had the effect of paralysing the executive government and of undermining the whole administration.

The Court issued its writs extensively throughout the country, arrested and brought to Calcutta all persons against whom complaints were lodged —zemindars, farmers and occupiers of land, whatever their rank or consequence in the country. Revenue defaulters were set at liberty under a writ of *habeas corpus* ; the criminal administration under the Nawab was declared to be illegal ; the mofussil civil courts were held to have no valid jurisdiction ; and the Supreme Court, itself modelled upon the Courts of England, introduced the whole system of English law and procedure. The Court exercised large powers independently of the government, often

so as to obstruct it, and had complete control over legislation : such a plan could not but fail and it had to be remodelled by another Act *viz.*, the Amending Act of 1780-81 which, among other things, exempted the Governor-General and Council of Bengal, jointly or severally, from the jurisdiction of the Supreme Court, for anything counselled, ordered or done by them in their public capacity (though this exemption did not apply to orders affecting British subjects). It also empowered the Governor-General and Council to frame regulations for the Provincial Courts of Justice without reference to the Supreme Court. It was under this statute that the so-called "Regulations" were passed. The Court of Directors and the Secretary of State were to be regularly supplied with copies of these regulations which might be disallowed or amended by the King in Council, but were to remain in force unless disallowed within two years.

(8) An Act passed in 1800 founded a Supreme Court of Judicature at Madras on the Bengal pattern with judges appointed by the Crown. Bombay obtained her Supreme Court in 1823.

(9) The Indian High Courts Act of 1861 empowered the Crown to establish, by Letters Patent, High Courts at Calcutta, Madras and Bombay, in which the Supreme Courts, as well as the *Sadr Dewani Adalat* and the *Sadr Nizamut Adalat* were all merged, the jurisdiction and powers of the abolished courts being transferred to the new High Courts. Each of the High Courts was to be composed of a Chief Justice and not more than 15 judges, of whom not less than one-third including the Chief Justice were to be barristers, and not less than one-third were to be members of the Covenanted Civil Service. All the judges were to be appointed by and to hold office during the pleasure of the Crown. The High Courts were expressly given superintendence over, and power to frame rules of practice for all the Courts subject to their appellate jurisdiction. Power was given by the Act to establish another High Court with the same constitution and powers as the High Courts established.

(10) The Indian High Courts Act of 1911 (*a*) raised the maximum number of judges of a High Court of Judicature in India to twenty ; (*b*) gave power to His Majesty to establish new High Courts within His Majesty's dominions in India, whether or not included within the limits of local jurisdiction of another High Court, and to make consequential changes altering the jurisdiction of that other High Court ;

and, (*c*) empowered the Governor-General in Council to appoint temporary additional judges of any High Court for a term not exceeding two years. In exercise of the powers conferred by this Act new High Courts have already been established at Patna and at Lahore for the new Province of Bihar and Orissa and for the Punjab and the number of Judges of the Calcutta High Court was for a time raised to the maximum.

§ 2. "High courts.....established in British India."

At present there are Chartered High Courts established at Calcutta, Bombay, Madras, Allahabad, Patna and at Lahore. Arrangements are in progress for establishing a High Court at Rangoon.

* *For Documents relating to the constitution of the Indian Judiciary from 1833 to 1916 see Documents I, pp. 386-430.*

* Under Sec. 65 of this Act the Indian Legislature may, with the previous approval of the Secretary of State in Council, abolish any of the High Courts referred to in this section.

§ 3. "Letters patent."

The phrase "Letters Patent" is thus defined by Wharton :—

"Writings of the Sovereign, sealed with the great Seal of England, whereby a person or public company is enabled to do acts or enjoy privileges which he or it could not do or enjoy without such authority. They are so called because they are open with the Seal affixed and are ready to be shown for confirmation of authority thereby given."

The Letters Patent for the High Court of Judicature at Fort William in Bengal, bearing date December 28, 1865 and those for the High Courts of Madras and Bombay are *mutatis mutandis* in exactly the same terms. *For the Letters Patent for the Calcutta High Court see Documents I, pp. 396-411. For the Letters Patent for the Patna High Court (1916) see Documents, I, pp. 415-430.*

The Allahabad High Court was established by Letters Patent dated 17th March, 1866.

§ 4. "Pleader."

In the Civil Procedure Code a "pleader" is defined as "any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court."

The term "pleader" is here used in a much larger than its ordinary sense as a convenient term to designate all persons who are entitled

to *plead* for another in Court. "Pleader," in its ordinary sense is synonymous with "Vakil" (*1884*) *8 I. L. Bom. 145.*

Tenure of office of judges of high courts.

102. Every judge of a high court shall hold his office during His Majesty's pleasure.[1]

(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.

[1861, c. 104, ss. 4, 16; 1912, s. 1 (1) prov. (a).]

1. "During His Majesty's Pleasure."

Appointments to the High Courts of India rest with the Crown and Judges hold office during His Majesty's pleasure "though according to constitutional rule, *de facto*, their tenure is as secure as in Canada, where they may be removed by the Governor-General on a Parliamentary address."

Tenure during pleasure is the ordinary tenure of public servants in England, including, those who belong to the permanent civil service, and the service of a member of the Civil Service of India is expressly declared by his covenant to continue during the pleasure of His Majesty. *Tenure during good behaviour* is subject to a few exceptions, confined to persons holding judicial offices. But judges of the Indian High Courts are expressly declared by statutes to hold during pleasure. The difference between the two forms of tenure is that a person holding *during good behaviour* cannot be removed from his office except for such misconduct as would, in the opinion of a Court of Justice, justify his removal; whilst a person *holding during pleasure* can be removed without any reason for his removal being assigned. *See Anson, Law and Custom of the Constitution, Second Edition Pt. II, p. 213, see also Willis vs. Gipps, 6 State Trials N. S. 311* (1846), *as to removal of judicial officers—Ilbert.*

Precedence of Judges of high courts. [1861, c. 104, ss. 5, 16.]

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.

Salaries etc., of judges of high courts. [1797, s. 2: 1800, ss. 8, 9; 1825, s. 4; 1861, c. 104 ss. 6, 16.]

(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.

[1800, s. 7; 1813, s. 89; 1823, s. 11; 1861, c, 104, ss. 11, 16]

(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.

[1861, c. 104 ss. 11, 16.]

(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 himsef 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.

Provision for vacancy in the office of chief justice or other judge. [1861, c. 104, ss. 7, 16; 1912, s. 1 (1) prov. (a).]

105. (1) On the occurrence of a vacancy in the office of chief justice[1] 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 of chief justice of the court, until some person has been appointed by His Majesty to the office of chief justice of the court, and has entered on the discharge of the duties of that office, or until the chief justice has returned from his absence, as the case requires.

(2) On the occurrence of a vacancy in the office of any other judge[2] 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, 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.

§ 1. "Vacancy in the office of the Chief Justice."

The wording of this sub-section leaves no doubt in one's mind that the person appointed to act for the Chief Justice need not be a Barrister Judge—a qualification that is necessary in the case of a permanent Chief Justice under sec. 101(4) above.

§ 2. "Vacancy in the office of any other Judge."

These words refer to a judge appointed to his office by His Majesty and not a person appointed under the section to act as judge (*Queen Empress vs. Gangaram*, 16A. 136, 152). There is no limit of time mentioned in this section within which the appointment of an Acting Judge is to be made. Such an appointment, therefore, is not invalid because it was not made immediately upon, or within a reasonable time after, the occurrence of the vacancy which it supplied. (*Balwant Singh vs, Rani Kishori, 1897, 20A. 267, 293.*)

Jurisdiction.

Jurisdiction of high courts. [1772, ss. 13, 14; 1780, s. 17; 1793 s. 156; 1797, ss. 11, 13; 1800, ss. 2, 5, 20; 1823, ss. 7, 17; 1861, c. 104, ss. 9, 11, 16.]

106. (1) The several high courts are courts of record and have such jurisdiction[1], 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 jurisdiction, powers and authority as are vested in those courts respectively at the commencement of this Act.

(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.

[1916, 1st Sch.]

(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.

[1780, s. 8; 1797, s. 11, 3rd proviso; 1800, s. 2; 1823, s. 7; 1861, c. 104, s. 11, 16.]

§ 1. "Jurisdiction."

"Jurisdiction" is a content of the judicial power; it is in fact the power of a Court to entertain an action, suit, or other proceeding.

This section confers upon the High Courts general appellate jurisdiction in all matters decided by the Civil and Criminal Courts within the limits assigned by the several Letters Patent.

The Original jurisdiction of the High Courts is limited by the Letters Patent to matters in which the subject-matter of the suit, or the character of the parties, fall under certain specified heads; but the appellate jurisdiction has no such limits.

Sec. 10 of the Indian High Courts Act of 1861 lays down :—"Until the Crown shall otherwise provide under the powers of this Act, all jurisdiction now exercised by the Supreme Courts of Calcutta, Madras and Bombay respectively over inhabitants of such parts of India as may

not be comprised within the local limits of the Letters Patent to be issued under this Act establishing High Courts at Fort William, Madras and Bombay, shall be exercised by such High Court separately."

Provisions as to original, appellate and admiralty jurisdiction are made in the different Letters Patents creating High Courts. *See Documents, Vol. I, p.p. 396—411 and 415—430.*

Powers of high court with respect to subordinate courts. [1772, s. 17; 1797, s. 11, 1st. proviso.]

107. Each of the high courts has superintendence over all courts[1] for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,—

(*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 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 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.

I. "His superintendence over all courts".

The High Courts under this section have not only judicial, but also administrative power. In the exercise of its power of superintendence a High Court may direct a Subordinate Court to do its duty, and this power is not limited to cases in which the Subordinate Judge declines to hear or determine a suit or application within his jurisdiction. But a High Court is not competent, in the exercise of this power, to interfere with and set right the orders of a Subordinate Court on the ground that the order of the Subordinate Court has proceeded on an error of law or an error of fact; *See 1 A. 101*; *9 A. 104*; *18A. 4*; *21 A. 181*; *26 C. 74, 76*; *41 C. 876, 885*. A High Court in the exercise of its superintending power will not ordinarily interfere, except in cases of grave and otherwise irreparable injustice. *31 B. 138. See Mullah's Civil Procedure Code pp. 906–907.*

See also sec 15 of the Indian High Courts Act, 1861.

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, [1861, c. 104, ss. 13, 16.]

(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.

[1861, c. 104, ss. 14, 16.]

See secs. 13, and *14 of the Indian High Courts Act*, 1861 *printed at pp. 394 and 395 of Documents Vol. I.*

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

Power for Governor-General in Council to alter local limits of jurisdiction of high courts. [1865, c. 15, s. 3.]

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 was established, and also to exercise any such jurisdiction in respect of any British subject for the time being within any part of India outside British India.

(2) The Governor-General in Council shall transmit to the Secretary of State an authentic copy of every order made under this section.

[1865, c. 15, s. 4].

(3) His Majesty may signify, through the Secretary of State in Council, his disallowance of any such order, and such disallowance shall make void and annual the order as from the day on which the governor-general notifies that he has received intimation of the disallowance, but no act done by any high court before such notification shall be deemed invalid by reason only of such disallowance.

See sec. 3 *of the Indian High Courts Act 1865 printd at page 412 of Documents, Vol. I.*

110. (1) The governor-general, each governor lieutenant-governor and chief commissioner, and each of the members of the executive council of the governor-general or of a governor or lieutenant-governor "and a minister appointed under this Act" shall not—

Exemption from jurisdiction of high court. [1772, ss. 15, 17 : 1780, s. 1 : 1797, s. 11, 1st. and 2nd. provisos : 1800, s. 3 : 1823, s. 7, prov. : 1861, c. 104, s. 11, 16 : 1919 s. 1 (1) : 1919, 2nd Sch. Pt. I.]

(*a*) be subject to the original jurisdiction of any high court by reason of anything counselled, ordered or done by any of them in his public capacity only; nor

[1780, s. 1; 1707, s. 11, 2nd proviso]

(*b*) be liable to be arrested or imprisoned in any suit or proceeding in any high court acting in the exercise of its original jurisdiction; nor

[1861, c. 104, ss. 15, 16; 1912, s. 16, prov. (a).]

(*c*) be subject to the original criminal jurisdiction of any high court in respect of any offence not being treason or felony.

[1772, s. 15.]

(2) The exemption under this section from liability to arrest and imprisonment shall extend also to the the chief justices and other judges of the several high courts.

[1772, s. 17; 1797, s. 11 1st. proviso; 1800, s. 2; 1823 s. 7: 1861, c. 104, ss. 11, 16.]

111. The order in writing of the Governor-General in Council for any act shall, in any proceeding, civil or criminal, in any high court acting in the exercise of its original jurisdiction, be a full justifiction of the act, except so far as the order extends to any European British subject; but nothing in this section shall exempt the governor-general, or any member of his executive council, or any person acting under their orders, from any proceedings in respect of any such act before any competent Court in England.

Written order by governor-general justification for act in any courts in India. [1780 ss. 2, 3, 4: 1861, c. 104, ss. 11, 16.]

See sec. 39 of the East India Company Act 1773 and Pitt's speech on the India Bill of 1773 printed at pages 26 and 55—58 of Documents Vol. I respectively. See also Secs. 127, 128 and 129 of this Act

Law to be administered.

112. The high courts at Calcutta, Madras and Bombay, in the exercise of their original jurisdiction in suits against inhabitants of Calcutta, Madras or Bombay, as the case may be, shall, in matters of inheritance and succession to lands, rents and goods, and in matters of contract and dealing between party and party, when both parties are subject to the same personal law or custom having the force of law, decide according to that personal law or custom, and when the parties are subject to different personal laws or customs having the force of law, decide according to the law or custom to which the defendant is subject.

Law to be administered in cases of inheritance and succession. [1780, s. 17, prov.; 1797, s. 13; 1800 s. 2; 1823, s. 7; 1861, c. 104, s. 11.]

This section reproduces the enactments marginally noted. When the East India Company took the entire management of the territories in India they adopted the plan of Warren Hastings and preserved the laws of the Natives of India to settle disputes among them. The twenty-third rule provided that Moulavies or Brahmins should respectively attend Courts to expound the law and assist in passing the decree. Subsequently when Parliament invested the Governor-General and Council with the power of making regulations, the provisions and the exact words of the aforesaid twenty-third rule were introduced into the first Regulation passed on April 17,1780 and enacted by the Bengal Government for the administration of justice. By sec. 27 of this regulation it was enacted "that in all suits regarding inheritance, marriage and caste, and other religious usages or institutions, the laws of the Koran with respect to Mahomedans and those of the *shaster* with respect to the *Gentoos*,

shall be invariably adhered to." This section was re-enacted in the following year in the revised code, with the addition of the word "succession." Sec. 17 of the Act of 1781 constitutes the first express recognition of Warren Hastings's rule in the English Statute Law. Enactments to the same effect have since been introduced into numerous subsequent English statutes and Indian Acts.—See clauses 19 and 20 of the Charter of 1865 of the Bengal High Court, the corresponding clauses of the Madras and Bombay Charters, clauses 13 and 14 of the Charters of the North Western Provinces High Court and clauses 13 and 14 of the Charter of the Patna High Court.

Sec. 2 of the Indian Contract Act (Act IV of 1872) contains a saving for any statute, Act or regulation not thereby expressly repealed. This section has been held to include the enactment reproduced by this section, under which matters of contract are, within the Presidency towns, but not elsewhere, directed to be regulated by the personal law of the party.

See. 14 C. 781—where it was held that custom of *dandapat* is still in force in Calcutta. If however any law or custom is already inconsistent with the terms of the Contract Act, it would be held to be repealed ; *See Madhab Chandra* vs. *Rajcoomar*, 14 B. L. R. 76.

* The leading case on the extent to which English law has been introduced into Indian law is *Mayor of Lyons* vs. *East India Company* reported in *1 Moor's P. C. 176.*

Additional High Courts.

113. His Majesty may, if he sees fit, by letters patent, establish a high court of judicature in any territory in British India, whether or not included within the limits of the local jurisdiction of another high court, and confer on any high court so established any such jurisdiction, powers and authority as are vested in or may be conferred on any high court existing at the commencement of this Act; and,

Power to establish additional high courts. [1861, c. 104, s. 16; 1911, c. 18, s. 2.]

where a high court is so established in any area included within the limits of the local jurisdiction of another high court, His Majesty may, by letters patent, alter those limits, and make such incidental, consequential and supplemental provisions as may appear to be necessary by reason of the alteration.

Advocate-General.

114. (1) His Majesty may, by warrant under His Royal Sign Manual, appoint an Advocate-General for each of the presidencies of Bengal, Madras and Bombay.

Appointment and powers of advocate-general. [1858, s. 29]

(2) The Advocate-General for each of those presidencies may take on behalf of His Majesty such proceedings as may be taken by His Majesty's Attorney-General in England.

[1813, s. 111, 1861, c. 104, s. 11.]

(3) On the occurrence of a vacancy in the office of Advocate-General, or during any absence or deputation of an Advocate-General, the Governor-General in Council in the case of Bengal, and the local government in other cases, may appoint a person to act as Advocate-General; and the person so appointed may exercise the powers of an Advocate-General until some person has been appointed by His Majesty to the office and has entered on the discharge on his duties, or until the Advocate-General has returned from his absence

[1916, 1st Sch.]

or deputation, as the case may be, or until the Governor-General in Council or the local government, as the case may be, cancels the acting appointment.

PART X.

ECCLESIASTICAL ESTABLISHMENT.

115. (1) The bishops[1] of Calcutta, Madras and Bombay have and may exercise within their respective dioceses such episcopal functions, and such ecclesiastical jurisdiction for the superintendence and good government of the ministers of the Church of England therein, as his Majesty may by letters patent, direct.

Jurisdiction of Indian bishops. [1813, ss. 51, 52; 1833, ss. 93, 94; 1919, 2nd Sch., Pt. III.]

"His Majesty may also by letters patent make such provision as may be deemed expedient for the exercise of the episcopal functions and ecclesiastical jurisdiction of the bishop during a vacancy of any of the said Sees or the absence of the bishop thereof."

(2) The Bishop of Calcutta is the Metropolitan Bishop in India, subject nevertheless to the general superintendence and revision of the Archbishop of Canterbury.

[1833, s. 94; 1919, 2nd Sch., Pt. III.]

"And as metropolitan shall have, enjoy, and exercise such ecclesiastical jurisdiction and functions as His Majesty may by letters patent direct. His

Majesty may also by-letters patent make such provision as may be deemed expedient for the exercise of such jurisdiction and functions during a vacancy of the See of Calcutta or the absence of the Bishop."

(3) Each of the Bishops of Madras and Bombay is subject to the Bishop of Calcutta as such Metropolitan, and must at the time of his appointment to his bishopric, or at the time of his consecration as bishop, take an oath of obedience to the Bishop of Calcutta, in such manner as His Majesty, by letters patent, may be pleased to direct.

[1833, s. 93.]

(4) His Majesty may, by letters patent, vary the limits of the dioceses of Calcutta, Madras and Bombay.

(5) Nothing in this Act or in any such letters patent as aforesaid shall prevent any person who is or has been bishop of any diocese in India from performing episcopal functions, not extending to the exercise of jurisdiction, in any diocese or reputed diocese at the request of the bishop thereof.

[1874, c. 77, s. 13.]

1. "Bishops"

"A Bishop is the chief of the clergy in his diocese or jurisdiction in England, Wales or Ireland. A Bishop is elected by the King's license to elect the person named by the King, accompanied by a letter missive addressed to the Dean and Chapter, and if they fail to make election in 12 days the King by letters patent may nominate whom he pleases. The Bishops are the Lords Spiritual in Parliament. A Bishop has three powers (1) a power of ordination gained on his consecration,

by which he confers orders, etc., in any place throughout the world; (2) a power of jurisdiction throughout his See or his bishopric; (3) a power of administration and government of the revenues thereof, gained on confirmation. He has also a Consistory Court; he visits and superintends the clergy of his diocese."—*Wharton.*

As to Indian Bishops see 37 and 38 vict. c. 77 sec. 13.

The bishops of Calcutta, Madras and Bombay, are the only Indian bishops who are referred to in the Act relating to India. Bishops have also been appointed, under letters patent or otherwise, for Chota Nagpur, Lahore, Lucknow, Rangoon, Tennevelly and Travancore.

116. *Repealed by the Government of India Amendment Act, 1916.*

Consecration of person resident in India appointed to bishopric. [1833, s. 99].

117. If any person under the degree of bishop is appointed to the bishopric of Calcutta, Madras or Bombay, being at the time of his appointment resident in India, the Archbishop of Canterbury, if so required to do by His Majesty by letters patent, may issue a commission under his hand and seal, directed to the two remaining bishops, authorising and charging them to perform all requisite ceremonies for the consecration of the person so to be appointed.

Salaries and allowances of bishops and archdeacons. [1813, s. 49; 1833, ss, 89, 101; 1842, ss. 1, 3, 4; 1871, c. 62, s. 1, 1st prov.; 1880, ss. 2, 3. 4 sch. 1; 1919, 2nd. sch., Pt. III.]

118. (1) The bishops of Calcutta, Madras and Bombay are appointed by His Majesty by letters patent "and the archdeacons of those dioceses by their respective diocesan bishops," and there may be paid to them, or to any of them, out of the revenues of India, such salaries and allowances as may be fixed

by the Secretary of State in Council; but any power of alteration under this enactment shall not be exercised so as to impose any additional charge on the revenues of India.

[1813, s. 50; 1833, 90.]

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

[1823, s. 5; 1833, s. 100.]

(3) There shall be paid out of the revenues of India the expenses of visitations of the said bishops, but no greater sum may be issued on account of those expenses than is allowed by the Secretary of State in Council.

Payments to representatives of bishops. [1825, s. 5; 1833, s. 97.]

119. (1) If the Bishop of Calcutta dies during his voyage to India for the purpose of taking upon himself the execution of his office, or if the Bishop of Calcutta, Madras or Bombay dies within six months after his arrival there for that purpose, 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.

(2) If the Bishop of Calcutta, Madras or Bombay 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.

120. His Majesty may, by warrant under the Royal Sign Manual, countersigned by the Secretary of State grant, out of the revenues of India, to any Bishop of Calcutta a pension not exceeding fifteen hundred pounds per annum if he has resided in India as Bishop of Calcutta, Madras or Bombay or archdeacon for ten years, or one thousand pounds per annum if he has resided in India as Bishop of Calcutta, Madras or Bombay for seven years, or seven hundred and fifty pounds per annum if he has resided in India as Bishop of Calcutta, Madras or Bombay for five years, or to any Bishop of Madras or Bombay a pension not exceeding eight hundred pounds per annum, if he has resided in India as such bishop for fifteen years.

Pensions [1823, s. 3; 1825, s. 15; 1833. ss. 96, 98.]

121. His Majesty may make such rules as to the leave of absence of the Bishops of Calcutta, Madras and Bombay on furlough or medical certificate as seem to His Majesty expedient.

Furlough rules. [1842 ss. 1, 2, 3; 1871, c. 62.]