

Hindus and Moslems will have troubles arising from religion; Punjabis will have troubles with Bengalis, and so on. All will have troubles incidental to their family lives and social connexions. The tendency of the people to proceedings in the Courts—either on true or false cases—will also make the official life somewhat neurotic. And officials must be prevented from using their powers detrimentally to the people. In the feverish nationalism of to-day these things tend to be overlooked; but every administrator, as distinct from a politician, is only too painfully aware of their possibilities.

Hitherto the administration has been governed by the Rule of Law. The Rule of Law is characteristically English. Is it politic or fair to leave India with a British spirit of administration when the British connexion is gone? To say the least, a constitutionalist must regard it as dangerous to give the rather vague Rule of Law as the chief guarantee of rights to an administration and a people to whom the Rule of Law is relatively new and not assimilated by the masses. The traditional English method of acting first and thinking afterwards may suit England. One may very justly question if it will suit India, which, as I have said, is almost the opposite of England in most respects.

To my mind the solution to these difficulties lies in the system of administrative law. To

many English and American constitutionalists this is heresy. To continental constitutionalists it is a necessary part of the government. Even in England the growing officialism in government has been accompanied by a tendency to adopt administrative law, at least in some respects. In all countries, England and the United States included, administrative execution is adopted for the collection of taxes, *e.g.*, in the case of non-payment the administration may seize property without judicial interference. Such executive action has legislative sanction, of course, but as Professor Dicey has pointed out, the transfer of authority to administrative boards saps at the foundation of the Rule of Law. The English courts keep officials within the law, *i.e.*, in cases of abuse officials are subject to the jurisdiction of the courts, but all errors of judgment, misinterpretation of orders and such like do not come within the purview of the courts (save, in certain respects, the courts of Quarter Sessions which, so far, have taken to themselves a characteristic of the continental system). In the English system, particularly by the writs of *habeas corpus*, *mandamus*, *quo warranto*, and *certiorari*, abuse is corrected, but the modern tendency to give functions to expert bodies of boards lessens the likelihood of the courts interfering. In fact their interference in all probability would not be welcomed by

the ordinary citizen, as it would add to the duration of cases, and the most decisive evidence would be heard from the officials who administered the particular subject.

Since the War, officialism in England has become more and more pronounced, partly owing to Mr. Lloyd George's method of choosing experts during the War as the heads of the various executive departments. It saves time and trouble to give wide powers to these experts. Such power is equivalent to delegation of authority, and is perfectly legal and in accordance with the English spirit, but it sets up an *imperium in imperio*. Each board sets up its own executive and its own judiciary which, by law, are empowered to execute their duties. For the execution of their duties the normal processes of law are not introduced, in fact the reason for the being of such boards is to avoid such processes, with their delays and legal technicalities.

In America, too, with its English system, a similar process is going on. The legislature is tending to extend to administrative boards or experts large powers of execution, and the courts support the legislature. ✓ Courts as a rule are jealous of the executive; they do not like to see their functions usurped. In recent years, however, there has been a distinct tendency—a tendency which has annoyed the arch-constitutionalist

Professor Dicey—to give up the jurisdiction of the courts in administrative questions to departmental decision! But the most notable instances of its adoption are in Japan and recently, in Germany. In Japan the system was adopted by the Commission on the Constitution after an exhaustive examination of all other systems. But the most remarkable adoption of all is in the recent German constitution.¹ Here was a Constituent Assembly of a Social Democratic type, which drew up a constitution which was designed perpetually to destroy autocracy. The new German democrats have actually accepted administrative law as an instrument of liberty.

In India the Rule of Law is doubtless a great blessing to the country; but the Rule of Law is already tempered by a certain amount of administrative law, due to the centralisation of government. Indeed centralisation is one of the characteristics of the continental system, and it certainly exists ready-made in India. But, as noted above, Revenue Courts are partly administrative, and within the administration itself there is much of the nature of administrative law, especially in appeals. The Decentralisation Commission (in Chapters IX and XVII of its

¹ For a fuller analysis of the new German Constitution, see article, "The New German Constitution" in the *Calcutta Review*, October, 1920.

Report) dealt with this question. It says—"It is desirable to strengthen the hands of government officers, and to economise the time of their superiors by giving greater finality to their decisions, while the fact that members of the public have greater freedom than officials in the matter of suing the government in the courts, renders it less necessary to provide a series of administrative appeals for their protection. On the other hand, it is better that executive officers should be able to correct errors of their subordinates through such appeals than that verdicts should be given against government in the courts."

In India the control by the judiciary of the executive has not been marked. But in India, as in England, the spread of officialism, the rise of new departments, and the very basis of the whole administration call for the creation of courts which will abolish the antagonism between the executive and judicial, and, at the same time place such courts as the Revenue Courts on a proper juristic footing. One of the complaints constantly voiced against the judicial or quasi-judicial functions of Magistrate-Collectors, or the executive generally—whatever the country—is that they become secret, and arbitrary. With modern differentiation of functions and specialisation, and with the devolution of powers to departments, each of which will be a miniature

imperium in imperio, there seems to be an unanswerable case for an institution which represents the middle way between complete separation and complete union. As I have shown, the alleged interference with the judiciary by the executive has given rise to much ill feeling in India. But the other side must not be forgotten—the interference by the judiciary with the executive. Executive action must be prompt, decisive, effective. Fettered by fears of writs (even Professor Dicey admits that *habeas corpus* has at times somewhat upset executive action), or the legalistic formulæ and delays of courts, an executive cannot be effective. The rights of the citizen, too, must be guarded against executive abuse. At present, the English system says, he must go to the law courts. Law courts deal with law : whereas executive work implies acts, facts and policy. Policy is outside the range of the law courts.)

Administrative courts, the home of which is France, deal with disputes between executive officers among themselves and between them and the public. Not only are they guarantees of good administration according to the law, but they are guarantees to the citizen against officials. Professor Dicey, whose well known chapter on the *droit administratif* has prejudiced so many Englishmen against the system, has argued that these courts have a bias in favour

of the official. This is natural, if the courts are composed, as they are in France, in such a way that the will of the executive must prevail. But in Prussia (and may I note again the system has been continued in the most democratic constitution of modern times?) the judges are irremovable. In France the members of the Council of State (the highest administrative Court) may be removed at any time by the executive. One of the chief virtues of administrative courts is that they are composed largely of administrators. The expert knowledge, quickness of action, the absence of undue legal technicalities and procedure are thus at hand in the courts as dispensers of justice at the same time as aids to good administration.

But I am not concerned with the actual organisation of these courts. Suffice it to say that in India we may profit by the mistakes of others. Whether the courts should be composed half of judges or half of active administrators, or any other proportion is a matter for detailed analysis not necessary here. I believe that in these courts—paradoxical though it may appear—lies the future safety of the English Rule of Law. Whether it be in England herself, America, or India, officialism must be saved from itself and the citizens must be saved from officialism. At the same time there must be efficiency in the public services.

The history of the Indian magistracy represents an epitome of the history of western administration. In the short space of a century and a half, India has compressed into her history the scope of several centuries in western evolution. The process from the simple to the complex was a long and laborious one in England. Nor was it a continuous process. Gradually, in spite of its ups and downs, it evolved from absolutism to democracy, from centralisation to decentralisation, from unification to differentiation. Many of the old absolutist forms remain though the spirit has changed. The theory of the constitution is also in many cases markedly opposed to its practice. Theoretically there is complete union of functions, the legacy of the old days of absolutism. The king is the head of the legislative system ; he is the nominal executive ; he is the fountain of Justice. Actually he is a figure-head. The Cabinet, the head of the executive, is responsible to the House of Commons. The Judiciary is independent. This constitution, in which union is so markedly present, was actually the model of Montesquieu to whom the Theory of Separation owes its modern vogue as an instrument of liberty. In France, under Louis XIV, the state was the king. The king was lawmaker, executor of the laws, and, though actually the courts were well organised, the final tribunal.

The early English administrators—to whom, be it marked, administration was ancillary to commerce—combined functions in a haphazard way. Their test was not legal forms, but actual success. Gradually, as the hold of administration was fixed, arose definite theories of government, with the accepted western maxims. Courts were established; the executive was organised. Gradually to mere government was added development. The need for development led to specialisation of functions. (The visible ruler, the district Magistrate-Collector was gradually divested of many functions which passed into the hands of departments, or special branches of government. Civil justice, police administration, public works, forests, jails, education, sanitation, local government, one by one departed from his control, leaving him a consultant and reporter, or a post office. New duties came where old duties went, and in the course of time, some of these new duties, such as co-operative credit, left him for departments. Two duties, with their powers, have continued, revenue collection and criminal justice. The time seems ripe for a further division,) for it has now been accepted that by no theory of government can we reconcile the responsibility of the executive to the patriarchal combination of powers. Administrative expedience may be an excellent, it may be the

best plea for union, but granted, as it has been granted, that India is fit for responsibility, then she must also be fit for the separation of the judicial and the executive.

During the last few years the administration of India has undergone many strange experiences. In 1915 we received a report by the Public Services Commission on the Public Services in India. In 1919 came the monumental Report of the Calcutta University Commission. The basis of both was imperilled by the momentous announcement of August, 1917, in the House of Commons regarding responsible government. What was logically prior came last, making the recommendations of the others either inapplicable or placing them in a false position. The Public Services Commission, for example, might have spent its time much more profitably analysing the whole system of government, an analysis which was beyond its terms of reference. In the meantime the executive work has to be carried on by the government in India by services which are none too sure of their future. India is now on the high way to full responsible government, but there is still much groping in the dark. A more systematic and scientific statement of policy, more co-ordination, and a longer view would save an infinite deal of trouble. Under the old scheme of things, the provincial governments

used to think administratively, the Government of India politically, the Secretary of State rapidly. In India the government as a whole was earning the unique, if unenviable, reputation of being expert in the act of governing backwards.

(To sum up, modern theory demands the separation of the present executive and judicial functions, though past experience does not show the presence of abuses which necessitate such "reform.") The question is not an urgent one, and the *salus rei publicae* would not be adversely affected were the present position to remain. Public money could more advantageously be spent on other and more pressing reforms, unless it can be proved that the people as a whole would receive more mental and physical benefit from the satisfaction of a logical principle. There is something to be said for both sides ; but one thing is clear, that some more definite and lasting system for the administration of India needs to be formulated. Haphazard methods may be carried to extremes ; and one line of reform, which in the writer's view seems worthy of very careful consideration, is the possibility of adapting the system of Administrative Law to India.

APPENDIX A.

EXTRACTS FROM MR. RECKITT'S LETTER.

(*Vide p. 14.*)

It will then be shown that the duties are infinite which have no bearing at all on judicial training, however much they may tend to mature an Administrator's experience, and draw forth all his power. On the other hand, it will appear that there must be a great and constant exercise of judicial functions in what are the most legitimate and important of a Revenue Officer's duties that there can be no politic separation of these duties; indeed that their combination is inevitable under our Revenue system.

But it must throughout be admitted that the anomaly complained of in the despatch does to some extent exist. Perhaps it may be possible to suggest some modifications or changes in the service, which, whilst, doing away with this anomaly, might benefit the administration and still I believe be in accordance with the general interests and opinions of the service.

It must be observed here, though it should have been observed earlier, that the official designations applied to our Executive Administrative

officers—Collectors and Deputy Commissioners—convey but a very imperfect idea of these officers' duties and responsibilities, and not only is the truth suppressed, but there is a suggestion of a false comparison with the similarly termed official in England, the "Collector" of a water rate, for instance, or the "Collector" of a tax assessed on your horse, your dog, or your crest on your groom's buttons—and the duties being accepted as somewhat similar, the responsibilities and faculties required for their discharge are held to be equal.

This want of accurate information is often encountered by Indian officials in England, even amongst persons who should be, or profess to be, well informed on Indian matters and official duties. It is no wonder the inappropriate term misleads. The mistake lies with those maintaining the erroneous appellations rather than with those who naturally accept the title as descriptive of the duties and take for granted that it would be changed if it was incorrect or incomplete.

I hope the term suggested by the Secretary of State's Despatch may be accepted as a new official denomination for the misunderstood Collector, or Deputy Commissioner—which latter term to my mind requires still more explanation than the former. The term "officer of a district" or "administrative officer of a

district " would be a far more accurate and descriptive title, more comprehensible and more intelligible.

The position of this official is this. He serves as an Assistant for 10 or 12 years, then till his 15th or 20th year of service he is a Magistrate, as well as a general executive administrator over a district comprising from 2,500 to 6,000 square miles, and over a population varying from 600,000 to 1,400,000 souls. The district will contain probably one town of from 40,000 to 120,000 inhabitants, six or seven minor towns under 8,000. There will be about 500 miles of roads in the district, and the staff will consist of 3 or 4 Assistants, 8 or 9 Native Sub-Collectors of Revenue, and co-subordinate Native staff of about 250 persons. The amount of Government revenue will vary from 5 to 20 lakhs of rupees a year. The population will comprise from 6 to 15 perfectly distinct races and castes, who have nothing in common, and often are antagonistic to each other.

As a Magistrate over this heterogeneous mass, he will have the supervision of about 40 police stations and 500 police under an English Officer. During each year he and his staff will, in a large district, dispose of about 2,000 criminal charges, rendering necessary the examination of about 10,000 persons. In exceptional years, as when famine is impending for instance,

this number will be increased by one half at least. Every case is recorded in English. Probably during the Magistrate's long apprenticeship of 15 or 20 years, there is not one criminal class with whose habits he is not intimately acquainted, there is hardly one clause in the criminal laws which he has not enforced. His commitments, excepting a very small fraction, will have obtained convictions at the Sessions. He will all along have worked under the strictest supervision of the superior Courts, who will have detected and called for explanation of the smallest irregularity. In Sessions cases he has attended the superior Court as prosecutor on the part of Government, each committing officer conducting his own case. The cases must be quite exceptional when an officer, who has qualified as above related, is not thoroughly qualified, to discharge all the duties of a Criminal Judge, when his time for promotion comes.

But a Magistrate's miscellaneous duties are infinite. He is a Justice of the Peace, an important office in your large cities, amongst our largely increasing English population. The wandering houseless outcasts from this population will soon require lock-ups and workhouses for their accommodation, exceptional legislation for those poor people is inevitable, and their care will fall on the Magistrate. He is the officer appointed by the Government to protect the

interests of the public in all connected with the Railway management. He has to report every accident where carelessness is apparent, or life is endangered. He is the health officer, not of the head-quarters station and city only, but of the whole district. Should there be an outbreak of any epidemic, as cholera for instance, he has to make a cordon round the stricken ward or round the city to protect it. By him is medicine distributed throughout his police stations, whence it is accessible to the people. By him are quarantine camps formed for isolating stricken or suspected travellers. The Government Vaccinating Officer, previous to commencing operations for the season, consults with and acts under the assistance of the Magistrate.

The Magistrate is a member of the Cantonment Military Committee. His voice is heard in all connected with the mutual interests of the Civil and Military community. His opinion is taken if Cantonments are increased or altered. The Lock Hospital reforms depend entirely on his co-operation.

In the station and city the Magistrate is the person responsible for the drainage, conservancy and all sanitary measures. He is the projector of all new streets and improvements. He makes, mends and waters the roads. He is the Local Board of Works and the Local Engineer. Should there be a Municipal Board at this

head-quarters, he is their active member, their Executive Officer, the accountant and treasurer, and he has to drive the whole cumbrous machine along, at the best deriving but little assistance from them, and often at a great sacrifice of time and labour. He is the person in charge of all the station rides and drives, the race course, so called, but in truth the station park, the public gardens, and all places of public resort and amusement.

The enumeration of even a portion of his duties is not yet complete. Next to the Civil Surgeon he is the chief person in supervision and management of all civil and charitable hospitals and dispensaries in his district.. He is a visitor, and to some extent responsible for the jail of his district, and in head-quarter stations there is the Central Jail besides, over which his supervision and responsibility to some extent reaches.

In the interior of his district, the Magistrate has the superintendence of all roads ; these will average 500 miles in each district ; he is the Executive Engineer for all these lines and whatever bridges or embankments they may require. He surveys and lays out new ones when requisite. He has charge of all the tolls and ferries. Should his district contain sacred shrines, the resort of Native pilgrims, he has the entire charge of the Native fair assembled,

and lasting for weeks at the sacred spot. This is a most serious addition to his duties, it means the laying out the camp for from 100,000 to 500,000 people from all parts of India, and every sanitary arrangement for them, and the protection of their lives and property through the Police.

These are some of the miscellaneous duties expected from a Magistrate. As a fact by some few they are all fairly done, by some they are as well done as can be expected under the circumstances. It often happens that a really good Magistrate does not excel in all those miscellaneous duties, and the reverse is often the case. But few men can by nature be sufficiently pliant, adaptable and versatile to give satisfaction on every point. No doubt these many calls on his time distract him much from his legitimate duties. Inasmuch as his attention is distracted, and his time diverted from these legitimate duties, by so much does he lose the Judicial training required to make him an efficient Judge. As a fact, in all large stations the actual case work, which supply the training, has to be set aside by the Magistrate to be performed by his subordinates, his Judicial training nearly ceases when he is promoted to be a Magistrate. He cannot though make over these miscellaneous duties to others, for he is personally responsible for all.

It has long been a matter of surprise to me why a highly paid official of some rank and standing, and in a most responsible post, should be permitted thus to be over-burdened with petty duties, and his time grievously wasted in doing what could be equally well done by a much cheaper agency.

I doubt if the Government is quite aware of the present state of things, for it has grown by very slow degrees. The habit for years has been to throw everything as it comes on the Magistrate or the Collector. There must be much good evidence produced before Government ere it can be convinced that too many straws have been heaped on the camel's back, ere a radical change can be made.

The correspondence from home shows that the suspicion has arisen, from whatever cause, that in India the Judicial training is incomplete. From an Indian point of view, I believe I have partly shown one cause at least. It is the interest of Government to get as much good work as it can for its money; it should not pay a high salary to a Magistrate, and then connive at his being overwhelmed with extraneous duties. It is impolitic, illogical, and extravagant, it is unjust to the Magistrate himself.

In the case of the Magistrate, the remedy is easy. Let him have more paid assistance. In all large cities and head-quarter stations of

a Civil Division, let there be a paid city and station Magistrate, to take all duties within a certain circle. This would be mere justice to the people, and to the unlucky Magistrate, and Government would gain more valuable work in nearer proportion to the salary it pays, and in course of time it will have a better trained candidate for a Judgeship.

But the greater portion of an Administrative Officer's duties remain to be described. The Collector's are more onerous and more difficult than a Magistrate's. The legitimate duties of a Collector are related in the old Regulations XI. of 1793 and XXV of 1803. They are legally defined in 13 to 24 different headings. The subjects under one or two of these headings are obsolete, one or two refer to office details, the remainder sketch in a few words our whole Revenue system, but it will appear only to the initiated how many strictly judicial duties they involve.

To be brief on this point, it will suffice to say that whenever the term "settlement" of States is used or "divisions" of estates, or investigations of the claims of Government, or others to any rights in land or revenue, or rent, it must be understood to mean a judicial enquiry, often of the most difficult and complicated nature, into every description of proprietary right in land, or tenant's right of occupation.

For each there will be many claimants, their rights will be very nearly balanced. Any Collector or Settlement Officer especially exercises in hundreds and hundreds of cases the most pure judicial functions. The base of his proceedings is the broad foundation of our revenue system. He actually decides the proprietary right in every acre of land in his district, he settles every tenant's position, he frames a record of every one of these titles, he assigns to each his quota of revenue or of rent. This record is implicitly accepted by the Civil Court as a genuine title deed. Probably a Settlement Officer occupied in settling an ordinary district will finally adjust 300,000 or 500,000 such titles.

Here is certainly the best possible judicial training. Indeed it is a training without which Revenue Law cannot be justly administered, for it must be remembered that our Revenue Law is based on "Custom." No law framed on such a foundation, ruling such immense interests over such an expanse of territory, can be as precise, complete, and definite in its terms as any Act or Law applying to one limited subject only, as for instance, a law on debts, or mortgages or bankruptcy.

The Revenue Law is not so much between one subject and another as between the governing power and the subject people. To be well administered, it must be interpreted by the light

of a wide revenue experience—or, as we have often seen, it is misinterpreted. It is overstrained, and its actual purport contradicted. An interpolation is made quite innocently as an explanation, the interpolation becomes law, and a whole section of every village community is placed in a position which the actual law as framed by experienced Revenue Officers, never contemplated, and which, in fact, its precise wording was meant to avoid, or a decision is given which saps every tenant's right at a blow, whilst at the same time it ruins every landed proprietor's prospects of weathering a famine season. I am not suggesting difficulties. Precedents can be cited, bearing out every word I have above stated.

On this point I think nothing could be more fatal to the relations of Government to its subjects, as supreme landlord and tenant, more prejudicial to our revenue system, more injurious to the prospects of the landed proprietors throughout all India, who are our main support, politically and materially, than a separation of the Judicial and Administrative lines without permitting the former to be recruited from the ripe experience of the latter, who I submit, though administrators, alone have had the right judicial training to ensure a correct exposition of all laws connected with land, revenue, and rent.

Next in importance is the trial of suits for rent, under the Rent Laws. These cases are counted by hundreds in every district. They are all distinctly Civil Suits. The mode of procedure is the same as in the regular Civil Courts. Many of these suits are very complicated. They have all the features of a suit for debt or loan, accounts, notes-of-hand, partial adjustments, interest, written agreements, all claim the attention of the Courts, as much as the peculiar claims and titles between landlord and tenant.

Appeals lie from these orders to the Judge as well as to the Collector. In my experience, the Revenue Officers of all grades decide these cases with as much care having as much regard to fixing the issue, omitting extraneous matter, and following the ordinary civil procedure accurately and intelligently as any of the purely Civil Subordinate Judges.

Similarly in all cases requiring the partition of estates. Titles and claims of all kinds come under review "judicially." In claims for exemption from the payment of land revenue, which were more common formerly than now, but which have been decided by the hundred in our recently acquired provinces, the most complicated title deeds have, or have had their validity tested by the Collector, acting in a judicial capacity.

Again, in all suits to which Government is a party, the Collector is charged with the preparation of the case on the part of Government. These cases are numerous and various. It would appear anomalous to entrust this duty to an Administrative Officer, were it not known that he has some judicial experience. No doubt they should be entrusted to the Government Solicitor and Advocate, but there is no such official out of the Presidency capitals. These cases proceed from the Collector to the Secretary of the Revenue Board who is *ex-officio* the Legal Remembrancer! He has the handling of the case until it goes into Court. It is a strange practice no doubt, but it stands the test of success. The duty of preparing these suits, original and in appeal, is good practical training for a future Judicial Officer.

Further instances could be cited, but the above is enough for my purpose. If the separation of the service into two departments is recommended only on the belief that the Collector or Administrative Officer does not discharge any judicial functions, and has no judicial training, I believe I have shown that the supposition is based on an erroneous impression of a Collector's duties.

But it is not my wish to prove that the Administrative Officer receives a complete judicial training. I merely wish it to be understood

that it goes further than is generally supposed—and that, as far as it goes, it is good.

It is easy to show how it might be made much better, for here again, as it was with the Magistrates, so it is even to a greater degree with the Collector. A mass of miscellaneous work is heaped upon him, diverting his time and attention from his important legitimate duties. Certainly administrative reform is much needed to remedy this, to enable the highly paid responsible officer to devote his time to his proper duties, to allow the State to receive in its own interest the full value of its servant's power and experience whilst he is a Collector, to train him up so as to become in time a reliable Judicial Officer. The interests of the State and its servants are in fact identical on this point, though they are often lost sight of to their mutual detriment, and with great injustice to the servant of Government, who humbly accepts all that is imposed on him, to the injury of his present position and his future prospects.

I will relate as briefly as I can some of a Collector's duties. It will be easy to distinguish the proper from the miscellaneous class. He is the Superintendent of Excise. In this capacity he has to form the privilege to manufacture spirits and drugs, to supervise their sale, and to guard against illicit traffic.

He is the responsible Treasury Officer. He has charge of the Money Order Office! a petty duty discharged at home by some small shop or Post Office-keeper. He is the Government Agent in all transactions connected with the Paper Currency. He has to maintain separate accounts in all these departments, and he is held responsible for all. These new departments, though supervised by a separate agency and actually worked by the Collector, to quote an official phrase, "in addition to his regular duties without any increase to his salary."

If a canal is projected through any portion of a country, the Collector is the person who recommends the course it should take, he assists during its construction, he imposes the Revenue accruing from it. He alone encourages and extends irrigation by wells, giving all the advances, taking all securities, and being answerable for their construction, and that the advances are refunded. This duty alone should be entrusted to a separate department. Because it is optional with a Collector to undertake it, as a fact it is neglected for more pressing, but less important matters, and so this great safeguard against famine, source of Revenue to the Government, and benefit to the people, is almost entirely neglected.

Should there be any demand for Military carriage, the Collector has to supply it. He

provides provisions along all his roads for the use of marching troops. He has alike to supply eggs for the Commanding Officer's breakfast, and corn and grass for the troopers' horses. If the encamping ground is ill defined, the Collector has to erect and maintain the boundary pillars. If it is stained and defiled by travellers, the Collector is reported to Government, and is expected to have it cleaned, and to purify it by ploughing and cropping. He plants the trees for the shade of the camps, he maintains the wells. If a soldier dies in camp, he is buried in the quiet corner preserved for his last resting place by the Collector of the district. When troops are ordered on service, the Collector is not surprised at being officially requested to furnish private servants for the officers, cooks for the men, grooms for the horses, sword-sharpeners, tin-men, smiths, saddlers and adepts at all the handicrafts required by men on service. As a fact, the Collector supplies them all.

If the Civil Station is on the bank of one of the large streams running from the mountain forests to the plains, the District Officer is the Government Timber Agent. In a jungly country he is the killer of wild beasts, reporting the slain to Government. Should his district be denuded of trees, or should his roads be shadeless, an exacting Government expects the Collector zealously to superintend arboriculture in all

its branches in groves and avenues. Should he be in a horse-breeding country, he has charge of the Government stallions, and is answerable that they are made use of, or, under the orders of Government, he distributes bulls from the Government farms through the cattle-breeding tracts.

If there is any new experiment to be tried in agriculture, as for instance, the cultivation of exotic cotton, the Collector imports the seed, distributes it, issues instructions for its culture, watches its growth, and furnishes biennial reports on the area under cultivation, and the expected outturn for the benefit of the private grower, the Indian and the Manchester trader.

When land is required for a new station, or for a railway or canal, the Collector conducts and concludes the whole transaction from beginning to end. He calculates the cost of houses, trees, crops, and land, settles all conflicting opinions, and makes the final legal agreement; this is one of the heaviest of some District Officer's duties.

He furnishes all statistics, agricultural, sanitary, mortuary. He is the visitor and local guardian over all village schools. He superintends the education in arithmetic and mensuration of all his village accountants. Indeed, he should be able to survey, level and plan like any professional surveyor for in no other way can he

at times settle an obstinately contested boundary. He is one of the Board of Examiners of the Junior Members of the Service of the candidates for pleaderships in the Civil Courts, and of Officers of the Army entering the Staff Corps.

If money is scarce, and local improvements languish, the resource of the Provincial Governor is the imposition of an octroi tax. The Collector has to draw out the schedules of articles and rates of taxation, he establishes the cordon of posts, appoints the Inspectors and Collectors, and manages the whole. He conducts the endless correspondence resulting from the measure, and as far as he is able, he impresses on the tax-paying multitude the advantages of the unpopular impost.

The periodical census is another duty entrusted entirely to the District Officer. He organizes the whole machinery, tabulates all information, and describes in his report every tribe and caste in his district, their origin, occupations, and peculiarities. In fact his census report is a page in Indian history and progress.

The Collector is the guardian, under the Court of Wards, of every minor landed proprietor in his district. He pensions his father's widows and followers, dismisses all his parasites, provides for the Ward's education, farms all his estates, being the agent for the whole property even to its most minute details. He arranges for the

Ward's state according to his rank, age, and degree. When the time comes, he negotiates for him a suitable marriage. He continues this multifarious charge until relieved by the Ward's majority.

Similarly when it is the interest of the State to avert ruin from an influential deserving family embarrassed by misfortune or thoughtless extravagance, the Collector, instructed by a paternal Government, steps into the breach. He takes charge of the estate, cuts down all superfluities, adjusts all creditors' claims, pays the proprietor a fixed stipend, and continues these onerous duties until all embarrassments vanish.

The list is not nearly complete. The whole travelling public is under the District Officer's care. For them he has serais, wells, rest-houses, and provision-dealers. Every halting place is under his especial protection.

Orders are received from the Home Government that photographs of ancient buildings or objects of interest are desirable. The Indian Government directs the Collector to obtain them. This is no easy task, as he is expected to obtain them for nothing.

If a parcel of Savants interested in Ethnology require subjects for inspection and discussion, the District Officer is at once applied to, and he submits for their edification, and in the cause of science what he conceives to be the

representative men of every genuine tribe and race in his district. The Lieutenant-Governor of a province happens to be impressed with the advantages of an industrial and agricultural exhibition. Forthwith the District Officer composes and issues the prospectus. He is the gathering and electing Committee in every department. He furnishes the design for the structure, finds the material and the workmen, superintends the erection of the buildings, and fills the stalls and sheds with commodities and cattle ransacked from 12 or 14 districts; he organizes the Juries and on the appointed day, hands over the show complete to the Lieutenant-Governor and the public. Finally, he distributes the prizes, and reports the whole to his Government.

Is there to be any Law reform, the Collector is the practical man whose opinion is furnished to blend with the theories of the Law-makers. Revenue Law, Criminal Law, Police, Jail management, Sanitary measures, Water-supplies, have, within the last three or four years, all been officially reported on by all Administrative Officers.

In any administrative reform affecting the people, the Collector has to feel their pulse to ascertain their wants and wishes, and to communicate their views to Government. If any new tax is imposed, and in the past four years

there have been three, the Collector has to organize the whole machinery to test every claim to exemption, and he is answerable for all. It appears to me after eleven years' duty as a District Officer, that the whole machine of our Government is built upon material which at one time or another has been reported on by District Officers.

All the time the Collector has to keep his doors open to all-comers, or he is a mere office hand disposing of his case work only, and a tool in the hands of his Native subordinates. Unless he is accessible to all, he fails in the chief part of his duty. He can never know his people, or be known by them. It is not too much to say that every part of an Indian Executive Administrator's duty depends on this. His personal influence is everything. He educates, leads or drives his people according as their natures require. If he cannot do all this, he is a cypher when the time of trial comes.

A District Officer's trial is most severe as we have lately seen in the time of famine or rebellion. Every District Officer almost within and beyond these provinces has passed through one or both of those phases. In a famine his knowledge, foresight, resource, every administrative faculty is tried to the utmost. He must be as well acquainted with the agriculture and rural economy of his district, as any farmer in it, or

he will be deceived, and deceive others at every turn. He must know something of its geology, and water supply from local and distant sources, or he can give no reliable opinion whether the drought is to be submitted to, or can be modified. In fact, he will be in the most minute particulars what an agent or bailiff is to a landed proprietor in England, only he will have a whole country, say, 2,000 or 3,000 square miles and a million of souls looking to him and him only, for guidance and help; and he will be responsible for every mistake to his Government.

In time of rebellion, if he does not know his district and people and what is more, if they don't know him, he will find the whole collapse and roll up like a scroll in his hands, for he can expect no help from abroad. If he weathers the storm, he will find every duty at once increased and many others added to them. Our Military departments cannot be organized to stand internal rebellion; they are to meet demands abroad, depending on peace at Home. In rebellion they collapse one after the other, and as long as the District Officer holds on, he receives them as they fall in, and somehow or other carries on their duties. He becomes the chief Commissariat Officer, the director of posts, the conductor of all transport service. He provides all carriage for war materials, he furnishes escorts, he improvises some sort of a force, and

keeps open communications ; he provides material for all sorts of Military equipments, he furnishes remounts for the cavalry, and recruits for all branches of the service, he supplies the actual sinews of war by loans from wealthy traders, whose instincts are for order, though their sympathies are not with the alien Governor. The strong arm of the Civil power keeps the people down. The positions of District Officers are at once changed. In ordinary times they are many members only of one body. In extraordinary times, they are the props of a falling Government.

In the Punjab and other Non-Regulation Provinces, the District Officer is all that I have attempted to describe, and much more besides. He has largely increased powers as a Criminal Judge, he is the sole Civil Judge of his district. His power is more finite than in the other provinces. In frontier districts he is the Political Agent of the State in all dealings with neighbouring independent tribes. He knows all their secret histories, the endless ramifications of their feuds and friendships, and he plays tribe against tribe. If an inroad occurs, he organises a retaliating expedition. Whilst this is preparing, he discharges his usual office duties, until all is reported to be ready, when he lays aside his pen for revolver and sword, and rides the foray with the expedition. He takes his chance with the

rest—a few hard knocks are exchanged on the hill side, a few villages are harried, friendly tribes are let loose on the common enemy, and the submission of the bearded fathers of the invaders of our territory having been obtained, the District Officer returns to resume his pen, and writes a matter-of-fact report on the expedition to Government.

* * * *

Let the system of administration as it exists at present be the first considered. The purport of my writing will be mistaken if I have not succeeded in showing, in my relation of a District Officer's duties, that there is a strange mixture of genuine work, and much that appears to have been thrown on that much-burdened official for no better reason than that he was at all events certain to be available on the spot, that he had means at his disposal which no one else had, and so there was more chance of his doing what was required than there was of any one else doing it.

For argument's sake, let it be assumed that the present system is correct in every way. Certainly, then, it must be conceded that when the Government has obtained the service of an Administrative Officer who has the bodily strength and the many faculties required for the efficient discharge of his endless duties, there can be no greater mistake, no greater waste of

the power at the disposal of Government, no greater injustice to the individual of many qualifications than for the Government to say to him—"When a certain vacancy occurs, you are at once to give up all the duties you have thoroughly mastered and creditably discharged for many years, you shall at once forego your active habits of mind and body; you shall have no longer scope for your foresight and resource, the knowledge you have acquired must be laid by for a season—you must risk the good reputation you have acquired, and acquire what fresh reputation you can by labouring in an office where your qualities, which have commanded success, and which we have esteemed, will be of no avail; you must change your old masters whom you know, and who know you, for other who are strangers, and the whole course of your official life must be changed—or you will be set aside and superseded."

If the present executive administrative system is right, then the manner of promotion from it must be wrong indeed. Rather should it be the object of Government to induce the successful Administrative Officer to remain in that branch of the service, to allow him to advance in the service as if he had accepted promotion in the ordinary course. And as a fact, many Administrative Officers would be found who would accept these terms. Though the work is

desperately hard, still if the body and brain hold out, there is a great charm in active independent life, in the infinite variety of duties, in the great power over the people, and the feeling of general usefulness, which brings its own reward.

On the other hand, there are many, with all qualifications but the bodily strength, who eagerly look forward to the day of their promotion, accepting the new life, the partly strange work and the remote chance of success, as a positive relief from the perpetual worry of their former position as Administrative Officers. These men are half worn out when they enter on their new duties.

Can there be any question that the proper course to pursue would be to admit that there is no advantage, even that there is no necessity to harass the present District Officer, or to disqualify the future Judge, by making him a "Jack of all trades," or a general practitioner. Nothing could be more easy than to assign his miscellaneous duties to the Executive Civil Engineer, the Local Health Officer, the Assistant Quartermaster General, the Commissariat Officer, the Municipal Officer, each taking what obviously belongs to his department. Then there would remain a more valuable administrator, with leisure for his legitimate duties, and in course of time there would be a better trained Judge.

Even then should the District Officer be thoroughly successful, it would be a mistake to remove him to a Judgeship when his turn came, he should remain, and the State would benefit more by a continuance of his proved good service, than by his removal.

* * * *

I am prepared for the remark that the combination of Civil and Criminal work is bad. That, somehow or other, the Civil Judge's power is impaired, and his reason prejudiced, by his criminal duties and experience. I cannot see that the argument applies to this country. The feeling prevails, and no doubt on good grounds, in England, but it is not so prevalent in continental Europe. To my idea the argument presupposes an amount of weakness, a readiness for sympathy or animosity, which may be found where Judge, Jury, Advocates, witness, or criminals, are of one language, race or religion. But in India it is far different. There is no connecting tie whatever between the alien Judge, and the half-educated, half-enlightened client, or the half-savage criminal. I believe no body of men can be freer from all bias than Indian Judges. What is there to excite their sympathy or animosity? Should by chance one be found overflowing with the milk of human kindness, it will all run off in the early years of his duties, on the numerous objects for his weakness.

Should he be full of hostile tendencies, without temper or discretion, as a fact, his promotion ceases, and shohaeno opportunity to be dangerous.

If this is not admitted, I am prepared with the further argument that the Judge, as a fact, does not see the same person in his different Courts. The criminal is of the lower classes. He is no landowner or tenant, so he is never seen in the Revenue Courts, he has no credit or position to admit of his being a client in a Civil action. Revenue Courts are in fact Civil Courts, but even there the landowner, as a rule, is very seldom seen in the Civil Court, if he is a party in a suit for loan on mortgage of his land for instance, he does not personally appear, and the suit is not of a kind to excite a Judge's sympathies. He is still more seldom seen on the criminal side. It is the same with the frequenters of the Civil Courts; the trader and money-lender stick to their trade, and have little to do with revenue or crime.

Sometimes of course a landed proprietor under the impulse of sudden passion, commits some violent crime, sometimes a money-lender commits perjury, or forgery, in a Civil suit, and is committed for trial in the Criminal Courts, but a system need not be adopted to meet cases of such very rare occurrence. Even in such cases the officer detecting the offence directs its trial by another officer.

APPENDIX B.

The preceding part of this book was written before the Reformed Legislatures came into being. During its passage through the press, the original manuscript was altered here and there to bring the subject matter into line with recent developments, but it was not possible to introduce major alterations at that stage. It was finally decided to leave the first draft as it stood, with such little alterations as it was possible to make in the page proofs, and to postpone the final publication of the book till the Report of the Bengal Committee was published, in order to bring the subject matter up to date as far as possible. That decision, as it happened, involved a delay of two years—a delay which may make some of the remarks made in the body of the book appear somewhat out of focus. From the foot-note at page 128, it will be seen that it was possible to say, early in 1921, that the question of the separation of Judicial and Executive functions had already been raised in several of the Reformed Legislatures. It would now be more correct to say that the question of the separation of the Executive and the Judicial had been raised in *all* the Reformed Legislatures.

It is impossible here to analyse in any detail either the debates on the subject or the reports of the various provincial committees which were appointed to draw up schemes to give effect to the separation. The debates cover the old familiar ground, but naturally the stock arguments of the supporters of separation are considerably reinforced by both the spirit and the letter of the Reforms. At the moment, the general financial stringency makes the translation into practice of the various schemes which have been drawn up impossible; but the actual carrying out of them would now seem to be only a matter of time. In this Appendix it is only necessary to complete the survey given in the historical section by adding the outlines of the latest scheme enunciated for the province of Bengal. It is impossible to include the recommendations of other committees, the first of which, that of the United Provinces presented its report in 1921; and the last of which, that of the Government of Madras, has only recently been appointed.

The Bengal Committee was appointed on the 19th August, 1921, as the result of a Resolution carried in the Bengal Legislative Council on the 5th April, 1921, to the following effect:—

“This Council recommends to the Government that early steps be taken for the total separation of the judicial from the executive functions in the administration of this Presidency.”

The Committee was composed of the following members :—

The Hon'ble Mr. Justice W. E. Greaves, President, Mr. F. C. French, C.S.J., I.C.S., Sir Ashutosh Chaudhuri, Dr. Abdulla Suhrawardy, Raja Manmathanath Rai Chaudhuri of Santosh, and Mr. G. Morgan, members. The Report of the Committee was published as a Supplement to the Calcutta Gazette on December 6th, 1922. The reference to the Committee was "to elaborate a practical working scheme for the separation of executive and judicial functions in the administration of Bengal and to report on the cost thereof." It will be noted that the *principle* of separation was not referred to the Committee, so that the Committee neither took evidence nor reported on that aspect of the question.

The Report of the Committee starts by giving a short historical survey of previous schemes of separation, a subject fairly fully dealt with in the main text. The only variation worthy of note is the special mention of a scheme drawn up by Mr. C. W. Bolton, a prominent member of the Bengal Civil Service, in 1900. Mr. Bolton recommended the appointment in each district of a District Judge to exercise the powers vested in Assistant Sessions Judges under the Criminal Procedure Code. To this Judge Mr. Bolton proposed to give the exclusive power of hearing appeals from Magistrates of all grades,

and also applications for revision of their decisions. This officer, he recommended, should be given general powers of supervision over the subordinate magistracy ; he was to distribute cases amongst them or assign to individual magistrates the duty both of distributing cases and of receiving complaints. Over and above the District Judges, he recommended that there should be Divisional Judges, to control the District Judges, try such criminal cases as the District Judges were not competent to try, and to have the power of transferring cases from one court to another. At each district headquarters he proposed the appointment of Joint, Assistant or Deputy Magistrates, empowered to try criminal cases. These Magistrates were to be appointed normally for a period of five years, and were to be subordinate in all their judicial functions to the District Judge. The District Officer at the same time should be relieved of all his judicial and appellate powers, and powers of supervision and control over the subordinate magistracy, all of which might be vested exclusively in the District Judge subject to the control of the Divisional Judge. In subdivisions Mr. Bolton recommended the creation of two offices, the one to be occupied by a Deputy Magistrate, for judicial work, who might also, if necessary, have charge of the sub-treasury, and the other, by a Deputy Collector, for revenue and executive work.

For the smaller sub-divisions he thought that the union of functions should continue, but the Sub-divisional Officer should be subordinate to the District Judge and the District Officer for his judicial and revenue-executive work respectively. The executive officer of the district, according to Mr. Bolton's scheme, was to be the District Officer, who, he proposed, should be given the preventive powers arising out of the Criminal Procedure Code, the supervision of this part of his work remaining with the Divisional Commissioner.

It will be seen that the main ideas of Mr. Bolton's scheme are brought out in the other schemes which have been examined; indeed, Mr. Bolton's scheme was submitted originally as a criticism of Mr. R. C. Dutt's plan. It may be added that that Mr. Bolton estimated the net increase in the cost of administration likely to result from his scheme at about five lakhs per annum, exclusive of the cost of buildings.

After a further analysis of the existing system of administration, the Committee proceed with their own scheme. "We see no practical difficulty in effecting a separation of judicial and executive functions," they say, "but we think that in framing any scheme it is desirable —

✓(1) that the separation should be as complete as possible :

(2) that it should disturb existing conditions as little as possible; and

(3) that, so far as is consistent with efficiency, any increase of cost should be minimised as far as possible."

With these guiding principles, the Committee recommend the following scheme :--

(a) The hearing of appeals from magistrates with second and third class powers should in future take place not before the District Officer or his subordinates, but before the District and Sessions Judge or some purely judicial officer empowered in that behalf.

(b) The inspection of criminal courts should be made in future not by the District Officer or his subordinates, but by the District and Sessions Judge or by some purely judicial officer empowered in that behalf, and the responsibility for the efficient working of all the criminal courts in the district and the due despatch of criminal business should rest in future not with the District Officer but with the District and Sessions Judge. We desire to emphasise the necessity of the inspection and supervision of the work of the criminal courts being ordinarily carried out by the District and Sessions Judge himself. Unless this is done, we think that there is a grave risk that the criminal work of the districts may deteriorate.

(c) The present staff of Deputy Magistrates Deputy Collectors and of Sub-Deputy Magistrates

and Sub-Deputy Collectors should be divided into two branches, and one should be employed in purely judicial work and the other in purely administrative, executive and revenue work. The control and supervision, including questions of promotion and transfer, of those engaged in purely judicial work should lie exclusively with the judicial authorities and the control and supervision of those engaged in purely administrative work should remain with the District Officer. If and when the scheme is adopted, regard should be had, where possible, to the wishes of the various members of the staff as to the branch to which they should be assigned. After the division is effected, we think that there should be no change for the present in the location of the magisterial staff, that is to say, that they should continue, where possible, to occupy their existing courts and rooms, whether at the sadar or the subdivision. We see no practical difficulty in the District and Sessions Judges, or whoever supervises and inspects their work, carrying out these duties at the sadar and subdivisional offices. To remove these officers at once to the Judge's court house would greatly increase the cost of any scheme; but, where additional accommodation is necessitated by the scheme, it should be provided at the Judge's court house rather than at the District Officer's, and ultimately all judicial officers, civil and

criminal, at head-quarters should be located in the Judge's court house.

(d) In future recruitment for the Bengal Civil Service and the Subordinate Civil Service should be made direct to the judicial branch and direct to the administrative, executive and revenue branch, change from one branch to the other not being permitted. Some members of the Committee, however, think that change from one branch to the other should be permitted for a period of five or six years, as thereby the wider experience thus gained would be beneficial to both branches.

(e) As regards future members of the Indian Civil Service posted to Bengal, we think that their selection of judicial or executive should be finally made at the expiration of six years' service, those first six years being treated as training and the officer, etc., being deputed for substantial periods to one branch or the other. We are aware that proposals have been made from time to time with regard to the improvement of the judicial training of members of the Indian Civil Service, but we do not think that it is within the scope of the reference to this Committee to consider and come to a conclusion upon this question. Some members of the Committee, however, think that in future recruitment for the Indian Civil Service should be made direct for the judicial branch and direct for the revenue, administrative and executive branch.

(f) The High Court should exercise the same control and supervision over the magisterial staff as they now exercise over the civil staff.

On the all-important subject of the preventive sections of the Criminal Procedure Code, the Committee made the following remarks:—

An important question arises which it will be convenient to deal with in a separate paragraph from the other details of the scheme. This question concerns the preventive sections of the Criminal Procedure Code which are contained in Chapters VIII to XII inclusive of that Code. Under the present system the powers under these sections are vested in the District Magistrate, the Subdivisional Officer and magistrates with first class powers empowered in that behalf. In Mr. Mitter's scheme these powers were to be taken away from the District Magistrate and from the magistrates under him and transferred to the District and Sessions Judge and to the judicial officers under him; in Mr. Bolton's scheme and in Sir Harvey Adamson's scheme these powers were to be retained by the District Officer and by officers under him. The Committee have heard a considerable amount of evidence on the question of the retention or otherwise by the District Officer and those under him of the present powers given them by the preventive sections. As already stated, they have examined the District Officers of nine

districts orally. All these officers consider that the powers under these sections should remain as at present with the District Officer and those under him ; three of them, however, see no objection to the trial of all cases under these sections being transferred to the District and Sessions Judge or those under him, provided there is no delay. As regards the views of the remainder, three see no objection to trials under section 107 taking place before a judicial officer, four see no objection to trials under section 110 taking place before a judicial officer, provided the trial be held locally, five would not object to motions against conditional orders passed under section 133 being heard by a judicial officer, and five would not object to section 145 proceedings taking place before a judicial officer. The two District and Sessions Judges whom we examined both thought that the power of initiating or drawing up proceedings under these sections should remain as at present, but that the hearing should take place before a judicial officer. The Divisional Commissioner whom we examined thought that all cases under these sections should be tried by a judicial officer, while the Additional District Magistrate whom we examined would retain as at present all powers under these sections, except that he would allow cases under sections 109, 110 and 145 to be tried by a judicial officer. Two of the three Subdivisional Officers would

retain the powers as at present, whilst the other would retain the powers under sections 133, 144 and 145 for urgent cases, letting the other powers be exercised by a judicial officer. Of the two barristers whom we examined, one of whom, as stated, is an *ex-Deputy Magistrate* with experience in the subdivisions, one would give all the powers to the District and Sessions Judge and the other would have the hearing of all proceedings before a judicial officer.

Of the two pleaders examined, both would leave the initiation of proceedings with the District and Subdivisional Officers, subsequent proceedings to take place before a judicial officer. One would, however, leave the District and Subdivisional Officers their powers under section 144 unimpaired, and saw no objection to their passing emergency orders under the other sections. The other saw no objection to the District and Subdivisional Officers passing orders under sections 133 and 144, provided that such orders could be subsequently challenged in courts of law. This witness was opposed to trials of section 110 cases taking place locally, thinking that the accused was thereby prejudiced in obtaining legal assistance.

Of the seventeen District Magistrates whom we did not examine orally but who replied to the questionnaire, all were in favour of the District Officer and those at present exercising powers

under these sections retaining the power to initiate proceedings ; twelve of them, however, saw no objection to the trial of proceedings under these sections being before a judicial officer.

Of the associations whose opinions we invited, one only dealt with this question, expressing the opinion that the power of initiation should remain as at present in urgent cases, but that proceedings under sections 107, 108, 110, 133, 144 and 145 should take place before a judicial officer.

In some of the oral evidence which we have taken and in some of the replies which we have received, some stress has been laid upon the fact that the powers under these sections are in the nature of executive acts, and that the proceedings are only *quasi*-judicial. As the District and Subdivisional Officers will, under the scheme submitted, still remain liable for the peace and order of the districts, it would manifestly be impossible to deprive them of these powers entirely, at the same time it seems to us impossible to say that the proceedings thereunder are not, at any rate at some stages, judicial proceedings. Consequently, if things remained as at present, executive officers would still be exercising some judicial functions and the separation of functions would not be complete. At the same time it is impossible always to be strictly

logical and, if we were satisfied that the peace and order of the district depended on things remaining as at present as regards the preventive sections, we should not hesitate so to recommend, even if thereby some executive and judicial functions overlapped.

After considering the evidence, we recommend that the powers of the District Officer and those under him under the preventive sections shall be modified in the following manner :—

(1) In ordinary cases under sections 107, 108, 109 and 110, when the District Officer requires a person to show cause, the proceedings shall be sent for trial before a judicial officer, but in cases of emergency which arise under these sections and when immediate action is necessary, it shall be open to the District Officer and those empowered to act under these sections themselves to make orders under the sections, but, where they make such orders, they shall state their reasons in writing and an appeal against the orders shall lie to the District and Sessions Judge. The Committee are agreed that all cases under section 110 should be tried locally as at present and that opportunity for obtaining legal assistance should be freely given.

(2) Section 137 shall be modified so as to provide that, if a person bound down conditionally under section 133 appears to show cause, the proceedings shall be heard before a judicial

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officer, but, if the order is made absolute, the District Officer shall be the person to enforce it under section 140 and the following sections.

(3) The hearing of proceedings under sections 145 and 147 shall be before a judicial officer, initiation of proceedings and the power to make provisional orders under the last proviso of section 145 (4) remaining as at present with the District Officer and those under him.

(4) Any appeal under section 406 of the Criminal Procedure Code shall go to the District and Sessions Judge.

If these suggestions are adopted, it will be necessary, in order to secure speedy disposal of cases, that the District Officer should forward the proceedings to the District and Sessions Judge with a request that they should be speedily disposed of, and that a High Court order should require the District and Sessions Judge to give effect to the request and secure the speedy disposal of all matters thus marked as urgent.

To the Committee's recommendations on this point, one member, Raja Manmathanath Rai Chaudhuri of Santosh, dissented, in the following note :—

“It is not without regret that I submit this note of dissent on a vital point, with regard to which my colleagues and I could not see eye to eye, or even effect a settlement satisfactory to

all. My regret is all the more, as throughout our labour we were able to square our differences and come to an agreement in every matter which came up before us for decision.

The difference, which has resulted in this note of dissent, is with regard to the preventive sections of the Criminal Procedure Code which are contained in Chapters VIII to XII inclusive of that Code.

I am of opinion that the powers under these sections should be taken away from the executive officers and transferred to the District Judges and judicial officers under them. I am prepared to allow the executive officers to retain the power of initiating or drawing up proceedings under these sections, but the hearing should take place before a judicial officer.

I am not unmindful of cases of emergency, which may arise under these sections, necessitating immediate action, but I do not see any reason why such cases will not be expeditiously dealt with by judicial officers, if there be a High Court order, as recommended by us in the report, requiring judicial officers to speedily dispose of all matters marked as urgent by executive officers.

If, however, the Government think that in the interest of law and order the executive officers should be allowed themselves to make orders under sections 107, 108, 109 and 110, in cases of emergency, I should certainly like to restrict such

powers to the District Officers and to the Subdivisional Officers only. By this I mean that officers under them should under no circumstances be empowered to make orders under these sections. I should also like to provide that such orders of the District Officer should always be revised by the District Judge, and those of the Subdivisional Officers by the subdivisional judicial officers, so that the convicted parties may obtain immediate relief on the spot, if law is on their side. Such a provision will virtually give the District and Subdivisional Officers power to make only *conditional* orders, in cases of emergency which may arise under these sections. When I urge for it, I certainly do not apprehend injustice in the hands of the executive officers, but I really do so as, in my opinion, no separation of the judicial and executive functions can be properly effected without transferring the powers under the aforesaid preventive sections from the executive to the judicial officers. |

I am also opposed to the executive officers being vested with the power to make provisional orders under the last proviso of section 145(4).

The Committee go into considerable detail on the subject of the cost of the proposed scheme. It may be recalled that the cost of Mr. R. C. Dutt's scheme had been calculated at about eleven and a half lakhs recurring and four lakhs non-recurring expenditure. The recent

Committee is much more merciful. They sum up the cost of their proposals thus :—

Recurring Expenditure.

	Rs.
At headquarters—	
Personnel (gazetted staff) ...	38,040
Additional clerical assistance ...	12,500
Additional process-serving staff ...	12,500
In subdivisions—	
Personnel (gazetted staff) ..	2,84,460
Additional clerical assistance ...	12,500
Additional process-serving staff ...	12,500
Housing allowance ...	32,400
Cost of assistance to District Judges by reason of the transfer of appeals, inspection, etc., and cost of the additional clerical staff occasioned by the creation of new District Judgeships ..	1,54,750
	<hr/> 5,59,650
Savings by abolition of Additional District Magistrates ...	48,000
	<hr/> 5,11,650
Net additional recurring cost ...	5,11,650
Savings by utilising Circle Officers for opening sub-treasuries ...	63,000
	<hr/> 4,48,650
Total net recurring expenditure ...	<hr/> 4,48,650

Non-recurring expenditure (buildings).

	Rs.
At headquarters ...	14,000
In subdivisions ...	1,03,000
To District Judges' courts ...	36,000
	<hr/> 1,53,000
Total non-recurring cost ...	<hr/> 1,53,000

This sum does not include the cost of the extra assistance required by the High Court by reason of the scheme, a cost reported by the High Court as likely to be considerable. As against this has to be set a possible saving to be effected in the staff of the Local Government which now deal with the work. The estimates, of course, are only approximate, but it may be borne in mind that they are post-War figures. The modesty of the recent scheme is a decided contrast to the expansive hopes of the pre-Reform times.

|To sum up, the position now is that not only has the principle of separation been accepted throughout India, but each Local Government has also worked out (or is working out) a scheme to give effect to the separation./ Each scheme costs money, and each province is exploring the possibilities of retrenchment. The same Councils which have again set the wheels in motion have to find the money to oil them, and the ardour for reform, even if it has not been tempered by the strenuous times that have been lived these past three years, must for some time be cooled by the very natural desire of the Councils to incur no new expenditure which may mean fresh taxation of the people.

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