INDIAN
CONSTITUTIONAL DOCUMENTS

VOL. I

Indian Citizen Series.

Indian Constitutional Documents

(1600—1918)

VOL. I

COMPILED AND EDITED

WITH AN INTRODUCTION

BY

PANCHANANDAS MUKHERJI, *M.A., F.R.E.S., (Lond.)*

Professor of Political Economy and Political Philosophy, Presidency College, Calcutta ; Lecturer, Calcutta University ; Author of "The Co-operative Movement in India."

SECOND EDITION

(Enlarged and Brought up-to-date).

THACKER, SPINK & CO.

CALCUTTA AND SIMLA

1918

Price Rs. 10.

PRINTED BY K. C. NEOGI,
NABABIBHAKAR PRESS,
91-2, MACHUABAZAR STREET, CALCUTTA.

To

The Sacred Memory

OF

His Beloved Brother

The Late Sivadas Mukherji, B. A.

(Born May 26, 1896, Died March 2, 1918).

Who was one of the First to enlist in the Indian Defence Force and who, even on his deathbed, prayed to God that he might live to serve his King and Country

This Book is humbly dedicated by the Author as a token of Affectionate Remembrance.

PREFACE TO THE FIRST EDITION.

Before the recent enactment of the Government of India (Consolidation) Act, Indian constitutional laws were scattered through a large number of statutes spread over about a century and a half. Though the Indian constitutional laws have now been codified into a single, all-embracing statute, yet its clauses can be properly understood only by reference to the various individual statutes referred to above. Besides, any one who wishes to trace the evolution of the present Indian constitution can only do so by studying the chronologically consecutive statutes relating to the constitution of the Executive, the Legislature and the Judiciary. To facilitate such a study of Indian constitutional development I have incorporated in this volume not only the various important statutes (or only their important sections) which form landmarks in Indian constitutional development, but also the speeches of the responsible ministers in charge of the bills in either House of Parliament. These speeches (which are all taken from authoritative reports of Parliamentary Debates) not only give us an insight into the spirit underlying the letter of the law, but also an exposition of the principles and ideals of those who were the fathers of the Indian constitution. Besides, I think that the speeches delivered in either House of Parliament by statesmen like Pitt, Palmerston, Disraeli, Derby, Gladstone, Morley and Asquith, on bills which shaped the Indian constitution and defined the principles of the Government of India, have an intrinsic and perennial value of their own, and should not be allowed to sink into oblivion. They possess an interest and an importance which increase, instead of diminishing, as time rolls on.

In addition to the statutes and the speeches I have also included in this volume epoch-making Proclamations and Announcements, and various important Despatches and Resolutions enunciating principles and policies, which have great constitutional significance. In this connexion I have to express my deep obligations to the Government of India for having given me permission to copy out from the original and to publish the historic Despatch from the Court of Directors, dated the 10th December, 1834.

Owing to the increase in the size of the book (from 550 pages in the first edition to about 900 pages in the present edition) and the increased cost of paper and printing, etc. I have been compelled to raise its price.

PRESIDENCY COLLEGE,
Calcutta, August the 20th, 1918.

P. MUKHERJI.

TABLE OF CONTENTS.

		SUBJECT.	PAGE.
		INTRODUCTION	lxxxv
PART	I.	General Documents (1600-1858) ...	1—175
	I.	Queen Elizabeth's Charter... ...	1—20
	II.	The East India Company Act, 1773 ...	20
	III.	The East India Company Act, 1784 ...	28
	B.	Pitt's speech on the India Bill, 1784 ...	45
	IV.	The Charter Act, 1793	58
	V.	The Government of India Act, 1800 ...	79
	VI. A.	The Charter Act of, 1833	84
	B.	The Court of Directors' Despatch, 1834	103
	VII. A.	The Charter Act of 1853	122
	B.	Extracts from Sir Charles Wood's speech	128
	VIII.	The Government of India Act, 1854 ...	132
	IX. A	The Government of India Act, 1854 ...	134
	B.	Extracts from Viscount Palmerston's speech	149
	C.	Extracts from the Earl of Derby's speech	163
PART	II.	Documents relating to the Constitution of the Council of India (1869-1907) ...	176-179
	I.	The Government of Act, 1869 ...	176
	II.	The Council of India Act, 1876 ...	177
	III.	The Council of India Act, 1907 ...	178
PART	III.	Documents relating mainly to the Constitution of (Imperial and Provincial) Executive Government (1865-1912) ..	181-190
	I.	The Government of India Act, 1865 ...	180
	II.	The Indian Councils Act, 1874 ...	181
	III.	The Indian Councils Act, 1904 ...	182
	IV. A.	The Government of India Act, 1912 ...	183
	B.	Extracts from Lord Crewe's speech	186

CONTENTS.

	SUBJECT.	PAGE
PART IV.	Documents relating mainly to the Constitution of (Imperial and Provincial) Legislative Councils (1861-1918) ...	191-38
I. A.	The Indian Councils Act, 1861 ...	191
B.	Extracts from Sir Charles Wood's speech	211
II.	The Indian Councils Act, 1869 ...	222
III.	The Indian Councils Act, 1870 ...	223
IV.	The Indian Councils Act, 1871 ...	226
V. A.	The Indian Councils Act, 1892 ...	228
B.	Extracts from Lord Curzon's speech ...	232
C.	Extracts from Mr. W. E. Gladstone's speech	241
VI. A.	The Indian Councils Act, 1909 ...	245
B.	Lord Minto's Minute of August, 1906 ...	251
C.	Extracts from Lord Minto's speech, 1907	253
D.	Government of India Circular, 1907 ...	254
E.	Government of India Reform Despatch, 1908	271
F.	Lord Morley's Reform Despatch, 1908	310
G.	Extracts from Lord Morley's speech, 1908	327
H.	Extracts from Lord Morley's speech, 1909	333
I.	Extracts from the Rt. Hon'ble Mr. Asquith's speech, 1909	340
J.	The Council Regulations, 1909-1918 ...	347
K.	The Resolution on the Reforms, 1909	376
PART V.	Documents relating to the Constitution of the Indian Judiciary (1833-1916) ...	386-430
I.	The Act Establishing the Judicial Committee, 1833	386
II.	The Indian High Courts Act, 1861 ...	390
III.	Letters Patent for the High Court in Bengal, 1865	396
IV.	The Indian High Courts Act, 1865 ...	412
V.	The Indian High Courts Act, 1911 ...	414
VI.	Letters Patent for the High Court at Patna, 1916	415

CONTENTS.

	SUBJECT.	PAGE.
PART VI.	Proclamations and Announcements, and Documents connected therewith (1858-1918)	430-566
I. A.	Queen Victoria's Proclamation, 1858	431
B.	Queen Victoria's Letter to the Earl of Derby, 1858	434
II. A.	Queen Victoria's Proclamation, 1876 ...	435
B.	Lord Salisbury's Despatch, 1876 ...	437
C.	The Royal Titles Act, 1876 ...	437
D.	Extracts from Mr. Disraeli's speech, 1876	438
III.	King-Emperor Edward VII's Proclamation, 1908	445
IV.	H. I. M. King-Emperor George V's Letter, 1910	448
V. A.	Royal Announcements at the Coronation Durbar, 1911	449
B.	Announcements by the Governor-General, 1911	450
C.	The Coronation Durbar Despatch from the Government of India, 1911 ...	453
D.	Lord Crewe's Durbar Despatch, 1911	466
VI. A.	Rt. Hon. Mr. Montagu's Announcement of August 20, 1917 ...	474
B.	Extracts from Lord Chelmsford's speech, 1917	474
C.	Proposals for Indian Constitutional Reforms, 1918	477
PART VII	Documents relating to the Native States in India	567-607
I	Documents relating to Hyderabad	
A.	Treaty with H. H. the Nizam, 1853 .	567
B.	Translation of a Sunnad from the Nizam's Government, 1861 ...	570
C.	Adoption Sunnad granted to His Highness the Nizam, 1862 ...	571

CONTENTS.

	SUBJECT.	PAGE
	D. Extradition Treaty between Her Majesty the Queen of Great Britain and His Highness the Nizam, 1867...	571
	E. Agreement made between His Highness the Nizam and Government of India, 1887	572
	F. Agreement between His Highness the Nizam and the Government of India, 1900	573
II	Documents Relating to Mysore	
	A. The Proclamation of 1868 ...	574
	B. Instrument of Transfer, 1881 ...	575
III	Documents relating to Boroda	
	A. Substance of a letter from the Governor of Bombay to His Highness the Guikwar, 1820	580
	B. Adoption sunnad granted to His Highness the Guikwar, 1862 ...	581
	C. The Proclamation of 1875... ...	582
	D. The Proclamation of 1875... ...	583
IV	Documents relating to Jeypore	
	East India Company's Treaty with the Raja of Jeypore, 1803	585
	Documents relating to Bikaneer	
	Treaty between Hon'ble English East India Company and Maharaja Soorut Sing Bahadur, the Raja of Bikaneer, 1818	586
VI	Documents relating to Manipur	
	Extracts from the Resolution regarding the trial of accused persons in Manipur and the Re-grant of Manipur State, 1891 ...	588
VII	Extracts from speeches and announcements relating to the Policy of the British Government towards Native States.	
	A. Extracts from Lord Curzon's speech, 1900	589
	B. Extracts from the speech of the Earl of Minto, 1909	590

	SUBJECT.	PAGE.
	C. Extracts from the Speech of Lord Hardinge, 1916	591
	D. Extracts from the Speech of Maharaja of Bikaneer, 1917	592
	E. Extracts from Lord Chelmsford's speech, 1917...	594
VIII	Proposals regarding Native States as contained in the Report on Indian Constitutional Reforms (1918)	596
PART VIII	Documents relating to the Representation of India in the Imperial War Conference	608-622
I	The Hon'ble Mr. M. Shafi's Resolution, 1915	608
II	Extracts from the speech of Lord Hardinge, 22nd September, 1915	608
III	Extracts from the speech of Lord Hardinge, 24th March, 1916	612
IV	Extracts from the speech of the Rt. Hon'ble Mr. Lloyd George, 19th December, 1916	612
V	Extracts from London "Times", 27th December, 1916	613
VI	Extracts from the speech of H. E. Lord Chelmsford, 7th February, 1917 ...	614
VII	Resolution regarding Representation of India in the Imperial Conference, 22nd April 1917	615
VIII	Extracts from the speech of the Rt. Hon'ble Mr. Lloyd George in the House of Commons, 18th May 1917	616
IX	Extracts from the Speech of H. E. Lord Chelmsford, 5th September, 1917 ...	617
X	Extracts from the Speech of the Hon'ble Sir William Vincent, 19th March, 1918 ...	619
XI	Nomination of Representatives of India in the Imperial War Cabinet, 1918 ...	622
PART IX.	Documents relating to Provincial Finance and Local Self-Government (1871-1918)	623-718

CONTENTS.

	SUBJECT.	PAGE.
I.	Lord Mayo's Resolution on Provincial Finance, 1870	623
II.	The Resolution on the Extension of Provincial Finance, 1881 ...	631
III.	Lord Ripon's Resolution on Local Self-Government, 1882.	638
IV.	The Resolution on Provincial Finance, 1912	651
V.	The Resolution on Local Self-Government, 1915	668
VI.	The Resolution on the Local Self-Government Policy of the Government of India, 1918	696
Appendix A.	Summary of Recommendations of the Royal Commission on Decentralization... ...	719
Appendix B.	The Joint Address or the "Curtis Scheme" ...	738
Appendix C.	The Congress-League Scheme	765
Appendix D.	Summary of the Recommendations embodied in the Report on Indian Constitutional Reforms, 1918	771

TABLE OF CONTENTS.

(*Chronologically Arranged.*)

	SUBJECT.	PAGE.
1600	Queen Elizabeth's Charter	1
1773	The East India Company Act	20
1784	The East India Company Act	28
„	Pitt's speech on the India Bill	45
1793	The Charter Act	58
1800	The Government of India Act	79
1803	East India Company's Treaty with the Raja of Jeypore ...	585
1818	Treaty between the Hon'ble East India Company and Maharaja Soorut Sing Bahadur of Bikaneer	586
1820	Substance of a letter from the Governor of Bombay to H. H. the Gwikwar of Boroda	580
1823	The Indian Bishops and Courts Act	82
1833	The Charter Act	84
„	The Act establishing the Judicial Committee	386
1834	The Court of Director's Despatch	103
1853	The Charter Act	122
„	Extracts from Sir Charles Wood's speech	128
„	Treaty with H. H. the Nizam	567
1854	The Government of India Act	132
1858	The Government of India Act	134
„	Extracts from Viscount Palmerston's speech	149
„	Extracts from the Earl of Derby's speech	162
„	Queen Victoria's Proclamation	131
„	Queen Victoria's Letter to the Earl of Derby	134
1861	The Indian Councils Act	191
„	Extracts from Sir Charles Wood's Speech	211
„	The Indian High Courts Act	390
„	Translation of Sunnud from the Nizam's Government ...	570
1862	Adoption Sunnad granted to His Highness the Nizam ...	571
„	Adoption Sunnad to His Highness the Maharaja of Boroda...	581

CONTENTS.

	Subject.	Page.
1865	The Government of India Act	180
„	The Indian High Courts Act	412
1867	Extradition treaty between Her Majesty the Queen of Great Britain and H. H. the Nizam	571
1868	Proclamation relating to Mysore	574
1869	The Government of India Act	176
„	The Indian Councils Act	222
1870	The Indian Councils Act	223
„	Lord Mayo's Resolution on Provincial Finance	623
1871	The Indian Councils Act	226
1874	The Indian Councils Act	181
1875	Proclamation relating to Boroda	583
1876	The Indian Councils Act	177
„	Queen Victoria's Proclamation	435
„	Lord Salisbury's Despatch	437
„	The Royal Titles Act	437
„	Extracts from Mr. Disraeli's speech	438
1881	The Resolution on the Extension of Provincial Finance ...	631
1881	Instrument of Transfer, Mysore	575
1882	Lord Ripon's Resolution on Local Self-Government ...	638
1887	Agreement made between His Highness the Nizam and the Government of India	572
1891	Extracts from Resolution relating to the trial of accused persons in Manipur	588
1892	The Indian Councils Act	228
„	Extracts from Lord Curzon's speech	232
„	Extracts from Mr. W. E. Gladstone's speech	241
1900	Agreement made between the Government of His Highness the Nizam and the Government of India	573
„	Extracts from Lord Curzon's speech at the Rajkote Durbar ...	589
1904	The Indian Councils Act	182
1906	Lord Minto's Minute	251
1907	The Council of India Act	178
„	Extracts from Lord Minto's speech	253
„	Government of India Circular on the Reforms	254
1908	Government of India Reform Despatch	271
„	Lord Morley's Reform Despatch	310
„	Extracts from Lord Morley's speech	327
„	King-Emperor Edward VII's Proclamation	445

	SUBJECT.	PAGE.
1909	The Indian Councils Act	245
,,	Extracts from Lord Morley's speech	333
,,	Extracts from Mr. Asquith's speech	340
,,	The Council Regulations	348
,,	The Resolutions on the Reforms	376
,,	Extracts from the speech of Earl of the Minto at a State Banquet at Udaipur	590
,,	Summary of Recommendations of the Royal Commission on Decentralization	719
1910	H. I. M. King-Emperor George V's Letter	448
1911	The Indian High Courts Act	414
,,	Royal Announcements at the Coronation Durbar ...	449
,,	Announcements by the Governor-General	450
,,	The Coronation Durbar Despatch from the Government of India	453
,,	Lord Crewe's Durbar Despatch	466
1912	The Government of India Act	183
,,	Extracts from Lord Crewe's speech	186
,,	The Resolution on Provincial Finance	651
1915	The Resolution on the Local Self-Government Policy of the Government of India	668
,,	Lord Hardinge's speech on the Representation of India in the Imperial War Conference	608
,,	Hon'ble Mr. M. Shafi's resolution on the Representation of of India in the Imperial Conference	608
1916	Letters Patent for the High Court at Patna	415
,,	Lord Hardinge's speech at Jaipur	591
,,	Lord Hardinge's speech on the Representation of India in the Imperial War Conference	612
,,	Extracts from London "Times"	613
,,	The Congress-League Scheme	618
1917	The Rt. Hon'ble Mr. Montagu's Announcement ...	474
,,	Lord Chelmsford's speech in the Indian Legislative Council September 5.	474
,,	Lord Chelmsford's speech on the Representation of India in the Imperial War Conference Feb. 7, ...	614
,,	Do Do Do 5th Sep.	617
,,	The Resolution regarding the Representation of India in the Imperial Conference.	615

	SUBJECT.	PAGE.
1917	Extracts from the speech of the Rt. Hon'ble Mr. Lloyd George	616
„	Maharaja of Bikaneer's speech	592
1917	Lord Chelmsford's speech at the Ruling Princes' Conference	597
„	Extracts from the speech of Lord Chelmsford	594
„	Proposals regarding Native States	596
„	The Joint Address or the "Curtis Scheme"	738
1918	Proposals for Constitutional Reforms by the Rt. Hon'ble Mr. Montagu and H. E. Lord Chelmsford	477
„	Nomination of representatives of India in the Imperial Council	622
„	Extracts from Hon'ble Sir William Vincent's speech ...	619
„	The Resolution on the Local Self-Government Policy of the Government of India	696

INTRODUCTION.

I. THE RISE AND GROWTH OF BRITISH POWER IN INDIA FROM 1600 A.D. TO 1765 A. D.

The Elizabethan Charter of 1600.—In the year 1600 two hundred and fifteen English knights, aldermen and burgesses headed by GEORGE, EARL OF CUMBERLAND, petitioned ELIZABETH, QUEEN OF ENGLAND "for Our Royal Assent and License to be granted unto them, that they, at their own Adventures, costs and charges, as well for the Honour of this our Realm of England, as for the Increase of our Navigation, and Advancement of Trade of Merchandise, within our said Realm and the Dominions of the same, might adventure and set forth one or more Voyages, with convenient number of ships and Pinnaces, by way of traffic and merchandise to the East Indies, in the countries and parts of Asia and Africa, and to as many of the islands, ports and cities, towns and places, thereabouts, as where Trade and Traffic may by all likelihood be discovered, established or had; diverse of which countries, and many of the islands, cities and ports thereof, have long since been discovered by others of our subjects, albeit not frequented in Trade of merchandise."

Accordingly on December 31st 1600 QUEEN ELIZABETH granted a charter to the said EARL, GEORGE OF CUMBERLAND, and 215 knights, aldermen and burgesses "that they and every of them henceforth be, and shall be one Body Corporate and Politic, in deed and in name, by the name of the Governor and Company of Merchants of London, trading into the East Indies." "The said Governor and Company of Merchants of London, trading into the East Indies, and their successors may have a common seal to serve for all the causes and business of them and their successors." The Company were to elect annually one Governor and 24 committees (who were individuals and not bodies and were the predecessors of the later Directors, who were to have the direction of the Company's

voyages, the provision of shipping and merchandises, the sale of merchandises returned, and the managing of all other things belonging to the Company. THOMAS SMITH, Alderman of London, was to be the first Governor.

This Elizabethan Charter was granted for a term of 15 years on condition that the trade was profitable to the realm; otherwise, it could be determined on two years' warning. If, however, the realm profited by the trade, the Charter might be renewed for a further term of 15 years. For these 15 years the Company were allowed the following privileges:—(*a*) to use any trade route and to have an exclusive right of trading (between the Cape of Good Hope and the straits of Magellan), with power to grant licenses to trade, unauthorised traders being liable to forfeiture of all their belongings and to other penalties; * (*b*) to make reasonable "laws, constitutions, orders and ordinances" not contrary or repugnant to the laws, statutes or customs of the English realm—for the good government of the Company and its affairs †; (*c*) to impose such fines or penalties as might be necessary for enforcing these laws.

All such apprentices of any member of the Company, and all such servants or factors of the Company and "all such others" as were found eligible by the majority present at a "Court"—might be admitted into the body of the Company. The members of the Company, their sons at the age of twenty-one years and their factors, apprentices and servants had the exclusive trading privileges of the Company. Members could gain full admission to the Company normally through the avenue of apprenticeship or service. But

---

* QUEEN ELIZABETH charges and commands her subjects not to infringe the privileges granted by her to the Company upon the pain of forfeiture and other penalties. At that time—when HUGO GROTIUS, the father of modern International Law, was still in his teens,—the region known as India was thought to be only a *res nullius* and there was no doubt as to the expediency—as apart from the constitutionality—of granting a trade monopoly of this description. "Such monopolies" says ILBERT, "were in strict accordance with the ideas, and were justified by the circumstances of the time. Beyond certain narrow territorial limits international law did not run, diplomatic relations had no existence. Outside these limits force alone ruled and trade competition meant war."

† These legislative powers of the Company did not differ in their general provisions from, and were evidently modelled on, the powers of making by-laws commonly exercised by ordinary municipal and commercial corporations.

"others" could be admitted, provided they offered suitable contribution to the adventure of the Company.

"The most noticeable difference," says ILBERT, "between the Charter and modern instruments of association of a similar character is the absence of any reference to the capital of the Company and the corresponding qualifications and voting powers of members. It appears from the Charter that the adventurers had undertaken to contribute towards the first voyage certain sums of money: failure to pay their contributions was to involve 'removal and disenfranchisement' of the defaulters. But the Charter does not specify the amount of the several contributions (the total amount subscribed in September 1599 was £30,133 and there were 101 subscribers), and for all that appears to the contrary, each adventurer was to be equally eligible to the office of Committee, and to have equal voting power in the general court. The explanation is that the Company belonged at the outset to the simpler and looser form of association to which the City Companies then belonged, and still belong, and which used to be known by the name of 'Regulated Companies.' The members of such a Company were subject to certain common regulations and were entitled to certain common privileges, but each of them traded on his own separate capital, and there was no joint stock. During the first twelve years of its existence the Company traded on the principle of each subscriber contributing separately to the expense of each voyage, and reaping the whole profits of his subscription. The voyages during these 12 years are therefore known as 'separate voyages.' But after 1612 the subscribers threw their contributions into a 'joint stock' and thus converted themselves from a regulated company into a joint-stock company which, however, differed widely in its constitution, from the joint-stock companies of the present day."

The Stuart Charters (1609—1687).—In the meantime JAMES I had in 1609 renewed the charter of ELIZABETH: the only material point of difference between ELIZABETH'S charter and JAMES'S charter is that the latter was made perpetual subject to determination after three years' notice on proof of injury to the nation. The legislative powers granted by ELI-

ELIZABETH'S charter being insufficient for the punishment of grosser offences and for the maintenance of discipline on long voyages, a Royal Charter of December 1615 granted the Company the power of issuing a commission to its "general" in charge of a voyage to inflict punishments for non-capital offences and to put in execution martial law, subject to the proviso of requiring the verdict of a jury in the case of capital offences. In 1623 JAMES I gave the Company the power of issuing similar commissions to their presidents and other chief officers, authorizing them to punish in like manner offences committed by the Company's servants on land, subject to the like proviso as to the submission of capital cases to the verdict of a jury.

From 1624 to 1660 the Company were mainly occupied with their contests with Dutch competitors and English rivals. Indeed in 1657 the Company, driven to despair, threatened to withdraw their factories from India, till CROMWELL, who had long hesitated as to his course, granted them a new charter. At the Restoration CROMWELL'S charter was conveniently ignored, but the Company obtained a similar one from CHARLES II (1661), which granted them the right to coin money and exercise jurisdiction over English subjects in the East.

It was in this year (1661) that the port and island of Bombay was ceded to KING CHARLES II as part of the marriage dowry of the INFANTA OF PORTUGAL. Eight years later (1669) they were presented by him to the Company "to be held of the Crown for the annual rent of £10." The Company also owned at this time some other trading depots, or (as they were styled) factories,* on the west coast of India. Similar depots were subsequently established at Madras, and other places on the east coast, and still later in Bengal. In course of time the factories at Bombay, Madras and Calcutta became the three principal settlements, to which the others were placed in subordination.

---

*"These factories or settlements comprised, in the first instance, merely a few acres of ground occupied by the Company's warehouses and the residences of their officers; and they were held only under favour of the native sovereign of the territories in which they were situated"—*Chesney, Indian Polity*, p. 26.

Eight years after the gift of Bombay by CHARLES II to the Company (*i.e.* in 1677) a Royal Charter empowered the Company to coin money at Bombay to be called by the name of "rupees, pices and budjrooks" or such other names as the Company might think fit. These coins were to be current in the East Indies, but not in England. (A mint for the coinage of *pagodas* * had been established at Madras some years before). At this time justice was administered at Bombay by (1) an inferior court, with limited jurisdiction, consisting of a civil officer of the Company and two Indian officers, and (2) a Supreme Court consisting of the deputy governor and a council, whose decisions were to be final and without appeal, except in cases of the greatest necessity. The charter of 1683, however, declared that a Court of Judicature should be established at such places as the Company might appoint and that it should consist of one person learned in the civil laws and two merchants to be appointed by the Company to try cases "according to the rules of equity and good conscience, and according to the laws and customs of the merchants." About this time when the forces of rebellion and disruption were manifest all over India, the Company proclaimed (1687) in memorable and prophetic words that they intended to "establish such a polity of civil and military power, and create and secure such a large revenue.....as may be the foundation of a large, well-grounded, sure English dominion in India for all time to come." The Company determined to consolidate their position in India on the basis of territorial sovereignty, to enable them to resist the oppression of the Moghuls and Marhattas.

In the same year, KING JAMES II., exercising his royal prerogative of creating municipal corporations, delegated to the East India Company the power of establishing by charter a municipality at Madras (according to the approved English type), consisting of a mayor, twelve aldermen and sixty or more burgesses. This charter of 1687 appears to be the last of the Stuart Charters affecting the East India Company.

Pagoda—a Madras coin of the value of about 8 shillings of English money.

The struggle between the old "London" and the new "English" Companies : their final amalgamation in 1708.— In the next year (1688) the Company laid down their future policy in the following resolution said to have been penned by SIR JOSIAH CHILD—

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

"This famous resolution," says ILBERT, "announces in unmistakable terms the determination of the Company to guard their commercial supremacy on the basis of their territorial sovereignty and foreshadows the annexations of the next century."

Meanwhile, however, the Company had to confront a determined and organized opposition. For many years individual interlopers had defied the Company's sole claim to the market of the Eastern trade, one of the most famous being THOMAS PITT, the grandfather of LORD CHATHAM, who thus founded the fortunes of his family. In 1691 the enemies of the Company formed themselves into a New Company and assailed the monopoly of the Old Company. They raised the constitutional question whether the Crown could grant a a monopoly of trade without the authority of Parliament. The question, though it had been already answered in the affirmative some years ago by the LORD CHIEF JUSTICE JEFFREYS in his judgment on the great case of the *East India Company vs. Sandys** (1683-85),

* In this case the Company brought an action against MR. SANDYS for trading to the East Indies without a license. The Lord Chief Justice in giving judgment for the plaintiff Company laid down—(1) that by the laws of nations, the regulations of trade and commerce are reckoned *Inter Juris Regalia i e.* the prerogatives of the Supreme Magistrate ; (2) that, though by the laws of this land and by the the laws of all other nations, monopolies are prohibited, yet societies to trade, such as the plaintiff Company, to certain places exclusive of others, are no monopolies by the laws of this land, but are allowed to be formed both here and in other countries and are strengthened by the usage and practice of both at all times.

was again discussed and decided by the Privy Council in favour of the Old Company. The monopoly of the Old Company was accordingly renewed by the Charter of 1693. As if to emphasise this fact of renewal of the monopoly of trade to the East Indies the Directors used their powers to effect the detention of a ship called the *Redbridge* which was lying in the Thames and was believed to be bound for countries beyond the Cape of Good Hope. The legality of this detention was questioned and the matter came up before Parliament in 1694. The House of Commons passed a resolution disclaiming the right of the Company to detain the *Redbridge* on the Thames on the ground that the Company suspected that it was going to trade within their own preserves. They declared "that all subjects of England have equal rights to trade with the East Indies unless prohibited by Acts of Parliament." "It has ever since been held," writes MACAULAY, "to be the sound doctrine that no power but that of the whole legislature can give to any persons or to any society exclusive privilege of trade to any part of the world." So the constitutional point was settled and for the first time Parliament asserted its right to interfere in the affairs of the Company. As ILBERT puts it, "the question whether the trading privileges of the East India Company should be continued was removed from the Council Chamber to Parliament and the period of control by Act of Parliament over the affairs of the Company began."

The first Act of Parliament for regulating the trade to the East Indies was passed in 1698 when, on providing CHARLES MONTAGU, CHANCELLOR OF THE EXCHEQUER, with a loan of £2,000,000, the new association was constituted by Act of Parliament a General Society, to which was granted the exclusive trade to India, saving the rights of the Old Company until they expired in three years' time. The great majority of the subscribers to the General Society, which was on a "regulated" basis, at once formed themselves into a Joint Stock Company and were incorporated by the Crown as the "English Company trading to the East Indies," to distinguish it from the Old or London Company. The latter, to safeguard themselves, by an adroit move, subscribed £315,000 to the funds of the General Society in the name of their treasurer, JOHN DU BOIS.

Thus the position after 1698 was curiously complicated. Four classes of merchants had the right to trade to the East Indies—(1) the New Company; (2) the Old Company trading on their original capital until 1701, and after that on the limited subscription of £315,000; (3) those subscribers to the General Society who had held aloof from the Joint Stock of the New Company, their capital amounting to about £22,000; and (4) a few separate traders who, relying on the Commons' resolution of 1694, had sent out ships prior to 1698 and had been permitted to complete their voyages. The two latter were comparatively unimportant and may be left out of account. Between the two Companies—Old and New—there followed a desperate struggle which partially came to an end in 1702 when, on pressure from the Crown and Parliament, the two Companies were forced into a preliminary union. The Old Company was called upon to buy £673,000 additional stock in the General Society to make their share equal to that of their rivals. The dead stock *i.e.* houses, factories, and forts of the Old Company, were valued at £330,000 and of the New at £70,000, and the latter had to pay £130,000 to make good the deficit. After six years of negotiation and compromise in 1708 the union was made absolute by Parliament, all points in dispute being settled by the arbitration of Earl of GODOLPHIN; a further loan of £1,200,000 was made to the state, and the amalgamation of the "London" and the "English" Companies was finally carried out under the style of the "United Company of Merchants of England trading to the East Indies." In 1709 QUEEN ANNE accepted the surrender of the London Company's charters and thus terminated their separate existence. Subject to changes made by statutes the original charter of the New or English Company thus came to be, in point of law, the root of all the powers and privileges of the United Company which continued to bear its new name up to 1833.

The establishment of Courts.—In less than twenty years after the United Company was established under the Act of QUEEN ANNE, its Court and Directors represented by petition to GEORGE I. that there was great need at Madras, Fort William and Bombay of a proper and competent power and authority

for the more speedy and effectual administering of justice in civil causes and for trying and punishing capital and other criminal offences and misdemeanours; and they accordingly prayed for permission to establish Mayor's courts at those places. Thereupon the existing courts, whatever they may have been, were superseded and in 1726 the Crown by letters patent established Mayor's Courts at those places. These courts were composed of a Mayor and nine aldermen, seven of whom were required to be British subjects. From these courts an appeal lay in cases the value of which was under 1000 *pagodas* to the Governor and Council, and, in cases of higher value, to the Privy Council. The Government Court also had powers in criminal matters. The constitution of these courts was amended in 1753 when a Court of Requests at each of the said places was established for petty cases up to five *pagodas*. The chief feature of this charter of 1753 was that the courts which were established were limited in their civil jurisdiction to suits between persons who were not natives of the several towns to which the jurisdiction applied. Suits between Indians were expressly excepted from the jurisdiction of the Mayor's Court and directed to be determined among themselves.

II. THE DEVELOPMENT OF THE INDIAN CONSTITUTION FROM 1765 TO THE PRESENT DAY.

The Grant of the Dewani.—Such was the extent of the executive, legislative and judicial authority possessed by the Company during the middle of the eighteenth century. Meanwhile great acquisitions of territory were being made and the position of the Company was being gradually changed from that of tenants of factories to territorial sovereigns.

One of the earliest possessions of the English in India, as we have already seen, was the island of Bombay, ceded to CHARLES II in 1661 by the KING OF PORTUGAL as part of the marriage dowry of the INFANTA. CHARLES II granted it to the East India Company, who, about the same time, gained possession of some factories on the west coast of India. Somewhat later, factories were established at Madras and other places on the east coast. Last of all, the Com-

pany made trading settlements in Bengal and founded Calcutta in 1690. The factories of Bombay, Madras and Calcutta became the leading factories in their different localities, and exercised control and supervision over the subordinate depots and places in their vicinity.

The decline of the Moghul power was very rapid after the death of Aurangzeb in 1707 ; and it was during the feud between the Marhâtta and the Mahomedan that the French and the English began the work of conquest and annexation. The principal struggle between the French and the English commenced in 1750 in Madras, where most of the French possessions were situated, and it ended in the supremacy of the English being established, and in Madras becoming the most important possession of the Company. The struggle in Bengal between the English and the native government continued from 1756 to 1765. It commenced upon the accession of Serajuddowla who captured Calcutta, but was overthrown by Clive in 1757, with the result that the authority of the Company was established over the whole of Bengal. The powers and duties of government were, however, carried on by the Nawab of Murshidabad.

But CLIVE was seeking an opportunity for availing himself of the outstanding sovereignty of the Mogul. He proceeded to obtain the grant of the *Dewanny* from the Mogul Emperor. SHAH ALUM issued the following *Firman* empowering the Company to collect and administer the revenues of Bengal, Behar and Orissa :—

"At this happy time, our royal Firman, indispensably requiring obedience, is issued ; that, whereas, in consideration of the attachment and services of the high and mighty, the noblest of exalted nobles, the chief of illustrious warriors, our faithful servants and sincere well-wishers, worthy of our royal favours, the English Company, we have granted them the Dewanny of the Provinces of Bengal, Behar and Orissa from the beginning of the Fasal Rabi of the Bengal year 1172, as a free gift and ultumgan, without the association of any other person, and with an exemption from the payment of the customs of the Dewanny which used to be paid by the Court ; it is requisite that the said company engage to be security for the sum of 26 lakhs of rupees a year for our royal revenue, which sum has been appointed from the Nawab Nudjamut-dowla Bahadur, and regularly remit the same to the royal sircar ; and in this case,

as the said Company are obliged to keep up a large army for the protection of the Provinces of Bengal etc., we have granted to them whatsoever may remain out of the revenues of the said provinces, after remitting the sum of 26 lakhs of rupees to the royal sircar, and providing for the expenses of the Nizamut. It is requisite that our royal descendants the Viziers, the bestowers of dignity, the Omrahs high in rank, the great officers, the Muttaseddes of the Dewanny, the manager of the business of the Sultanat, the Jaghirdars and croories, as well the future as the present, using their constant endeavours for the establishment of this our royal command, leave the said office in possession of the said Company, from generation to generation, for ever and ever. Looking upon them to be assured from dismissal or removal, they must, on no account whatsoever, give them any interruption, and they must regard them as excused and exempted from the payment of all the customs of the Dewanny and royal demands. Knowing our orders on the subject to be most strict and positive, let them not deviate therefrom." (Aug. 12, 1765.)

This act is generally regarded as the acquisition of sovereignty by the English. The collection of revenue in India involved the whole administration of civil justice, and that, together with actual possession and military power, nearly completed the full idea of sovereignty. Still in name it was held in vassallage from the Mogul; and the Nizamaut or administration of criminal justice remained with the Mogul's Lieutenant, the NAWAB OF MURSHIDABAD.

The view which the Directors took of the transactions is thus expressed in a Despatch of 17th May, 1768—

"We conceive the office of Dewan should be exercised only in superintending the collection and disposal of the revenues. This we conceive to be the whole office of the Dewan. The administration of justice, the appointments to offices, Zemindaries, in short, whatever comes under the denomination of civil administration, we understand, is to remain in the hands of the Nawab or his ministers."

The Regulating Act of 1773.—The legislative enactments respecting these territorial possessions of the Company commenced in 1767. In that year, it was agreed between the "Public" and the "Company" that in consideration of an annual payment of £400,000 by the Company the large territorial possessions which had

been recently obtained in India should remain in possession of the Company for the term of two years. This term was afterwards extended to five years more from the 1st of February, 1769. The sums paid to the "Public" under these two Acts were—

In 1768—	£400,000	
1769—	£400,000	
1770—	£400,000	
1771—	£400,000	
1772—	£200,000	
1773—	£253,779	
1775—	£115,619	(payable in 1773)
Total—	£2,169,398.	

In 1773 the Company presented a petition to Parliament praying for relief. They solicited a loan for four years, and a sum of £1,400,000 was accordingly lent them. Parliament, upon that occasion, first assumed a general regulation of the Company's affairs by passing an Act—commonly called the Regulating Act of 1773—"for establishing certain regulations for the better management of the affairs of the EAST INDIA COMPANY as well in India as in Europe." Its main provisions may be broadly classified under three heads—Executive, Legislative and Judicial powers.

Provisions for Executive Government :—The Act provided that the Government of Bengal should consist of a Governor-General and four counsellors, but that in case of differences of opinion, they should be concluded by the decision of the majority ; in the case of an equal division of counsellors present, the Governor-General or senior counsellor should have a casting vote, and his opinion was to be decisive and conclusive. The Presidents and Councils (which were the germ of the present Presidencies) of Madras and Bombay were rendered subordinate to the Governor-General and Council of Bengal, so far as regards the declaration of war or the conclusion of peace. The first Governor-General (WARREN HASTINGS) and his Council of four members (of whom PHILIP FRANCIS was one) were named in the Act ; thereafter they were to be appointed by the Court of Directors.

Provisions for Legislation :—By the 36th section of the Act the Governor-General and Council were empowered "from time to time to make and issue such rules, ordinances and regulations for the good order and civil government of the said United Company's settlement at Fort William aforesaid, and other factories and places subordinate to or to be subordinate to it, as shall be deemed just and reasonable (such rules, ordinances and regulations not being repugnant to the laws of the nation), and to set, impose, inflict and levy reasonable fines and forfeiture for the breach and non-observance of such rules, ordinances, and regulations."* Such regulations, however, were not to be valid, or of any force until they were duly registered in the Supreme Court, with the consent and approbation of the said Court. (The earliest regulation bears date 17th April, 1780). An appeal from a regulation so registered and approved lay to the King in Council, but the pendency of such appeal was not allowed to hinder the immediate execution of the law. The Government were bound to forward all such rules and regulations to England, power being reserved to the King to disapprove of them at any time within two years.

Provisions for the establishment of the Supreme Court :—The same Act also 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

* This was called Legislation by the Executive Government.

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 re-modelled 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.

Pitt's India Act, 1784.—In 1783 Fox, on behalf of the Ministry, introduced a Bill which in substance transferred the authority belonging to the Court of Directors to a new body, named in the Bill for a term of four years, who were afterwards to be appointed by the Crown. This Bill passed the House of Commons by a majority of two to one, but was rejected by the Lords. The King, who was known to disapprove of the Bill, forthwith dismissed Fox from office and summoned PITT to be First Lord of the Treasury. In the following year (1784) after a dissolution, PITT carried through Parliament his own India Act (24 Geo. 3, c. 25). Its effect was two-fold. First, it constituted a department of state in England, under the official title of "Commissioners for the Affairs of India" whose special function was to "control" the policy of the Court of Directors. Secondly, it reduced the number of members of Council at Bengal to three, of whom the Commander-in-chief must be one; and it re-modelled the councils at Madras and Bombay on the pattern of that at Bengal.

The "Commissioners for the Affairs of India" were directed to form themselves into a Board which, as finally modified by a subsequent Act (33 Geo. 3, c. 52) consisted of five members of the Privy Council, three of whom must be the two Secretaries of State and the Chancellor of the Exchequer. But it was never intended that these high officers should take an active part, and therefore the first Commissioner named in the letters patent was appointed President of the Board, and a casting vote was given to him in matters of difference, which practically made him supreme. Thus arose the popular title of "President of the Board of Control." The first President was HENRY DUNDAS (afterwards LORD MELVILLE), the friend of PITT, who held office from 1784 to 1801. One of his earliest acts was to pass a Statute (26 Geo. 3, c. 16) by which authority was for the first time given to the Governor-General to overrule the majority of his council in certain cases. This matter, however, was

dealt with more thoroughly in the Act of Parliament which has now to be described.

The Renewals of the Charter (1793-1853).—In 1793 the question of continuing to the East India Company their right of exclusive trade in the East came under the consideration of Parliament. The monopoly was renewed for a further term of twenty years; and advantage was taken of the opportunity to codify, as it were, the constitution of the Indian Government. By this Act (33 Geo. 3, c. 52) the Board of Control was modified as mentioned above, and the Court of Directors were required to appoint a "Secret Committee" of three of their own number, through whom the Board of Control was to issue its instructions to the Governors in India regarding questions of peace or war. The Councils at Bengal, Madras and Bombay were remodelled. Each was to consist of three members, appointed by the Court of Directors, from among "senior merchants" of ten years' standing; and the Directors were empowered to appoint the Commander-in-chief of each Presidency as an additional member. The appointment of the three Governors and the Commander-in-chief was vested in the Court of Directors, subject to the approval of the Crown. The Directors also retained their power of dismissing any of these officials. The Governor-General was empowered to override the majority of his Council "in cases of high importance and essentially affecting the public interest and welfare," or (as it is elsewhere worded) "when any measure shall be proposed whereby the interests of the Company or the safety and tranquillity of the British possessions in India may, in the judgment of the Governor-General, be essentially concerned." A similar power was conferred upon the Governors of Madras and Bombay. The Governor-General was authorised to "superintend" the subordinate presidencies "in all such points as shall relate to negotiations with the country powers, or levying war or making peace, or the collection or application of the revenues, or the forces employed or the Civil or Military Government." The form of procedure in Council was regulated; and it was enacted that all orders &c, should be expressed and be made by "the Governor-General (or Governor) in Council," a style that has continued to the present day. The Governor in

Council at Madras first received legislative powers in 1800 by an Act (39 & 40. Geo. 3. c. 79) which also founded a Supreme Court of Judicature at Madras on the Bengal pattern, with judges appointed by the Crown. Bombay did not obtain legislative powers until 1807, nor a Supreme Court until 1823.

In 1813 the territorial authority of the East India Company and its monopoly of trade with China were again renewed for twenty years; but the right of trade in India was thrown open to all British subjects. The Act passed on this occasion established a bishop for India and an archdeacon for each of the three Presidencies. It also authorised the expenditure of one lac of rupees on education and the encouragement of learning.

When the time came round for renewing the powers of the Company in 1833 for another twenty years, far more extensive changes were carried into effect. The Charter Act of 1833 (3 and 4 Will. 4. c. 85) abolished the monopoly of trade with China and the Company (now for the first time officially styled "the East India Company") ceased altogether to be a mercantile corporation. It was enacted that no official communications should be sent to India by the Court of Directors until they had first been approved by the Board of Control. The Governor-General received the title of "Governor-General *of India*." His Council was augmented by a fourth or extraordinary member who was not entitled to sit or vote except at meetings for making laws and regulations. He was to be appointed by the Directors, subject to the approval of the Crown, from among persons, not servants of the Company. The first such member was THOMAS BABINGTON MACAULAY. The Governor-General in Council was empowered to make "Laws and Regulations" for the whole of India, withdrawing from the Governors of Madras and Bombay all legislative functions, but leaving to them the right only of proposing draft schemes. Acts thus passed by the Governor-General in Council were liable to be disallowed by the Court of Directors and were also required to be laid before Parliament, but no registration in India was necessary. It was also expressly enacted that they were to have the force of Acts of Parliament. A Law Commission was appointed, composed of the legislative member of Council, another

English member, and one civil servant from each of the three Presidencies. This Law Commission drafted the Indian Penal Code which, however, did not receive the legislative sanction until 1860. The laws passed since 1833 are known as Acts, not Regulations. A new Presidency was created, with its seat at Agra; but this clause was suspended two years later by an Act (5 and 6 Will. 4. c. 52) which authorised the appointment of a "Lieutenant-Governor of the North-Western Provinces." At the same time the Governor-General was authorized to appoint a member of his Council to be Deputy Governor of Bengal. Two new bishoprics were constituted for Madras and Bombay. By a special clause, it was for the first time enacted that "no native of India shall, by reason of his religion, place of birth, descent or colour, be disabled from holding any office under the Company."

In 1853, the powers of the East India Company were again renewed, but "only until Parliament shall otherwise provide". Further important changes were effected by the Act passed on this occasion (16 & 17 Vict. c. 95). By section 16 of this Act (the Government of India Act), the Court of Directors of the East India Company, acting under the direction and control of the Board of Control, were empowered to declare that the Governor-General in Council should not be Governor of the Presidency of Fort William in Bengal, but that a separate Governor was to be from time to time appointed in like manner as the Governors of Madras and Bombay. In the meantime, and until a Governor was appointed, there was power under the same section to appoint a Lieutenant-Governor of such part of the Presidency of Bengal as was not under the Lieutenant-Governorship of the North-West (now United) Provinces.* Six members of the Court of Directors, out of a total of eighteen, were henceforth to be appointed by the Crown. The appointment of ordinary members of Council in India, though still made by the Directors, was to be subject to the approval of the Crown. The

* The power to appoint a Lieutenant-Governor was exercised, and during the continuance of its exercise, the power to appoint a Governor remained in abeyance. But it still existed and was inherited by the Secretary of State from the Court of Directors and Board of Control, and was exercised in March, 1912 when a Governorship was substituted for the Lieutenant-Governorship of Bengal.

Commander-in-chief of the Queen's Army in India was declared Commander-in-Chief of the Company's forces. The Council of the Governor-General was again remodelled by the admission of the fourth or legislative member as an ordinary member for all purposes ; while six special members were added for the object of legislation only *viz.*, one member (who was paid an annual salary) from each of the four Presidencies or Lieutenant-Governorships and also the Chief-Justice and one of the judges of the Supreme Court. Thus the first Indian Legislative Council as constituted under the Act of 1853 consisted only of twelve members *viz.*, the Governor-General and the four members of his Council, the Commander-in-Chief, and the six special members. The Governor-General was also empowered by this Act to appoint, with the sanction of the Home Government, two civilian members, but this power was never exercised. From this time onwards the sittings of the legislative council were made public and their proceedings were officially published. By the same statute of 1853 a body of eight commissioners was appointed in England to report upon the reforms proposed by the Indian Law Commission.

The Government of India Act, 1854.—Between 1853 and the transfer of the Government of India to the Crown in 1858 there was passed an Act in 1854 which has had important administrative results in India. This Act empowered the Governor-General of India in Council, with the sanction of the Court of Directors and the Board of Control, to take by proclamation under his immediate authority and management any part of the territories for the time being in possession or under the government of the East India Company, and thereupon to give all necessary orders and directions respecting the administration of that part, or otherwise provide for its administration. The mode in which this power has been practically exercised has been by the appointment of Chief Commissioners, to whom the Governor-General delegates such powers as need not be reserved to the Central Government. In this way Chief Commissionerships have been established for Assam, the Central Provinces, the North West Frontier Province, British Baluchistan and the new Province of Delhi. The same Act empowered the Government of

India, with the sanction of the Home authorities, to define the limits of the several provinces in India and directed that the Governor-General was no longer to bear the title of Governor of the Presidency of Bengal.

The transfer of the Government of India from the Company to the Crown, 1858.—"The principle of our political system is", said VISCOUNT PALMERSTON in 1858 in introducing the first *Bill for the Better Government of India*, "that all administrative functions should be accompanied by ministerial responsibility—responsibility to Parliament, responsibility to public opinion, responsibility to the Crown, but in this case the chief functions in the Government of India are committed to a body not responsible to Parliament, not appointed by the Crown, but elected by persons who have no more connexion with India than consists in the simple possession of so much India Stock.

I say, then, that as far as regards the executive functions of the Indian Government at home, it is of the greatest importance to vest complete authority where the public have a right to think that complete responsibility should rest, and that whereas in this country there can be but one governing body responsible to the Crown, the Parliament, and to public opinion, consisting of the constitutional advisers of the Crown for the time being, so it is in accordance with the best interests of the nation, that India, with all its vast and important interests, should be placed under the direct authority of the Crown, to be governed in the name of the Crown by the responsible Ministers of the Crown sitting in Parliament, and responsible to Parliament and the public for every part of their public conduct, instead of being, as now, mainly, administered by a set of gentlemen who, however respectable, however competent for the discharge of the functions entrusted to them, are yet a totally irresponsible body, whose views and acts are seldom known to the public, and whether known or unknown, whether approved or disapproved, unless one of the Directors happens to have a seat in this House, are out of the range of Parliamentary discussion."

So, after the Mutiny of 1857, the cumbrous system of "Double Government" was abolished and a new chapter in Indian constitu-

tional history began with the passing of the *Act for the Better Government of India* which received the Royal Assent on the 2nd of August, 1858, and came into operation thirty days later. This Act declared that henceforth "India shall be governed by and in the name of" the Queen, and vested in the Queen all the territories and powers of the Company. A Secretary of State was appointed, with a Council, to transact the affairs of India in England. Omitting certain provisions of temporary effect, and combining the provisions of the three amending Acts of 1869, 1876 and 1907 this Council, originally fifteen in number, now consists of such number of members, not less than ten and not more than fourteen, as the Secretary of State may from time to time determine. Nine of them at least must have served or resided in India for ten years, and must have left India not more than five years before appointment. Vacancies could be filled up by the Secretary of State. The term of office, which had been originally "during good behaviour" and was till 1907 ten years, is now seven years, reserving a power to the Secretary of State to reappoint any member for five years more "for special reasons of public advantage". No member of Council was capable of sitting in Parliament. The Secretary of State was empowered to divide the Council into Committees for the more convenient transaction of business, and to appoint one of the members to be Vice-President. Except in certain cases specially mentioned, the Secretary of State was not bound to follow the opinion of the majority of the Council, but he must record his reasons for acting in opposition thereto. In cases of urgency he might act without consulting the Council; and as regards that class of cases which formerly had passed through the Secret Committee of the Court of Directors, he was expressly authorised to act alone without consulting the Council or recording his reasons. All the revenues of India were subjected to the control of the Secretary of State, who might sanction no grant without the concurrence of the majority of the Council. The accounts were to be audited in England, and annually laid before Parliament. Any order sent to India directing the commencement of hostilities must also be communicated to Parliament. Except for repelling actual invasion, or "under other sudden and ur-

gent necessity," the revenues of India might not be applied to defray the expense of any military operation beyond the frontier without the consent of both Houses of Parliament. The naval and military forces of the Company were declared to be thenceforth the forces of the Crown; all officers and servants of the Company in India were to be officers of the Crown; and all future appointments were vested in the Crown. Appointments to the offices of Governor-General, Governors of Presidencies and Advocate-General, and also (by 32 and 33 Vict. ch. 97) of the ordinary members of the Councils in India, were to be made direct; appointments to the offices of Lieutenant-Governor or other ruler of a Province by the Governor-General, subject to the approval of the Crown, and other appointments made in India remained as before.

The *Act for the Better Government of India* received the Royal Assent on the 2nd of August, 1858, and came into operation thirty days later. Its effect, so far as regards the assumption of the government by the Crown, was announced to the Princes and People of India by a Proclamation of the direct supremacy of the British Crown. This Proclamation, "simple and natural enough as it appears at the present day in the light of what has followed, was a stroke of genius at the time. 'It sealed the unity of Indian Government and opened a new era.' It was the act of a great Sovereign Mother which appealed to oriental sentiment as nothing else could have done. An entirely new keynote was struck. Her Majesty directed her Minister to issue the great announcement, 'bearing in mind that it is a female Sovereign who speaks to more than a hundred millions of Eastern people on assuming the direct government over them and, after a bloody war, giving them pledges which her future reign is to redeem and explaining the principles of her government.' 'Such a document,' said Her Majesty, 'should breathe feelings of generosity, benevolence and religious toleration, and point out the privileges which the Indians will receive in being placed on an equality with the subjects of the British Crown.' It was the greatest event in a long history of great things. Now for the first time on record the whole of the vast continent of India, greater in extent than Europe itself, excluding Russia,

acknowledged not only the Hegemony of a single power, but the guardianship of a single person."*

This memorable Proclamation, justly called the Magna Charta of India, was published at every large town throughout the country and translated into the vernacular languages. In this historic Proclamation the Governor-General (LORD CANNING) was for the first time styled "Viceroy."

The Statutes of 1861—1874.—We have now reached the critical point of the story at which representatives of Indian opinion were for the first time admitted to the legislature of the country, and need make no apology for quoting a well-known passage from a minute written by Sir Bartle Frere in 1860 :—

"The addition of the native element has, I think, become necessary owing to our diminished opportunities of learning through indirect channels what the natives think of our measures, and how the native community will be affected by them. It is useless to speculate on the many causes which have conspired to deprive us of the advantages which our predecessors enjoyed in this respect. Of the fact there can be no doubt, and no one will I think object to the only obvious means of regaining in part the advantages which we have lost, unless he is prepared for the perilous experiment of continuing to legislate for millions of people, with few means of knowing, except by a rebellion, whether the laws suit them or not.

"The durbar of a native Prince is nothing more than a council very similar to that which I have described. To it under a good ruler all have access, very considerable license of speech is permitted, and it is in fact the channel from which the ruler learns how his measures are likely to affect his subjects, and may hear of discontent before it becomes disaffection.

"I cannot think that the plan proposed will even in our presidency towns lead, as has been apprehended, to needless talking and debate, or convert our councils into parish vestries. It is a great evil of the present system that Government can rarely learn how its measures will be received or how they are likely to affect even its European subjects, till criticism takes the form of settled and often bitter opposition."

Lord Canning decided that though any return to the system which existed before Lord Dalhousie was impossible, a partial return to the

* *The Historical Record of the Imperial Visit to India*, 1911," p. 5.

still earlier system which prevailed before 1834 was advisable. Once the principle of having local Governments represented in the Indian legislature was admitted, the Governments of Madras and Bombay could not reasonably be expected to be content with the meagre share which they then had in legislation concerning their own presidencies. Rejecting the idea of increasing in his existing council the number of members drawn from the two subordinate presidencies, Lord Canning proposed that the single council should be broken up into three distinct councils—the legislative council of the Governor-General at Calcutta and local councils in Madras and Bombay. The lieutenant-governorships of Bengal, the North-Western Provinces, and the Punjab should also be equipped with separate legislatures. To each council he proposed that three non-official members, European or Indian, should be admitted ; that all measures of local character not affecting the revenue should fall within the competence of the local councils ; that the latter should concern themselves with legislation only ; and that business should be so conducted as to allow even Indians unacquainted with English to participate in it. These proposals are remarkable as constituting the first decisive step in the direction of decentralization, and also in that of associating Indians or indeed non-officials at all with the business of legislation.

Various events contributed to precipitate the passing of the Indian Councils Act of 1861. Differences arose between the Supreme Government and the Government of Madras about the income-tax Bill ; serious doubts were expressed about the validity of the laws introduced into certain backward areas which were known as non-regulation provinces without enactment by the legislative council ; and finally the Governor-General's legislative council presented an address asking that certain correspondence between the Secretary of State and the Government of India should be communicated to it. The situation had become strained, and justified Sir Charles Wood's complaint in the House of Commons that, contrary to the intention of its founders, the Council had become a sort of debating society or petty Parliament. He quoted the Chief Justice of Calcutta as saying that the Council "has no jurisdiction in the nature of that of a grand inquest of the nation. Its functions are purely legislative, and are

limited even in that respect. It is not an Anglo-Indian House of Commons for the redress of grievances, to refuse supplies, and so forth."

Many provisions of the Act of 1861 still form the framework of the internal constitution of India. The Act restored to the Governments of Madras and Bombay the powers of legislation which the Act of 1833 had withdrawn, but with one important distinction. Formerly the laws enacted by the local legislatures had been complete in themselves and came into operation of their own force. Thenceforth the previous sanction of the Governor-General was made requisite for legislation by the local councils in certain cases, and all Acts of the local councils required the subsequent assent of the Governor-General in addition to that of the Governor. To this extent the Governor-General was given direct and personal control over the exercise of all legislative authority in India. For purposes of legislation the Governor-General's Council was reinforced by additional members, not less than six, nor more than twelve in number, nominated for two years, of whom not less than half were to be non-officials. The legislative power of the Governor-General in Council was extended over all persons, whether British or Indian, foreigners or others, within the Indian territories then under the dominion of Her Majesty, and over all courts of justice and over all places and things within the said territories, and over all British subjects within the dominions of Princes and States in alliance with Her Majesty. The Act also gave legal force to all the miscellaneous rules and orders which had been issued in the newly-acquired territories of the Company (known as the non-regulation provinces) either by extending or adapting to them the regulations which had been made for older provinces, or frankly by the executive authority of the Governor-General in Council. (A few years later the power of legislating for disturbed or backward tracts by regulations made in executive council was restored to the Governor-General by the Act of 1870). Moreover we find some trace of the old executive power of legislation surviving in the power given to the Governor-General, without his Council, in cases of emergency, to make temporary ordinances which were not to remain in force for more than six months. The legislative councils were restored in Madras and

Bombay by expanding the Governors' executive councils on the same lines as the Governor-General's. The Governor-General was also directed to establish a legislative council for Bengal and empowered to establish similar councils for the North-Western Provinces and for the Punjab ; these two bodies actually came into being in 1886 and 1897 respectively. But we lay stress on the fact that there was no attempt to demarcate the jurisdictions of the central and local legislatures as in federal constitutions. The Governor-General's Council could legislate for the whole of India ; and the provincial council for the whole of the province, with the reservation that before doing so in respect of certain matters the Governor-General's sanction had to be obtained. Finally, the provisions of the Act rebuked the precocity of the council established under the Act of 1853, which had modelled its procedure on Parliament and shown what was considered an inconvenient amount of independence by asking questions about and discussing the propriety of the methods of the executive Government. The functions of the new councils were strictly limited to legislation. They were expressly forbidden to transact any business except the consideration and enactment of legislative measures, or to entertain any motion except a motion for leave to introduce a Bill or having reference to a Bill actually introduced.

In summing up these changes we cannot do better than follow the present Lord Macdonnell who, writing 27 years after the Act was passed, was able to adopt with little modification the language in which the author of *Courts and Legislative Authorities in India* had described the position created in 1861.

"The character of the legislative councils established by the Act of 1861 is simply this, that they are committees for the purpose of making laws—committees by means of which the executive Government obtains advice and assistance in their legislation, and the public derive the advantage of full publicity being ensured at every stage of the law-making process. Although the Government enacts the laws through its council, private legislation being unknown, yet the public has a right to make itself heard, and the executive is bound to defend its legislation. And when the laws are once made, the executive is as much bound by them as the public, and the duty of enforcing them belongs to the courts of justice.

In later years there has been a growing deference to the opinions of important classes, even when they conflict with the conclusions of the Government, and such conclusions are often modified to meet the wishes of the non-official members. Still it would not be wrong to describe the laws made in the legislative councils as in reality the orders of Government; but the laws are made in a manner which ensures publicity and discussion, are enforced by the courts and not by the executive, cannot be changed but by the same deliberate and public process as that by which they were made, and can be enforced against the executive or in favour of individuals when occasion requires.

"The councils are not deliberative bodies with respect to any subject but that of the immediate legislation before them. They cannot inquire into grievances, call for information, or examine the conduct of the executive. The acts of administration cannot be impugned, nor can they be properly defended in such assemblies, except with reference to the particular measure under discussion."*

In the same year (1861) the Indian High Courts Act was passed (24 & 25 Vict. c. 104) empowering the Crown to establish, by Letters Patent, High Courts at Calcutta, Madras and Bombay, in which the Supreme Courts, as well as the *Sadar Dewani Adálat* and the *Sadar Nizamut Adálat* 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.

The Government of India Act of 1865 extended the legislative powers of the Governor-General's Council to all British subjects in Native States, whether servants of the Crown or not; the Indian Councils Act of 1869 still further extended these powers by enabling

* Extracts from the *Report on Indian Constitutional Reforms*, 1918.

the Governor-General's Council to make laws for all native Indian subjects of the Crown in any part of the world, whether in India or not. Incidentally, it may be added that the Act of 1865 also enabled the Governor-General in Council to define and alter, by proclamations, the territorial limits of the various Presidencies and Lieutenant-Governorships.

An Act of 1873 (36 Vict. c. 17) formally dissolved the East India Company from January 1, 1874. In the following year another Indian Councils Act enabled a sixth member of the Governor-General's Council to be appointed for Public Works purposes. The Indian Councils Act of 1904, however, removed the necessity for appointing the sixth member specifically for Public Works purposes, though it continued the power to appoint a sixth member.

The assumption of the title of "Empress of India" by Queen Victoria in 1876.—In 1876 the transfer of the Government of India from the Company to the Crown, which had been effected eighteen years earlier, was further recognised by an Act of Parliament (39 & 40 Vict. c. 10) which empowered the Queen to make a significant addition to her style and title. The circumstances which led to the passing of this statute are thus related by LADY BETTY BALFOUR in her book entitled "*Lord Lytton's Indian Administration.*"

"When the Administration of India was transferred from the East India Company to the Sovereign, it seemed in the eyes of her Indian subjects and feudatories that the impersonal power of an administrative abstraction had been replaced by the direct personal authority of a human being. This was a change thoroughly congenial to all their traditional sentiments, but without some appropriate title the Queen of England was scarcely less of an abstraction than the Company itself. * * * The title of Empress or *Bádsháh* could alone adequately represent her relations with the states and kingdoms of India, and was moreover a title familiar to the natives of the country, and an impressive and significant one in their eyes.

"Embarrassments inseparable from the want of some appropriate title had long been experienced with increasing force by successive Indian administrators, and were brought, as it were, to a crisis by various circumstances incidental to the Prince of Wales's visit to India in 1875-76,

and by a recommendation of Lord Northbrook's Government that it would be in accordance with fact, with the language of political documents, and with that in ordinary use to speak of Her Majesty as the Sovereign of India—that is to say, the paramount power over all, including Native States."

"It was accordingly announced in the speech from the Throne in the session of 1876, that whereas when the direct Government of the Indian Empire was assumed by the Queen no formal addition was made to the style and titles of the Sovereign, Her Majesty deemed that moment a fitting one for supplying the omission, and of giving thereby a formal and emphatic expression of the favourable sentiments which she had always entertained towards the princes and people of India."

To fulfil Her Majesty's desire the Royal Titles Act (39 & 40 Vict. c. 10.) was passed in the same year (1876). With a view to the recognition of the transfer of the Government of India to the Crown, it authorised the Queen, by Royal Proclamation, to make such addition to the style and titles appertaining to the Imperial Crown of the United Kingdom and its dependencies as to Her Majesty might seem meet. Accordingly, the Queen, by Proclamation dated April 28, 1876, added to her style and titles the words "INDIÆ IMPERATRIX" or "EMPRESS OF INDIA" (*London Gazette*, April 28, 1876). The translation of the new title in the vernacular was a matter for careful consideration with LORD LYTTON'S Government who finally decided to adopt the term KAISER-I-HIND. "It was short, sonorous, expressive of the Imperial character which it was intended to convey, and a title, moreover, of classical antiquity."

The Indian Councils Act, 1892.—The next landmark in Indian constitutional history was the passage of the Indian Councils Act of 1892. The measure which eventually took shape as the Act of 1892 was initiated by discussions in Lord Dufferin's time in which Sir George Chesney, Sir Charles Aitchison, and Mr. Westland took prominent part. Regarding the proposals of Lord Dufferin's Committee we find the following remarks in the *Report on Indian Constitutional Reforms*.

"We are impressed with the bold approach which the members of Lord Dufferin's Committee were prepared to make even thirty years ago towards the position in which we now find ourselves. They

recommended for example that the councils should see papers freely and originate advice or suggestion ; that debates on such advice or suggestion should be permitted : and that the estimates connected with local finance should be referred to a standing committee and debated if necessary in council. They also were concerned to bring into public affairs the gentry and nobility of the country ; and for this purpose they devised a council which should consist of two orders or divisions both containing some official members. They made the radical suggestion that election should be introduced as far as possible—in the first division directly, on a high property qualification, and in the second division indirectly, by local bodies and the universities. They advised that care should be taken to secure the fair representation of all classes ; that power should be reserved to Government to pass measure in certain cases against the votes of a majority in council ; and that councils should be of moderate size and not more than two-fifths elected. In these recommendations it is interesting to encounter the germ of proposals which bulks largely in our present inquiry, for standing committees, grand committees, upper houses, reserved and transferred subjects, and the like.

Lord Dufferin's view of the situation is contained in the following noteworthy passage :—

'It now appears to my colleagues and to myself that the time has come for us to take another step in the development of the same liberal policy, and to give, to quote my own words, 'a still wider share in the administration of public affairs to such Indian gentlemen as by their influence, their acquirements, and the confidence they inspire in their fellow-countrymen are marked out as fitted to assist with their counsels the responsible rulers of the country.' But it is necessary that there should be no mistake as to the nature of our aims, or of the real direction in which we propose to move. Our scheme may be briefly described as a plan for the enlargement of our provincial councils, for the enhancement of their status, the multiplication of their functions, the partial introduction into them of the elective principle, and the liberalization of their general character as political institutions. From this it might be concluded that we were contemplating an approach, at all events as far as the provinces are concerned, to English parliamentary government, and an English constitutional system. Such a conclusion would be very wide of the mark ; and it would be wrong to leave either the India office or the

Indian public under so erroneous an impression. India is an integral portion, and it may be said one of the most important portions of the mighty British Empire. Its destinies have been confided to the guidance of an alien race, whose function it is to arbitrate between a multitude of conflicting or antagonistic interests, and its government is conducted in the name of a monarch whose throne is in England. The executive that represents her *imperium* in India is an executive directly responsible, not to any local authority, but to the Sovereign and to the British Parliament. Nor could its members divest themselves of this responsibility as long as Great Britain remains the paramount administrative power in India. But it is of the essence of constitutional government, as Englishmen understand the term, that no administration should remain at the head of affairs which does not possess the necessary powers to carry out whatever measures or policy it may consider to be 'for the public interest.' The moment these powers are withheld, either by the Sovereign or Parliament, a constitutional executive resigns its functions and gives way to those whose superior influence with the constituencies has enabled them to overrule its decisions, and who consequently become answerable for whatever line of procedure may be adopted in lieu of that recommended by their predecessors. In India this shifting of responsibility from one set of persons to another is, under existing circumstances, impossible; for if any measure introduced into a legislative council is vetoed by an adverse majority, the Governor cannot call upon the dissentients to take the place of his own official advisers, who are nominated by the Queen-Empress on the advice of the Secretary of State. Consequently the vote of the opposition in an Indian Council would not be given under the heavy sense of responsibility which attaches to the vote of a dissenting majority in a constitutional country; while no responsible executive could be required to carry on the government unless free to inaugurate whatever measures it considers necessary for the good and safety of the State. It is, therefore, obvious, for this and many other reasons, that, no matter to what degree the liberalization of the councils may now take place, it will be necessary to leave in the hands of each provincial government the ultimate decision upon all important questions, and the paramount control of its own policy. It is in this view that we have arranged that the nominated members in the Council should outnumber the elected members, at the same time that the Governor has been empowered to overrule his council whenever he feels himself called upon by circumstances to do so.

"But though it is out of the question either for the supreme or for the subordinate Governments of India to divest themselves of any essential

portion of that Imperial authority which is necessary to their very existence as the ruling power, paramount over a variety of nationalities, most of whom are in a very backward state of civilization and enlightenment, there is no reason why they should not desire to associate with themselves in council in very considerable numbers such of the natives of India as may be enabled by their acquirements, experience, and ability to assist and enlighten them in the discharge of their difficult duties. Nor can it be doubted that these gentlemen, when endowed with ample and unrestricted powers of criticism, suggestion, remonstrance, and inquiry will be in a position to exercise a very powerful and useful influence over the conduct of provincial and local public business which alone it is proposed to entrust to them. As inhabitants of the country, as intimately associated with its urban and rural interests, as being in continual contact with large masses of their fellow-countrymen, as the acknowledged representatives of legally constituted bodies, or chosen from amongst influential classes, they will always speak with a great weight of authority; and as their utterances will take place in public, their opinions will be sure to receive at the hands of the press whatever amount of support their intrinsic weight or value may justify. By this means the field of public discussion will be considerably enlarged, and the various administrations concerned will be able to shape their course with the advantage of a far more distinct knowledge of the wishes and feelings of the communities with whose interests they may be required to deal than has hitherto been the case—for those wishes and feelings will be expressed, not, as at present, through self-constituted, self-nominated, and therefore untrustworthy, channels, but by the mouths of those who will be legally constituted representatives of various interests and classes, and who will feel themselves, in whatever they do or say, responsible to enlightened and increasing sections of their own countrymen."

The changes introduced by this Act were, broadly speaking, three in number. The first was the concession of the privilege of financial criticism in both the Supreme and the Provincial Councils; the second was the concession of the privilege of asking questions, the third was the addition to the number of members in both classes of Councils. Under the Act of 1861 financial discussion was possible only when the Finance Minister proposed a new tax. By the Act of 1892 power was given to discuss the Budget annually in both the Supreme and the Provincial Councils. "It was not contemplated, as the extracts from the despatch of LORD DUFFERIN would

show, to vote the Budget in India item by item, as was done in that House, and to subject it to all the obstacles and delays Parliamentary ingenuity could suggest; but it was proposed to give opportunity to the members of the Councils to indulge in a full and free criticism of the financial policy of the Government, and he thought that all parties would be in favour of such a discussion. The Government would gain, because they would have the opportunity of explaining their financial policy, of removing misapprehension, and of answering criticism and attack; and they would profit by criticisms delivered on a public occasion with a due sense of responsibility and by the most competent representatives of unofficial India. The native community would gain, because they would have the opportunity of reviewing the financial situation independently of the mere accident of legislation being required for any particular year, and also because criticism upon the financial policy of the Government, which now found vent in anonymous and even scurrilous papers in India, would be uttered by responsible persons in a public position. Lastly, the interests of finance would gain by this increased publicity and the stimulus of a vigorous and instructive scrutiny." (*Extracts from Lord Curzon's speech in 1892, p. 232* of this book.)

The second change introduced by the Act was the concession of the right of asking questions. It was desirable, in the interests of the Government which was then without any means of making known its policy or of answering criticisms or animadversions or of silencing calumny.

Both the above rights of financial discussion and interpellation were, however, subject to conditions and restrictions prescribed in rules made by the Imperial or Provincial Governments.

Thirdly, the Act of 1892 authorised an increase in the size of the Legislative Councils and changes in the method of nomination. The numbers of members to be nominated for legislative purposes were now fixed at 10 to 16 for the Governor-General's Council, 8 to 20 for Madras and Bombay, not more than 20 for Bengal, and not more than 15 for the United Provinces, the minimum proportion of non-officials being left as before. At the same time powers, by the exercise of which important advances were made, were conferred by

a sub-section authorising the Governor-General in Council, with the approval of the Secretary of State in Council, to make "regulations as to the conditions under which such nominations, or any of them, shall be made by the Governor-General, Governors, and Lieutenant-Governors respectively." By regulations subsequently made the principle of election was tentatively introduced, and the proportion of non-officials was increased beyond the minimum laid down by the Act of 1861. The Governor-General's Legislative Council, for example, had to include 10 non-officials, of whom five were nominated on the recommendation of the Calcutta Chamber of Commerce and the non-official members of the Legislative Councils of Madras, Bombay, Bengal, and the United Provinces. In Bombay 8 out of 11 non-officials were nominated on the recommendation of various bodies and associations, including the Corporation, the University, groups of municipal corporations, groups of local district boards, classes of large land-holders and associations of merchants, manufacturers, or tradesmen. Similar provisions were made in regard to the Legislative Councils in Madras, Bengal, and the United Provinces. The key to the policy underlying these reforms of 1892 is therefore rightly stated by Lord Lansdowne in the following words—

"We hope, however, that we have succeeded in giving to our proposal a form sufficiently definite to secure a satisfactory advance in the representation of the people in our Legislative Councils, and to give effect to the principle of selection as far as possible on the advice of such sections of the community as are likely to be capable of assisting us in that manner."

The Act of 1892, in short, was a most cautious but deliberate attempt at introducing the elective element into the government of India. As Mr. Gladstone pointed out—"While the language of the Bill cannot be said to embody the elective principle, it is very peculiar language, unless it is intended to pave the way for the adoption of that principle." As a matter of fact the working of this Act did pave the way for the adoption of that principle in the epoch-making scheme of political reforms associated with the names of Viscount Morley and the late Earl of Minto. "The Bill of 1892," said Lord Morley in the course of his speech on the second

reading of the Indian Councils Bill, "admittedly contained the elective principle, and now this Bill extends that principle."

King-Emperor Edward VII's Proclamation, 1908.—But before going into the details of the MINTO-MORLEY Reforms we should advert to an intermediate event of surpassing importance, *viz.*, the Proclamation of King-Emperor EDWARD VII to the Princes and Peoples of India on the occasion of the fiftieth anniversary of the transfer of the Government of India to the Crown. It was read by His Excellency the Viceroy (the late EARL OF MINTO) in Durbar at Jodhpur on the 2nd November, 1908. We may be permitted to quote here some of the notable sentences in this historic Proclamation—

"Half a century is but a brief span in your long annals, yet this half century that ends to-day will stand amid the floods of your historic ages, a far-shining land-mark. The proclamation of the direct supremacy of the Crown sealed the unity of Indian Government and opened a new era. The journey was arduous, and the advance may have sometimes seemed slow ; but the incorporation of many strangely diversified communities, and of some three hundred millions of the human race, under British guidance and control has proceeded steadfastly and without pause. We survey our labours of the past half century with clear gaze and good conscience."

"Steps are being continuously taken towards obliterating distinctions of race as the test for access to posts of public authority and power. In this path I confidently expect and intend the progress henceforward to be steadfast and sure, as education spreads, experience ripens and the lessons of responsibility are well learned by the keen intelligence and apt capabilities of India."

"From the first, the principle of representative institutions began to be gradually introduced, and the time has come when, in the judgment of my Viceroy and Governor-General and others of my counsellors, that principle may be prudently extended. Important classes among you, representing ideas that have been fostered and encouraged by British rule, claim equality of citizenship, and a greater share in legislation and Government. The politic satisfaction of such a claim will strengthen, not impair, existing authority and power. Administration will be all the more efficient, if the officers who conduct it have greater opportunities of regular contact with those whom it affects, and with those who influence

and reflect common opinion about it. I will not speak of the measures that are now being diligently framed for these objects. They will speedily be made known to you, and will, I am very confident, mark a notable stage in the beneficent progress of your affairs."

The Constitutional Reforms of 1909—The measures of reform foreshadowed in this Royal Proclamation were initiated by LORD MINTO as early as 1906. The full history of these Constitutional Reforms will be found in pp. 245-385 of this book. We shall attempt to give here a bare outline of this history, believing, as we do, that no readers of this book will fail to read those classic discussions which culminated in the epoch-making reforms of 1909.

In a Minute reviewing the political situation in India, LORD MINTO in 1906 pointed out how the growth of education, encouraged by British rule, had led to the rise of important classes aspiring to take a larger part in shaping the policy of the Government. A Committee of the Governor-General's Council was appointed to consider the group of questions arising out of these novel conditions. The subject of the constitution and functions of the legislative councils was publicly re-opened by the announcement of the Governor-General, in a speech addressed to the Legislative Council on the 27th March, 1907, that with the object of satisfying the constitutional requirements of the Indian Empire the Government of India had, of their own initiative, taken into consideration the question of giving the people of India wider opportunities of expressing their views on administrative matters. Later in the same year they issued, with the approval of the Secretary of State, a Circular to all Local Governments and Administrations, inviting their opinions on a number of proposals that they put forward, "subject to this essential condition that the executive authority of the Government is maintained in undiminished strength," in the belief that they represented "a considerable advance in the direction of bringing all classes of the people into closer relations with the Government and its officers, and of increasing their opportunities of making known their feelings and wishes, in respect of administrative and legislative questions". The proposals were exhaustively discussed by the Government of India in their despatch to the Secretary of State, dated the 1st of

October, 1908. The Secretary of State (VISCOUNT MORLEY of of Blackburn), informed the Government of India of his decision in his famous despatch of the 27th of November, 1908 (*See pp. 310-326 of this book*) : and early in the next year he introduced the Indian Councils Bill in the House of Lords. In the course of the debates on this Bill LORD MORLEY announced his intention to appoint an Indian—"one of the King's equal subjects"—to a post on the Governor-General's (Executive) Council. The subject was outside the scope of the Bill, because, as was explained, the power of making these appointments is free from any restriction as to race, creed, or place of birth. As LORD MORLEY emphatically pointed out—"It is quite true, and the House should not forget that it is quite true, that this question is in no way whatever touched by the Bill. If this Bill were rejected by Parliament it would be a great and grievous disaster to peace and contentment in India, but it would not prevent the Secretary of State the next morning from advising His Majesty to appoint an Indian Member. The members of the Viceroy's Executive Council are appointed by the Crown". LORD MORLEY did not hesitate to give effect to his liberal intention, and he forthwith appointed MR. (now Sir) S. P. SINHA, in March 1909, to the post of Law Member of the Governor-General's Council. This appointment carried a step further the policy adopted in 1907, when two Indians were given seats in the Secretary of State's Council. In pursuance of the same policy an Indian has been placed on each of the Executive Councils for Madras, Bombay, Bengal, and Bihar and Orissa. This statesmanlike action on the part of LORD MORLEY has nobly vindicated the gracious intentions of QUEEN VICTORIA contained in the following lines of Her Majesty's Proclamation of 1858—"And it is Our further Will that, so far as may be, Our subjects, of whatever Race or Creed, be freely and impartially admitted to offices in Our Service, the duties of which they may be qualified, by their education, ability, and integrity, duly to discharge."

The Indian Councils Bill was finally passed into law on May 25, 1909 ; the Act was brought into operation on the 15th November, 1909, and the new Legislative Councils met early in 1910. The Act itself was couched in wide and general terms, and left all

details and some important questions of principle to be determined by regulations and rules made by the authorities here.

The effect of the main alterations made in the law, so far as the legislative councils are concerned, may be stated quite briefly. In the first place, it was laid down that the members appointed for legislative purposes, instead of being all nominated, "shall include members so nominated and also members elected in accordance with regulations made under this Act"; secondly, the maximum numbers of such members on the various councils were raised, being at least doubled, and in most cases more than doubled; thirdly, the section of the Act of 1892, under which provision might be made for the discussion of the financial statement and the asking of questions, was repealed and replaced by the following :—

"Notwithstanding anything in the Indian Councils Act, 1861, the Governor-General in Council, the Governors in Council of Fort St. George and Bombay respectively, and the Lieutenant-Governor or Lieutenant-Governor in Council of every province, shall make rules authorising at any meeting of their respective legislative councils the discussion of the annual financial statement of the Governor-General in Council or of their respective local Governments, as the case may be, 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 applicable to the several councils."

The actual numbers of members to be nominated and elected (within the maximum limits laid down), the numbers required to form a quorum, the term of office, the conditions under which and manner in which members should be nominated and elected, and the qualifications for membership, were left to be determined by regulations to be made by the Governor-General in Council subject to the approval of the Secretary of State in Council. Regulations were laid down accordingly for each legislative council separately. These Regulations have since then been revised from time to time, and only a brief account of their effect and purport can be given here. For details reference must be made to the Regulations themselves. (*See pp. 348-376 of this book.*)

The regulations and rules as to elections and nominations were framed for each province with reference to local conditions, with

the object of obtaining, as far as possible, a fair representation of the different classes and interests in the province.

The elected portion of the Governor-General's Council consists of members elected by the non-official members of the provincial councils, by the landholders and by the Mahomedan Communities, in the various provinces, and representatives of the Bengal and Bombay Chambers of Commerce. In the provincial councils seats are provided in most cases for elected representatives of the landholders, municipalities and district boards, the Mahomedan community, the Chambers of Commerce, and the Universities. The few remaining seats are allotted with a view to the due representation of special local interests : thus representatives are elected (one in each case) by the Corporations of Calcutta, Madras, and Bombay, by the planting community in Madras, by the Indian commercial community, by the mill-owners in Bombay, and by the tea interest in Assam. The procedure as to elections is very varied and in many cases very complicated. Some of the main points only can be noticed.

Some general provisions are common to all the provinces. Females, minors, and persons of unsound mind may not vote, neither are they eligible for election. Persons coming under certain other heads (including Government officers) are also declared ineligible for election. Members must, before taking their seats, make an oath or affirmation of allegiance to the Crown. The term of office is ordinarily three years. Corrupt practices render an election invalid.

Subject to these general provisions, the positive qualifications for electors and candidates and the methods of election, are laid down in the detailed rules for the various electorates. They vary considerably from province to province, even in the case of similar electorates. The retention of a number of non-official seats filled by nomination in each council makes it possible to provide for the representation of minor interests and smaller classes as the particular needs of the moment and the claims of each community may from time to time require.

The Act and regulations of 1909 made no alteration in the legislative functions and powers of the Councils. These are

still regulated mainly by the Act of 1861, which included provisions precluding the Indian legislatures from making laws affecting the provisions of Acts of Parliament (save in the case of the Imperial Council, which may, generally speaking, repeal or amend such Acts passed prior to 1860), and specifying, for the Governor-General's Council and the provincial councils respectively, various heads under which legislation cannot be undertaken without the previous consent of the Governor-General. In the case of the Governor-General's Council, this consent must be obtained before any Bill is brought forward which affects religion, the public debt or revenues, the army or navy, or foreign relations; in the case of the provincial councils, the same restriction applies also to Bills affecting the currency, the transmission of postal or telegraphic messages, the Indian Penal Code, patents or copyright. The powers of the local legislatures are strictly territorial, but beyond this no precise line of demarcation is drawn between their legislative spheres and those of the Governor-General's Council. Generally speaking, the Governor-General's Council legislates only in cases where uniformity throughout British India is desirable, or in matters beyond the competency of the local legislatures, or for provinces which have no local legislatures of their own.

The changes made in regard to the discussion of the year's finance are, briefly, that the discussion extends over several days instead of one or two, that it takes place before, instead of after, the budget is finally settled, and that members have the right to propose resolutions and to divide the Council upon them. As indicating the nature of the new rules, a brief summary of the rules laid down for the Governor-General's Council may be given. The first stage is the presentation of the "Financial Statement" (*i.e.*, the preliminary financial estimates for the next year), with an explanatory memorandum. Its further consideration is postponed for some days in order that members may have an opportunity of making themselves acquainted with its contents. Then on an appointed day there is *first* of all a general discussion of the financial statement. Members are at liberty to offer any observations on the statement as a whole or on any question of principle involved therein.

After this general discussion has terminated the *second stage* of discussion takes place on a subsequent day after the finance member has made any explanations he thinks necessary. On this day any member may move any resolution entered in his name in the list of business relating to any alteration in taxation, new loan or additional grant to local governments proposed or mentioned in the financial statement or in the explanatory memorandum, and a discussion takes place on the resolution so moved.

The *third stage* of discussion begins after these resolutions have been disposed of. The member of council in charge of a department explains the head or heads of the financial statement relating to his department, and resolutions may then be moved and discussed.

The Budget as finally settled must he presented to the Council on or before March 24, by the Finance Member, who then describes any changes made in the figures of the Financial statement, and explains why any resolutions passed by the Council have not been accepted.

Similarly, rules are laid down for the discussion of matters of general public interest (excluding, as before, foreign relations, and relations with native states, and matters under adjudication by courts of law), on resolutions moved by members. As in the case of the financial statement, a resolution must be in the form of a specific recommendation addressed to the Governor-General in Council, and, if carried, has effect only as such.

A time limit of 15 minutes is laid down, as a general rule, for speeches, and provision is made for the handing in of printed speeches, which may be taken as read. In the new rules for the asking of questions, an important change is that a member who has asked a question is allowed to put "a supplementary question for the purpose of further elucidating any matter of fact regarding which a request for information has been made in his original question."

The rules as to discussions and resolutions in the various provincial councils differ little in essentials from those of the Governor-General's Council. One distinguishing feature, however, is that in the case of the local financial statements the first stage is an exami-

nation by a committee of the Council consisting of not more than 12 members, six nominated by the head of the Government and six elected by the non-official members.

A passage from the Government of India's Resolution of the 15th November, 1909, may be quoted as summarising the total effect of the changes then made in the constitution and functions of the legislative councils :—

"The constitutional changes that have been effected are of no small magnitude. The councils have been greatly enlarged; the maximum strength was 126; it is now 370. All classes and interests of major importance will in future have their own representatives. In the place of 39 elected members, there will now be 135; and while the electorates of the old councils had only the right to recommend the candidate of their choice for appointment by the head of the Government, an elected member of the new councils will sit as of right, and will need no official confirmation. Under the Regulations of 1892 officials were everywhere in a majority; the Regulations just issued establish a non-official majority in every provincial council. Nor has reform been confined to the constitution of the councils; their functions also have been greatly enlarged. A member can now demand that the formal answer to a question shall be supplemented by further information. Discussion will no longer be confined to legislative business and a discursive and ineffectual debate on the budget, but will be allowed in respect of all matters of general public interest. Members will in future take a real and active part in shaping the financial proposals for the year; and as regards not only financial matters but all questions of administration they will have liberal opportunities of criticism and discussion and of initiating advice and suggestions in the form of definite resolutions. The Governor-General in Council feels that these momentous changes constitute a generous fulfilment of the gracious intention, foreshadowed in the King-Emperor's message, to entrust to the leaders of the Indian peoples a greater share in legislation and government, and he looks forward with confidence to these extensive powers being loyally and wisely used by them, in association with the holders of executive authority, to promote the prosperity and contentment of all classes of the inhabitants of this great country."

The Imperial Coronation Durbar of 1911.—Even before a year's trial could be given to the scheme of reforms thus ushered in, King-Emperor EDWARD VII—"the first Emperor of all India"—

passed away; and the voice of lamentation in India was heard through all the world. His son and successor—H. I. M. KING-EMPEROR GEORGE V—our present King and Emperor—ascended the throne; and almost his first public act after ascending the throne was to send a message to his subjects in the East. "QUEEN VICTORIA, of revered memory," he said, "addressed her Indian subjects and the heads of Feudatory states when she assumed the direct government in 1858, and her august son, my father, of honoured and beloved name, commemorated the same most notable event in his Address to you some fifty years later. These are the charters of the noble and benignant spirit of Imperial rule, and by that spirit in all my time to come I will faithfully abide." His Majesty concluded by saying—"I count upon your ready response to the earnest sympathy with the well-being of India that must ever be the inspiration of my rule."

"His Majesty had formed a new ideal of his high office and recognised most clearly that the Crown was the one and only power by which the scattered elements not of India only, but of his other vast dominions, could be welded into a single living whole for the benefit of all, and he came first of all to India in pursuance of this great design, with the fullest confidence not only that the people of England would, for the sake of their Indian fellow-subjects, readily make the sacrifice involved in his absence, but that the millions of India would not fail to respond, and would regard his visit as the strongest possible proof of British good-will. In his own words, he wished not only 'to strengthen the old ties but to create new ones, and so, please God, secure a better understanding and a closer union between the mother country and her Indian Empire, to break down prejudice, to dispel misapprehension, and to foster sympathy and brotherhood.'"*

His Imperial Majesty's gracious intention to visit India was announced by LORD HARDINGE on his arrival in Bombay on the 18th November, 1910; it was referred to in the Speech from the Throne at the opening of Parliament on the 6th February, 1911.

The Historical Record of the Imperial Visit to India, p. 14.

A Proclamation, issued in England and in India simultaneously on the 23rd March, 1911, declared—"Now we, by this our Royal Proclamation, declare our Royal intention to hold at Delhi on the twelfth day of December, one thousand nine hundred and eleven, an Imperial Durbar for the purpose of making known the said Solemnity of our Coronation."

Their Imperial Majesties the King-Emperor and the Queen-Empress set out from London for their journey to India on the 11th of November 1911 and reached Bombay on the 2nd of December; and the Imperial Coronation Durbar was held on the 12th of the same month. At this great Durbar three announcements were made. The first was made by the King-Emperor himself and expressed his feelings of satisfaction and pleasure:—"It is a sincere pleasure and gratification to myself and the Queen-Empress to behold this vast assemblage and in it my Governors and trusty officials, my great Princes, the representatives of the Peoples, and deputations from the Military forces of my Indian Dominions." The second announcement was made by the Governor-General, on behalf of the King-Emperor, and declared and notified "the grants, concessions, reliefs, and benefactions which His Imperial Majesty has been graciously pleased to bestow upon this glorious and memorable occasion." The third was made by the King-Emperor himself and announced, in memorable words, "the transfer of the seat of the Government of India from Calcutta to the ancient Capital of Delhi, and simultaneously, and as a consequence of that transfer, the creation at as early a date as possible of a Governorship for the Presidency of Bengal, of a new Lieutenant-Governorship in Council administering the areas of Behar, Chota Nagpur and Orissa, and a Chief Commissionership of Assam." The correspondence leading to these announcements is fully reprinted on pp. 449-473 of this book, and its contents are too well-known to need any summarising here.

The solemn ceremony at Delhi was witnessed by officials, civil and military, great Feudatories, and representatives of the people, and its deep political and constitutional significance was understood by all. "Never before had an English King received his Imperial

crown in India; indeed, never before had a British sovereign set foot on Indian soil."* "The visit was really an emphatic announcement that India is an equal and integral part of the British Empire."† It was the perfect and practical fulfilment of the noble words of the great and good Queen—"We hold ourselves bound to the Natives of Our Indian Territories by the same obligations of duty which bind Us to all Our other subjects, and these obligations, by the blessing of Almighty God, We shall faithfully and conscientiously fulfil."

"The event was one of tremendous importance in the history of the Empire. Political aspirations were lifted to a higher plane, patriotism was broadened and intensified, a new pride arose in the heritage of the Empire, and with it a stronger feeling of mutual respect and better social relationship between the natives of India, and the natives of England, to all of whom the King was common, irrespective of religion, race or colour."‡

"Its beneficial results were, and still are, so patent to all that there is no need to pursue the theme further. The work begun by QUEEN VICTORIA, and continued by KING EDWARD, has now been completed by KING GEORGE, and it will never have to be done again in quite the same sense; but human memories are short, and India will ever hope for a renewal of its impressions and a closer association with the Royal House. KING GEORGE and QUEEN MARY have forged the final link of gold, and India is now assured, without a shadow of doubt, of its part in the great Imperial commonwealth and of the inherent sympathy and high intentions of the rule which Their Majesties personify. It knows without doubt that it is no longer a mere subordinate and conquered land, but that it is bound by ties of the closest affection and heartfelt allegiance to a monarch who, amid all the multifarious interests and absorbing activities of his great position, has ever watched its welfare with the deepest interest and sought to give it an equal place in the dominions of the Empire; a Sovereign, too, who lives for unity, in the certain know-

* *Ilbert: The Coronation Durbar and its consequences*, p. 455.

† *The Historical Record of the Imperial Visit to India*, p. 18.

‡ *The Historical Record of the Imperial Visit to India*, p. 17.

ledge that the brotherhood of his world-wide dominion can only be for the benefit of its members and for the blessing and advantage of untold millions of the human race."*

Recent Statutes, 1911-1916.—Before concluding this historical summary we ought to notice a few important statutes. In 1911 was passed the Indian High Courts Act (1 & 2 Geo., V. c. 18) which (1) raised the maximum number of judges of a High Court of Judicature in India to twenty; (2) 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 the local jurisdiction of another High Court, and to make consequential changes altering the jurisdiction of that other High Court; and, (3) 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 given by this Act a new High Court has already been established at Patna for the new Province of Behar and Orissa and the number of Judges of the Calcutta High Court was for a time raised to the maximum.

In the very next year (1912) the Secretary of State for India introduced in the House of Lords an important Bill—the Government of India Bill—"to make such amendments in the law relating to the Government of India as are consequential on the appointment of a separate Governor of Fort William in Bengal, and other administrative changes in the local government of India" The Bill was passed into law on the 25th June, 1912. The main provisions of the Act are—(1) that the Governor of Bengal should have all the rights, duties and functions which the Governors of Madras and Bombay possess; (2) that an Executive Council should be created along with the new Lieutenant-Governorship of Behar and Orissa; and (3) that the Governor-General should be empowered to constitute Legislative Councils for territories under a Chief Commissioner. The scope of this important Act is fully explained by LORD CREWE in his speech on the second reading of the Government of India Bill. (*See pp. 186-190*). This is the last of the long series of import-

* *The Historical Record of the Imperial Visit to India*, pp. 19-20.

ant statutes which have moulded the Indian Constitution into its present shape: all the statutes have, however, now been consolidated into one single all-embracing measure—the Government of India (Consolidation) Act of 1915.

A year's working of the Consolidation Statute revealed defects and deficiencies which necessitated the enactment of the Government of India (Amendment) Act of 1916. We should like to draw special attention to the clauses in the Amending Act enabling (*a*) appointments to be made to civil posts and military commissions of rulers and subjects of Native States and adjacent territories like Nepal (*b*) selected subjects of these States to compete in the Indian Civil Service Examinations, and (*c*) the rulers and subjects to be nominated for the Legislative Councils. All these are significant developments of British policy towards the Native States of India.

Representation of India in the Imperial War Conference and Imperial War Cabinet, 1917-1918.—An event of great constitutional significance happened in December, 1916, when His Majesty's Government invited the Secretary of State for India to represent India at the Imperial War Conference of 1917 and the Secretary of State appointed, in consultation with the Government of India, three Indian gentlemen, to assist him at the Conference. The previous history of the Imperial Conference is fully set out in Lord Hardinge's Speech in the Indian Legislative Council on the 22nd September, 1915 (pp. 608-612). It will be seen that the Conference is of Great Britain, the Dominions and India. Each Dominion is represented by its Prime Minister, and has but one voice in the conference, but the Prime Ministers are permitted to bring with them *such other Ministers as they may desire and may invite these* Ministers to speak on behalf of the Dominions on any particular question. It is obvious that in the case of India, so long as the Secretary of State is directly responsible to Parliament for the policy of the Indian Government, the Secretary of State must be the head of the Indian delegation, and the policy propounded by India must be the policy of the Secretary of State in Council: that being the position in 1916, the Secretary of State's colleagues from India

spoke, with his permission, whenever possible, on behalf of India. In referring to the enormous importance of this step Lord Chelmsford said:—"India has been admitted to-day for the first time to a place of honour at the Council Table of the Empire. It marks a point in the history of India, which, though it may not be seen in its true perspective to-day will, I have no hesitation in saying, be the beginning of a new chapter in India's history under the Imperial flag."

Subsequently the Overseas representatives, assembled in Conference, agreed to the Prime Minister's motion "that meetings of an Imperial Cabinet should be held annually, or at any intermediate time when matters of urgent imperial concern require to be settled, and that the Imperial Cabinet should consist of the Prime Minister of the United Kingdom, and such of his colleagues as deal specially with imperial affairs, of the Prime Minister of each of the Dominions, or some specially accredited alternate possessed of equal authority, *and of a representative of India* to be appointed by the Government of India." In accordance with this resolution India was represented at this year's Conference by the Secretary of State for India, the Hon. Sir S. P. Sinha (representing the Indian people), and H. H. the Maharaja of Patiala (representing the Indian States). In the words of Lord Chelmsford "the status of India in the Empire is thus fully recognized and an advance has been made such indeed as might have been hoped for, but was scarcely to be expected a year ago."

The Proposals for Indian Constitutional Reforms, 1918.—On August 20, 1917, the Secretary of State for India made an epoch making announcement in which he declared that "the policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible Government in India as an integral part of the British Empire." This is perhaps the most momentous utterance ever made in India's chequered history, for it pledges the British Government in the clearest terms to the adoption of a new policy towards

three hundred millions of people. The eventual outcome of the adoption of that policy is thus described by the august authors of the Reform Proposals—"Our conception of the eventual future of India is a sisterhood of States, self-governing in all matters of purely local or provincial interest, in some cases corresponding to existing Provinces, in others perhaps modified in area according to the character and economic interests of their people. Over this congeries of States would preside a Central Government, increasingly representative of and responsible to the people of all of them, dealing with matters, both internal and external, of common interest to the whole of India; acting as arbiter in inter-state relations, and representing the interests of all India on equal terms with the self-governing units of the British Empire." In this picture of the future of political India the Rt. Hon. Mr. Montagu and H. E. Lord Chelmsford have but added the finishing touches to the rough outlines of Lord Hardinge contained in the following extract from his Durbar Despatch of 1911—"The only possible solution of the difficulty would appear to be gradually to give the Provinces a larger measure of self-government, until at last India would consist of a number of administrations, autonomous in all provincial affairs, with the Government of India above them all, and possessing power to interfere in cases of misgovernment, but ordinarily restricting their function to matters of Imperial concern."

The constructive proposals for constitutional reforms which are contained in pp. 117 to 198 of the *Report* are reprinted in pp. 477-566. of this book; the summary of recommendations is to be found in an Appendix at the end. The recommendations may be classed under two heads—(*a*) those which are but developments of existing constitutional law and usage, and (*b*) those which constitute constitutional innovations. The latter far outnumber the former.

We must remember that these recommendations contemplate "transitional arrangements," "Hybrid executives, limited responsibility, assemblies partly elected and partly nominated, divisions of functions, reservations general or particular, are devices that can have no permanent abiding place. They bear on their faces their transitional character; and they can be worked only,' if it is clearly

recognized that that is their justification and their purpose." Bearing all this in mind, no educated Indian ought to have any hesitation in according his cordial support to the general plan of the suggested reforms, though he may take exception to some of the detailed recommendations. All reasonable men would welcome the *Report* as a sincere and genuine attempt to liberalise the Indian constitution with a view to the eventual realization of the goal of Responsible Government. As a state document of historic importance it is more important and more weighty than Lord Durham's Report of 1839, for the problems which faced the Rt. Hon. Mr. Montagu and H. E. Lord Chelmsford were far more complicated and involved greater issues than those which Lord Durham was called upon to solve.

The Position of the Native States : their relation to the Indian Polity :—All the Indian Native States are guaranteed protection by the Crown : as the price for this protection and for the rights which they derive therefrom, they have certain obligations to the British Government. These duties are liable to be reinforced by the exercise of the royal prerogative, by the action of Parliament within the limits which its solemn guarantees impose upon itself, by the law of natural justice, by fresh agreements, and by usage which is ever active to adapt the letter of engagements to their spirit under altered circumstances. Under such circumstances an exact balance of rights and obligations cannot be struck. Nevertheless, the main heads of the account are sufficiently distinct.

(1) The States have entrusted to the Paramount Power the duty of providing for common defence, and of directing their external relations.

(2) In time of war they must co-operate to the full extent of their resources, and in time of peace they must grant to the Imperial Army such assistance as it requires, and must regulate the strength and equipment of their own forces so as to avoid embarrassment to their neighbours and danger to the peace of their own territories.

(3) They must enable the supreme Government to maintain its communication between the military stations and posts occupied by its forces and to avoid dangerous interruptions or break of juris-

dictional gauge in the Imperial system of Railways and Telegraphs.

(4) Inasmuch as the Government of India acts for them in all international and interstatal arrangements, they must loyally carry out the obligations incurred by the Supreme Government to foreign powers or other States on their behalf.

(5) The perpetuation of their governments is incompatible with the dismemberment of their States, internal disorder, or gross misrule. They must, therefore, accept Imperial intervention to prevent or correct such abuses. The laws of natural justice and the principle of religious toleration must be observed.

(6) The right of self-preservation, with its incidental rights, gives to the British Government an indefinable right to protect Imperial interests where they may be injured by the unfriendly action of the King's allies: and it suggests a possible right of intervention in their internal affairs, as in the regulation of currency, or commerce, or in the establishment of postal unions. Each case of interference must, however, be justified by real necessity.

(7) Claiming as they do the protection of the King-Emperor the Indian Princes must seek the confirmation of the Viceroy to their successions, must treat with respect the representatives of the Imperial authority, accept the guidance of the Supreme Government during minorities, and generally prove their loyalty to the Crown.

Such are the extensive duties of the protected princes: but there are strict limitations upon the interference of the British Government. Parliament and the Legislatures of India have on their part recognised the fact that except in the case of British subjects or servants, British legislative and judicial authority cannot extend beyond the territorial limits of India under the King-Emperor. The judicial or legislative functions with which the British Government is invested in regard to the Native States must, therefore, be based on a full recognition of the fact that they are exercised in a foreign territory.

If International law deals only with nations or States whose intercourse with one another is based upon the theory that they are equal powers and have the right to form alliances and declare war, and conclude peace, the Native States of India cannot claim all Inter-

national position. The above-mentioned restrictions placed upon their independent action, and the obligations which habitually govern their external relations, and even to some extent their exercise of internal sovereignty, must be held to have deprived them of real international status. This view is confirmed alike by the action and explicit declaration of the British Government and by the opinions of eminent writers on International Law.

The action and declaration of the British Government as to its relations with the Native States will be evident on an examination of the Manipur Case, (see p. 588) the importance of which lies in the principles which were enunciated and approved by the highest authority. These principles were—(1) the assertion of the right of the Government of India to settle successions and to intervene in case of rebellion against a chief; (2) the doctrine—that resistance to Imperial orders constitutes rebellion; (3) the right of the Paramount Power to inflict capital punishment on those who had put to death its agents whilst discharging the lawful duty imposed upon them. But the most important principle—that of the repudiation by the Government of India of the application of International law to the protected States—was thus formulated in the *India Gazette* of August 21, 1891—"The principles of International Law have no bearing upon the relations between the Government of India as representing the Queen-Empress on the one hand, and the Native States under the suzerainty of Her Majesty. The paramount supremacy of the former presupposes and implies the subordination of the latter."

The testimony of writers of acknowledged authority is hardly less emphatic. According to Twiss the States are "protected dependent States." Sir Edward Creasy in his *First Platform of International Law* deals with the proposition "that titular independence is no sovereignty if coupled with actual subjection." "Such", he observes, "is the condition of the Native Princes of India. We all see clearly in them and in their subjects not independent political communities, which are sovereign States in the eye of International Law, but mere subordinate members of the larger and Paramount political society, the true sovereign State, the British Empire."

Thus the relation of the Native States to the British Crown is different from any relation known to International Law. The Native States are subject to the suzerainty of Great Britain, and are debarred from all external relations. Even in their relations with the British Government they are declared not to be subject to the ordinary rules of International Law. Nevertheless, for other purposes, and within the domain of private international law, such States are to be regarded as separate political societies, and as possessing an independent civil, criminal and fiscal jurisdiction. (*Sirdir Gurdyal Sing* vs. *the Rajah of Faridkote*. *Pitt Cobbett, p. 227*).

Since the connexion between the British Government and the Native States is not one based on International Law, Prof. Westlake suggests that the connexion between the King's authorities in India and his protected allies or rulers of the Native States is a constitutional tie. "The Native Princes who acknowledge the Imperial Majesty of the United Kingdom have no International existence; to International Law a State is sovereign which demeans itself as independent;" and if no foreign relations are allowed it, Westlake will not allow it to be called even semi-sovereign, for "a State is semi-sovereign to the extent of the foreign relations which the degree of its practical dependence allows it." He goes on to argue that, since the British power alone represents to the outside world the unit, India, the political relations possessing any degree of fixity which exist between the component parts of the unit are constitutional. The position of a Native State "appears to be that of a separate part of the dominions of the King-Emperor, as New South Wales and British India are other such separate parts." The Governor-General in Council has been progressively receiving from Parliament power to make laws "for all servants of the Company within the dominions of the Princes and States in alliance with the Company;" "for all British subjects of Her Majesty within the dominions of Princes and States in alliance with Her Majesty, whether in the service of the Government of India or otherwise"; and "for native Indian subjects of Her Majesty without and beyond British India." But with this there comes into combination the fact that, as expressed in the

preamble to the *Indian* Act XXI of 1879, "by treaty, capitulation, agreement, grant, usage, sufferance, and other lawful means, the Governor-General of *India* in Council"—this time not representing the special Government of British India, but as the executive organ for exercising the Imperial supremacy—"has power and jurisdiction within diverse places beyond the limits of British India." Thus reviewing the intrusion of foreign jurisdiction into the States, Westlake argues that their position has been imperceptibly shifted from an International to an Imperial basis. The recent trend of events appears to confirm Professor Westlake's contention. According to the Government of India (Amendment) Act of 1916 rulers and subjects of the Native States can be appointed to Civil posts and military commissions and nominated for the Legislative Councils. A Native Prince was invited to be present at the Imperial Conferences of 1917 and 1918. The Montagu-Chelmsford Reform Scheme contains proposals for the formation of a Council of Princes to be presided over by the Viceroy and for the joint deliberation and discussion between the Council of Princes and the Council of States. After all, both the Native States and the British Government are striving for the same end, *viz.* the progressive welfare of the people: the interests are so common, the points of contact are so many that it is inevitable that in the process of time the Native States should abandon their isolated, atomic existence and become joint partners in the great Imperial Commonwealth of Nations.

III. THE DEVELOPMENT OF THE SYSTEM OF PROVINCIAL FINANCIAL SETTLEMENTS.

The theory and early history of the settlements.—The institution of Provincial Financial Settlements represents an attempt to solve a problem which must always arise where there exists a Local Government in complete or partial subordination to a Supreme Central Authority. Certain classes of expenditure must obviously be left to the subordinate authority, while other services can be satisfactorily administrated by the Central Government alone. Both these bodies require to be kept in funds. In India, where the great

bulk of the revenues of the country is collected in, and credited to the accounts of, the various Provinces, the problem resolves itself into the question how the Central Government can best be supplied with resources to meet the charges of the services which it must of necessity administer. The Provincial Settlements represent a method of attaining this object which has been evolved by diverse and protracted experiments, the history of which we now proceed to trace.

Originally, the financial affairs of the three Presidencies were in the main kept separate until 1833 when, by Act of Parliament (3 & 4 Will. 4, c. 85, ss. 39 & 59), the Governor-General was entrusted with a general control over Madras and Bombay. By this statute it was provided that "no Governor shall have the power of creating any new office or granting any new salary, gratuity or allowance, without the previous sanction of the Governor-General". All financial powers were thus practically vested in the Central Government. This continued up to 1871, as the Decentralisation Commission have observed in para. 54 of their Report. There they say—"Save in respect to local cesses which were levied in some Provinces, principally for roads, schools, and other items of local expenditure, each Provincial Government was absolutely dependent on sums annually assigned to it by the Central Government for the upkeep of its administrative services."

The system was thus a centralized system by which the revenues of the whole of India, although received in the treasuries and sub-treasuries of the various Provinces throughout India, were credited to a single account viz. the account of the Central Government ; and the Central Government took upon itself the entire distribution of the funds needed for the public service throughout India.

The evils of the system were manifest. In the words of Sir JOHN STRACHEY*—"the Supreme Government controlled the smallest details of every branch of the expenditure ; its authority was required for the employment of every person paid with public money, however small his salary, and its sanction was necessary for the grant of funds even for purely local works of improvement, for every local road, for every building, however insignificant".

* *The Finances and Public Works of India, p. 131.*

Under such a system the Provincial Governments had little liberty, and but few motives for economy, in their expenditure. While intended to effect economy, the system resulted in extravagance, for each Provincial Government was tempted to make unlimited demands, because there was almost no limit to their legitimate wants. "The Local Governments had no means of knowing the measure by which their annual demands upon the Government of India ought to be regulated. They had a purse to draw upon of unlimited, because unknown, depth. They saw on every side the necessity for improvements, and their constant and justifiable desire was to obtain for their own Province and people as large a share as they could persuade the Government of India to give them out of the general revenues of the empire. They found by experience that the less economy they practised, and the more importunate their demands, the more likely they were to persuade the Government of India of the urgency of their requirements." As MAJOR-GENERAL STRACHEY has remarked—"The distribution of the public income degenerates into something like a scramble in which the most violent has the advantage, with very little attention to reason As local economy leads to no local advantage, the stimulus to avoid waste is reduced to a minimum. So, as no local growth of the income leads to an increase of the local means of improvement, the interest in developing the public revenues is also brought down to the lowest level."

The unsatisfactory condition of the financial relations between the Supreme and the Local Governments led to still more serious evils. Constant differences of opinion about petty details of expenditure, and constant interference of the Government of India in matters of trivial importance, brought with them, as a necessary consequence, frequent conflicts with the Local Governments regarding questions of provincial administration of which they were the best judges, and of which the Government of India could know little. The relations between the Supreme Government and the Local Governments were altogether inharmonious, and every attempt to make financial control more stringent increased an antagonism the mischief of which was felt throughout the public service.

There was thus continual friction between the Government of India and the Provincial Governments whose interests were made antagonistic. So far back as 1860 a reform of the system in the direction of provincialising finance was suggested by GENERAL DICKENS, then Secretary to the Government of India in the Department of Public Works. MR. LAING, the Finance Minister, drew attention to the subject in the Budget statement for 1861-62, and again in 1862-63. In 1867, a definite scheme of Provincial Finance was drawn up by GENERAL RICHARD STRACHEY for Mr. MASSEY, the then Finance Minister; but nothing was actually accomplished at that time.

Lord Mayo's Scheme of Provincial Financial Settlements.—It was LORD MAYO who practically inaugurated the scheme of what is known as the "Provincial Financial Settlement." He resolved to give the Local Governments the economical standard which they required, to make over to them a certain income by which they must regulate their local expenditure and to leave to them, subject to certain general rules and conditions, the responsibility of managing their own local affairs.

By a Resolution dated the 14th December, 1870, the following heads of expenditure were transferred to the control of the Local Governments with the revenue under the corresponding heads and a fixed annual Imperial grant to meet them—Jails, Registration, Police, Education, Medical Services, Printing, Roads, Miscellaneous Public Improvements and Civil Buildings. Out of the Imperial assignment the Provincial Governments were required to pay 7 p. c. to the Imperial Government as a relief to its finances. The deficit, if any, was to be met either by local taxation or by reduction of expenditure. The following table will explain the nature of the financial arrangements :—

	£
Total Provincial Expenditure ...	5,667,000
Imperial Assignment	4,689,000
Receipts	647,000
Assignment from Provincial to Imperial—	331,000
	5,667,000

The only Provinces in which local taxes were imposed in consequence of LORD MAYO'S decentralization measures were Bombay, Bengal and Oudh ; and the total amount which they were expected to yield in the first year was £210,000.

These arrangements separating provincial from Imperial finances came into operation from the commencement of the official year 1871-72. The views of LORD MAYO were thus stated by himself in the Legislative Council on the 18th March, 1871.

"Under these 8 heads, it is proposed to entrust the administration under a few general conditions to the Provincial Governments, and a fixed contribution will be made from Imperial revenues every year. * * * It is impossible to prophesy or say at present what can be done in the far future ; but I should be misleading the Local Governments if I were not to say that it is our opinion that these sums are now fixed at an amount which cannot be exceeded for at least a number of years. I think it desirable that this should be perfectly understood, because, one of our objects is the attainment of as great an amount of financial certainty as is possible. We believe that, in justice to other public claims which are certain hereafter to be made on Imperial revenue, in view of increased charges for the payment of interest and other objects, we cannot, without recourse to large additional Imperial taxation, increase this sum, as now fixed, to any very considerable amount. We know that, if it is necessary, the sums which have been hitherto allotted for this purpose can be increased by local taxation in a manner much less burdensome and much less offensive to the people than they could be by Imperial taxation. If it is necessary or desirable to spend more money, that money must come from some other source. It is possible that the wants of the Local Governments may increase, and I daresay they will ; but if they do, we believe, after most mature consideration, that these wants can better be supplied within the limits of the Provinces themselves, than they can be by adding to the Imperial taxation and to the general burdens of the people. But, in addition to the increased power of administration which it is proposed to give to the Local Governments, an administrative change will take place which I think they will be able to exercise with advantage. They will have a large sum to devote to local objects ; the power of allotment will be left absolutely to them, and they will be able to vary their grants from roads, civil buildings, education, and other heads from year to year, as they may think most desirable. In some Provinces it may be desirable in one year to spend a larger sum on roads,

in others it may be desirable to fill up some shortcomings with regard to education or other objects. The Local Governments will thus be able to exercise that power of allotment with much greater satisfaction to themselves and to the public than they did under the old system, when they had been obliged to consult the Supreme Government, not only as to the allotments that were made in the beginning of the year, but also with regard to any appropriations that were thought desirable within the year, provided that those appropriations exceeded a certain amount. * * *. I have heard it stated that, by the proposals which we make, there may arise a separation of interests between the Supreme and Local Governments. I fail to perceive any strength whatever in this assertion. I believe that, so far from there being a separation of interests, the increased feeling of responsibility and the feeling of confidence which is reposed in them will unite and bind together the Supreme and Local Governments to a greater extent than before. * * *. I believe that we shall see, in place of greater uncertainty, greater certainty; we shall see works and objects carried on with more vigour, enthusiasm, and with less hesitation, when these works and these objects are effected under the immediate responsibility of those who are most interested in them."

These were not the only results which LORD MAYO anticipated from the adoption of the scheme. He believed that it would have a most important effect in stimulating and developing local and municipal institutions. "Local interest," so runs the famous Resolution, of the 14th December, 1870, "supervision, and care are necessary to success in the management of funds devoted to education, sanitation, medical charity and local public works. The operation of this Resolution, in its full meaning and integrity, will afford opportunities for the development of self-government, for strengthening municipal institutions, and for the association of Natives and Europeans to a greater extent than heretofore in the administration of affairs. The Governor-General in Council is aware of the difficulties attending the practical adoption of these principles; but they are not insurmountable. Disappointments and partial failures may occur; but the object in view being the instruction of many peoples and races in a good system of administration, His Excellency in Council is fully convinced that the Local Governments and all their subordinates will enlist the active assistance, or at all events the sympathy, of the many classes which have hitherto taken little or no part

in the work of social and material advancement" The Local Governments generally accepted the arrangements with alacrity, valuing highly the large increase of power accorded to them.

Lord Lytton's New Scheme of Provincial Financial Settlements, 1877.—The weak point in LORD MAYO's measures of financial decentralisation was, according to SIR JOHN STRACHEY, that "while they transferred to the Local Governments the responsibility for meeting charges which had an undoubted tendency to increase, the income of which the Local Governments had to dispose, although not quite a fixed amount, had little room for development: the difficulty has perhaps not, hitherto, been generally felt to a serious extent, because it has been met by economy and good management: it must, however, be felt hereafter; and, for this and for still more important reasons, I have always maintained that the system of Provincial Assignments established in 1871 ought to be applied not only to expenditure but to income. What we have to do is, not to give to the Local Governments fresh powers of taxation, but, on the contrary, to do all that we can to render fresh taxation unnecessary and to give to those governments direct inducements to improve those sources of existing revenue which depend for their productiveness on good administration."

To effect these objects SIR JOHN STRACHEY, the Finance Minister under LORD LYTTON'S administration, introduced a new scheme which extended provincial independence in the matter of expenditure and also conferred upon the Provincial Governments for the first time a large interest in the revenue receipts. Madras alone remained under the system of 1871.

The new scheme was elaborated by SIR JOHN STRACHEY in the Financial Statement for 1877-78. He announced that the Government intended to proceed further and to transfer to the Local Governments the financial responsibility for other services, the cost of which had hitherto been met from the general revenues (*i.e.* from the Imperial assignments). The services so transferred were those connected with Land Revenue, Excise, Stamps, General Administration, Stationery, Law and Justice,—all, in fact, except those for which the Supreme Government, was prevented by some special

reason from transferring the financial responsibility (such as Customs, Salt, Opium, Railways etc).

The Local Governments did not receive for the performance of these newly transferred services, as they had for the services imposed on them by LORD MAYO, merely a lump sum from Imperial revenues. The opportunity was seized to make them responsible for the efficient collection of revenue as well as for its economical disbursement. The only source of revenue that had been transferred to the management of the Local Governments by LORD MAYO, was the departmental receipts from the departments that they managed ; for the rest of the money that they spent they depended on the permanent grants assigned to them. "Thus, while a direct interest had been given to them in distributing their resources well, and in spending them economically, they had no such interest in the collection of the revenue ; and, meanwhile, the excise and stamp duties were notoriously evaded, and the Government suffered, through careless collection of revenue, a loss of which the amount was, of course, unknown, but which was, in the opinion of the Finance Minister, very large."

The Government of India, therefore, determined to give to the Local Governments, the servants of which had always had the duty of collecting the revenue, an interest in seeing that that duty was well discharged, and that the revenue was collected in full. This determination it carried out by assigning to the Local Governments, for the discharge of the services newly imposed on them, not an increase in their permanent grants, but a share in the revenue realised under certain heads in their respective Provinces. To the North-Western Province (now the United Provinces) for example, they assigned the revenues derived from excise, stamps, law and justice, collections from certain estates, and some miscellaneous items, on condition that the Supreme Government should take half of any surplus that might be realised over the specified amount that these sources were estimated to yield, and should bear half of any deficit. The Local Governments, however, were not invested with any power of imposing fresh taxation, of undertaking any new general service, of abolishing or reducing the pay and allowances of any appointment

with a salary of more than Rs. 250 a month, or of making any change in the system of revenue management, or in the form or procedure of the public accounts, without the sanction of the Government of India. The principle underlying it all was that the Local Government should not enforce economy at the expense of the efficiency of the administration or increase expenditure which would affect the uniformity of the system in other parts of India.

The Local Governments were required to keep the Governor-General in Council, in the several departments, fully informed of their executive and financial proceedings. The position that the Government of India intended to take up with regard to the details of provincial finance was expressed in the following words—

"The Governor-General in Council will not relinquish his general powers of supervision and control in any department, but His Excellency will, as far as possible, avoid interference with the details of the administration of the transferred revenues and services, and any embarrassment of the provincial finances."

The general result of the reform of 1877 was to give to the Provincial Governments a free Budget of about Rs. 16,000,000, including local funds.

The following letter addressed to the Government of India expresses the opinion of the Government of Bengal on the new system, at a time when it had been recently introduced, and when, therefore, the difference between its effects on administration and the effect of the old decentralising system was sharply felt—

"The Lieutenant-Governor has found that the general effect of the extension of the decentralisation system, in respect to the facilities which it has given to provincial administration, has been even more satisfactory than he anticipated. In making the Local Governments responsible for expenditure, and giving them a direct interest in the development of various branches of the revenue, it has secured a careful scrutiny over the expenditure of all departments, and a deep interest in all improvable heads of revenue which has extended to all grades of the services. District officers understand that the Local Governments can sanction no new scheme, and few new works, unless it has a constantly improving revenue; and they have shown an earnest desire to assist the Government by the adoption of every measure which their local experience suggests as likely to have a beneficial effect on the revenues. At the

same time the Local Government has, since the inauguration of the system of Provincial Finance in 1871-72, been in a position to carry out many works and many measures of improvement on its own responsibility, which would, under the old system, have possibly been delayed for an indefinite period. All friction with the Imperial Government has been obviated, and much useless and unsatisfactory correspondence avoided."

Lord Ripon's Reforms in the System of Provincial Financial Settlements, 1882.—The arrangements for 1877-78 left room for a further increase of provincial responsibility, in as much as a large proportion of the yearly income of each Province was drawn, not from revenue for the collection of which the Local Government was responsible, but from a lump grant made by the Supreme Government. In 1882 when LORD RIPON was Governor-General and MAJOR BARING LORD CRONOR Finance Minister, a modified scheme of Provincial Finance was introduced for a period of 5 years. The new system introduced was as follows.—A fixed permanent grant was no longer assigned to the Local Governments as a part of their resources, but, instead, they were granted the whole product of some sources of revenue, and a share in the product of others, including land revenue. The result was that a few, including Opium, Salt, Customs, Tributes, Post Office and Military Receipts, were reserved almost wholly as Imperial ; a few others, such as receipts by Civil Departments and receipts from Provincial Public Works, were handed over almost entirely to the Provincial Governments ; the majority, being those before transferred, with the addition of Forests and Registration, were divided, for the most part in equal proportions, between the Imperial and Provincial exchequers ; and as the balance was against the Provinces, this was rectified not by the allotment of a lump sum as formerly, but by a fixed percentage on the Land Revenue, which was thus also in a measure made Provincial.

The general result of the arrangement of 1882 was that the revenue of the Local Governments was for five years from that time made up of—

The whole of the revenue under heads producing	£4,000,000
Half of the revenue under heads producing	£8,000,000
A larger or smaller proportion under heads (chiefly land revenue) producing	£23,000,000
An almost nominal share under heads producing ...	£7,000,000

Thus the Local Governments had a direct interest in the collection of revenue to the amount of £42,000,000, while they administered the expenditure wholly under heads for which, the grants at the time of making the agreements amounted to £15,000,000, and to a very small extent under heads for which the grants amounted to £4,000,000.

Another measure, affecting the relations between the Supreme Government and the Local Governments was adopted in 1882 The financial relations between the Imperial and Provincial Governments were defined in respect to the two extraordinary charges of war and famine. With regard to war, no demand was to be made on the Provincial Governments except in the case of a disaster so abnormal as to exhaust the Imperial reserves, and to necessitate the suspension of the entire machinery of public improvement throughout the Empire. With regard to famine, it was declared that the Imperial Government would come to the rescue of the Provincial Governments at an earlier stage than before, *i.e.*, when the famine was proved to be severe, and as soon as the Provincial resources were embarrassed, without regard to the actual amount expended. And, as the Imperial Government made an allotment every year of £1,500,000 for Famine Relief and Insurance, it was no longer held incumbent on the Provincial Governments to accumulate any special reserve on this account.

Thus the Local Governments were placed in a position to enjoy, in the management of the resources entrusted to them for the administration and internal development of their respective Provinces,

a sucurity such as was unknown to the Government of India. As MAJOR BARING (LORD CROMER) remarked, "one result of the provincial arrangement concluded in 1882 was, that of the four peculiar dangers to which the finances of India were exposed *viz.* war, a diminution of the opium revenue, fall of exchange and famine, the first three had had to be met by the Government of India and only the fourth was felt by the Local Governments."

Alterations in the system of Provincial financial settlements, 1884-1897.—The next alteration in the system of provincial finance was made in 1884. In the three years preceding that year the Local Governments had been spending the large balances that had accumulated during the Afghan War, when the Government of India had temporarily checked provincial expenditure, and also the Rs 670,000 which the Government of India had withdrawn from them during the war, and had subsequently refunded. This abnormal expenditure suggested the adoption of a measure to prevent excessive fluctuations in the finances of the Local Governments, and with effect from the 1st of April in that year, a minimum was prescribed below which the balance to the credit of each Local Government was not to be allowed to fall, according to the Budget estimate.

The administrative results of the system were described as follows in 1885 by SIR AUCKLAND COLVIN, then financial Member of the Viceroys' Council—"The system inaugurated by LORD MAYO, which has now fully taken root and become part of our system of local administration in India, has continued during the last three years to work greatly to the advantage of the several Governments, which share in it. Friction has been reduced to a minimum; and if, as was inevitable, questions have, from time to time, arisen regarding the amount of assistance to be afforded by the Government of India to this or that Local Government in regard to some particular project, or some reform involving an increased outlay of funds, they have given evidence of the existence of a spirit of mutual concession, which is in marked contrast to the relations existing in former times betweeen the Supreme and the Provincial Governments under the centralised system of finance."

In 1887 when the term of the quinquennial arrangements made in 1882 came to an end, the Government of India appointed a Finance Committee to investigate the financial administration of each Province and to offer suggestions for the framing of the agreements that were to be made for the quinquennium 1887-88—1891-92. The general result of the revision was to transfer an annual sum of Rs. 64,00,000, or, allowing for increased grants, a net sum of Rs. 55,00,000 from Provincial to Imperial revenues, the estimate being based upon the increased receipts under the different main heads, and making due allowance for increased provincial demands.

There was again another revision of the settlement in 1891-92 which came into operation from 1892-93 and of which the result was a further resumption by the Imperial Government of the surplus of provincial receipts to the amount of Rs. 46,63,000 which represented about 25 p. c. of the increased revenue that accrued during the currency of the arrangements that expired with 1891-92.

Towards the close of this quinquennium *i.e.*, in 1897 the provincial finances were reviewed, an estimate was made of the expenditure thought necessary for each Province on all the services with which it was charged, and a suitable proportion of the revenue collected in the Province was set apart to meet it. Under the contracts of 1897, the provincial Governments, speaking generally, retained the whole of the provincial rates, and of the receipts of certain departments, such as law courts, jails, police, education, medical services, local marine services, scientific departments, pension contribution, most of the minor irrigation works, certain State railways, and major irrigation works, buildings and roads, stationery and some miscellaneous heads; three-fourths of the stamp revenue; half of the revenue from assessed taxes, forests, and registration; a varying proportion (generally one-fourth) of the land revenue, and one fourth of the excise revenue (or one-half in Burma and Bengal). With some exceptions, they had to meet out of these revenues expenditure under most of the heads just enumerated, and a share of the cost of collection under the revenue heads corresponding to the proportion of the receipts which they received, though in the case of land revenue, they bore, except in

Bengal, the whole cost of collection. They were also responsible for famine-relief expenditure up to their financial capacity, for certain political charges, and miscellaneous items. The total revenues thus assigned to them amounted in 1901-2 to £16,746,000, while the aggregate of the revenue heads, in the collection of which they had a direct and substantial interest, was £36,811,000 or nearly 49 p. c. of the gross revenues of India.

Any balance which they could accumulate by careful administration was placed to their credit in the accounts; but on occasions of extraordinary stress, the Central Government had sometimes called upon them to surrender a portion of their balances. This was done during the Afghan War, after which the sums so taken were refunded and again in 1886-87, in 1890-91 and in 1894-95, the amounts being refunded in the last two instances.

The Quasi-Permanent Settlements, 1904.—The quinquennial contract of 1897 which would normally have expired in 1902 was temporarily prolonged till the year 1904 which witnessed an important new departure, *viz.*, the institution of a system of *quasi*-permanent settlements.* Under these the revenues assigned to a Provincial Government were definitely fixed, and were not subject to alteration by the Government of India save in the case of grave Imperial necessity, or in the event of experience proving the assignment made to have been materially disproportionate to normal provincial requirements. Settlements of this character were made with all major Provinces.

The object and principal effects of these settlements were stated to the Royal Commission on Decentralisation by the Financial Secretary to the Government of India in the following terms :—

> The general principles which underlie the financial settlements made by the Government of India with a Local Government are as follows :—
>
> (*a*) That the Government of India shall retain certain administrative services which it is inexpedient to hand over to Provincial Governments, and that they shall reserve the revenue from

* This account is based on pp. 28—30 of the *Report of the Royal Commission on Decentralization, 1909.*

these services, and such a share of the other public revenues as shall be adequate to the expenditure falling upon them.

(*b*) That the remaining administrative services of the country being entrusted to Provincial Governments, each Local Government shall receive an assured income which will be independent of the needs of the Government of India and sufficient for its normal expenditure.

(*c*) That this income shall be given in the form of a defined share of the revenue which the Local Government collects, in order that the Local Government's resources may expand along with the needs of its administration.

(*d*) That, so far as possible, the same share of the chief sources of revenue shall be given to each Province, to insure a reasonable equality of treatment.

* * * * *

The object of making provincial settlements *quasi*-permanent was to give the Local Governments a more independent position, and a more substantial and enduring interest in the management of their resources than had previously been possible. Under the previous system, when settlements were revised every five years, it was the practice for the Imperial Government to resume the surplus of the Local Government's revenue over its expenditure. This unfortunate necessity (which it is only just to say was largely the result of severe financial pressure on the Government of India during the years of low exchange) went far to destroy any incentive in a Local Government to economise, as it knew that its reduced standard of expenditure would be the basis for a correspondingly unfavourable settlement at the next revision. All this disappears under the existing system. A Local Government need not fear, in any except very abnormal circumstances, the resumption of its surplus revenue by the Imperial Government ; it can count upon a reasonable continuity of financial policy ; it will be able to enjoy fully the fruits of its economies, and it will not be hurried into ill-considered proposals in order to raise its apparent standard of expenditure. On the other hand, the Imperial Government improves its relations with Local Governments by avoiding five-yearly controversies over the settlement ; it can calculate its own resources with more confidence, and can undertake reductions of taxation or fresh schemes of expenditure with a clearer knowledge of the consequences than was formerly possible.

Generally speaking, the effect of these settlements was as follows: the Government of India received the whole of the revenue accruing from opium, salt, customs, mint, railways, post and telegraphs, and tributes from the Native States, while the Provincial Governments got all receipts from registration and from the spending departments which they managed, such as police, education, law and justice, and medical. The receipts from land revenue, excise, stamps, income-tax and forests were divided between the Imperial and Provincial Governments, generally in equal proportions. The receipts from the larger irrigation works were also generally shared: those from minor irrigation works were (except in one Province) wholly Provincial, as were also civil works receipts other than those appertaining to Imperial buildings. The bulk of the provincial revenues was derived from the divided heads.

Expenditure in connexion with sources of revenue which were wholly Imperial, was Imperial also, while, subject to minor exceptions, provincial revenues were responsible for the whole of the expenditure incurred within the Province in connexion with land-revenue (which included district administration), registration, law and justice, police, jails, education, medical, stationery and printing, and provincial civil works. Charges relating to stamps, excise, income-tax and forests were equally divided, while the incidence of Irrigation expenditure followed that of the receipts. The Provincial Governments were also responsible for the charges of such scientific and minor departments as they administered, and for political charges in connexion with the Native States under their control; but the bulk of the expenditure in connexion with the Political Departments fell on the Government of India, as did all ecclesiastical charges.

The charges thrown on Provincial Governments by these settlements being, generally, somewhat in excess of the assigned revenues, the difference was made up, as formerly, by a fixed assignment under the land-revenue head; but the policy of the Government of India was to make such assignments as small as possible, when the settlement was framed, so as to enable each Province to derive the bulk of its resources from growing revenues.

Moreover, with these *quasi*-permanent settlements, the Provincial

Governments concerned had all received considerable initial lump-grants, principally with the object of enabling them to undertake works of public utility at an earlier date than would have been possible from their ordinary revenues. Further, the ordinary resources of the Provinces had been largely supplemented by special grants, principally for the development of police reform, agriculture and education, and the Government of India had also made a special assignment to supplement the ordinary revenues of district boards. Finally, new arrangements were made for relieving the Provinces of the burden of famine relief. The Government of India was to place year after year, up to a fixed maximum, to the credit of each Province exposed to famine, a specific amount calculated roughly with reference to its estimated famine liabilities; and when famine actually occurred, the Provincial Government was to draw in full on this credit without trenching on its normal resources. When such credit had been exhausted, the famine charges were to be divided equally between the Imperial and Provincial Governments, instead of being wholly debited to the latter; and if, even under these conditions, the provincial balances should be depleted below half the ordinarily prescribed minimum further assistance was to be given from Imperial revenues

---

This scheme called the Famine Insurance Scheme, which came into operation from 1907-8, is thus described by SIR JAMES MESTON in his Financial Statement for the year 1907-1908,—"The ruling principle of the scheme is to enable each Local Government whose territories are liable to famine gradually to build up a reserve of credit with the Imperial Government on which it will be at liberty to draw when it becomes necessary to incur expenditure on famine relief. The means of creating this reserve of credit will be provided from Imperial revenues, in the form of an increase to the annual fixed assignment of each Local Government. This arrangement is equitable, and indeed necessary, because the existing provincial settlements make no allowance for famine relief expenditure, and the Provincial Governments could not provide the funds without curtailing their ordinary expenditure."

"When famine occurs, the Local Government will be entitled to draw upon the amount standing to its credit to meet its famine expenditure, and charges thus incurred will be shown in our accounts as Imperial expenditure instead of being provincial as at present, and an account will be kept of the amounts thus accumulated year by year to the credit of each Government. In a famine of relatively small extent the reserve of credit will usually be sufficient to meet the whole charge, and the Local Government will be secured from all dislocation of its ordinary administrative machinery"

"If a famine should be widespread or severe, it is possible that the reserve of credit may be exhausted. When that happens, we have decided that any further

At the time when the Royal Commission on Decentralization published their report in 1909, there were three noticeable features in the Provincial Financial Settlement System—

(1) The settlements had been declared to be *quasi*-permanent. The Government of India had, it is true, reserved the right of revision, but they had promised to exercise that power 'only when the variations from the initial relative standards of revenue and expenditure were, over a substantial term of years, so great as to result in unfairness either to the Province itself or to the Government of India, or in the event of the Government of India being confronted with the alternatives of either imposing general taxation, or seeking assistance from the Provinces.'

(2) The distribution of revenues between the Provincial and Central Governments was made, except on occasions of grave emergency, with direct reference not to the needs of the Central Government, but to the outlay which each Province might reasonably claim to incur upon services which it administered. The first step taken in concluding a settlement was to ascertain the needs of the Province and assign revenue to meet them, the residue only of the income of the Province coming into the Imperial Exchequer.

(3) The third feature of the system was the method by which the revenue accruing from various sources was distributed. The residue which was available for Imperial purposes was taken in the shape of a fixed fractional share in a few of the main heads of revenue, which were known as "divided heads." As, however, the distribution of these heads could never be so adjusted as to yield to the Province, when added to the

---

expenditure on famine relief shall be equally shared between the Imperial and the Local Government, instead of being wholly provincial as at present. Both governments will bear their share of the inevitable burden, but the Local Government will have to support it to only one-half of the extent that it does at present."

"If a famine should unhappily be prolonged, it may happen that even this measure of assistance may be insufficient. We have, therefore, decided that when, in consequence of the prevalence of famine the balances of any Local Government are depleted, so that they fall below one-half of the prescribed minimum, further assistance shall be given from Imperial revenues." In 1917 this arrangement was simplified by making famine relief expenditure a divided head, the outlay being borne by the Imperial and Provincial Governments in the proportion of three to one, which coincided approximately with the actual incidence under the previous system.

revenue from the purely provincial heads, the exact sum necessary to meet provincial charges, equilibrium was effected by means of fixed cash assignments; a deficiency being remedied by an assignment to provincial revenues from the Imperial share of the land revenue, and an excess by the reverse process.

The Scheme of Permanent Provincial Financial Settlements, 1912.—In 1912 no alteration was made in these general principles except in the direction of giving greater permanency to the settlements. From the point of view of the Central Government a measure of this kind was rendered vitally important by the existing situation of Imperial finances. Simultaneously with the prospect of the loss of a considerable annual revenue from opium, the Government of India were faced by the necessity of providing large and increasing funds for the extension of education, for the improvement of sanitation, and for other kindred purposes. To insure successful conduct of their finance in these circumstances it was essential to remove every avoidable element of uncertainty. They, therefore, decided to introduce as great a degree of finality as possible into the financial relations of the Imperial with the Provincial Governments.

Before detailing the steps which the Government of India decided to take in order to secure an increase of permanency in the settlements, we shall indicate here some of the minor points that were settled in the Resolution of 1912. The first of these points was the desirability of converting over-grown fixed assignments into shares of growing revenues. The Government of India decided that fixed assignments should be replaced by a share of growing revenue in the following circumstances only :—

(1) When an assignment is so large as to prevent the increment in revenue from keeping abreast of the legitimate and necessary growth of expenditure.

(2) When the financial outlook of the moment justifies the abandonment of the necessary amount of growing revenue in exchange for the reduction of fixed charges.

The second point was the question of lump grants from Imperial to Provincial balances. Such grants have frequently been given to

individual Provinces, in order either to admit Local Governments to a share in a "windfall" or an exceptional increase of prosperity, or to afford the means of financing a policy which commends itself to the central authority. The principle of making allotments of this kind, which has been described as a "policy of doles", was subjected to considerable criticism before the Royal Decentralisation Commission. The chief charges brought against this policy are—that it increases the opportunities for interference by the Government of India in provincial affairs ; that a fair distribution of the grants among the Provinces is frequently a matter of extreme difficulty ; and that this system often compels Local Governments to spend money on objects of less comparative urgency than other needs of their populations. From the point of view of the stability of Imperial finances, the policy has the additional disadvantage that it must tend to decrease the provincial sense of financial responsibility, by accustoming Local Governments to look for special and spasmodic assistance outside the terms of their settlements. While fully appreciative of these drawbacks attaching to the system, the Government of India were convinced that the total abolition of the doles was impracticable.

A line of policy pressed upon the Government of India by the Secretary of State, by the obvious trend of public opinion or by the competition for efficiency among Local Governments, must frequently be passed on to the Provinces, and to insure its efficient prosecution, it is essential that the latter should be provided with funds additional to their ordinary resources. Again, it often happens that the Imperial Government secures a surplus which cannot suitably be employed in the reduction of taxation, and it naturally wishes to share its windfall with the Provinces. In both these cases, doles are unavoidable. To minimise these disadvantages the Government of India have accepted the three recommendations of the Royal Decentralisation Commission :—

(1) The system should not involve any greater degree of interference by the Central with the Local Governments than at present exists ;

(2) The grants should be given with due regard to the wishes of the provincial authorities ;