

as an Act passed by the Governor-General in Legislative Council, and may be controlled or superseded by any such Act.

Local Legislatures.

72. (1) For purposes of legislation, the Council of a Governor or of a Lieutenant-Governor having an Executive Council, shall consist of the members of his Executive Council with the addition of members nominated or elected in accordance with rules made under this Act.

(2) In the case of the Councils of the Governors of Madras and Bombay (and, if so ordered by the Governor of Bengal, in the case of his Council), the Advocate-General or acting Advocate-General for the time being of the presidency shall be one of the members so nominated.

(3) The Legislative Council of a Lieutenant-Governor, not having an executive Council, or of a Chief Commissioner, shall consist of members nominated or elected in accordance with rules made under this Act.

(4) Councils constituted as provided by this section are in this Act referred to as Local Legislative Councils, and Governors, Lieutenant-Governors and Chief Commissioners in Legislative Council are in this Act referred to as local legislatures.

74. (1) The number of additional members nominated or elected to the Legislative Council of the Governor of Bengal, Madras or Bombay, the number of such members required to constitute a quorum, the term of office of such members, and the manner of filling casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise, shall, in the case of each such Council, be such as may be prescribed by rules made under this Act.

Provided that the aggregate number of members so nominated or elected shall not exceed the number specified in that behalf in the second column of the First Schedule to this Act.

(2) At least one-half of the additional members so nominated or elected to any of those councils must be persons not in the civil or

military service of the crown in India; and if any such person accepts office under the crown in India his seat as a member shall thereupon become vacant.

(3) An additional member of any of those councils is not entitled to be present at meetings of the Governor's Executive Council.

(4) The Governor-General-in-Council may, with the approval of the Secretary of State in Council, make rules as to the conditions under which and manner in which persons resident in India may be nominated or elected additional members of any of those Councils, and as to the qualifications for being, and for being nominated or elected, an additional member of any of those councils, and as to any other matter for which rules are authorised to be made under this section, and also as to the manner in which those rules are to be carried into effect.

(5) All rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and those rules shall not be subject to repeal or alteration by the Governor-General in Legislative Council.

75. (1) The Legislative Council of the Governor of Bengal, Madras or Bombay shall assemble at such times and places as the Governor appoints.

(2) Any meeting of the council may be adjourned by the Governor, or, under his authority, by the other person presiding.

(3) If the absence of the governor from any meeting of the council the person to preside thereat shall be the vice-president of the council, or, in his absence, the senior civil member of the Executive Council present at the meeting, or during the discussion of the annual financial statement, or of any matter of general public interest, the vice-president or the member appointed to preside in accordance with rules made under this Act.

(4) If any difference of opinion arises on any question brought before a meeting of the council, the person presiding shall have a second or casting vote.

76. (1) The number of members nominated or elected to the legislative council of a Lieutenant-Governor or Chief Commissioner,

the number of such members required to constitute a quorum, the term of office of such members, and the manner of filling casual vacancies, occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise, shall, in the case of each such council, be such as may be prescribed, by rules made under this Act.

Provided that the aggregate number of members so nominated or elected shall not, in the case of any Legislative Council mentioned in the first column of the First Schedule to this Act, exceed the number specified in that behalf in the second column of that schedule.

(2) At least one-third of the persons so nominated or elected to the Legislative Council of a Lieutenant-Governor or Chief Commissioner must be persons not in the civil or military service of the Crown in India.

(3) The Governor-General in Council may, with the approval of the Secretary of State in Council, make rules as to conditions under which persons resident in India may be nominated or elected members of any of those Legislative Councils, and as to the qualifications for being, and for being nominated or elected, a member of any of those councils, and as to any other matter for which rules are authorised to be made under this section, and as to the manner in which those rules are to be carried into effect.

(4) All rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and those rules shall not be subject to repeal or alteration by the Governor-General in Legislative Council.

77. (1) When a new Lieutenant-Governorship is constituted under this Act, the Governor-General-in-Council may, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute the Lieutenant-Governor in Legislative Council of the province, as from a date specified in the notification a local legislature for that province, and define the limits of the province for which the Lieutenant-Governor in Legislative Council is to exercise legislative powers.

(2) The Governor-General-in-Council may, by notification, extend the provisions of this Act relating to Legislative Councils of

Lieutenant-Governors, subject to such modifications and adaptations as he may consider necessary, to any province for the time being a chief commissioner.

78. (1) Every Lieutenant-Governor who has no Executive Council, and every chief commissioner who has a Legislative Council, shall appoint a member of his Legislative Council to be vice president.

(2) In the absence of the Lieutenant-Governor or chief commissioner from any meeting of his Legislative Council the person to preside thereat shall be the vice-president of the council, or in his absence, the member of the council who is highest in official rank, among those holding office under the Crown who are present at the meeting, or, during the discussion of the annual financial statement, or of any matter of general public interest, the vice-president or the member appointed to preside in accordance with rules made under this Act.

(3) If any difference of opinion arises on any question brought before a meeting of the council, the person presiding shall have a second or casting vote.

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

(2) The local legislature of any province may, with the previous sanction of the Governor-General; but not otherwise, repeal or alter as to that province any law made either before or after the commencement of this Act by any authority in British India other than that local legislature.

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

- (a) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force, and imposed by the authority of the Governor-General in Council for the general purposes of the Government of India; or

- (b) regulating any of the current coin, or the issue of any bills, notes or other paper currency; or
- (c) regulating the conveyance of letters by the post office or messages by the electric telegraph; or
- (d) altering in any way the Indian Penal Code; or
- (e) affecting the religion or religious rites and usages of any class of British subjects in India; or
- (f) affecting the discipline or maintenance of any part of His Majesty's naval or military forces; or
- (g) regulating patents or copyright; or
- (h) affecting the relations of the Government with foreign princes or states.

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

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

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

(2) It shall not be lawful for any member of any local Legislative Council to introduce, without the previous sanction of the Governor, Lieutenant-Governor or chief commissioner, any measure affecting the public revenues of the province or imposing any charge on those revenues.

(3) Notwithstanding anything in the foregoing provisions of this section, the local Government may, with the sanction of the Governor-

General in Council, make rules authorising, at any meeting of the local Legislative Council, the discussion of the annual financial statement of the local Government, and of any matter of general public interest, and the asking of questions, under such conditions and restrictions as may be prescribed in the rules. Rules made under this sub-section for any council may provide for the appointment of a member of the council to preside at any such discussion in place of the Governor, Lieutenant-Governor or chief commissioner, as the case may be, and of the vice-president, and shall be laid before both Houses of Parliament as soon as may be after they are made, and shall not be subject to repeal or alteration by the Governor-General in Legislative Council or the local legislature.

81. (1) When an Act has been passed at a meeting of a local Legislative Council, the Governor, Lieutenant-Governor, or chief commissioner, whether he was or was not present in council at the passing of the Act, may declare that he assents to or withholds his assent from the Act.

(2) If the Governor, Lieutenant-Governor, or chief commissioner, withholds his assent from any such Act, the Act has no effect.

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

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

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

(2) Where the disallowance of any such Act has been so signified, the Governor, Lieutenant-Governor or chief commissioner shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

83. (1) The local Government of any province, for which a local Legislative Council is hereafter constituted under this Act, shall, before the first meeting of that Council, and with the sanction of the Governor-General-in-Council, make rules for the conduct of legislative business in that council (including rules for prescribing the mode of promulgation and authentication of laws passed by that council.)

(2) A local legislature may, subject to the assent of the Governor, Lieutenant-Governor or chief commissioner, alter the rules for the conduct of legislative business in the local Legislative Council (including rules prescribing the mode of promulgation and authentication of laws passed by the council); but any alteration so made may be disallowed by the Governor-General-in-Council, and if so disallowed shall have no effect.

Validity of Indian Laws.

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

- (a) in the case of a law made by the Governor-General in Legislative Council, because it affects the prerogative of the Crown; or
- (b) in the case of any law, because the requisite proportion of members not holding office under the Crown in India was not complete at the date of its introduction into the council or its enactment; or
- (c) in the case of a law made by a local legislature, because it confers on magistrates, being justices of the peace, the same jurisdiction over European British subjects as that legislature, by Acts duly made, could lawfully confer on magistrates in the exercise of authority over other British subjects in the like cases.

Ss. 63-84 (both inclusive).

Below is given a general description and criticism of the constitution and powers of the Indian Legislatures, both Imperial and Provincial. Here we append some remarks on the extent of the law-making powers of the India Legislative Councils.

The law-making powers of the Indian legislatures, as laid down in s. 65 of the present Act (and s. 79 for the local councils) are not exhaustive. Under various Acts of Parliament the Indian Councils, like other British legislatures with limited powers, have power to make laws on specified subjects with more extensive operation than laws made under its ordinary power. Thus the Extradition Act of 1870, the Slave Trade Act of 1876, the Fugitive Offenders Act of 1881, the Colonial Courts of Admiralty Act of 1890, the Colonial Probates Act of 1892, and the Merchant Shipping Act of 1894 have each given wider powers than are contained in the provisions of this Act.

As regards the general powers of the Indian legislatures, the leading case is that of *Queen vs. Burah* (1878, L. R. 3, App. Cas. 889). In that case an act of the Indian legislature, (XII of 1869) was questioned. By that act the Garo Hills were removed from the jurisdiction of the ordinary civil and criminal courts, and the administration of civil and criminal justice in those territories was vested in officers appointed by the Lieutenant-Governor of Bengal. By s. 9 of that Act the Lieutenant-Governor was authorised to extend the operation of the Act to any of the adjoining mountains. The Privy Council maintained the validity of the Act as well as that of the ninth section. It was held that (1) the Act was not inconsistent with the Indian High Courts Act of 1861 or with the Charter of the Calcutta High Court; (2) it was in its general scope within the powers of the Governor-General in Council; (3) s. 9 was conditional legislation and not a delegation of legislative authority; and (4) where plenary powers of legislation exist as to particular objects, they may be well exercised either absolutely or condi-

tionally. In delivering the judgment of the Privy Council in this case Lord Selborne said, "The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. *But, when acting within these limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself.* The established courts of justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can do so is by looking to the terms of the instrument, by which affirmatively the legislative powers were created, and by which negatively they were restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited, (in which category would of course be included any Act of the Imperial Parliament at variance with it), it is not for any court of justice to inquire further, or to enlarge constructively those conditions or restrictions."

Ilbert, commenting on s. 63, (2) (d) of his digest, which corresponds to s. 65 (2) (ii) of the present Act, asks, "Are the words, 'or the sovereignty &c, to be connected with' 'whereon may depend,' or with 'affecting?' probably the latter." The present act has removed that doubt by making "affecting" govern "sovereignty". Hence Indian legislatures cannot pass laws to authorise or confirm the cession of territory. According to the decision in *Damodhar Khan vs. Deoram Kanji*,—the Bhavnagar case,—the Governor-General as the representative of the Crown in India has the power to cede territory.

As regards provincial legislation, local legislation cannot affect the Indian High Courts Act; hence questions have arisen as to the validity of laws affecting the jurisdiction of the High Courts. In *Premshankar Ragunathji vs. The Government of Bombay* (8 Bom. H. C. Rep. A. C. I. 195) it was held that the Governor of Bombay in Council has power to pass laws affecting

the jurisdiction of the courts established by the local legislature; and that such acts are not void merely because the indirect effect is to affect the appellate jurisdiction of the High Court. The Bombay legislative Council may make laws affecting the rights and obligations of the subjects of that presidency, but not the power of the High Court to deal with those rights and obligations. (*Collector of Thana vs. Bhaskar Mahadev Reth I. L. R. 8 Bombay 264*).

The liability of the Secretary of State to be sued for certain matters being given by an Act of Parliament, the Government of India cannot pass any act which would prevent a subject from suing him in a civil court, in any case in which he could have sued the East India Company. In *Secretary of State vs. Moment* (15 Bom. 27) s. 41 (b) of Act iv of 1898, Burma, which debarred a civil court from entertaining any claim against the Government to any rights over land, was held to be *ultra vires*. By s. 2 (2) of the Government of India Amendment Act of 1916 it has been provided "A law made by any authority in British India, and repugnant to any provision of this or any other Act of Parliament, shall, to the extent of that repugnancy, but not otherwise, be void."

I. The Chief Characteristics of Indian Legislatures.

I. The Indian legislatures are not sovereign law making bodies. They are not sovereign because (1) they cannot make laws like a sovereign legislative authority on any topic whatsoever and touching any person or place within their jurisdiction. Thus they cannot pass laws affecting (a) Acts of British Parliament passed after 1860 and extending to British India including therein the Army Act. They cannot touch (b) Acts of Parliament enabling the Secretary of State to raise money in England on behalf of the Government of India, (c) and in general, affecting any part of the written or unwritten constitutions of the United Kingdom or affecting the authority of Parliament,

(a) nor can they pass any laws on which may depend the allegiance of the subjects of the Crown of Great Britain or the sovereignty or dominion of the King Emperor over any part of British India. Of course they cannot alter or amend in any way this main Act, the Government of India Act of 1915, on which now their own existence and authority depend. Besides these kinds of laws which they can in no way touch, there are other subjects on which, though competent to pass laws, they cannot undertake legislation without the previous sanction of the Governor-General. Such subjects are the public debt and public revenues of India, the religion and religious rites and usages of the British subjects in India, the relations of the Government with foreign princes or states, and the discipline and maintenance of any part of His Majesty's Military and Naval forces. (2) Besides being precluded from passing any laws of the classes enumerated above there is a further limitation upon their authority which make them non-sovereign. All laws passed by them may be declared *ultra vires* by the courts of law, should any such law be involved in a case coming before them in the ordinary course of their work.

Further, even as far as British India is concerned the whole legislative authority is not centred in them. Apart from the omnipotent British Parliament, power is vested in the Governor-General to pass ordinances independent of his council which ordinances have all the force of laws duly passed by the council at least for six months.

The legislatures in India are derived from and dependent upon the executive. In theory they are even to-day merely an extension of the executive councils of the Governor-General and of the Presidency Governors. In the case of the Lieutenant Governors and Chief Commissioners without executive councils, the Legislative Councils are, it would seem, in point of law, a body convened by the executive authority to pass laws. The supreme Legislative Council consists of the ordinary members plus a varying number of additional members. That they are dependent upon the executive is evident from the fact that

the executive guides and controls them at every stage whether it is in making laws, in discussing the finances or in criticising the administration of the country. They are also derived from the executive. The fact, however, that the Indian legislatures are derived from the executive, would, by itself, in no way constitute a peculiarity of the Indian system. The legislative authority in every modern civilised state all the world over is derived from the executive. It may seem strange but is yet true that in the political development of every modern nation the executive had the precedence of the legislative. In fact the whole legislative authority was once centered in the executive. But while in the democratic countries the trend of political development has been towards a gradual separation, resulting either in a complete independence of the executive and legislative authorities, as in the case of the United States, or at least the control of the executive by the legislative authority as in England and France. In India on the other hand the legislative is merely an extension of the executive, the creature, and therefore a dependent, that at every stage is conscious of its dependence. We find that even in England the cabinet *i. e.* the executive collectively, proposes, frames, initiates and carries through all legislative measures; and the legislative assembly *i. e.* Parliament, has merely the power, under the present circumstances, of criticising, amending, and, in the last instance rejecting the measures proposed by the executive. In the last instance, of course, the legislative body, bringing about the rejection of the measures of the executive, does so, not so much perhaps because it objects to the measures, as because it objects to the executive which had charge of those measures; and in that way, by destroying their off-spring, they help to destroy the parent also. In India on the other hand the executive hold their position entirely independent of the legislative. They are appointed to their posts for a term of years which cannot be determined, by the desires of the Legislative Councils. Their membership of the Legislative Councils arises from their office *i. e.* they are members of the legislature because they are officers, and not that they are officers because they are members and leaders of the legislature.

The principal business of the Indian legislatures—the business sanctioned definitely by the present Act, is to discuss and pass measures placed before them by the executive. In other countries, the activity of the legislative assemblies is not confined merely to legislation. By far the greater part of the work of the British Parliament, and of all such assemblies which have copied the British model, consists of checking and controlling the executive authorities whether by questions, by motions for discussion of public business, or by direct votes of censure. The power of the purse enjoyed by them enables them, by refusing supplies, to bring the executive to book. In all these respects the Indian legislatures are in a class by themselves. They have no power of the purse. They cannot refuse the annual supplies to the executive, and thus cannot bring home to the highest servants of the country the responsibility of their high office. The utmost they can do is to make suggestions which the executive need not accept. Lastly, even in the domain of legislation, they can only legislate on certain subjects, and on most of these it is usual with the executive to frame the proposed legislation. It only remains for the legislation to assent to these proposals, or offer a hardly effective protest.

II. Official Majority.

The maintenance of the standing official majority by the rules of the councils is another peculiarity of the Supreme Legislative Council in India. The composition of the Indian legislature, allowing as it does great powers to the executive to nominate a certain number of the members of the Legislative Council, always affords a guarantee to the executive that their proposals will never be formally out-voted by the legislatures of the country, whatever may be the trend of public opinion on a given measure. Not satisfied, however, by this safe-guard which was considered quite ample even by the bureaucratic chiefs of the Government of India under Lord

Minto, Lord Morley, the professedly liberal Secretary of State, who had won his political renown by his active sympathy for the Nationalist cause in Ireland, insisted upon an official majority in the Viceregal Legislative Council. Says Lord Morley,

"While I desire to liberalise as far as possible the Provincial Councils, I recognise that it is an essential condition of this policy that the Imperial supremacy shall be in no degree compromised. I must, therefore, regard as essential that Your Excellency's Council, in its legislative as well as its executive character, should continue to be so constituted as to ensure its constant and uninterrupted power to fulfil the constitutional obligations that it owes, and must always owe, to His Majesty's Government and to the Imperial Parliament. I see formidable drawbacks, that have certainly not escaped Your Excellency, to the expedient which you propose, and I cannot regard with favour the power of calling into play an official majority while seeming to dispense with it. I am unable to persuade myself that to import a number of gentlemen, to vote down something upon which they may or may not have heard the arguments, will prove satisfactory. To secure the required relations, **I am convinced that a permanent official majority in the Imperial Legislative Council is absolutely necessary.**" And so the present Imperial Legislative Council has a majority, though a bare majority, of nominated official members, who are bound to vote with the Government in every case irrespective of their individual opinions on a subject.

The considerations which led Lord Morley to accept the discontinuance of an official majority in the Provincial Councils were various and all powerful. (1) The field for legislation left to the Provincial Councils is so limited that it is almost inconceivable that even the most radical and irresponsible council could pass legislation which might endanger or embarrass the Imperial Government. (2) The composition of the Provincial Councils, representing a variety of interests seldom likely to be unanimous, and to offer a concerted opposition to the Government, was in itself a sufficient guarantee against hasty, ill-considered or dangerous legislation—quite apart from the fact that

with the increase in their numbers would come an increased sense of responsibility, making it psychologically impossible for them to undertake and carry through revolutionary legislation. (3) The presence in the councils of nominated members, who, though not officials, and therefore, not bound to vote with the Government in all cases regardless of their own private judgment on the subject before them, may, however, be quite reasonably presumed to be anxious ~~not~~ to offer a constant and meaningless opposition to Government measures, would be another safeguard against provincial legislation of a radical description. Membership of Legislative Councils in India is yet regarded as a distinction much greater than the similar position in England. We in India cannot yet say that a man is likely to be more famous by writing a score of flippant essays or a realistic play about high life than by a whole session of dutiful and steady attendance in the councils. Being *prized as a distinction, which men of average ability cannot hope to obtain at the hands of their fellow-countrymen*, the membership of the council will not be lightly hazarded by nominated members through an unreasonable opposition to Government schemes. (4) In addition to all this is the power of the Local Government in the first instance, and of the Viceroy afterwards, to veto bills passed by the councils, if they do not approve of those measures. The power of vetoing bills duly passed by councils is indeed one which should not be lightly resorted to. Frequent or hasty vetoing of measures passed by the representatives of the people is dangerous for every Government; and particularly so for the Government in India, which are, from their very nature, supposed to be out of touch with public sentiment, and which cannot therefore offer their own alternatives—likely to be acceptable to the people—for measures vetoed by them. But when all is said, when we have appreciated fully the danger of the veto to the Government, it must be said that exercised properly—or rather properly not exercised—the power of veto constitutes a handsome reserve in the hands of the executive to repress the possible excesses of an inconsiderate legislature. (5) Finally, in the words of Lord Morley, "If, however, the combination of all these non-official members

against the Government were to occur, that might be a very good reason for thinking that the proposed measure was really open to objection, and should not be proceeded with."

These very reasons could also be adduced for a similar course in the Imperial Legislative Council. The field for legislation, though wide, is not all-embracing. The presence of the nominated element is even more prominent in the Imperial than in the Provincial Councils, and its composition not less diverse. The Viceroy, and, above him, the Secretary of State have the power of refusing assent while the almost inconceivable combination of the divergent elements in the non-official membership of the Viceregal Council would be a more emphatic condemnation of a measure in the Imperial Council, than any such combination could offer in the Provincial Councils. In the six or seven years during which the councils have been working, the Government of India have hardly ever had an occasion to make good their proposals by the use of their official majority. And yet Lord Morley thought fit absolutely to insist upon it. His only reason was the necessity he alleged that the supreme council, both Legislative and Executive, should be so composed as to allow of a smooth fulfilment of the obligations of the Government of India towards the Home Government and the Imperial Parliament. The maintenance of a permanent official majority is not always so great a palladium as is implied by Lord Morley's statements. Even in the old state of things—before the reforms of 1909—when the Government of India was an unadulterated bureaucracy, the spectacle of the Government of India differing from their constitutional superior in Whitehall was not entirely unknown. And if an exclusive bureaucracy could occasionally prove restive, the presumption of a purely democratic assembly proving altogether unamenable to the autocracy of Charles Street cannot be said to be altogether unreasonable. But just as the old unmitigated bureaucracy used to be brought to reason where it showed a refractory tendency, by the salutary power reserved to the Viceroy to overrule his Council, so there is no reason to believe, that the same expedient would not succeed with a democratic legislature in India. Examples of the like nature are not wanting in the short, but

already instructive, history of the self-governing colonies. The Governor or the Governor-General in these colonies frequently exercises this power; and everybody, even those against whom this power is exercised, is agreed that such a power is reasonable in theory and useful in practice. It is less offensive without being less effective. It maintains unimpaired imperial supremacy, and yet permits a full and free scope to local ambitions.

The truth is that there seems to be a total absence of agreement as to what constitutes the maintenance of imperial supremacy. If it be meant by that phrase that the wishes of the King's Government should prevail in all concerns affecting equally the various parts of the Empire, or that the Imperial Parliament should be the sovereign legislative body in all those subjects for legislation, such as Extradition or Copy-right Acts, no one would deny that, under the existing circumstances, such an idea is eminently just and reasonable. But if it be meant—and public opinion in India is more than faintly suspicious on this point—that the maintenance of Imperial supremacy in the case of India is only an euphemism for making her accept a policy, in her own internal concerns, which is all but universally repudiated in India, and the only justification for which is that the position of the Secretary of State and his colleagues in the British Cabinet is dependent on the acceptance of that policy in India. Because such instances have occurred in the past, however rarely, when the supremacy of the Imperial Government has resulted in the compulsion of our Government, in the teeth of the almost unanimous opposition of officials and non-officials, to accept the policy on which depended the prestige—the political future of the British Cabinet, Indian opinion quite naturally assumes that it is intended to avoid a repetition of a definite opposition to the unmistakable sentiments of the people by this thin disguise of a permanent official majority in the Imperial Council. If this were true it would be a very unpleasant reflection. It may well be asked, if Imperial supremacy can only be maintained by the purchased votes of a few officials, is it worth the trouble? or, to put the same thing differently, if Imperial supremacy is likely to be endangered by the extension

of democratic institutions in India, should such institutions be expanded?

III. The Composition of the Legislative Council of the Governor-General.

The composition of the council, apart from the official majority, is also peculiar. The maximum number of the additional members of the Governor-General's Legislative Council is fixed at 60. Of these some members are nominated by the Governor-General, not exceeding 33; and out of these 33 not more than 28 can be officials. Out of the remaining 5, three should be selected, one from the Indian Commercial community in general, one from the Mahomedan community in the Punjab, and one from the landholders of the Punjab; and the remaining two may be nominated by the Governor-General as experts. The 28 additional official members, together with the 6 ordinary members of the Governor-General's council and the Commander-in-Chief make up a total strength of 35 official members, as against 32 non-officials, not including the Governor-General.

Out of the 32 non-officials, 27 are elected as follows:—Two each by the non-official elected members of the Legislative Councils of Madras, Bombay, Bengal, and the United Provinces; (8), and one each by the non-official members of the Legislative Councils of the Punjab, Burma, Bihar & Orissa, and Assam (4). One member could be elected by the District Councils and Municipal Committees in the Central Provinces while the Province had no Legislative Council; (1) one each, by the landholders in each of the following provinces, Madras, Bombay, Bengal, United Provinces, Bihar and Orissa, and the Central Provinces; (6) One each by the Mahomedan community of Madras, Bombay, Bengal, United Provinces, Bihar and Orissa. (5). One each by the Bengal and Bombay Chambers of Commerce (2). In addition to these the Mahomedans of the United Provinces may elect an additional member at alternate elections as also the Mahomedans of Bengal (1). (8+4+1+

$6+5+2+1=27$. This composition has been criticised seriously ever since the intentions of the Government of India became known. We have already discussed at length the presence of the official element. Coming to the non-official elected element, it is clear that the electoral system in this country has been devised so as to secure adequate representation to all classes and interests of the community. The problem of securing adequate representation to all important interests in the councils is not peculiar to India. But the solution which we have found for the problem is peculiar in the extreme. The Government of India were impressed very much with what was taken to be the partial representation of the whole Indian people by the non-official members of the Legislative Councils before 1909. Those members were nearly all professional men, and the preponderant majority of them was Hindus. The landed interest and the commercial interests all escaped any representation, at all proportional to their importance in the country. It was deemed necessary to give "Substantial representation to the great landholders, who not only constitute the aristocratic and stable elements in the Indian society, but also represent the interests of landlords great and small. And as regards the Muslim community it was admitted that "neither on the Provincial nor in the Imperial Legislative Councils has the Mahomedan community hitherto received a measure of representation commensurate with its numbers and political and historical importance." In their despatch on the subject the Government of India declared "this electorate, (since 1892), while it has worked advantageously in the case of one class, can hardly be said to have afforded proportionate representation to the other interests concerned. Of the non-official members elected to the Imperial Council since 1893, 45 per cent have belonged to this professional middle class; the landholders have obtained 21 per cent of the seats and the Mahomedans only 12 per cent; while the Indian mercantile community, a large and increasingly important body, have had no representation at all."

In their proposals, therefore, the Government of Lord Minto, while accepting and slightly enlarging the existing

territorial electorates, sought to introduce special electorates on the basis of economic or religious distinction. Of these the special electorates for the Mahomedans—based as they are on distinctions of race and religion—have provoked the greatest criticism. This emphasis on the division of races suggests a divergence of political interest which does not in reality exist. The enlightened leaders of either of these two great communities rejoice in the development of a feeling of nationality and of community of interests, that has been silently effected under the fostering care of British Rule. But this process of bringing about a strong, united nationality cannot be accomplished if racial differences and the old historical antagonism of the past are rejuvenated by such means. While it must be admitted that the relative backwardness of the Mahomedan community and their peculiar psychology cannot simply be ignored, their adequate representation could have been secured in other ways than by creating a special electorate for them. And even if the special representation of the Mahomedans can be justified on grounds of Justice, not the same reasons would support the special treatment given to the landholders and the commercial community. The divergence of interest is by no means so great as to render it impossible for a member of the one community to represent the interest of any other in the common councils of the nation. In the case of the special Mahomedan electorate there is this further argument that all those subjects, on which the Hindu legislators might take a view different from, and repugnant to, the Mahomedans, are studiously kept outside the cognisance even of the supreme legislature in India. Without the specific consent of the Viceroy, legislation concerning the religious rites and usages of any class of His Majesty's subjects in India cannot be introduced in the Imperial Council, while it is altogether outside the scope of the Provincial Councils. It is not too much to assume, that the Viceroy, an impartial English gentleman with a truly imperial outlook, will not lightly accord his approval to measures to be introduced in a council without adequate Mahomedan representation, if such measures are at all likely to wound the religious susceptibilities

of that great community. In the case of the landed interest, the problems concerning land coming up before the Legislative Councils are more likely to affect the small cultivator, who does not get any representation in the enlarged councils unless it were from the official members. For the representation given to the landed class is almost exclusively enjoyed by the large land-owners whose interests, if anything, are likely to be divergent from those of the cultivators. The creation of a landed aristocracy, and the recognition of that aristocracy by such special representation, is justified on the ground that it is the only stable element in Indian society. Even if it were—and it is doubtful how far it is more permanent than the other elements in our society—its claim to special representation is bereft of all justice, when we find that the introduction of that element has only served to exclude that vast interest—the actual cultivators of the soil, who need, if any class or community in India does need it, a special attention.

The representation of the Universities in the provincial councils, though a fitting tribute to learning, is but an imitation of the English system in this connection. The Indian Universities are by no means so important as to raise special problems of their own very frequently, and such problems as do rise can very well be discussed by the ordinary educated members. And if on occasions special aid was necessary it could always be obtained by the privilege of the executive to nominate experts.

IV. The Indian Electorates and Franchise.

Not only is the principle of election in a permanent minority in the Supreme Council; not only is it extremely complicated in its working; there is also the extremely limited franchise which makes it useless for getting into actual touch with the sentiments of the people. It must of course be admitted that, in a country where barely three per cent of the population is literate even in their own languages, where the system of repre-

representative government is still in its infancy, it would be futile to urge a completely democratic franchise on the model prevailing in England or her chief colonies. But though the time has not yet come when we might reasonably assume every Indian to be capable of pronouncing an opinion on concerns that affect him vitally, it is certainly not too much to say that the attempt to popularise the Western ideas of government in India would meet with a larger measure of success if the franchise were more liberal and the electorates a little wider. To take but a few examples, the only territorial electorate for election to the Supreme Council is composed of non-official members of the various Provincial Councils. These number 32 in Bengal, 26 in Madras, 28 in Bombay, 25 in Bihar, and 27 in the United Provinces, 14 in the Punjab, 15 in Assam and 9 in Burma. And as regards franchise, in the case of the Imperial Council the landholders entitled to elect an additional member in (a) Madras *must have an annual income of not less than Rs. 15,000 or be receiving a similar allowance from the Government*; in Bombay they must be Sardars or Jagirdars; in Bengal they must be paying an annual land revenue of not less than Rs. 10,000, or have a title of Raja or Nawab and so on. Or, in the case of the Mahomedans, the electors must be either land owners with a certain annual income or be paying income-tax on an income of 6000, or be in possession of certain honours and distinctions, or the non-official members of the local councils, or be fellows of the local Universities, or be pensioned officers of the Government. Such regulations show that the electorates are narrow and the franchise high, because, after all, these are only experiments in India.

Single Chamber.

In all these respects the Indian legislatures compare unfavourably with democratic legislatures in other countries. In one respect, however, Indian legislatures are more advanced even than those of the most democratic countries. India has

been spared the dangers or difficulties of a double-chamber legislature. Proposals were, indeed, made when the reforms were being discussed, to create a sort of a second chamber. But the idea of an advisory council of the ruling Princes and Chiefs did not find favour with the Secretary of State. On this project Lord Morley writes "I confess that, while entirely appreciating and sympathising with your object, I judge the practical difficulties in the way of such a council assembling under satisfactory conditions to be considerable, expense, precedence, housing, for instance, even if there were no others. Yet if not definitely constituted with a view to assembly it could possess little or no reality." Though not definitely rejected the project was suffered to drop. And in all subsequent schemes for further reform it is a noteworthy fact that no one has made any suggestion for a second chamber-elected, nominated or hereditary-in India.

V. The Qualifications and Disqualifications of Elected Members.

The elected members must be duly elected. After election, but before taking their seat in the council, they must, at a meeting of the council, take an oath or make an affirmation of allegiance to the Crown in a prescribed form. The Governor-General has the power to declare seats vacant, and to order new elections, in cases where the election was not properly carried out. Candidates elected by more than one constituency may, by notice signed by them, declare for which of these constituencies they would serve. A candidate offering himself for election, must be a male British subject of 25 years of age and of sound mind. Officials, uncertificated bankrupts, undischarged insolvents, men dismissed from Government service, or sentenced by a criminal court to imprisonment for an offence punishable with imprisonment for more than 6 months or transportation, or men ordered to find security for good behaviour, or men debarred by a competent authority from practising as

lawyers, or men "Declared by the Governor-General-in-Council to be of such reputation and antecedents that their election would, in the opinion of the Governor-General-in-Council, be contrary to the public interest." The last 4 disqualifications, however, may be removed by an order of the Governor-General-in-Council. Members are all elected for three years, unless a member is elected in the middle of the term, in which case he is to be a councillor only for the unexpired period.

VI. Voters and Voting.

The qualifications for voters are much wider than those for the candidates. Only aliens, women, minors and persons duly declared to be of unsound mind are excluded. As regards the positive qualifications, the principal qualifications, almost in all provinces, are: the payment of a certain amount of land-revenue or income-tax varying in different provinces (in the case of the Mahomedans and the land owners), the membership of certain associations like the Chamber of Commerce, or of Municipalities.

The different kinds of electoral machinery may be broadly classified under two main heads: one under which the electors vote direct for the members, as in the case of the non-official members of the provincial councils voting for one or two members for the Imperial Council; and the other under which they select delegates by whom the members are elected, as in the case of Municipalities or District Boards. There is a further subsidiary distinction. In some cases the electors or delegates vote at a single centre before a Returning Officer, or vote at different places before an Attesting Officer who despatches the voting papers to the Returning Officer. These are general rules. More particularly in Bengal the delegates have each a varying number of votes, the number depending, in the case of District Boards and Municipalities, upon the income of those bodies, and in the case of the Mahomedans upon the strength or

importance of the population of the community in the district or group of districts. In other provinces the same object has been attained by varying the number of delegates for similar reasons, each delegate then having only one vote. A particular case of voting by delegates is that of the election of a member of the Governor-General's Council for the Mahomedan Community of Bombay. The delegates in this case are not appointed *ad hoc*, but consist of the Mahomedan members of the provincial council.

The procedure for voting is generally similar to that prescribed by the Ballot Act in England, though of course, there are not the same safeguards for securing secrecy.

The process of election is begun in India upon a notification of the Governor or Governor-General-in-Council, just as in England it begins upon a Writ from the Crown. This notification is issued on the termination of three years, or on the death or resignation of a member, or any other cause leading to vacancy. As the term of office of almost all members now expires at the same time the notifications in India bear a great resemblance to the Writs in England, at a general election. Before the election can take place the electoral roll—whenever one is kept—must be revised. This revision is now done annually, and is begun by the publication of draft electoral rolls in July every year. On this draft publication claims and objections may be urged before the Collector of each District; and these being all decided, the electoral roll is finally published before the 1st of October every year. This roll is conclusive evidence of the right to vote. The actual election proceedings begin by the nomination of candidates made in writing by at least two voters in due form. If only one person is nominated for a seat, or two where there are two seats, the candidates are forthwith declared elected; but if more candidates are nominated the voters have then to proceed to an election on the date fixed for recording their votes.

On the declaration of the results on an appointed date, elections may be contested on the grounds of:—

- (a) Improper rejection or reception of a nomination.
- (b) Improper rejection or reception of a vote.
- (c) Corrupt practices *i. e.*, bribery, undue influence, and false personation.

The contest is decided by the Chief Executive authority for each province, and not by the Courts of Justice as in England.

A comparison on this subject alone of the difference between England and India is enough to show that the one is a democratic, the other a bureaucratic, if not an autocratic, country. There is not the same interest taken by the public at large in India in a general election as in England, because in India the electorates are small and the electors almost all men of wealth and standing. In India moreover the executive at every stage dominates the elections. It orders the elections, it lays down and decides upon the claims of the voters, it receives, records, and declares the result of their votes, and, finally, it decides upon the questions of disputed elections. For India to be a truly democratic country many of these duties will have to be made over to Judicial officers, or at least officers who are unlikely to be influenced by the Executive authority.

Sketch of the Bombay Legislative Council.

Within the limits of this work it would be impossible to describe the constitution of all the provincial councils. A sketch, however, of one provincial council is attempted in order to give the reader a general idea of the composition of the local legislatures in India. The same general principles of nomination of officials and others and election are to be found in the provincial councils as in the Imperial Council; with this difference, however, that while in the Imperial Council there is a permanent official majority, in the local councils the official majority has been dispensed with. This does not mean,

however, that the strength of the Government is in any way reduced. For the officials together with the nominated non-officials are always and everywhere in a majority, apart from the fact that the elected members are so secured that there is hardly any chance of their all acting together against the Government in any case. Besides the general territorial electorate of the Municipalities and District Boards, seats have also been provided for the elected representatives of land-holders and Mahomedans, Chambers of Commerce and the Universities, Presidency Municipalities and Port Trusts, and other special local interests like the Trades Association or Planters' Association. Thus in Bombay 4 members are elected by the Municipalities of the 4 divisions of the Presidency, and 4 by the District Boards of the 4 Divisions. Four more are elected by the Mahomedan Community, one by that community in Bombay, and one each by the community in the Northern, Central, and Southern Divisions. Three others are elected by the land owning interest, one by the Sardars of Gujarat and one by those of the Deccan; while one more is added by the Jagirdars and Zamindars in Sind. The Chambers of Commerce of Bombay and Karachi, the Municipal Corporation of Bombay, the Mill Owners' Association of Ahmedabad, the University of Bombay, and the Indian Commercial community elect one each. That makes 21 elected members. Against these there are 23 nominated by the Governor, of whom not more than 14 may be officials. Besides these there are the four ex-officio members. Hence the Bombay legislative council consists of:—

The Governor			
{	Members of the Council	3	} Ex-Officio.
	Advocate General	1	
	Nominated officials	14	
	Nominated non-officials	9	
	Elected	21	
Total		49	

Against the elected members the Government have practically a majority of six not including the Governor; whilst

against the Government the non-officials—if they could all combine on a measure—have a majority of 12 not including the Governor.

It may be added that on each provincial council two members (experts) may be added whenever the legislation in hand is of a peculiar nature requiring expert advice.

VIII. The Work of the Councils.

The functions of the councils under the Act of 1909 have also been considerably enlarged. Under the Statute of 1861 the only business that could be transacted at any meeting of the Legislative Council was the consideration and passing of bills. The amending Act of 1892 permitted the asking of questions and also the discussion of the actual budget, provided that no member used either of the privileges to propose a resolution or to divide the council. Under the present Act the legislative functions and powers of the councils remain almost unaltered; but in the place of the section of the Act of 1892, which allowed the discussion of the annual financial statement and the asking of questions, there is now inserted the following provision.

'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 the 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.'

Hence the most important changes made under the Act of 1909 are in relation to the asking of questions, (the rules permit also the asking of supplementary questions), the discussion of the financial statement and the moving of resolutions. As

regards the discussion of the financial statement the changes may be thus summarised. The discussion now extends over several days instead of one or two, and it takes place before, instead of after, the budget is finally adopted. Members, moreover, have the right to propose the resolutions and to divide the council on them.

IX. The Financial Procedure in the Imperial Council.

Early in each calendar year the Finance Minister, in the case of the Government of India, presents his preliminary estimates with an explanatory memorandum. On a subsequent day he makes such further explanation as he thinks necessary. Members can thereupon move resolutions regarding (a) any proposed alteration in taxation, (b) any proposed loan, or (c) any additional grant to a local Government. When these resolutions have been voted upon the first stage in the discussion of the budget of the Government of India is over. The second stage commences when the estimates are taken by groups. At this stage also resolutions may be moved on any heads of revenue and expenditure that are opened to the council for discussion.

**Heads of Revenue and Expenditure open to
the Council for discussion.**

REVENUE.		EXPENDITURE.	
Heads open.	Heads not open	Heads open.	Heads not open.
Land Revenue.	Stamps.	Refunds & drawbacks	Assignments and
Opium.	Customs.	Land Revenue.	compensation.
Salt.	Assessed Taxes.	Opium.	Interest on debt.
Excise.	Tribute from native	Salt.	Ecclesiastical.
Provincial rates.	states.	Stamps.	Political.
Forest.	Court fees.	Excise.	Territorial and
Registration.	Army.	Provincial rates.	political pen-
Post office.	Marine.	Customs.	sions.
Telegraphs.	Military works.	Assessed Taxes.	State Railways.
Mint	All purely provincial	Forests.	(interest, annu-
Jails.	revenue and	Registration.	ities etc.)
Police.	revenue accruing	Interest on other	Major Works.
Education.	from divided heads	obligations.	(interest on
Medical.	in provinces	Post office.	debt.)
Scientific and other	possessing Legis-	Telegraphs.	Army.
departments.	lative Councils.	Mint.	Marine.
Receipts in aid of		General Administra-	Military works.
superannuation etc.		tion.	Special defence.
Stationery and		Courts of Law.	Statutory charges.
printing.		Jails.	Provincial expen-
Exchange.		Police.	diture and
Miscellaneous.		Education.	expenditure
State Railways.		Medical.	arising from
Subsidised Compa-		Scientific and other	divided heads
nies.		minor departments	in provinces
Irrigation major		Civil.	possessing
works.		Furlough and ab-	Legislative
Minor works and		sence allowances.	Councils.
navigation.		Superannuation	
Civil works.		charges.	
		Stationery and print-	
		ing.	
		Exchange.	
		Miscellaneous.	
		Famine relief.	
		Protective Railways	
		Protective irrigation	
		works.	
		Reduction of debt.	
		Subsidised Companies	
		Miscellaneous Rail-	
		way expenses.	
		Irrigation, major	
		and minor.	
		Civil works.	
		Capital expenditure	
		on State Railways	
		and on irrigation	
		works.	

This policy of excluding important heads of revenue and expenditure considerably mitigates the value of this great concession in financial matters. From the point of view of the Government each head excluded from discussion has, no doubt, its own special justification for such exclusion, whether the want of fiscal autonomy for the Government of India, or the political expediency in particular matters.

When all these resolutions have been moved and voted upon, the Finance Minister takes the discussion into consideration, makes such changes as have been suggested and found practicable, and then presents his final Budget. At this, the 3rd stage, the Finance Minister describes the changes made and explains why other suggestions have not been accepted. A general discussion of the Budget as a whole then follows: but in this stage no resolution may be moved or votes taken.

The right of discussing the Budget and making specific recommendations upon it was regarded as a great concession. Certainly it was a great concession when we think of the state of things before the reforms. Nevertheless if the ideal of political evolution for India be self-government on colonial lines, the present practice is hardly adequate to promote that ideal. In the 1st place India—even the Supreme Government of India—is really not independent in financial matters. Whatever the control of the Secretary of State may be in other departments, there is reason to believe that in matters of Finance the Home Authorities exert all their legal powers over the Government of India. And as, unfortunately, the impression is generally prevalent that the fiscal policy which is in the best interest of this country, would quite conceivably be prejudicial to the interest of a considerable section of the British electorate, the public in India feel that the Government of India—even if their own opinions are in sympathy with those of the Indian public—are kept in very tight leading strings by the Home Government for hardly veiled selfish reasons. One must remember, however, that there are other reasons, besides this which disincline English Statesmen to favour fiscal autonomy for India. (A). India is a habitual borrower on a large scale

in the London money market. That these borrowings may be effected at the best possible terms for the Government of India, it is essential that their credit be kept up at a very high level, and, therefore, their revenue and expenditure be under a close and constant supervision by English statesmen, who are, in the last resource amenable to the English Parliament. (B). Moreover, so far the Government of India was exclusively composed of men, who were not the children of the soil. In the interests of the people of India, the control of a democratic chief, such as the English Secretary of State, over our bureaucracy was as necessary as it was desirable. Hence the necessity for the Secretary of State to have a majority of his Council voting with him in some financial matters. Hence also the provisions of the Acts of Parliament as regards the necessity of and the previous sanction of Parliament for the employment of Indian troops and Indian Revenue outside the frontiers of India. These reasons are no doubt not so strong to-day as they were fifty or even twenty years ago. The Government of India is too well managed to give grounds for any reasonable anxiety about its credit. And the people of India are not so utterly excluded from the councils of their country as to make it necessary for us to claim and maintain the financial supremacy of the English Secretary of State for India. Even in matters where there is a suspicion that the fiscal policy, likely to be popular in India, is bound to be prejudicial to England, opinion is by no means so dogmatically unanimous in England herself to-day as it was in the days of Lord Lytton. The absence of fiscal autonomy, therefore, modifies considerably the value of this concession.

Secondly, the exclusion of important heads from discussion operates in the same direction. Reasons of political expediency have an unpleasant tendency to be interpreted, or rather misinterpreted, as a want of confidence in the judgment or the loyalty of the Council. These reasons have been thus summarised. "The grounds for exclusion are various. Some items both of Revenue and expenditure are fixed by law, and the proper method of proposing any variation of them is the introduction of a bill. Most of the Political heads are governed by treaties

and engagements with which the Councils have no concern; the debt heads depend upon contracts which cannot be altered; and military and ecclesiastical charges raise far reaching questions of policy which it would be inexpedient to discuss, and impossible to put to the vote. Finally it is obvious that the Imperial Council can only discuss with advantage the revenue and expenditure which is under the administration of the Government of India, while a provincial council must equally be restricted to items subject to the control of the local Government." To these reasons must be added the fact of the analogy between the practice in India and in England. There, too, some heads are excluded from discussion—the so-called consolidated fund services. But the motives for such an exclusion there are shown too clearly in each case by the history of the country to be at all misinterpreted. Moreover the unquestioned sovereignty of Parliament can always be relied upon to annul or modify an exclusion whenever it becomes unreasonable or inexpedient. Laws imposing taxes can be altered, contracts of debt can be varied, treaties and engagements can be given effect to by Acts of the same Legislature. Not so in India. It is desirable, therefore, that this list of excluded topics should be curtailed as far as possible. And this curtailment would in no way be embarrassing to the Government—even in the absence of financial autonomy—if it be remembered that the Council has the power only to discuss, not to initiate, or negative any financial proposal.

This is the third reason which makes the concession almost valueless. The Council may discuss, but it has no right to vote or veto a Budget. The initiation of the Budget by the Executive is apparently modelled on the English practice, where supplies can be demanded only by a minister of the Crown; while new expenditure may be suggested by the Commons by an address to the Crown. But the copy has belied the original. In England, under the thin disguise of outward forms remaining unchanged, the real matter has altered altogether. The sovereignty of the people is in no instance so complete as in the department of finance. The King may demand, but the Commons are not bound to grant all his demands. In India the Council is

bound to pass the Budget even when it is widely criticised by the members themselves. It can only make recommendations which the Government need not accept. This indication of absolutism is all the more unreasonable when one sees that the Government of India is amply secured against resolutions being carried in the council if they are distasteful to the Government. If, inspite of the official majority, which would make it impossible to carry any adverse vote in the council, the Government of India still found it desirable to insist upon the character of the resolutions as mere recommendations, it can only mean that the Government desired to emphasise—to make clear beyond the possibility of a doubt—the absolute nature of their power.

X. Provincial Finance:

Constitutional Practice.

At this stage a description of the provincial Budgets may well be added. The main principles governing the constitutional practice in respect of Provincial Finance are that the Councils should be afforded facilities for expressing their views upon the Budget. These facilities are given at a sufficiently early stage to enable the Government to profit by the advice of the Council by adopting and carrying out such suggestions as may be found practicable. The ultimate control in this case, as in the case of the Government of India, rests with the Government. To suggest is the privilege of the Council, To carry out is in the discretion of Government. On these lines the Budget procedure in the provincial councils has been drawn up in four stages. The 1st stage commences by a rough draft of the provincial estimates, including in it all projects involving an expenditure of over 5,000 rupees. All these projects are given in a schedule, which is divided into two parts, the first containing all those items which must be carried out because they have already been taken in hand, or because they are ordered by the Government of India or the Secretary of State to be completed, and the 2nd containing items not so earmarked. This draft

Budget is submitted to the Government of India. The latter correct the estimate of the revenue, and determine, in consultation with the provincial Government, the aggregate expenditure for which the provincial Governments should provide. They have also the right to alter or add to the items in the 1st part of the schedule. When all this is done the figures about the altered revenue and the aggregate expenditure, as fixed by the Government of India, are communicated to the Local Government, and the first stage of a provincial Budget comes to an end.

With the second stage the rôle of the provincial Council begins. The draft financial statement when returned by the Government of India is submitted by the local Government to a committee of their council. This committee consists of officials and non-officials in equal number, the former nominated by the Government, the latter elected by their fellows. The Committee is presided over by the member of council in charge of the finance department, or, in provinces where there are no councils, by the financial secretary to the Government. The number of the Committee varies from 12 to 6. It busies itself with the 2nd part of the schedule already referred to: and provided it keeps within the aggregate expenditure fixed by the Government of India, it is free to make variations and even to insert new items occasionally. Though the discussion in the committee is free, and by the vote of the majority, the proceedings are private and informal. On the conclusion of its labours the Committee reports such changes as have been made to the local Government. The latter, after considering the report, revise their expenditure estimate, also their revenue totals if any changes are obvious, and report the figures under both these heads to the Government of India to be incorporated in the Imperial Budget. This ends the second stage.

The third stage begins with the presentation of the estimates as a whole to the provincial council. The figures of expenditure reported to the Government of India in the second stage would not, as a rule, have been altered by the latter, unless they were obliged to order a general reduction of taxation. The revenue figure would be brought upto date, and alterations in taxation, if

required and practicable, are given effect to. These finally revised figures are incorporated in the Imperial Budget and communicated to the local Government. The latter then have their Budget printed, convene their council, and formally introduce the Budget in the whole council with a speech from the member in charge of finance. The Council considers the Budget in a committee of the whole council. They take the figures in groups as in the Imperial Council, and resolutions may then be moved on each group discussed. When all resolutions have been debated and voted upon, the result is reported to the local Government, who are, however, not bound to accept the recommendations. Here ends the third stage.

The fourth stage commences, when the local Government, after introducing such changes as have been found practicable within the limits of their powers, and after telegraphing the alterations to the Government of India, the final edition of the Budget is presented to the council. A debate follows, but no resolutions are in order, and the Budget being adopted the matter comes to an end.

XI. Summary of the Rules of Procedure in the Imperial Legislative Council.

The council meets ordinarily at about 11 a. m., and sits upto 4 p. m., unless the President should otherwise direct. The minimum number required is seven including the President, who is also given powers to adjourn, without discussion or votes, a meeting or business whether there is a quorum present or not. On all points of order a decision of the President is final. Members wishing to make observations on any subject must address the Chair. A curious provision of these rules is that members who are not able to speak in English may request any other member to speak on their behalf. On every motion before the council question is put by the President and decided by a majority of votes, and after the question is

so put no further discussion upon the point is allowed. Members are entitled to call for any papers or returns connected with any Bills before the council; but the President has the power to determine whether such papers or returns can be given. It would seem also that the public have a right to petition the Governor-General in Council upon matters connected with any bill before the Council, in the form of a petition or by a letter to the Secretary. Such petitions or letters are required to be circulated among the members to help them in forming a judgment. Communications of this nature coming from Courts, except the High Court at Calcutta, officials, or public bodies must be sent through the Local Governments.

Questions.

Questions are allowed to be put generally to officers of the Government. They may be allowed also to the other members of the council. No question however is permitted on any matters touching the relations of the Home Government or of the Government of India with a Foreign State or with a Native State in India, or touching matters pending for decision before a Court of Law. As regards the form of questions, they must be so framed as to be merely a request for information, of moderate length, and free from arguments, inferences, or defamatory statements. Questions must neither be ironical, nor should they refer to the conduct or character of persons except in their official or public capacity. They, however, should not be made a handle for eliciting an expression of opinion, or a solution of a hypothetical proposition. As regards matters which are subjects of controversy between the Government of India and the Secretary of State or a Provincial Government, questions are not to be asked except as to matters of fact, and answers to such questions are confined to a statement of facts. Members desiring to ask questions must give notice in writing, at least 10 days before the meeting of the council at which he intends to put the questions, furnishing at the same

time to the Secretary a copy of the questions. This rule about notice may be dispensed with by the President. The President is entitled to disallow any questions, without giving any reason, except that in his opinion it cannot be answered consistently with the public interest, or that it would be better put in the legislative council of a local Government. Questions cannot be followed by discussions in the council, but the member who has asked a question, may ask a supplementary question, if he finds the answer to the main question not sufficiently clear, in order to elucidate the subject. The supplementary questions need not be answered by the member in charge, since they are questions without notice, unless the member concerned waives his privilege.

Resolution.

For the discussion of matters of general public interest provision has been made by these rules. Matters of general public interest may include all subjects of administrative importance, with the exception of subjects removed from the cognizance of the Legislative Council, and also all matters affecting the relations of the English or the Indian Government with a Foreign State or a Native State in India, and in a matter which is pending for decision before a court of law. Subject to these restrictions, members are entitled to move resolutions relating to any matter of general public importance, provided that the resolutions are in the form of a specific recommendation addressed to the Governor-General in Council, worded in clear and precise language, raising a definite issue, and containing no arguments, inferences, ironical expressions, or defamatory statements. Notice of 15 clear days should be given by the member intending to move a resolution before the meeting of the council at which the same is desired to be moved, and a copy of the Resolution should be furnished therewith. As in the case of questions, the President may dispense with this rule about the notice, as he may also disallow

any resolution, without giving any reasons, except that in his opinion it cannot be moved consistently with public interest, or that it should be moved in the legislative council of a local Government. The discussion on resolutions comes at the end of the business of the day, just as questions precede the business of the day. On every resolution the mover has the right to speak first, every other member in such order as the President directs; and at the end the mover has the right to reply. A time limit of 15 minutes is introduced; and members are not allowed to speak more than once on the same resolution, unless the President permits them to do so in order to make an explanation.

Amendments can be moved upon such resolutions, provided no amendment would be allowed which has merely the effect of a negative vote. After the resolutions have been sufficiently discussed in the opinion of the President, he may close the discussion by calling upon the mover to reply, and the member in charge to submit any final observations which he may wish to make. Resolutions, if carried, have the effect merely of recommendations to the Governor-General in Council, which are, however, not binding on the Governor-General in Council.

Bills.

Legislative business takes the shape of bills which must pass the council in various stages. Bills cannot be introduced in council without the permission of the council to that effect. A member desiring to introduce a bill must move the council for permission, and for such motion at least three clear days' notice must be given. When the permission is given, the bill is drafted, together with a full statement of objects and reasons, whether by the member independently, or by him in consultation with the Secretary. When the text of the bill together with its objects and reasons is ready, the Secretary has the bill printed, sending a copy to each member. The bill may be

printed together with the statement of objects and reasons in Hindustani for the convenience of members unacquainted with English. The bill is then properly introduced in the council; and, unless the ordinary rules are suspended, if it happens to be a contentious measure it must pass through the following stages before it becomes law.

(1) A motion may be made to refer the bill to a select committee, of which the Law member is always a member, and of which other members are named by the council itself when the bill is referred to it, or at a subsequent meeting. On this motion the general principle of the bill is discussed. The Committee is generally presided over by the Law member and in his absence by the member in charge of the bill. When the members of the committee are equally divided the Chairman has a casting vote. After the bill is published in the Gazette of India, the committee considers the bill and makes its report thereupon, but not before at least three months have elapsed from the first publication in the Gazette of India unless otherwise ordered. If the bill is altered substantially the Committee may recommend republication as modified, and the republished bill must be sent to the department to which it refers. The report of the committee should be printed and a copy of such report should be sent to each member, and may also be printed in the Gazette of India with the amended bill if the committee or the President so directs. The bill is then taken into consideration either as a whole or section by section. At this stage the structure of the bill, as settled by the committee, is discussed by the council as a whole. Amendments may be moved at this stage upon any part of the bill provided sufficient notice—three clear days—has been given for each amendment. After the amendments have been discussed and incorporated or rejected, the bill may be passed by the council. A copy of the bill so passed is signed by the President, who, as Governor-General, also signifies his assent to the bill by signing this copy. After this the bill is published in the official gazettes as an Act of the Governor-General-in-Council.

(2) Bills which are of the highest urgency may be passed through all the stages in the council at one and same sitting,

provided the rules of procedure have been suspended by the President.

(3) Bills involving large issues of policy are circulated among local Governments and other bodies for the purpose of eliciting public opinion on the principle and the provisions of these bills. After the opinions have been received the bill may again be referred to a select committee, and then goes through the same stages as any ordinary bill. Or it may be taken into consideration by the council at once, though this course would be rare and unprofitable.

In the case of provincial councils substantially the same procedure is followed, except that every proposed bill should be first submitted to the Government of India and the Secretary of State. For their own legislative proposals, the Government of India must also obtain a previous approval of the Secretary of State.

XII. The Summary of Changes.

To sum up the alterations effected by the act of 1909 it would be useful to have a view of the legislative council existing before that date and as it was extended in 1892. The legislative councils were created for India, Madras and Bombay in 1861, for Bengal in 1862, for the United Provinces in 1866, for the Punjab and Burma in 1898, for Bihar and Orissa in 1912 as also for Assam, and for the Central Provinces in 1913.

Under the Act of 1892 the Legislative Council of the Governor-General consisted of the ordinary members, and the additional members, not less than 10 and not more than 16, nominated by the Governor-General. The members were nominated for two years at a time. Not more than 8 of the members could be officials. The nomination of 5 members was to be made on recommendation of the Calcutta Chamber of Commerce, and the non-official members of the local legislative councils of

Madras, Bombay, Calcutta and Allahabad. The remaining seats, the Governor-General could fill in such manner as it appeared to him most suitable. In this respect the Act of 1909 introduced considerable changes. In the first place the additional members for legislation, instead of all being nominated, were to include persons so nominated, as well as members elected in accordance with the regulations made under this Act. Secondly the maximum number of members in the various councils was raised, in some cases doubled, and in some cases more than doubled. The resolution of the Government of India dated 15th November 1909, sums up thus the total effect of the changes in the constitution and functions of the legislative council.

"The Councils have been greatly enlarged. Their maximum strength was one hundred and twenty six. 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 council 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 the 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 the legislative business and 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 suggestion in the form of definite resolutions."

XIII. Some Suggested Reforms.

A memorial signed by some 19 members of the Supreme Legislative Council, and presented to the Viceroy, has summed up the directions in which the Non-official public in India desires reform in the structure of the Government to proceed. *They are as follows:—*

In the words of the Memorial:

(1) "Under the first head we would take the liberty to suggest the following measures for consideration and adoption:— In all the executive councils, Provincial and Imperial, half the number should be Indians. The European element in the Executive council should, as far as possible, be nominated from the ranks of men, trained and educated in the public life of England, so that India may have the benefit of a wider outlook and larger experience of the outside world. It is not absolutely essential that the members of the Executive Councils, Indians or Europeans, should have experience of actual administration, for as in the case of the ministers in England, the assistance of the permanent officials of the department is always available to them. As regards Indians we venture to say that a sufficient number of qualified Indians, who can worthily fill the office of members of the Executive Councils, and hold port folios, is always available. Our short experience in this direction has shown how Indians like Sir S. P. Sinha, Sir Syad Ali Imam, the late Mr. Krishna Swami Iyer, Sir Shamsul Huda, and Sir Shankar Nair have maintained a high level in the discharge of their duties. Moreover, it is wellknown that the Native States, where Indians have opportunities, have produced renowned administrators like Sir Salar Jang, Sir T. Madhav Rao, Sir Sheshadri Iyer, Diwan Bahadur Raghubath Rao, not to mention the present administrators in the various states of India. The statutory obligation now existing that three of the members of the Supreme Executive Council shall be selected from the public services in India, and similar provisions with regard to the provincial councils should be removed. The elected representatives of the people should have voice in the selection of the Indian members of the Executive Councils, and for that purpose a principle of election should be adopted.

(2) All the Legislative Councils in India should have a substantial majority of elected representatives. These representatives, we feel sure, will watch and safeguard the interest of the masses and the agricultural population, with whom they are in closer touch than any European officer, however sympathetic, can possibly be. The proceedings of the various legislative councils, and the Indian National Congress and the Moslem League, bear ample evidence to the solicitude of the educated Indians for the welfare of the masses, and their acquaintance with their wants and wishes. The franchise should be broadened and extended directly to the people, Mahomedans or Hindus, wherever they are in a minority, being given proper and adequate representation, having regard to their numerical strength.

(3) The total number of the members of the Supreme council should be not less than 150, and of provincial councils not less than 100 for major provinces, and 60 to 75 for minor provinces.

(4) The Budget should be passed in the shape of money bills, fiscal autonomy being conceded to India.

(5) The Imperial Legislative Council should have power to legislate on all matters and to discuss and to pass resolutions relating to all matters of Indian administration, and the provincial councils should have similar power with regard to provincial administration save and except the direction of military affairs, of foreign relations, declarations of war, making of peace and entering into treaties other than commercial which should be vested in the Government of India. As a safe guard the Governor-General in Council, or the Governor-in-Council as the case may be, should have the right of veto, but subject to certain conditions and limitations.

(6) The council of the Secretary of State should be abolished. The Secretary of State should, as far as possible, hold in relation to the Government of India a position similar to that which the Secretary of State for the Colonies holds, in relation to the colonies. the Secretary of State should be assisted by two permanent under secretaries one of whom should be an

Indian. The salaries of the Secretary and under secretaries should be placed on British estimates.

(7) In any scheme of Imperial Federation India should be given, through her chosen representatives, a place similar to the self-governing colonies.

(8) Provincial Government should be made autonomous as stated in the Government of India's despatch dated August 25th, 1911.

(9) The United Provinces as well as other provinces should have a Governor, brought from the United Kingdom, with an Executive Council.

(10) A full measure of local Self-Government should be immediately granted.

(11) The right to carry arms should be granted to the *Indians on the same conditions as to the Europeans.*

(12) Indians should be allowed to enlist as volunteers and units of a territorial army to be established in India.

(13) Commissions in the army should be given to the Indian youths under the conditions similar to those applicable to Europeans."

These 13 measures of reform are set out at length because they have been deemed important by the chosen representatives of the people. Of these the first 6 are by far the most important, the first dealing with the Executive Councils in India, the next four with the composition, functions and powers of the Legislative Councils, and the sixth with the India Council. Of the remaining 7, the 1st touches a problem of imperial politics, the next two matters of administrative detail, the 10th the question of local self-government, and the last three the right of Indians to carry arms, to be soldiers and officers in the Indian army.

To take the reforms in the order in which this work is planned, the abolition of the India Council is apparently a revolutionary proposal. In the existing state of things, it is quite true that the India Council has very little active power to

promote or to prevent the better Government of India. And it must also be admitted, that, if we are right in understanding the nature of this council, it will always be unresponsive to the advanced tendencies in India. The more democratic the Government of India becomes, the less will be the chance of the council in London being sympathetic to the wishes of India. This presupposes that the constitution of the council remains unchanged. If, instead of being appointed, the members of India Council were elected by the people of India—directly or indirectly—this danger would almost be absent. But in case the members of the India Council are elected Indians, the question will become all the more acute. For that Council was originally established by Parliament, first to give expert advice to the Secretary of State, and secondly to watch, on behalf of the British Parliament, the interests of the people of India. This latter purpose is not so clearly realised as it ought to be. In the days after the Mutiny, when there was no idea, even among the most advanced radical, of Indians being associated with—let alone dominating—the Government of their own country, this council was admirably suited to be a check upon the autocratic Government of India. At the same time it was to be dominated by a personage who was the representative of Parliament, and therefore, one might say that the India Council, or rather the Secretary of State in Council, was the agent of the British Parliament to watch over the interests of the Indian people. But to-day the situation has changed. Indians are beginning to be associated in the government of their country. This memorial breathes the atmosphere of the day when they would be dominating their government. In that case the India Council would be quite superfluous, for its *raison d'être* would have been over. The Secretary of State would have no need to check the views of the Government of India, since, presumably, they would be the views considered by the accredited leaders of the people to be the best in their interest; and so he would have no occasion to seek independent expert advice. Secondly, there would also be no need to act as the agent of British Parliament, because the Government of India would have ceased to be autocratic,

The question, however, would still remain as to what should be the relations of the Imperial Parliament with the Government of India. According to the tenor of this memorial there would seem to be no need for the exercise of that constant vigilance, which the English parliament deemed necessary in the past. Indeed, if the ideal of colonial self-government is realised in India—if India is ruled by the brains of her own sons as a member of the British Empire—Parliament may well delegate—if not abdicate altogether—its present position with reference to India. The English Parliament is admittedly unable, perhaps incompetent—to govern the Empire of India as it governs the realm of Great Britain. Why should it not then relieve itself of a burden which unable to carry itself, it may well entrust it to others, who would be grateful for the privilege? But to do so the English people must be convinced that those aspiring to bear the burden are able to do so at least as well as they have done themselves. Suggestions, therefore, about the abolition of the Secretary of State's Council are of no avail if made to the Government of India. It is the English people who must be convinced of the necessity of resigning a trust which they have so well carried in the past.

Taking now the executive councils the proposal of the memorialists is open to criticism. If India's goal is self-government on colonial lines, she would want an Executive, whether elected or appointed, whether European or Indian or mixed, to conform to the wishes of the legislature. If it be secured that the wishes of the legislature shall prevail in every instance, it would be immaterial whether the Executive is Indian or European. To secure the supremacy of the legislature the principle of election in the executive may be all very well; but it would be opposed to every tradition of constitutionalism wherever British institutions have been copied. The right of the Crown to choose its own executive, provided that executive can command the support of a majority in the legislature, is unquestioned. That right is something more than a mere meaningless convention. It is very doubtful if that prerogative would be surrendered by the Crown in India, whether under a direct election of a certain portion of the executive, or

by any system of panel. Besides, the suggestion misreads constitutional practice altogether. If a certain portion of the executive is elected and the rest nominated, there would be every chance of the elected members coming into conflict with the nominated members; and, as the authority of each section—each member—would presumably be equal, there would be no means possible to avoid a deadlock. The worst of all political deadlocks—it need hardly be mentioned—is the executive deadlock of this description. Again, if the right of the Crown to choose its own executive is not surrendered, the only other way to secure the supremacy of the Legislative is to copy that convention of the British Constitution, whereby the Crown selects its own ministers from among men who can command the support of a majority in the Legislature. To do so we need parties, which, for good or for evil, are almost unknown in India so far. There is, of course, no reason to imagine that self-government being once a reality in this country, parties will never emerge in India; but for the moment their absence makes it difficult, if not impossible, to copy faithfully the principles of the English or the colonial constitutions in India. It should be added, moreover, that if the convention of the English constitution, above referred to, is successfully copied in India, the suggestion that half of the Indian cabinets should consist of Indians, and half of Europeans would be superfluous and impracticable.

As regards the composition, functions and the powers of the Indian Legislatures, the memorial gives indications of the same hesitating tone. It is not merely enough that all legislatures in India should have "A substantial majority of elected representatives." They must be *exclusively elected* if the ideal of self-government is to be realised. The principle of representation according to races or interests should be abandoned; and means should be devised to secure adequate representation to important minorities. Increase in the numbers of members is inevitable as also the complete internal autonomy. There is nothing unreasonable in suggesting that the unity and integrity of the British Empire will in no wise be violated if the British Imperial Cabinet is confined to purely Imperial concerns,

leaving the Local Governments in every part of the Empire a free hand in all their purely local concerns.

On the last seven points there can be hardly any criticism or disagreement, as they are all statements of general principles which no one denies altogether.

The reforms, then, which are both necessary and practicable, may be thus summed up:—

(a) The spheres of the activity of the British Imperial Cabinet and the Government of India should be accurately defined on the lines developed by the self-governing colonies. A clear definition of their respective spheres of activity would minimise misunderstanding, if not altogether eliminate every occasion for friction. At the same time it would render unnecessary the India Council. Each would, under such a definition, be supreme in its sphere; and so the Secretary of State would only be a common mouth-piece. In any scheme of Imperial co-operation such an official would be indispensable; and even in the absence of any Imperial federation, the necessity to England as well as to India of a Secretary of State is beyond question. But the powers and position of that official would be revolutionised. He would no longer be the dictator of the Government of India that he now is. He would scarcely be better than the chief Secretary to the Lord Lieutenant of Ireland.

(b) The Executive in India—if complete autonomy for internal purposes is given—should be a completely parliamentary executive. One of the obstacles in the way of a fully parliamentary executive in India is the dependance of the Government of India on Home authorities. There is no hope of a Parliamentary executive in India so long as the Government of India are merely the agents of the Home Government. For so long as the Government of India are not sure of their policy prevailing in the end, a Parliamentary executive in India would serve only to embarrass and embitter the two governing authorities. Unless, therefore, the 1st condition of a clear definition of the respective spheres of authority of the Government of India and

of the Home authorities is granted, there can be no chance of realising any ideals of self-government in India.

Assuming for the moment that a scheme of self-government is accepted, and the Government of India is given a tolerably free hand in the internal politics of India, there is no reason to doubt the possibility or the success of a Parliamentary executive. One condition for a successful working of the English Cabinet system is the existence of the parties. For every government in existence there is always possible a government in the alternative. In India so far we have had no parties. And, therefore, it might seem doubtful at first blush how we are going to realise a Parliamentary executive. It is, however, not too much to assert that the absence of the political parties in India to-day does not prove the impossibility of such parties ever appearing. To-day one single issue dominates and overshadows all others. If there be any parties in India at all to-day they are: the actual rulers and their popular critics. The latter are to-day almost unanimous on the great question of self-government in India. But once that self-government is granted there is every possibility of active party spirit manifesting itself in India. Our problems of administration, whether of police reform or of Railway reform, which attract the attention to-day are not, in themselves, great enough to create party divisions. But when those problems of social reform are taken in hand, as they must be one day taken in hand; when our rulers, instead of remaining deliberately neutral, actively busy themselves with such matters as the depressed classes and marriage laws, caste system and financial re-arrangement India would not be able, however much she might desire, to avoid parties. And when parties arise successful working of a Parliament executive would be hardly difficult. The question may well be asked as to which should precede and which should follow. And though it is difficult to give an off-hand answer, it may yet be said that the grant of a scheme of self-government, even if it comes before the rise of parties, would not be impossible. It will, by habituating the people to self-rule, stimulate political thought and thereby bring about political parties.

At this stage the question of the Provincial Government may be introduced. It has already been treated of in these pages in some of its aspects. Here it may be added that the ideal of provincial autonomy does not by any means claim the unamixed support of every thinking man. The one strong argument in favour of raising our existing provinces to the dignity of semi-independent states is, that only by that means the governing machinery in India can be more popularised, and that each part of the country, being free, will be able to work out its own destiny. The argument is quite sound if it be remembered, that the autonomy of the provinces should not be purchased at the cost of weakening the central Government; nor should the development of any one province be allowed to be pushed on in such a way as to retard the country as a whole, whether by fostering provincial jealousy or by any other untoward, unexpected consequence. Besides, the experience of nearly every country in the last century betrays the necessity for every growing country to have a strong central Government. Even in federations like the United States or Germany, Canada or Australia, the state sentiment is fading into background as against the Imperial or federal sentiment. A self-governing India would need a strong central Government more than ever the bureaucratic India needed it. If she is to be respected in the gathering of the Empire in proportion to her size and population; if she is to make a stand against China and Japan, against Persia and Turkey in the industrial rivalry that is bound to dominate the current century; if she is to solve her own immense internal problems of social reform—some of which are not even perceived as yet—she must have a strong central government. And the ideal of provincial autonomy loses all its charm, when we have a fully popular government at the top, and completely self-governing institutions at the bottom. When for all local concerns there is the free popular assembly of the village or the district, and for all national concerns the Imperial Council—also a free and popular body—it is extremely doubtful if we would need provincial autonomy on a scale which would make the provinces equal and independent states. That ideal was quite reasonable under bureaucratic government when there was an unmistakeable

tendency of strong secretariats at the central head quarters' to absorb all administrative work to interfere, to regulate, to dictate in all purely local affairs; and when there were reasonable apprehensions of the interests of individual provinces being not attended to. But if there is any prospect of a free popular Government being realised, much further decentralisation would be positively injurious. A complete provincial autonomy would prevent India from realising the consciousness of a single nationality; for to her already numerous principles of division—racial, religious and others, it would add one more—that of economic rivalry—among the various provinces,

(c) As regards the legislatures, the most urgent reform is that the councils should—one and all—be wholly elected. If some persons are excellent officers who fail to be elected, and who yet are too valuable to be dismissed, they may be allowed to attend in the councils, and speak. But they should have no right to vote. The elections should proceed on a popular franchise—of education, wealth or status. The membership in the councils should be increased—one member being elected by each district in the case of the Imperial council, and by a taluka or any other similar sub-division in the case of provincial councils. Officials, qua-officials, should not be allowed to have a seat, though in a few specified cases they may be eligible to the councils even after accepting those offices. The functions of the councils would necessarily increase, if the two previous conditions are realised, their sittings would be longer, their proceedings more varied. In the composition of the councils one very great reform would be to exclude the head of the executive Government from the deliberations of the Legislature. Almost in every democratic country—and particularly in the English speaking countries—the convention has been firmly established that the nominal head of the Executive Government should avoid any meddling with Legislative affairs. In India the presence of the Viceroy and the Governors as presidents of their respective councils was perhaps necessary in the beginning to secure decorum, to make the varied elements of the council harmonise. But with the increase in the freedom and the powers of the councils their presence would be undesirable. They

might conceivably be reproached with partisan tendencies; they might all unconsciously become a restraint upon free and full discussion. Another reform of the like nature is the removal from the Regulations of certain arbitrary disqualifications for candidature to the Legislative Councils.

All these reforms are so connected one with another that there is no good in any one being effected while others are postponed. If they are to be introduced they had better be introduced all at the same time or be rejected altogether.

APPENDIX

TO

CHAPTERS II, III, IV & V.

INDIAN FINANCE.

Two important departments of State—Finance and Army—which in every other constitution receive the closest attention of the authors of the constitution, have not been specifically dealt with by this Act. Provisions of a financial character have no doubt been inserted in the chapters dealing with the Secretary of State and the Council of India; and reference to the Legislative procedure has been made in the provisions relating to the Indian Legislatures. It is necessary, however, for a proper study of the system of Indian Government, to have a more connected account of the theory and practice of Indian finance, and some slight acquaintance with the important heads of revenue and expenditure; and this is, possibly, the most fitting place for inserting this account.

I. Financial Administration in India.

The general administration of finance in India, including the imposition of taxes, collection of revenue, and sanctioning of expenditure, is, (under the control of the Secretary of State in Council,) in the hands of the Government of India. The Executive Council of the Government of India has a member whose special duty it is to consider every question before the Government of India which has a financial aspect. Under him is the Accounts department, in the immediate charge of the Comptroller and Auditor-General, managing the civil accounts of the Supreme and the Provincial Governments. In this

office all the accounts of the country are brought together and compiled. Subordinate to the Comptroller and Auditor-General are the Provincial Accountants-General, entrusted with the task of keeping the accounts of Imperial receipts and expenditure within their province, as well as the accounts of the local Governments. The accounts officers must see that no payment is made except upon proper authority, while another independent check is exercised by the Comptroller and Auditor-General through his own staff by means of test audits.

New Expenditure may be authorised and made by the governing authorities in India within the limits laid down in the case both of the Imperial Government and of the Provincial Governments by standing rules approved by the Secretary of State in Council. Any expenditure, outside these rules, requires the specific sanction of the higher authority. Under the existing rules the sanction of the Secretary of State in Council is required for creating any new permanent appointment, which would ordinarily be held by a gazetted civil officer recruited in England, and for raising the pay of such an appointment; for creating any other new appointment with a salary of over Rs. 800 a month; for revising a permanent establishment involving an additional expenditure of over Rs. 50,000 a year. The limits of the Provincial Governments are still narrower.

II. The Budget System.

Indian finance has been regulated by the Budget system since 1860. This system consists in preparing estimates for the revenue and expenditure one year in advance, and suggesting means for meeting the discrepancy, if any, between the revenues and expenditure of the country. In India the financial year ends on the 31st March. Under the new rules a financial statement is laid before the Imperial Legislative Council sometime before March to be discussed by that Council. The Budget proper, consisting of the estimates in

their final form, as revised in the light of the latest information, and of the discussions on the preliminary estimates, must be presented to the Council by the Finance Member on or before the 24th March; while the Financial statement and Budget, with a report of the discussions in the Council, are laid before Parliament shortly afterwards.

The Indian financial statement and Budget include, besides the estimates for the coming year, the revised estimates of the year about to close, and the "actuals" or closed accounts of the previous year. There is almost always a considerable difference in the total estimates, as well as in the estimates for specific heads in the Budget, in the revised estimates, and in the actuals. This is due to the fact that the principal heads of revenue in India, depending as they do upon weather conditions, are proverbially uncertain; and the spending-departments, too, are seldom able to keep rigidly to the exact limit set to their operations by the Finance department. The ideal of a Financial Minister is to try and make his budget estimates correspond as nearly as possible to the actual accounts; but for the reason given above this ideal is difficult to realise in India. Hence we have the constant phenomena of wide differences between the estimates and actuals, unexpected and heavy surpluses and deficits, and the consequent desire of the Finance Minister to make very cautious estimates, and to try and budget deliberately for a surplus. This is, of course, at variance with the sound maxim that no more revenue should be raised than is exactly necessary for expenditure; but it cannot be avoided by the Government of India, who have a fairly heavy debt in proportion to their revenues, who must therefore maintain their credit, if necessary, by budgeting deliberately for a surplus.

Another explanation of this phenomenon, (or, perhaps, we may regard it as another peculiarity of Indian Finance) is that the bulk of the Indian revenues are derived from non-tax sources. The table below would show that nearly one-half the revenue, if we regard the land revenue as not a tax, is derived from non-tax sources; the purely tax revenue being limited to about a fourth.

III. Revenue Table.

Revenue.	Accounts 1914-15	Revised Esti- mates 1915-16	Budget Esti- mates 1916-17.
Land Revenue	£ 21,221,539	£ 21,734,900	£ 21,932,100
Opium	1,572,218	1,881,200	2,286,900
Salt	3,910,790	3,490,500	3,987,600
Stamps	5,082,048	5,387,800	5,457,200
Excise	8,856,881	8,582,900	8,588,000
Customs	6,347,201	5,747,900	7,698,000
Other heads	5,151,321	5,178,300	6,107,400
Interest	1,023,307	1,076,000	1,155,300
Posts & Telegraphs ...	3,596,973	3,764,800	3,876,900
Mint... ..	69,498	74,000	72,900
Receipts by Civ. Dept. ...	1,505,120	1,546,300	1,542,900
Miscellaneous	677,750	645,100	565,100
Railways: Net	15,799,149	17,339,300	16,721,700
Irrigation	4,680,969	4,759,800	4,815,000
Other Public Works ...	288,219	288,500	262,700
Military Receipts	1,374,688	1,173,100	1,165,900
Total Revenue	81,157,666	82,620,400	86,199,600
Surplus + or deficit—	—1,785,270	—1,986,100	+1,052,400

Of these the Land Revenue, accounting for nearly $\frac{1}{2}$ of the total revenue, and being the largest single item, is fixed by

settlements, which are, generally speaking, fixed permanently or subject to periodical revisions. The receipts under this head ought not, therefore, to fluctuate very much from year to year; but the uncertainty of yield, which depends very much on the character of the weather, and the consequent desire of the Government not to be very rigid in collecting this revenue, account for all variations. In a year of drought Government might have remitted, partially or totally, their revenue demand from the afflicted district, in which case the figures for that year would show a considerable decline. Or they might have only postponed their demand, in which case the figures for the following year would show a great improvement owing to the payment of arrears. On the whole the receipts under this head show a steady upward tendency owing to the value of the "assets" having increased with the extension in cultivation, growth in population, rise in prices and development in trade.

The receipts shown under the head of Opium are those arising from the sale of opium for export; the revenue derived from opium consumed in India being credited under excise. Opium revenue is derived from a government monopoly. In normal times, before 1908, the revenue was subject to great fluctuations owing to variations in prices and changes in weather. Since 1908, following the Anglo-Chinese treaty in this respect, the Government of India have undertaken to reduce their exports progressively to China, and this revenue therefore is expected to fall very low in the near future.

The Salt revenue was, it is said, inherited by the British Government from native rule along with other transit dues. These transit dues were abolished, but the salt duty was consolidated and raised. Broadly speaking, one-half of the salt produced in India is manufactured by Government agency, while the rest is prepared under Government license. The North India Salt Department, a branch of the Finance department, controls the public manufactories in the Panjab and Rajputana, while in Madras and Bombay they are under the

supervision of the local Governments. For the salt raised in native states there are special treaties, permitting, for a commuted payment to the states concerned, free movement of salt. The duty on indigenous salt was Rs. 2-8 between 1888-1903 per maund. It was reduced to Rs 2 in 1903, to 1-8 in 1905, and to Re. 1 in 1907. Owing to the exigencies of the present war the duty was raised to Rs 1-4 in 1916. The receipts under this head include the revenue derived from imported salt.

The Excise revenue in British India is derived from the manufacture and sale of intoxicating liquors, hemp, drugs, toddy and opium and cotton duties. The revenue is collected under provincial laws which have accepted the general principle of disposing of the right to manufacture spirit for supplying a district by tender. The rate of still-head duty and the supply price to be charged are fixed in the contract, while the right to sell is separately disposed of. Foreign liquor is subject to an import duty at the tariff rates, and the revenue therefrom is included under the customs revenue.

The Stamp revenue is derived from two kinds of stamps: judicial or court fee stamps, and non-judicial or revenue stamps. The judicial stamp revenue constitutes more than $\frac{2}{3}$ of the total revenue; it is considered a kind of *quid pro quo*, rather than a tax properly so called. The revenue stamps are chiefly those charged on commercial documents.

The revenue under Customs is derived from duties charged on imported articles. Owing to financial stringency the customs schedule was completely recast in 1916-17. The general import tariff was raised from 5 p. c. to $7\frac{1}{2}$ p. c. *ad valorem*, except in the case of sugar which was taxed at 10 p. c. The old free list—containing articles not liable to any import duty—was materially curtailed. The customs revenue was further increased in this year by an export duty on tea and jute. The customs department is administered by an Imperial Customs service, responsible to the Imperial Government through the

department of Commerce and Industry, but acting through the local governments.

Among the "other heads" of taxes may be mentioned the Income Tax which is the chief of the assessed taxes. Like the customs, this head also was considerably altered in 1916. The present Income Tax is levied on non-agricultural incomes of over Rs. 1,000 a year. Every such income of over Rs. 1,000 a year and under Rs. 2,000 a year must pay an income tax of 4 pies in the rupee, or roughly 2 p. c.; incomes between 2,000 and 5,000 must pay 5 pies in the rupee or $2\frac{1}{2}$ p. c.; incomes between Rs. 5,000 and Rs. 10,000 must pay 6 pies in the rupee or 3 p. c.; incomes between 10,000 and 25,000 must pay 9 pies in the rupee or $4\frac{1}{2}$ p. c. and incomes over Rs. 25,000 a year must pay 12 pies in the rupee or 6 $\frac{1}{2}$ p. c. The total yield from this tax is estimated in 1916-17 at £ 2,912,800.

Among the remaining heads of revenue, receipts under Interest are derived from loans made to local Governments or native states or to local Boards and municipalities. The Posts and Telegraphs are another instance of a public monopoly in India, which is charging for its services the lowest possible rate, lower than any corresponding rate in the rest of the world, and which is worked mainly in the public interest.

The revenue derived from Public Works is given in the table under three heads: Railways, Irrigation and other public works. The Public Works Department originated from the military necessities of the Company's Government. Its activities have increased enormously since its institution in 1854; and at the present time, apart from the military branch, which, since 1899, has been finally separated from the civil branch and is now a part of the general military organization, it consists of three main branches: the Railways, the Irrigation works, and the Roads and Buildings branch. Of these the Railways form an Imperial department under a Railway Board represented in the Imperial Council by the member in charge of Commerce and Industry. The Board consists of a chairman and two members. The chairman has the status of a Secretary to the Government of India, with the right of independent access to

the Viceroy. It is the duty of the Board to prepare the Railway programme for expenditure, and to consider all important questions of railway policy. The remaining two branches of the Public Works department are entrusted to the Provincial Governments, subject to the control of the Imperial Government. This control is exercised on the principle that all essential matters should be determined by the Imperial Government, while the local Governments should be left a free hand in all questions of detail. The selection and execution of individual works, for instance, are regarded as matters of detail, while the distribution of the available grants, the power to sanction projects costing over 10 lacs, the control and pay of the more important posts are regarded as essential matters and thus left to the Imperial Government.

The revenue from Railways is derived from: (a) the share of surplus profits falling to the State under the agreements with the railway companies, and (b) the direct profits of the State from lines owned or acquired and conducted by the State. The State in India is financially interested in almost every railway line in the country, in British India or Native States; and its credit has been staked to a very large extent in support of the railway enterprise. In the past it has suffered heavily through the railways, which were pushed on not always in strict conformity with the economic requirements of the country; since the beginning of the present century, however, the railways have turned the corner and are yielding an increasing—though varying surplus every year. It is calculated that by the middle of this century the Government of India would be owning a fine network of railways, each paying its own way and yet bringing a considerable profit to the State. The question whether, as the contract with each company falls through, the State should acquire the line and work it through a public department, or whether it should once again lease the line for working to a company securing more favourable terms for the State, is at present engaging the attention of the Government of India.

The revenue derived from Irrigation works is collected, generally speaking, along with the land revenue, and in the

shape of an enhanced land revenue demand. It is also collected in some parts in the shape of specific rates levied on the owners or occupiers of the land benefiting by irrigation works. Unlike the railways, the major productive irrigation works have all been constructed and worked directly by the State, and they have invariably proved profitable. A few irrigation works, however, have been constructed with a view to protection rather than to profit. But on the whole the public irrigation works have never caused a loss to the State.

In all these heads of revenue changes can be made by the Indian Legislature, though the Government are not bound to submit their proposals for financial changes to the Legislative Council and abide by the vote of the Council thereon. In practice, however, even before the changes of 1909, the Government carried out each proposed change by means of a special legislative enactment.

As regards expenditure, the following table gives

IV. The principal heads of expenditure:—

Heads of expenditure.	Accounts 1914-15.	Revised estimates 1915-16.	Budget estimates 1916-17.
Direct demands on revenue	8,939,330	9,383,100	9,450,600
Interest	1,191,257	1,135,400	989,700
Post and Telegraphs	3,257,263	3,221,000	3,503,500
Mint	141,682	86,000	90,300
Salaries and expenses civil depts.	18,909,977	19,067,000	19,323,300
Miscellaneous civ. charges.	5,311,384	5,131,200	3,283,300
Famine Relief	1,000,000	1,000,000	1,000,000
Railways: Interest etc.	13,641,115	13,990,800	14,217,100
Irrigation	3,754,268	3,769,300	3,770,900
Other Public Works	7,177,209	5,464,200	4,717,500
Military Services	21,809,603	23,015,800	23,165,900
Total Expenditure ...	85,133,038	85,263,800	85,512,100

Among these various heads of expenditure the most noticeable is the head of Interest on Debt, which amounted to £ 9,957,000 in 1916-17. The debt of India has arisen from two causes. (a) There was a huge legacy of debt left to the Crown by the East India Company in 1858, to which was added the value of the India stock in that year; so that the total debt amounted to Rs. 63'555 crores in 1859-60. This was almost wholly non-productive debt. In the years that followed, the rupee debt was gradually increased owing to wars, such as the 2nd Afghan war or the 3d Burmese war or the present European war, and to famines, such as those of 1878-79 and 1899-1900. (b) There was the need for fresh borrowing every year for the construction of productive public works. Under this head there is hardly any limit to the public borrowing in India, except the one set by the available supply of capital in the London and the Indian money-markets. Out of the total interest charge of £ 9,957,000 in 1916-17, Railways alone absorbed £. 8,147,000, while Irrigation accounted for £ 1,509,400, the interest on ordinary, unproductive debt amounting to only £ 298,200.

According as the loan is raised in India or in England, the public debt of this country is divided into Rupee debt and the Sterling debt. This distinction is not now of very great importance, since, for all practical purposes the rupee is a fixed fraction of the £ sterling; but before the value of the rupee was fixed, the distinction was full of a living importance, as the interest on sterling debt being payable in sterling, the amount in rupees payable for interest went on increasing as the exchange dropped. The rate of interest has also been gradually reduced. In 1822 the whole of the rupee debt carried interest at 6 p. c. and this debt was not finally paid off till 1860. Between 1823 and 1853 the Government borrowed in India at 5 p. c. The greater portion of this 5 p. c. debt was converted in 1856 to 4 p. c.; but the shock to the credit of the State owing to the Mutiny compelled the government to borrow at the higher rate of 5 p. c.; this debt was finally extinguished in 1871. In 1858-59, government had to borrow even at 5½ p. c. and this loan was paid off by 1878-9. The 4½ p. c. debt, first raised in 1856-7, was increased in 1871 owing to the conversion of 4½ p. c. loan;

and by 1878-79 nearly the whole rupee debt bore interest at 4½ or 4 p. c. i. e. Rs. 15,148 crores at 4½ p.c. and 61,388 at 4 p. c. The 4½ p. c. debt was converted to 4 p. c. by 1893 with the exception of Rs. 1 crore, which was borrowed from the Holkar, for the construction of the Indore State Railway, which cannot be converted till 1970. The 3½ p. c. debt dates from 1893 when a small loan of Rs. 3.55 crores was raised at that rate; and its success encouraged the Government for a further reduction of the rate of interest to 3½ p. c. on the 4 p. c. debt in the following year. In 1896-7 a loan of Rs. 4 crores was raised at 3 p. c. but the bulk of the debt in the following years, until the outbreak of the European war, was incurred at 3½ p. c. In 1915 Rs. 4½ crores were raised at 4 p. c. and in the following year Rs. 6.75 crores were added at the same rate. In the Budget of 1916-17 the total debt provided for was as follows:—

Sterling debt	...	...	...	...	...£ 180,282,858
Rupee	"	—			
4 p. c.	...	...	...	...	Rs. 14,68,90,000
3½ p. c.	...	...	...	...	" 138,53,25,400
3 p. c.	...	...	...	...	" 7,72,75,500
Other debt	...	...	...	...	" 1,00,14,300
Temporary Loans	...	...	...	...	" 6,50,00,000
Savings Banks Balances...	...	...	...	...	" 23,35,20,176
Against this the total interest payable was					Rs. 5,80,25,000
in India and					£. 6,088,700, in England.

The expenditure on the Army is greater than in the past owing to the European war. The organisation of the Army etc. are dealt with in another chapter.

The direct demands on Revenue include all costs of collection and production. This item has been steadily on the increase. The cost of collection of the land revenue constitutes over 60 p. c. of the total; the charges under that head include the cost of district administration of the departments of land records, and of survey and settlement operations,

The expenses of the civil departments have been continuously growing. They include charges for general administration, courts of law, jails, Police, Ports and pilotage, Education, Ecclesiastical, Medical, Political, Scientific and other departments. The increase is most conspicuous under Education, Police, Medical and Scientific departments. The charges for general administration represent the cost of the whole civil administration down to the grade of commissioners of divisions. They include also the charges on account of the India Office, the Viceroy, the Governors, Lieutenant Governors and Councils in India. Such charges as those for the Coronation Durbar also come under this head. The Scientific and minor departments include the Survey of India, the Botanical and Geological Surveys, the Agriculture and Veterinary departments, Observatories, Inspectors of Mines and Factories and miscellaneous departments.

The Miscellaneous Civil charges include territorial and political pensions, civil furlough and absentee allowances, superannuation allowances and pensions, stationery and printing, and miscellaneous. Of these the first head is on the decline and the superannuation allowances are on the increase.

The charges for Posts and Telegraphs, Railways and Irrigation, Roads and Buildings, Mint &c. are incurred in connection with the working of these great commercial undertakings.

The Famine Relief and Insurance item dates from 1878. Prior to that date each famine was met as it occurred, and beyond that no regular machinery was provided. The experience of 1878 convinced the Government that the cost of famine relief should be treated as an ordinary charge on the revenue; and for that purpose a sum of 1½ crores of Rupees was to be set aside every year. This sum is applied first to the direct relief of famine; secondly to the construction and maintenance of "protective" railways and irrigation works; thirdly to the construction of "productive" public works which would otherwise necessitate additional borrowing. The amount used under the last-mentioned purpose is shown under the head of

Reduction or Avoidance of debt. Combating famine is primarily within the sphere of local Governments; but since 1907 the fixed assignments to Bombay, the Central Provinces, United Provinces, Bengal and Madras were increased by £ 250,000. This total is debited to the provincial revenues each year under the head of Reduction or Avoidance of debt, and the share of each province is entered to its credit with the Imperial Government. The provinces thus accumulate a reserve of credit which may be drawn upon in the event of famine. The charges then incurred are entered as Imperial expenditure.

V. Home Charges.

Another peculiarity of Indian Finance is that not the whole of the expenditure is incurred in India. A considerable portion, amounting to nearly £. 18 million, is spent in England, and is collectively described as the Home Charges. They include:—interest and management of the ordinary debt, interest and annuities on irrigation and railways account, payments in connection with civil departments in India, India Office charges, Army and Marine charges, stores, furlough allowances, and pensions and gratuities. Of these, interest accounts for nearly £ 7 million; India Office and Civil department charges for £ 500,000; Army and Marine charges over £ 1 million, stores a varying item, furlough allowances over a million and pensions and gratuities for nearly £ 5 millions. Indian public opinion regards this as a drain from India for the benefit of England. The defenders of the Government of India point out that (a) a good proportion of the Home Charges is used for paying the interest on debt, the greater portion of the money borrowed being used for productive purposes. Moreover the terms and conditions obtained by the Government of India in the London market are much easier than would be possible if India were an independent state. And such borrowing would be indispensable if India is to have all those means of modern

material development, which many other countries, like Japan or the United States, have to bring about by borrowed money. To all these arguments Indian publicists reply that not the whole of the Indian public debt has been incurred for productive purposes, nor were the objects, assumed to be productive, equally or immediately productive. Besides, even if India had to borrow for all these material improvements, there is no ground for assuming that she borrows under better conditions under British dominion than she would otherwise, as the much more unsettled state of South American republics does not preclude them from borrowing in the same London market at pretty nearly the same terms as India. (b) It is further argued by those who see no drain in the Home Charges that the item of stores should not be included, since in this instance there is a tangible return in goods for India's money. Again (c) the item of pensions, gratuities and other charges of the kind, is incurred for services rendered in the past, or being rendered now to the Indian peoples by the recipients of these allowances, and so here also it is unfair to describe the charge as a drain. To this the Indian publicists reply that the services of public servants are remunerated in India, admittedly the poorest country in the world, at a much higher rate than in any other country; that in those services the sons of India obtain a very slender proportion; and that the whole amount saved by English officials in India is taken away from India on their retirement, and may therefore, quite reasonably be regarded as a drain. This subject, however, is too complicated, and involves too many considerations to allow us to do anything more than to summarise the arguments on either side in this work.

VI. The Decentralisation of Finance.

The third peculiarity of Indian finance is the division of financial authority between the Imperial and the Provincial Governments.

Originally under the Charter Act of 1833 a system of Financial administration was established, by which the revenues of the whole of India, although received in the treasuries and sub-treasuries of the various provinces, were all credited to the single account of the Government of India which distributed all the funds needed for the public services throughout India. "The Supreme Government" it has been said "controlled the smallest details of every branch of the expenditure: its authority was required for the employment of every person who was 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 provincial Governments had no liberty and no incentive to economy. The distribution of the public income degenerated into a scramble in which the most violent—not the most reasonable—had the advantage.

This system was modified by Lord Mayo. The main principle introduced by that Viceroy was to make over to the provincial Governments a certain income by which they must regulate their expenditure, and to leave to them, under certain general conditions, the responsibility of managing their own local affairs. According to this principle the following heads of revenue and expenditure were made over to the local Governments: Jails, Registration, Police, Education, Medical services, Printing, Roads, Civil Buildings, and Miscellaneous public improvements. These were to be supplemented by a fixed annual Imperial grant varying according to the needs of each province. In case of a deficit the local Governments were to reduce their expenses or meet it by imposing taxation.

The system thus modified was improved under Lord Lytton, slightly altered under Lord Ripon, revised under Lord Landsdowne and made semi-permanent under Lord Curzon. The main principles of this scheme of gradual decentralisation of finance had been confirmed in the course of a generation and were summarised as follows by the Financial Secretary to the Government of India for the Royal Commission on Decentralisation:—

- (a) The Imperial Government retained certain administrative services which were thought inexpedient to be handed over to the provincial Governments. They also reserved the revenues from such services, together with such a share of the other public revenues, as would meet the expenditure falling on them.
- (b) The remaining administrative services were made over to the provincial Governments, each local Government was assured an income making it independent of the needs of the Government of India, and at the same time able to meet its normal needs.
- (c) This income was given in the shape of a defined share of the revenues collected by the Local Government in order to allow the resources of the local governments to expand with their needs.

The Royal Commission on Decentralisation summarised the existing system in 1909 as follows:—

(1) The settlements had been declared to be quasi-permanent. The Government of India reserve 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 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 revenue 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.

(3) The third feature of the system was the method by which the revenue accruing from the 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 the "divided heads". As, however, the distribution of these heads could never be so adjusted as to yield to a province, when added to the 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.

In 1912 the settlements were made permanent, and provincial Finance in India is now governed by rules framed in that year. The settlements with all the provinces were revised, and, subject to the contingency of providing against famine, local Governments were informed that certain growing heads of revenue were placed once for all at their disposal from which to meet the future needs of their province. The following rules now govern the Provincial settlements.

(1) The settlements being permanent are not subject to revision. In the case of a serious famine the Government of India might render special assistance to the afflicted province. On the other hand provinces might be called upon to aid the Government of India in the case of a serious embarrassment.

(2) Whenever the fixed assignment to a province becomes unduly high it will, as a rule, be converted wholly or partially into a share of growing revenue.

(3) Whenever the Government of India have a surplus which is not required for remission of taxation or reduction of debt, they may make special allotments to the provinces and declare the purpose for which such special grant is to be used. But such grants are not to be made the occasion of a greater interference by the Supreme Government in the local concerns than before, nor should the grants be made without any regard to the wishes of the local Government, or should be made applicable in all the provinces to the same purpose.

(4) The local Governments are not allowed to budget for deficits, unless the excess expenditure is due to exceptional and non-recurring causes. And if the deficit results in the reduction of Provincial balances below the prescribed minimum, arrangements should be forthwith made to replenish the deficit. If a local Government exhausts its own balance, and is permitted to overdraw upon the general balance, the overdraft is regarded as a short loan, bearing interest and repayable in such modes as the central Government might direct.

(5) The corrections by the Government of India in future will be limited to the proposed totals of revenue and expenditure, and divided heads of revenue.

The same resolution which laid down these rules also considered the two further questions of the advisability of the provincial Governments imposing and altering taxes, and that of borrowing on their own credit. As regards the first the local Governments argued that the conditions of economic development in all provinces are not identical; and therefore, the uniform taxation levied by the central Government results in unfairness. The Imperial Government admitted that, in a vast country of varying conditions, imperial taxation must of necessity be limited in its range, since very few taxes are suitable for the whole Empire; that the incidence of an imperial impost might vary from province to province; that the right given to the provinces to tax their own citizens might balance such inequalities, and allow of tax-experiments on a small scale which would be impolitic on a large scale. But all these were theoretical considerations only. In the absence of any practical scheme, the Government of India did not see fit to concede the right beyond admitting that the financial autonomy of provincial Governments must carry with it—whenever it came—the right to impose taxation. As regards the raising of loans by Local Governments, they are not permitted to raise them in open market, for they would compete with the Imperial loans. Besides it is considered undesirable to increase the unproductive debt of India. They may, however, have short term loans from Imperial revenues to

meet the cost of non-productive works of obvious utility which they cannot finance from their own revenues.

Having already considered the question of the provincial autonomy, it is unnecessary to discuss in detail the financial policy of the Government of India in relation to the provinces. Suffice it to say that under the present circumstances it would be undesirable to make the provinces financially independent of the Government of India. That Government cannot concede the right of taxation or of borrowing without impairing its own supremacy, and no financial independence for the provinces be complete without the right to tax and to borrow.

VII. Present Arrangement.

Revenue:—The Government of India take the whole of the revenue from opium, salt, customs, mint, railways, posts and telegraphs, military receipts, and tributes from native states.

The provincial governments take the whole of the revenues from forests, registration fees and the income from such spending departments as ordinary public works, police, education, medical, courts and jails.

The receipts from Land-revenue, Excise, Stamps, Income Tax, and Irrigation dues are divided equally between the Imperial and the Provincial Governments.

Expenditure:—The Government of India are exclusively responsible for Defence, Railways, Posts and Telegraphs, Interest on debt and Home Charges.

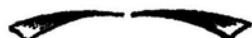
The Provincial Governments are similarly responsible for Land-Revenue and general administration, Forests, Police, Courts, jails, Education and Medical.

Charges for Irrigation and other ordinary Public Works are common to the Imperial and Provincial Governments.

The arrangement varies from province to province but the general features are the same. It must be added that the principle of permanent provincial settlements applies only to the major provinces. British Baluchistan, and the North West Frontier Province have yet only a quasi-permanent settlement.

CHAPTER VI.

Public Services in India.



PART VII.

Salaries, Leave of Absence, Vacation of Office, Appointments &c.

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

(2) Provided as follows:—

- (a) an order affecting salaries of members of the Governor-General's executive council may not be made without the concurrence of a majority of votes at a meeting of the council of India;
- (b) if any person to whom this section applies holds or enjoys any pension or salary, or any office of profit under the Crown or under any public office, his salary under this section shall be reduced by the amount of the pension, salary or profits of office so held or enjoyed by him;
- (c) nothing in the provisions of this section with respect to allowances shall authorise the imposition of any additional charge on the revenues of India.

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

86. (1) The Governor-General-in-Council may grant to any of the ordinary members of his executive council, and a Governor-in-Council may grant to any member of his executive council, leave of absence under medical certificate for a period of not exceeding six months.

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

87. (1) If the Governor-General, or a Governor, or the Commander-in-Chief of His Majesty's forces in India, and, subject to the foregoing provisions of this Act as to leave of absence, if any ordinary member of the executive council of the Governor-General, or any member of the executive council of a governor, departs from India, intending to return to Europe, his office shall thereupon become vacant.

(2) No act or declaration of the Governor-General or a Governor or a member of an executive council, other than as aforesaid, except a declaration in writing under hand and seal, delivered to a Secretary to the Government of India or to the chief secretary of the presidency wherein he is, in order to its being recorded, shall be deemed or held as a resignation or surrender of his office.

(3) If the Governor-General, or any ordinary member of the Governor-General's executive council, leaves India otherwise than in the known actual service of the Crown, and if any Governor, Lieutenant-Governor or member of a Governor's Executive Council leaves the province to which he belongs, otherwise than as aforesaid, his salary and allowances shall not be payable during his absence to any person for his use.

(4) If any such officer, not having proceeded or intended to proceed to Europe, dies during his absence, and whilst intending to