effected at some sacrifice of administrative efficiency; and in other parts of the Bombay Presidency, where similar divisions have been allowed, the intervention of Government to provide for the jurisdiction and maintenance of public order has been necessarily carried to the full length of political administration, a step only short of annexation.

A few examples of the intervention of the British Government to prevent divisions of states may be taken from the Annual Reports on the moral and material progress of India presented to Parliament, or from the Collection of Treaties. The earliest instance of express check upon alienation is to be found in the Sanad given in 1820 to the Raja of Garhwal. In more recent times, the Chief of Ali Rajpur, dying in 1862, bequeathed his state in different shares to two sons. The will was set aside, and the succession of the elder son, Gangadhar, acknowledged. In 1884, the partition of the chiefship of Katosan, in the Mahi Kanta, was prevented, although in regard to private property it was the custom of the chief's tribe and of the Mukwana caste to distribute the patrimony on the death of the head of the family. On that occasion Her Majesty's Government expressed the opinion that the assignment of maintenance to a younger son of a chief was preferable to dividing the estate. In 1850 the Court of Directors refused to allow the partition of a state in Central India, and in 1848 they applied to all political Jagirs the rule, "that existing incumbents should be held incapable of charging their estates beyond their own lifetime." This order was repeated by Her Majesty's Government in July 1871 in the case of the state of Akalkot. Upon the more important state of Kolhapur a temporary restriction, in

regard even to alienations of land within the state, was imposed by article v. of the treaty of the 20th of October 1862. The Maharaja of Kashmir was precluded, by his treaty of 1846, from changing the limits of his territory without the concurrence of the British Government; and in the same year restrictions were imposed upon the Trans-Sutlej Chiefs. The Sanad, given to Suket on the 24th of October 1846, contains this clause: "The Raja shall not alienate any portion of the lands of the said territory without the knowledge and consent of the British Government, nor transfer it by way of mortgage." On the other hand, in one special case, to which reference has already been made in the fourth chapter of this treatise, Kotah was saved in 1838 from the dangers of civil war by the creation of a new state of Jhalawar at its expense. But even so, when the opportunity occurred in 1899 of restoring to Kotah part of the districts severed from it, that course was adopted. This partial departure from the rule of preserving a principality from dismemberment was the exception which proved the rule.

Extension of the principle to acquisitions of land.

§ 113. It may be mentioned here that some restrictions upon the acquisition of lands, as well as upon their alienation, are imposed upon the chiefs of India. In so far as such fresh lands are sought at the expense of other Native states they are governed by the principles already explained, since rulers of states cannot part with the public property. But where ruling chiefs seek to acquire property by purchase in British territory, the danger is apprehended that the chief by such acquisition will place himself under British jurisdiction, and so subject himself to complications which may prejudice his rights and privileges as a foreign sovereign. A leading chief in Central India

engaged in trade in Bombay with one Cowasjee Jehanghir, and in 1866 a writ of attachment against property belonging to his state was issued by the High Court in satisfaction of a decree obtained by a plaintiff who had sued him. The Maharaja appealed to the British Government to protect him, and the principle was laid down that the privileges enjoyed by His Highness, as a ruler of his state, could not accompany him when he deserted that position and assumed the character of a trader in British India. Chiefs who desire to acquire property in British territories are therefore required to seek the advice of Government before they purchase it; and they are given to understand that, in their capacity as possessors of such property, they must expect to be treated by public officers just as any other British proprietors or subjects.

Limitations on the power of Chiefs to bequeath estates.

§ 114. The restrictions attached to the dismemberment of states, or to the encumbrance of Jagirs and certain other estates beyond the lifetime of their holders, are carried still farther where an excessive provision is made for the families of a deceased ruler which must be injurious to the interests of his successor. In numerous cases the assignment of villages to widows has been commuted after a chief's death, with the sanction of the British Government, to an allowance in money. More difficult questions are raised by the assignment to younger sons of Giras or hereditary landed property, subject only to conditions of military service and tribute. Cases are not wanting where a chief, conscious of his inability to bequeath his whole estate to, or dismember it in favour of, a particular son, has attempted to evade the spirit of the rule by either giving on his deathbed, or leaving after his death, large estates to his younger son or

sons. The practice called for interference in more than one state in Kathiawar, where the system led in some cases not only to a material alienation of revenue from the chiefs who had to bear the burden of administration, but to constant feuds between the ruler and the cadets, or Bhayad, of former rulers. The state of Chuda thus dwindled down into a sovereignty of fourteen villages with its stem less than its branches, and with its chief left without the means of supporting his position. More than 2000 square miles, in the Province of Kathiawar alone, have fallen under British political administration from similar causes. The disintegration of Native states not only leads to the breaking down of the political system, but entails an increasing cost of supervision and control upon the British Government. It is therefore an evil which to some extent concerns the British taxpayer no less than the Native state. If the policy of administering the political agencies through their chiefs is to be maintained, it is necessary to keep the states compact and capable of supporting the cost of their administration. Adequate maintenance for the sons of chiefs can be provided from the public treasury without recourse to permanent alienations of villages and the consequent jurisdictional friction. Accordingly, the British Government, whilst it has not yet formulated any universal rule on the subject of providing for younger sons by grants of land, has at times interfered in the internal administration of its allies to rectify abuses and to prevent serious injury to the rights of the ruling chief.

Right of intervention to suppress rebellion.

§ 115. The second right of interference to which attention must be called in this chapter—for the subject of regulating successions to principalities falls properly under the heading of the Royal Prerogative—

arises in the event of rebellion against the authority of the recognised sovereign. So long as the doctrine of non-intervention and subordinate isolation was rigidly enforced, the Company interfered, or not, according to its conception of its own interests. It refused the invitation of the Bikanir Maharaja to reduce his nobles in 1830. Again, Hari Rao Holkar, in 1835, was denied assistance, because his own internal administration, with which the Government had "no concern," was the cause of the disturbance. The Company, in those days, preferred to wait and see whether disorder was incurable, and if so, they were ready with annexation. But with the more liberal measure of protection now accorded a larger right of intervention has been created. This inevitable right has been publicly asserted in the correspondence published in the *Gazette of India*, dated the 22nd of August 1891. At the same time the British Government will not lightly interfere where the rebellion can be suppressed by the responsible local authorities. Thus, in 1875, a set of Hindu devotees, called Sidhs, determined to coerce the Bikanir State by committing suicide by self-burial. The Indian Government decided not to interfere so long as the Native state could deal with the case. If the chief felt incapable of performing that duty and renewed his request for aid, and if public disturbances were threatened, and the incapacity of the state to suppress them was demonstrated, then interference would be regarded as a duty.

It is now a generally accepted principle that if the protecting power steps in it must do so on its own terms. The first condition annexed to interference for the maintenance of order is the request of the state for aid, supported by proof of the need for

such intervention; or, where there is evidence that the Native state cannot deal with the disorder, the British Government will interfere of its own motion. The second condition is hardly less important. In the case just quoted, the Political agent was directed to inquire into the grievances of the Sidhs, and if he found them to be substantial, he was instructed to annex to the grant of aid for restoring order a condition that the Darbar would be advised to redress any legitimate grievances. Thus a second condition is annexed to interference, namely, that the British arbitration or aid, when once invoked or granted, must be accepted by the ruling chief without condition or limitation. When, in 1870, civil war was expected in Alwar between the Maharao and His Highness's Thakores, the Maharao was called upon to submit in writing his acceptance of arbitration, and an undertaking to abide by the result without any condition or reservation. A direct guarantee from the British Government to his subjects was, by this means, avoided, and the authority of their ruler was upheld, since the concessions ultimately and ostensibly proceeded from him. These principles are further illustrated by the correspondence laid before Parliament in 1890 in connexion with disturbances in Cambay. On the 17th of September 1890 the Government of Bombay learnt that His Highness the Nawab had been driven from his state by a mob, who resented the oppressive administration of his minister Shamrao Narain Laud. The Nawab was at the very outset informed that his application for military assistance would be granted on the condition that "such intervention must be accepted unconditionally by the Darbar." British troops were then despatched to Cambay; and although repeated orders were

addressed to the malcontents to disperse, and an assurance of a full investigation after their dispersal was conveyed to them, they preferred to resist the police aided by the military force. They were consequently dispersed, not without some unavoidable loss of life; and after due inquiry certain reforms were suggested to the Nawab, which he was required to carry out. To assist him, and at the same time to uphold his authority, a special Agent was placed at his disposal for a fixed period; and His Highness was requested to delegate to the Agent full powers over the administration. The letter addressed to the Nawab, on the 9th of October 1890, by Lord Harris, Governor of Bombay, contained this intimation: "The British Government has scrupulously fulfilled its obligations for the maintenance of your rights, and has accorded you its protection in times of disturbance; but it cannot consent to incur the reproach of enforcing submission to an authority which is only used as an instrument of oppression." "In pursuance then of the express condition on which my Government undertook to intervene, and of the general principles to which I have called attention, I have directed Major Kennedy to proceed to Cambay in the capacity of Special Political officer." "Your Highness will be required to invest him with all the jurisdiction and authority necessary for the performance of the duties entrusted to him." Several instances have occurred in other parts of India which have established the principle that, in the event of rebellion against the authority of a Native sovereign, the British Government will interfere when the local authority has failed, or is unable, to restore order, provided that its intervention is accepted as authoritative, or final. Should it appear that the rebellion

is justified by good cause, the measures taken will be as gentle as may be consistent with the re-establishment of order, whilst the necessary reforms will be introduced, even if they involve the deposition of the chief.

Right of intervention to check gross misrule.

§ 116. The right of intervention is not confined to the case of open rebellion or public disturbance. The subjects of the Native states are sometimes ready to endure gross oppression without calling attention to the fact by recourse to such violent measures. Where there is gross misrule, the right, or the duty, of interference arises, notwithstanding any pledges of unconcern or "absolute rule" which treaties may contain. It is obvious that if the annexation of Oudh was justified, as the "only means of removing the reproach" to which the British Government was exposed by supporting with its arms and protection a system of tyranny, the milder interference involved in deposition or temporary administration may properly be applied. There is no obligation, wrote Lord Hardinge on the 7th of January 1848 to the Maharaja of Kashmir, on the part of the British Government "to force the people to submit to a ruler who has deprived himself of their allegiance by his misconduct." To the late Gaikwar of Baroda Lord Northbrook wrote, on the 25th of July 1875, in these terms: "Misrule on the part of a Government which is upheld by the British power, is misrule in the responsibility for which the British Government becomes in a measure involved." Any tendency that may be shown by some sections of the Indian populations to exaggerate grievances and appeal against their own Government, makes it necessary to lay stress on the condition that the misrule which justifies interference must be gross. Sir John

Malcolm, in 1830, excluded from the right of intervention to secure reform, "that right, which has often been assumed, with regard to our view of the comparative benefit that the inhabitants would enjoy under our rule from that which they enjoy under that of their own Native princes." The published correspondence of the Government of India bears abundant testimony to their watchfulness against the advocates of a policy of benevolent coercion at the expense of the recognised rights of the states. Their intervention, when called for and granted in consequence of misrule, has only been accorded where the circumstances were exceptionally grave, and misgovernment both long continued and gross. In most instances repeated warnings have been given, and in some cases, as in Baroda and Oudh, a definite period for amendment was first allowed before the ruler's authority was set aside.

Right of intervention to suppress inhuman practices.

§ 117. Indian treaties bear unmistakable and painful evidence of the dark side of human nature. It was not only in the earliest period of intercourse with the Company that solemn engagements were taken from the Native sovereigns with a view to the suppression of crimes and practices which shock the sentiments of civilised humanity. In the course of the nineteenth century more than one chief was deposed by the British Government for the commission of barbarous acts, and several Sanads issued by Viceroys of India testified to the continued necessity for guarding against any relapse to inhuman practices condemned by British opinion, but condoned, if not commended, by some sections of Indian society. Thus, in 1819, His Highness the Rao, "at the particular instance of the Honourable Company, engages

to abolish the practice of infanticide, and to join heartily with the Company in abolishing the custom generally through the Bhayads of Kutch." The engagement had, however, to be renewed in 1840 by the chiefs, and there is reason to fear that this inveterate and unnatural practice has not yet been entirely suppressed. On the 4th of December 1829, Lord William Bentinck, in the teeth of strong opposition from native society and warnings from the highest officials, passed a Regulation which punished suttee, or the burning of widows on the funeral pyres of their deceased husbands, as culpable homicide. But for some years the practice, condemned by the law of British India, survived under the shelter of the Native states. In one of the Trans-Sutlej states, Mandi, twelve women were burned on the pyre of the Hindu Raja. On the death of Karan Singh, Chief of Ahmednagar, in the Mahi Kanta Agency of Bombay, his widow was burned alive against her will in 1835, notwithstanding the attempts of the British officers to prevent it. In 1836 his son bound himself by treaty—"From this time forward neither I, nor my children, nor my posterity, will perform the ceremony of suttee." But it was not until the close of the administration of Lord Hardinge that effective measures were taken to put down this blot upon British influence in the protectorate. That the British Government would not now tolerate any reversion to the practice may be accepted as certain.

Infanticide and suttee were not the only social customs on which the British Government waged war. On the north of the Brahmaputra, in the Province of Assam, the Raja Purandhar Singh agreed, on the 2nd of March 1833, to "bind himself, in the administration of justice, to abstain from the practices of the

former Rajahs of Assam, as to cutting off ears and noses, extracting eyes, or otherwise mutilating and torturing, and that he will not inflict cruel punishment for slight faults." The efforts of Sir Henry Lawrence in the cause of humanity are a matter of history, and an extract from a treaty, which he negotiated with the Udaipur state in 1854, illustrates the obligation under present consideration, although the particular treaty was afterwards annulled. Article xix. of the instrument ran thus: "No person to be seized on the plea of sorcery, witchcraft, or incantations." Passing on to the third period of Indian treaties, we find Lord Canning imposing the following obligation on the Cis-Sutlej states. On the 5th of May 1860 the Maharaja of Patiala, the Raja of Nabha, and the Raja of Jind, engaged "to prohibit suttee, slavery, and female infanticide throughout their territories, and to punish with the utmost rigour those who are found guilty of any of them." Unfortunately the need for constant watchfulness has not passed by. A casual examination of the published Reports of the Indian Governments supplies a list of half a dozen cases in which the Indian Government has interfered since 1868 to punish the rulers of Native states for cruel acts. There is no occasion to revive the shame of such incidents by republication of the names of the states, which will readily be found in Blue-Books, but it is noticeable that in each case the British Government took action, although the particular state had no special agreement with the British authorities to prohibit the practice condemned. The supreme Government justified its intervention by the law of public morality, and not by any express convention. A recital of the offences which provoked its departure from the rule of non-interference in the

internal affairs of the sovereign states will sufficiently explain its action. One chief ordered a subject, convicted of theft, to suffer the penalty of having his hand and foot chopped off. The second directed the mutilation of a slave by cutting off his nose and ears. A third had two jailers flogged to death. A fourth committed an outrage of too shocking and disgusting a character to bear repetition. The fifth ordered a "barbarous and inhuman" sentence of impalement to be carried out; and the sixth, so lately as in 1890, publicly tortured a subject. These instances tell their own tale, and explain why it is incumbent on the British Government, which upholds the Native states, to reserve to itself a right of interference to check or punish inhuman practices.

Right of intervention to secure religious toleration.

§ 118. The obligation to secure religious toleration is accepted not solely in consequence of the solidarity of religious feelings throughout the Empire, but also in the interests of the states themselves. When it is borne in mind that the British Government owes it to its own subjects to secure for them religious tolerance from Foreign potentates, its duty in India is enhanced by the subordinate relations which subsist between the Government of India and its protected allies. Thus, with China, liberty of conscience is secured by treaty; and the engagement with Siam, dated the 18th of April 1855, contains this provision: "All British subjects visiting or residing in Siam shall be allowed the free exercise of the Christian religion, and liberty to build Churches in such localities as shall be consented to." The Treaty of friendship and commerce with Zanzibar, dated the 30th of April 1886, contains article 23, which runs thus: "Subjects of the two High contracting parties shall, within the dominions of each other, enjoy freedom of conscience

and religious toleration. The free and public exercise of all forms of religion," and "the right to organise religious missions of all creeds, shall not be restricted or interfered with in any way." But the duty which the British Government has assumed is not confined to what it owes to its own subjects in Native states. Interference is justified, if the need arises, to secure religious toleration for the subjects of the protected states. Thus, in Gondal, bitter disputes at Dhoraji were composed by securing to the Muhammadan population the right, under certain safeguards, of eating their customary food. The Jodhpur Chief undertook, on the 24th of September 1839, to exercise "no interference in regard to the six sects of religionists." In 1871, when the Chief of Rajgarh embraced the faith of Islam, an announcement was made in public Darbar that the British Government did not look to the religious professions of the chiefs of India, but to their obligations to the paramount power. If they observed their engagements, "and ruled without oppression and intolerance, there would be no interference." The duty of religious tolerance was thus publicly asserted, and when the Maharaja of Indore claimed a right to enforce certain regulations against the Canadian missionaries, Lord Ripon informed His Highness that he could not permit them to be interfered with "in the exercise of personal and religious freedom in their own houses and on their own premises." It is true that in this case the missionaries were British subjects, but the immunity against persecution was claimed not only for themselves but for their converts and dependants. There are still a few Hindu principalities in which the civil status of Hindus embracing another religion is regulated by the ancient Laws of Menu, and a change of faith is held by their

Courts of Law to deprive such converts of their rights as citizens or as parents. The law of India is expressed in Act xxi. of 1850, and the British Government is constantly urging the rulers of such states to legislate for their own subjects in the same spirit of religious toleration. Until they do so, it is obvious that the paramount power must protect, if need be, its own subjects resident in or visiting such states from the operation of local laws so clearly opposed to their rights as subjects of the King.

Other rights of interference are in special cases secured by Treaty.

§ 119. The five instances which have been given of the right assumed by the supreme Government of interference in the internal administration of the united states possess two common features. The obligations discussed affect all the states of the Empire, and they are justified, even in the absence of treaty, by a desire for the permanency of Native rule. There are other obligations peculiar to certain states which have been created by express agreement and which operate exclusively in the territories to which they expressly apply. There is no reason to fear that they will be unduly extended to other states, and a brief notice of their character will suffice. The numerous sovereignties in Kathiawar engaged in 1807 "not to seize upon the lands of another," "neither will I purchase, at the offer of my brethren, their villages or lands." For the protection of the Bhayad and Mulgirassias, a Court called the Rajasthanik Sabha was accordingly constituted under the presidency of a British officer, whose proceedings were "subject to the general control of the paramount power, exercised through the Political agent in Kathiawar." When this special Court had decided a large number of cases and established a body of leading principles for the future guidance of the courts of the

Native states, it was withdrawn in the hopes that thereafter the states concerned would judge righteously between the parties. In the large state of Kutch, the British Government extended, in 1819, its guarantee to the Jareja chiefs of the Bhayad, and generally to all Rajput chiefs in Kutch and Wagar. Apart, then, from the general obligation of the Rao, His Highness is required to give effect to this engagement by the constitution of a special Court for the trial of certain cases that affect the guarantee-holders. In Central India the guaranteed chiefs and Tankhadars are protected by special rules from the jurisdiction of their feudal superiors; whilst in Kolhapur the subordinate Jagirdars are placed under British supervision, notwithstanding "the seignorial rights of" their Raja.

General rights of intervention to enforce British interests: *e.g.* i. Trial of Europeans.

§ 120. These exceptional restrictions upon internal sovereignty go to establish the general rule of non-interference; and passing from the category of obligations which have their origin in a consideration for the welfare of the states, we can now proceed to examine those duties which the British Government renders to its own subjects, and which cannot be performed without some degree of intervention in the affairs of other states. The subject of jurisdiction over Europeans and Americans, who owe allegiance to Foreign Nations, has been considered in connexion with the external relations of the Indian princes who have surrendered their rights of negotiation. British subjects, and especially those who are European or of European origin, are made subject to the Indian Legislature by Acts of Parliament. The right which a German or an American can expect his own Government to secure for him, of a fair and proper trial, cannot be denied to British subjects. Accord-

ingly, jurisdiction is exercised over them within the Native states by British officers. In the chapter on Jurisdictory arrangements this matter will be discussed at further length.

ii. In the matter of currency.

§ 121. Another British interest has given rise to intervention in the internal administration of the Native states. The regulation of coinage is one of the objects which the United States of America have entrusted to the Central Government. In India the full advantages of free trade and free intercourse are conceded to the Native states under British protection. There are no frontier stations, and no obstacles of customs examination are placed in the way of free circulation of passengers and goods, save where arms, opium, and a few special articles are concerned. These privileges carry with them some reasonable claims to co-operation. At the same time, the British Government does not appear to have asserted as yet any general right to establish uniform coinage or uniform weights and measures throughout the United Empire. The attempt was, indeed, made in Sind in 1842, where an article on the subject was introduced into the treaty presented to the Amirs. But generally and elsewhere the Government of India has contented itself with interference on behalf of the British taxpayer when circumstances have arisen in a protected state which have seriously threatened or injured public interests. Accordingly, when, in 1834, spurious and counterfeit coins were poured into the great trading centre of Bombay, the mint of Janjira, a state which lies on the other side of the harbour, was suppressed. No violence was done to the principles of international law by such intervention; and the Janjira state, if it had been a nation instead of a subordinate protected state, could not

with reason have complained. In order that it may avoid the recurrence of extreme measures of intervention, the British Government, which experienced at Agra a similar inconvenience from the mints of a neighbouring state, has laid down the rule, that Native state mints must be established and worked only at the capital of the state under proper control and supervision by the ruler of the state, whose coinage must be limited to the requirements of his own territories, and of those of his subordinate Chiefs. Where mints have fallen into disuse, they are not to be revived, and the state of Balasinore was, in 1885, informed accordingly. In some states, as in Porbandar, the British coinage has been introduced, and the tendency of the Government of India is illustrated by the 13th article of the Mysore instrument which makes the coins of the Government of India legal tender in that principality and declares that "all laws and rules for the time being applicable to coins current in British India, shall apply to coins current in the said territories. The separate coinage of the Mysore state, which has long been discontinued, shall not be revived."

iii. In the matter of railways, free trade, and judicial acts.

§ 122. The exercise of control over the railway system is not merely a measure of Imperial defence, but also one of common welfare. Every state in India is required to cede jurisdiction over that part of the common system which traverses its limits. The advantages of this concession will be discussed in a subsequent chapter. The union of the whole Empire has been consolidated in recent years by numerous engagements with the chiefs for the removal of injurious restrictions on trade. In the unreserved adoption of free trade the state of Kolhapur took a leading place in 1886, and other states, especially on

the Western side of India, have followed the example. But these reforms of the fiscal system are effected by agreement, and are not introduced by the assertion of Imperial authority except where the British Government acquired from the Peshwa special rights in the matter, or where the circumstances have called for exceptional intervention. Thus, in April 1857, the Company's Government laid down the principle in Gujarat that "a tributary state cannot raise at pleasure its transit duties, this being an Imperial prerogative," and in so doing they carried out the orders of the Court of Directors dated the 4th of January of that year. When, again, the British Government was compelled to intervene in Manipur in 1892, it abolished forced labour as an act of state. There are other directions in which the Imperial authority is occasionally pressed. Thus extradition is demanded in certain cases from Native states when a reciprocal surrender cannot be conceded. The recognition of the judicial acts of the Native states cannot be guaranteed or enforced against other states so long as their systems of administration remain as imperfect as they are. Yet, where the ends of justice require the attendance of parties before British Courts, the states united to the Indian Empire may be expected to render ready co-operation.

Cautions and reservations needed in reading this chapter.

§ 123. The obligations discussed in this chapter, so far as they are not expressed in written engagements, must be regarded as resting upon slippery ground. Allowance must be made for the great variety of states included in the protectorate, their geographical positions, and the course of British relations with each one of them. Each case for interference will admit of much difference of opinion. The full extent of British rights of intervention in

the Home Departments of the states has never been, and never can be, defined. The theory of it is well understood, but it has never been published. When one leaves the safe ground of military and international obligations, in respect of which the paramount power has received full authority to act, one enters on the debatable ground of policy and approaches "the mysteries." If Sir George Campbell was too sweeping in his comment on the relations between the British Government and the protected states,—"It is impossible to give a definite explanation of what matters we do meddle with, and what we do not,"—there is some truth in the application of his words to the internal administration of the states. The admission has been frequently made in these pages that neither the Company nor the Crown accepted a distinct mandate to promote the public welfare of the states in subordinate union with the government of India. It has been shown that obligations are constantly liable to be reinforced by the action of Parliament, by the exercise of the Prerogative, and by the accretion of interpretation and usage. Who can measure their volume? In the chapter on the "Price of Union," it was suggested that the account could not be closed. Is it, then, worth while to attempt the solution of the insoluble, or the classification of obligations, and their differentiation from matters of comity? To this question the answer may be given that the preservation of some 680 Native states by a paramount power is an extraordinary achievement. The threads which unite them must be very delicate and liable to be broken, unless mutual confidence is established and the burden of their common responsibilities equitably distributed. Success must depend on the self-restraint and modera-

tion of the protecting power, as well as on the loyal co-operation and submission of the protected states. From this point of view there is an advantage to be gained by sorting the whole bundle of obligations, distinguishing between those which the Indian princes must clearly perform, and those other services which they may at their discretion withhold or render to the Empire. On its part the British Government loses no opportunity of taking the public into its confidence, and when it interferes in the internal affairs of a state it usually publishes full reasons for the policy which it pursues. From such publications the material for this chapter has been taken; and since it is certain that the political barometer will rise and fall in the future as it has in the past, and that time and public opinion will make fresh calls upon the King's allies, it seems expedient to search history for an explanation of the principles which have hitherto guided the government of India in this part of its difficult task. By such means a continuity of policy may be maintained, and impatient reformers may be led to appreciate the difficulties as well as the advantages of the changes which they may advocate.

As regards the rulers of the states, they must remember that they cannot be of the Empire and yet not of it. They cannot enjoy the privileges and ignore the responsibilities of the union. As members of a single political organism, they owe allegiance to the union and must shoulder their share of the common burden. They will save themselves from interference if they recognise their obligations for the preservation of their sovereignties against dismemberment, and for the promotion of good government and religious toleration, which the King's Government has undertaken. There are other interests to be con-

sidered besides those of the states and their subjects. The British Government has a strong and indefinable obligation to promote the moral and material welfare of 232 millions of British subjects. If the action of a foreign nation towards them were unfriendly, law and policy would justify reprisals. With nearly seven hundred subordinate states, large and small, admitted into junior partnership with it, the British Government must guide its policy in each case that arises by the "competition of opposite analogies." It can hardly be contended that the refusal of a minority of the states to join in common action for the welfare of the Empire, whether it be a matter of currency, of postal development, of railway extension, or any other Imperial concern, would justify general inaction. The rights and privileges of each protected state are guaranteed by Parliament, but the beneficent exercise of the suzerain's authority, if it could not proceed without the agreement of every unit of the protectorate, would be paralysed. Care must be taken that a policy of benevolent coercion does not prove more dangerous to the integrity of the Indian sovereignties than was the policy of escheat or annexation. But at the same time the progressive wants of society impose new responsibilities on those who are charged with their administration. Under these conditions it is well for all parties to take stock of their rights and duties. An examination of treaties and of published correspondence on cases of interference is essential for that purpose; and the object of this chapter is not to lay down a law, but to suggest some lines of distinction, and to indicate facts and analogies upon which others may put their own interpretation.

CHAPTER XI

OBLIGATIONS DERIVED FROM THE ROYAL PREROGATIVE

Obligations which flow direct from the Crown.

§ 124. In every political constitution there are certain public acts which are incomplete without the formal exercise of the authority, or attributes, vested by it in its recognised Head or representative. The bestowal of favours, or the grant of powers, by the supreme Head of the community carries with it certain obligations. The Crown is the fountain of Honour, and those who accept its decorations or privileges owe, and admit their liability for, something in return. The Sovereign alone receives or accredits ministers and agents, and it needs no clause, such as article xix. of the Treaty with Kutch, dated the 13th of October 1819, to ensure that the British agent must "be treated with appropriate respect." The admission of a new chief into the family of sovereigns in subordinate alliance with His Majesty, however regular the succession may be, is not complete without the formal recognition of His Majesty's Viceroy; and the chief so recognised owes allegiance to the authority which recognises and upholds him. It was assuredly no accident that Lord Canning used in the Adoption Sanads issued by him a form and words which are quite unusual in Indian treaties. The Treaty of Benares, concluded on the 12th of December

1860 with Maharaja Sindhia, is drawn up between the British Government and His Highness, and Her Majesty's authority was not expressly referred to. But the Sanad of adoption, given to His Highness on the 11th of March 1862, set forth "Her Majesty's desire to perpetuate the Governments of the princes of India, and to continue the representation and dignity of their Houses." The royal prerogatives were touched upon, and to the assurance given "in fulfilment of" Her Majesty's desires, the express condition was annexed of "loyalty to the Crown," as well as faithfulness to obligations to "the British Government." There are, then, certain other obligations due by the Native states which have not been collected under the three heads of common defence, external relations, and common welfare, obligations which flow from the source of the British Crown and from the prerogatives of the King-Emperor of India. It may be argued that some of these duties were enforced even before Lord Canning, in his Despatch dated the 30th of April 1860, described the general position created by the transfer of the administration to the Crown in these terms:—"The last vestiges of the Royal House of Delhi, from which we had long been content to accept a vicarious authority, have been swept away. There is a reality in the suzerainty of the Sovereign of England which has never existed before, and which is not only felt but eagerly acknowledged by the Chiefs; a great convulsion has been followed by such a manifestation of our strength as India has never seen." No doubt the connexion between the Crown and the Indian Sovereigns became more intimate after 1858, but it existed before then. The Company simply derived from their Sovereign many of the rights which they asserted and exercised.

Hence it follows that some of the obligations which will be considered in this chapter were recognised when the Company ruled, although fresh vitality and force have been given to them by the determination of the Company's "trust" announced in Her Majesty's Proclamation of the 1st of November 1858.

Exclusive right to settle precedence and grant honours.

§ 125. The first of these obligations arises from the prerogative of the Crown to grant honours and decorations, and to settle precedence. From the fact that the King-Emperor of India exercises this power two obligations follow: first, that the Viceroy's decision as to relative rank is authoritative; and, secondly, that no honours can be received from other sources without His Majesty's sanction. It may be added that the power which confers can take away that which it has granted. Questions of precedence and relative rank seem trivial, but they have even led to war in the periods which preceded the establishment of the British peace. In the present day they give rise to heated discussion and sullen resentment, but more serious differences would ensue if the authority to arbitrate between rival claims did not vest in the Viceroy. A brief sketch of the history of British titles and salutes will suffice as an introduction to the consideration of the obligations attached to their enjoyment.

In India the Company's allies coveted honours and titles, bestowed by the Emperor of Delhi, long after the consolidation of British supremacy. In 1838 it was observed by a writer in the *British and Foreign Review*, that "the Nizam still acknowledges the supremacy of Delhi, as well as the King of Oudh, the Nawab of Bhopal, and the Nawab of Madras. Amir Khan does so in secret, we believe, although the Company raised him to the independent position

he holds." Considerations of policy induced the Governor-General to change the title of the "Nabob Vizier" of Oudh to that of "King." Lord Moira's Treaty of the 1st of May 1816 was concluded with "His Excellency the Nabob Vizier," whilst Lord Amherst's Treaty of the 17th of August 1825 was with "His Majesty the King of Oudh." Lord Moira, when he became Lord Hastings, was the first Governor-General who paid serious attention to the bestowal of titles, and he recorded his opinion that "this essential and peculiar attribute of sovereign rule should be exercised direct by the British Government." Lord Amherst granted several titles, and Lord William Bentinck reviewed the whole subject, in May 1829, in a Resolution in which he laid down three grounds for their award. The first qualification was service rendered in war or time of public emergency. The second was public spirit shown by landholders in assisting the police, or by others who had improved the commerce and agriculture of India, or by those who had carried out important public works. The third qualification was based upon liberality in making contributions for public purposes. But it was not until the communications of India were developed, and the institution of 1861 of the Most Exalted Order of the Star of India by the Queen, that the Emperor of Delhi's titles ceased to possess a value, and the favours of the Sovereign of Great Britain and Ireland were eagerly sought. The first Table of Salutes authorised by Her Majesty was contained in an Order in Council, dated the 20th of March 1857, although its issue in India was delayed by the outbreak of the Mutiny. The earliest lists published by authority were sanctioned by Orders of Council, dated the 23rd of January 1860 and the 1st of March

1864. They were revised in 1867, and several additions or alterations in them have since then received the specific sanction of the Queen. The Viceroy of India can only amend the Table of Salutes subject to the approval of His Majesty, and when in 1877 the title of Queen-Empress, or Kaiser-i-Hind, had been assumed by the Sovereign, a fresh list was published in the following year, which introduced the distinction of personal salutes given for life. Additions of guns, as a personal honour, to the dynastic salute of a chief last only for the life of the prince upon whom they are conferred. The salutes range from twenty-one guns, to which the three rulers of Baroda, Hyderabad, and Mysore are entitled, to nine guns, but those chiefs who receive salutes of eleven guns and upwards are alone entitled to the style of His Highness. Under the Company's administration certain ruling chiefs were styled His Excellency, but this style is now exclusively reserved for the Viceroy and certain other British officials. It is unnecessary to give a complete list of Indian titles with the additions made to them by Lord Dufferin, who was the first Viceroy to recognise learning by the creation of the titles of Mahamaho-padyaya and Shams-ul-Ulama. The fact that all honours, titles, salutes, and decorations proceed from the Sovereign entails certain consequent obligations which have next to be considered.

It was laid down in 1891 by Her Majesty's Govemment, that in all questions of social precedence amongst the chiefs of Native states in India, no absolute right can be claimed, and the decision of the Viceroy is authoritative. But long before then a dispute had arisen between the two great Rajput Houses of Jodhpur and Udaipur, otherwise known as Marwar

and Meywar, as to their relative precedence, and the Viceroy's decision had been enforced in 1870 as final. The deprivation, or the reduction, of a salute is regarded as a public disgrace, and Indian history supplies several instances of the infliction of this punishment on chiefs who have failed to carry out their solemn obligations. In the same way, titles have been publicly taken away from their holders, whether Native chiefs or British subjects, if they have brought disgrace on the Order into which they have been admitted. The obligation annexed to the receipt of the Royal favour is thus made clear. In August 1886, the *Gazette of India* published the announcement, that "Ram Singh of Bansi in the District of Basti is hereby deprived of his title of Raja." The Raja had sent for a girl betrothed to her relative; and when she was removed he ordered his servants to bring her by force. On her resistance she was cut down and her father was killed. The accused persons were acquitted for lack of evidence, but the Court pronounced an opinion against the Raja, who was accordingly deprived of his title. The Raja of Puri was, on another occasion, deprived of his title of Maharaja; and a member of the Carnatic family, who treated with disrespect a title conferred upon him, was only allowed to resume it after he had tendered his apology. The prerogative of the Crown is exclusive, and titles which suggest an allegiance to any sovereign but the King-Emperor are ignored. Thus the title of Vizier of Oudh was exchanged, as already mentioned, for King, and in 1864 the claim set up by Sultan Sikandar to the title of Shahzada was disallowed. Again, the sovereigns of India are never called in official language royalties, nor are their sons styled Princes, a term appropriated

both in Statutes and in Indian laws to ruling chiefs themselves.

Acceptance of foreign orders.

§ 126. Since the Sovereign grants honours, salutes, and titles, whether personal or official, it is also the prerogative of the Crown to settle the conditions under which they may be accepted from foreign Sovereigns. Regulations on the subject were published in the official *Gazettes of India* in 1886, and have since then been republished. Foreign powers can have no intercourse with the protected sovereigns of India, and this rule of isolation precludes the direct transmission of royal favours. Occasionally, Native chiefs have sought a privilege from another chief, or desired to confer a title on a British subject. In each case it has been held that the act was inadmissible as an invasion of the royal prerogative. Thus in April 1886, a chief in Central India desired to receive a gold chain Toda from the "famous house of Kolhapur." The request was courteously declined. Much must depend on the nature of the present sought or offered by a ruling chief. The annual gift of shawls by the Maharaja of Kashmir to the King, and the presents which the last King of Ava sent to China, signify more than an exchange of courtesies, being symbols of allegiance and subordination. It would therefore be contrary to the spirit of the union if Native chiefs gave or received such presents. In 1875, the Nizam of Hyderabad proposed to confer the title of Mustakil Jung Istikam-ud-Daula Bahadur on a British officer, but the title was not recognised. On the other hand Native sovereigns have conferred titles on their own subjects.

§ 127. More important, both in itself and in its consequences, is the principle that the succession of a chief to a Native state requires the recognition of the

King's representatives. From this principle follows the further right of the British Government to settle disputed successions. The first rule was clearly laid down in 1884 in a letter addressed, on the 15th of January, to the Chief Commissioner of the Central Provinces, which was published in the *Gazette of India* of the 22nd of August 1891. The Secretary to the Government of India wrote:—"The formal investiture of a chief should, if possible, be performed by a British officer. Such a course may not always be practicable; but I am to observe that the succession to a Native state is invalid, until it receives in some form the sanction of the British authorities. Consequently an *ad interim* and unauthorised ceremony, carried out by the people of a state, cannot be recognised, although the wishes of the ruling family and the leading persons in the state would naturally in all cases receive full consideration." The same principle had already been established under the rule of the Company, not, however, without some contradictory precedents, and it was certainly recognised by all subordinate states under the Mughal and the Maratha governments. Thus, the Nizam of Hyderabad, Sikandar Jah, in 1803 obtained the confirmation of the Emperor of Delhi to his succession to rule in the Deccan on the death of Nizam Ali. When it is recollected that Hyderabad had been admitted into the British alliance in 1766, that it was a party to the Triple alliance of 1790, and that in 1798 the British subsidiary force was made permanent and the union of the Nizam with the Company finally cemented, the reference to Delhi for recognition illustrates the firm hold which the idea of the Imperial prerogative of recognising successions had obtained in India. The Company was not altogether

The right to recognise all successions to chiefships.

pleased with the incident, but its officers judiciously retorted by delivering to the new Nizam an instrument, dated the 24th of August 1803, which declared that the British Government considered all treaties and engagements which had subsisted between the late Nizam and the Company to be in full force. Thus, in the first period of British intercourse, the prevalent idea in India was that successions needed the confirmation of higher authority; and the Governor-General, Lord Wellesley, accentuated the principle by delivering a formal instrument to the ruler of the leading state in the country.

In the next period the state of Indore presented an opportunity for enforcing the same lesson. Hari Rao Holkar died in October 1843, and His Highness's mother was allowed by the British Resident to choose his successor, who was thereon installed by that officer without awaiting instructions from Calcutta. To make the position clear, the Governor-General, on the 9th of November 1844, addressed the new Maharaja in language which has ever since been adopted on similar occasions. It was remarked that by the death of the late chief, without leaving an adopted son, or any one entitled to succeed, "the guddee of the Holkar state became vacant." Thereon "it became necessary for the Governor-General to make an arrangement for the administration" of Indore. The secondary position which, in forming a decision, was assigned to the wishes of the widows, was emphasised in the following sentence:—"Having an earnest desire to promote the interests of the chiefs and people of the state, and to preserve the honour and prosperity of the principality, the British Government determined on this occasion to make such an arrangement as would conduce to the accom-

plishment of these ends, and at the same time, it was believed, be agreeable to the feelings of the remaining members of the family of the late Hari Rao Holkar, and of the chiefs and nobles of the principality." Upon this foundation of motive and prerogative was based the following conclusion :—" Actuated by these motives, I was induced to direct the Resident to nominate your Highness to the occupation of the vacant guddee." " In thus bestowing on your Highness the principality of the Holkar state," it is the intention of Government that " the chiefship should descend to the heirs male of your Highness's body lawfully begotten, in due succession, from generation to generation." Few Indian documents possess more historical interest than that just mentioned. It exonerates Lord Dalhousie from the charge, so often brought against him, of discovering a new doctrine of lapse. It places Lord Canning's Sanads in their true light as granting a concession which no ruling chief, and still less the widow of a chief, could claim, namely, the privilege of regulating the succession where no heirs male of the chief's body lawfully begotten existed to constitute a " due succession." Finally, it gives the force of continuity to the language used by Her Majesty's Government in 1884 when the succession to Kolhapur was based on selection and not on any ceremony of adoption performed by the widow of the last Raja. On that occasion the Secretary of State expressed satisfaction that " a candidate has been found, closely related to the deceased prince, of a character which is stated to give promise of success as a ruler when he attains majority, and whose selection, whilst agreeable to the Ranis and people of Kolhapur, has met with the approval " of the Government of India.

From this account it may be gathered that the prerogative of recognising successions was exercised in the times of Mughal rule and was asserted by the Company in the first and second periods of their intercourse with the states. In the third period it was finally placed beyond any challenge by the action of the first Viceroy. Lord Canning's Sanads of adoption were eagerly sought, and, as has been seen, they were denied to the junior branch of the Kurundwar family because its representative was not recognised as a ruling chief. The ruling prince of almost every important state in India received a Sanad, and by his acceptance admitted, if there was any need for the admission of that which could not be contested, the right of Her Majesty to regulate successions. The Sanads were received with every mark of joy and gratitude, because they conferred something new and substantial when they granted to ruling chiefs a right of adoption "by yourself and future rulers of your state, of a successor in accordance with Hindu law and the customs of your race," or an assurance "that, on failure of natural heirs, any succession to the government of your state, which may be legitimate according to Muhammadan law, will be upheld." The present section may be concluded by repeating a quotation from a Despatch dated the 5th of June 1891, which was published with the correspondence on Manipur affairs. "It is the right and duty of the British Government to settle successions in subordinate Native states. Every succession must be recognised by the British Government, and no succession is valid until recognition has been given." There is no compromise or qualification in this public declaration of an obligation common to all states.

§ 128. From that broad rule it follows that the British Government has the right and the duty of intervention to settle disputed successions. One of the objects which Lord Canning had in view when he conferred the Sanads of adoption was that ruling chiefs should make timely provision for their successions. If they neglect the opportunity, and make no use of the means particularly placed in their hands, the British Government must *select* a successor. It cannot entrust the prerogative of the Crown to the widows of a chief. They may indeed adopt a son to the private estate, if there be any, of the deceased Hindu chief who has himself neglected, or been unable, to exercise the right. But the regulation of the succession to a chiefship is beyond their power. Thus, the last Rani of Satara adopted a son to her private estate, but the principality lapsed on the death of her husband without heirs. A chief may reasonably be expected to exercise the right of adoption in a formal and public manner. When, in 1869, it was announced that the late chief of Shahpura had adopted Ram Singh just before his death, it was discovered that the alleged adoption had been performed in secret, and there was no adequate proof of the fact that the chief himself had taken part in it. The obligation of selecting a successor thus devolved upon the British Government. The state of Ali Rajpur fell vacant, in 1891, upon the failure of heirs direct or adopted. The Government of India, following the precedent of Indore and of other states already noticed, declared that the state was thus liable to be treated as an escheat, but they selected Partab Singh, a cousin of the late Rana. In so doing they announced that they were "guided solely by a consideration of the best interests of the state and of the

The right to settle disputes as to succession.

generally-expressed wishes of its nobles and people. Rana Partab Singh succeeds to the chiefship in virtue of his selection by the Government of India, and not as a consequence of any relationship, natural or artificial, to the late Rana Vijay Singh." In weighing the best interests of a state due consideration is paid to Hindu or Muhammadan law or to any special family or tribal custom that supersedes the ordinary law. The personal fitness, or promise of fitness if a minor is selected, of the candidate is an essential qualification. Subsidiary to these main considerations, the wishes of the late ruler, if they can be ascertained, and the general feeling of the nobles and widows receive full attention. The widows of the deceased chief ought, in the absence of palace intrigue or domestic quarrels, to be the best exponents of their husband's intentions or preferences, and they can so far contribute to the material upon which the Viceroy's selection and decision will be taken. But a prompt settlement is essential to the welfare of the state, which would be ruined by delay, and by the growth of partisan feelings which a prolongation of the dispute would entail. It is unnecessary to dwell on these considerations which are familiar to every student of Indian history. The Manipur correspondence shows that importance is still attached to the principle just discussed. "It is admittedly," wrote Her Majesty's Secretary of State on the 24th of July 1891, "the right and duty of Government to settle successions in the protected states of India." Such questions may even arise out of the terms of the adoption Sanads, and not merely upon failure of heirs whether natural or adopted. In Nawanagar, a Kathiawar state, His Highness first adopted one son, on whose death the adoption of another, Ranjit

Singh, was in January 1879 recognised by the Viceroy. But in 1882 the Jam had a son, Jaswat Singh, born to him, and the Government of India consequently revoked their provisional recognition of Ranjit Singh. When, however, an early death removed this natural heir leaving no son to succeed him, the claims of Ranjit Singh as an adopted heir revived, and he was recognised as ruler of Nawanagar.

In other cases questions have arisen as to the meaning of the Sanads given to Muhammadan states, which qualify the succession "on failure of natural heirs" by the words "which may be legitimate according to Muhammadan law." Does the protective *caveat* "natural heirs" comprise collaterals? or may a Muhammadan ruler select any son he chooses to succeed him? It would seem that a Muhammadan chief who is without lineal heirs should not pass over a natural collateral heir in favour of a selected successor without rights of inheritance, nor pass over the person next in succession by selecting a more remote collateral. This much is established by authoritative decisions in several cases, that the strict rules of civil inheritance are not necessarily applicable to quasi-regal successions. But there is no occasion to exhaust the list of questions that may require settlement. It is sufficient to state the rule that if disputes arise either under the Sanads or outside them, the Viceroy, as representative of His Majesty, has the right to settle them. Were it not so the rival parties would have recourse to the sword.

Nazarana and succession duties.

§ 129. Indian treaties and histories contain frequent reference to Nazarana or succession duties, and a discussion of the subject of succession to Native states is incomplete without some allusion to them. Such fines or levies have their roots deep in the

past of Indian, as well as mediæval European, history. At one time the payment of Nazarana or succession fines was regarded as the best evidence of a title to succession, and rival claimants vied with each other in pressing their payment on the Peshwa or the Emperor. The duty was often excessive. Thus, the petty Bhil state of Mandavi had devolved, in 1771, upon a cousin of the last ruling chief, and the Peshwa charged a Nazarana of 100,000 rupees. Another succession occurred in 1776, and a further duty of 150,000 rupees was demanded. Ten years later the impoverished state was charged 60,000 rupees for a third succession. When the Treaty of Bassein placed Mandavi in tributary relations with the British Government, the country was reduced to such a state that, in 1814, on the succession of a collateral, no Nazarana was taken. Sir John Malcolm was an advocate of the expediency of establishing the system of Nazaranas on a fixed basis; but so long as the doctrine of escheat and lapse prevailed, the Company did not desire to commute a more profitable right of reversion for a tax with which was associated the idea that its payment afforded a guarantee against lapse. The Native states still levy Nazarana on succession to their subordinate chiefships, and the British Government has interfered in Kolhapur to prevent the exactions from oppressing unduly the chiefs who are placed under their general protection by treaties with the Maharaja. The liability of subordinate states to pay succession duties on the recognition of succession by the suzerain was so well established by precedents and tradition that exemption from the liability required special provision. Thus the treaty of 6th June 1819 with the Southern Maratha Country Jagirdars, the Patwardhan family, contains

a statement of their obligations to muster troops, and then promises that "when new Sanads are required for the descendants of each it is to be represented to the Government, which will graciously confer a new Sanad, and continue the Jagir without exacting any Nazar." The chiefs have since then received adoption Sanads, so that it may be assumed that no Nazarana would be charged on the succession either of descendants of the original grantee or of sons adopted by the ruling chiefs. Practically, under present policy, no succession duties are charged in the case of direct successions or adoptions duly made by ruling chiefs. In other cases of collateral successions, and where the state is not specially exempted for poverty or other good reason, a light duty is charged on its net revenue after deduction of any tribute which the state may have to pay under its treaties. The duty is graduated according to the distance of relationship, and if one succession on which duty has been paid is followed within a certain interval by another, a further reduction is made.

The right to receive or accredit agents.

§ 130. It is the prerogative of the Sovereign to receive representatives of, or to accredit his own to other Nations and states, and to annex to their recognition such conditions as are required. This, like other royal prerogatives, was exercised by the Company in former days. An extract from the records of the East India Company illustrates the procedure adopted. Thus, on the 2nd of August 1843, the following Despatch was sent to the Governor in Council at Bombay: "Sir—At the request of His Majesty the King of the French, which has been communicated to us through the Queen's Government, we have consented to the recognition of Mons. Jules Altaras as Vice-Consul

for France at Bombay. We are, your Loving Friends, John Cotton," and others. From the date when the Government of India passed to the Crown, the nominations of foreign Consuls to reside in India have been regulated by the rules which apply to other possessions of the Crown. Nominations of a foreign Consul are signified by the power concerned to the Foreign Office in London. If the Indian authorities have no objection to raise, the *exequatur* of His Majesty issues in the usual course. When a foreign Consul is invested by his own Government with authority to make Vice-Consular appointments, the Government of India can recognise such appointments. Foreign consular officers having none but commercial duties to perform are only appointed at British Indian ports, and they have no intercourse whatever with the Native states. The channel of communication between the ruling princes and the outside world for all official purposes is through the agents or Residents placed at their Courts by the Government of India. These representatives of the King's Government have various duties assigned to them by British law, as well as by treaty with the states, or in the absence of treaties by established usage. In the earliest days of political intercourse, when a few favoured states were admitted into the Company's alliance, arrangements were made for the mutual appointment of agents. But with the introduction of the extended policy of subordinate isolation, and with the surrender by the protected allies of their rights of war and of negotiation, the maintenance of the Company's agents at the Courts of the Indian sovereigns entered on a new phase. Some states, as Kolhapur, were required to pay the cost, or a part of the cost, of the agency establishment from which under the altered conditions

they received material services of protection and advice. In course of time Parliament and the Indian Legislature attached to the Political agents special jurisdiction over British subjects in foreign territory. The Governor-General in Council charged them with the exercise of other jurisdiction delegated to the Government of India by the Native sovereigns, as over railway lands or civil stations. These arrangements will be considered in the next chapter. Here it is only necessary to refer to these matters in order to indicate the extensive area of duties and functions imposed on the Political officers attached to the protected states. For the discharge of their duties they require not merely the privileges of extra-territoriality and the immunities that attach to foreign representatives and their servants in foreign territory, but also the active assistance of the sovereigns whose interests are protected by the British Government. No treaty engagement is needed to support this obligation. Without its representatives on the spot the Government of India could not perform its proper duties to the Native states. Occupying the position of international representative or of arbiter in interstatal disputes, charged with the defence of the Empire and the protection of the chiefs against causeless rebellion, called upon to decide on the spur of the moment questions of succession, and in rare cases required to take a more active part in the internal administration, the supreme Government must station its officers wherever the need arises for their presence or their intervention. Any attack upon them is rightly regarded as a breach of loyalty, and when the Gaikwar of Baroda was, in 1875, charged with an attempt to poison the British Resident, the proclamation issued by the Viceroy described the alleged attempt in these

terms: "Whereas such an attempt would be a high crime against Her Majesty the Queen, and a breach of the condition of loyalty to the Crown under which Mulhar Rao Gaikwar is recognised as ruler of the Baroda state." The duty which a Native prince owes to the British agent at his Court was thus traced to its source, the royal prerogative.

The right to take charge of the states of minors, and to provide for their education.

§ 131. To the same source may be attributed the right of the British Government to take charge of states when, owing to the death or removal of a ruler, a fresh succession has not been recognised, or the successor duly recognised is unable from minority or other cause to undertake the responsibilities of his high position. Similar in source and nature is the obligation repeatedly and publicly affirmed "to see that a minor chief is so educated as to befit him to manage his state." The civil law imposes a special obligation on Government for the protection of minors and for their education. The principle is of greater importance to the Indian sovereigns, where Zenana factions and Court intrigues tend, if unchecked, to produce complications that would seriously hamper a young chief in the discharge of the extensive powers which may devolve upon him, whenever he is entrusted with the administration of his state. In the discharge of its duties the Government of India, whilst anxious to pay all deference to the views of the family of the deceased chief, admits no right of intervention, and is exclusively guided in the arrangements which it makes by its own conception of the interests of the ruler and his subjects.

The duty of loyalty to the Crown.

§ 132. There are other obligations that flow from the direct relations in which His Majesty the King-Emperor stands to the protected chiefs of India, and

which are embraced in the condition of loyalty to the Crown attached to the Sanads of adoption. The criminal law of British India recognises the offence of "waging war upon the King"; and although the princes of India are not subject to the regular jurisdiction of the British Courts, they have been taught by many examples that resistance to the Royal authority constitutes an act of rebellion. The Nawab of Furruckabad rebelled in 1857, and surrendered himself in 1859 under the Proclamation of amnesty. He was tried, and found guilty of waging war against the British Government, and of the murder of British subjects. The sentence of death passed upon him was suspended, but he was banished from British India. Breach of allegiance is still recognised as a ground for annexation, and Lord Canning expressly guarded against the impression to which his Sanads might possibly give rise, by recording this reservation: "Neither will the assurance diminish our right to visit a state with the heaviest penalties, even to confiscation, in the event of disloyalty or flagrant breach of engagement." The obligation of loyalty rests not merely on the rulers of states, but on their subjects as well, since they, equally with their rulers, enjoy the protection of His Majesty. Thus, in August 1891, the Jubraj of Manipur was tried and convicted of "waging war against the Queen-Empress of India." The occasion was taken to proclaim that "the subjects of the Manipur state are enjoined to take warning by the punishments inflicted on the above-named persons guilty of rebellion and murder." Hostilities against the British Government not only involve a breach of allegiance, but a "crime." In the same way no Native state is justified in undertaking, or abetting hostilities against another state. When,

in 1873, the Maharaja of Rewa, under grave provocation, despatched a force to arrest Hardat Singh in Sohawal territory, his conduct was held to be a breach of allegiance. The duty of allegiance and loyalty owed by every state in India must be performed in spirit as well as in deed. The grant of harbour or refuge to a proclaimed offender differs little from abetment of his offence. In 1872, His Highness the Nawab of Junagarh brought to Bombay in his retinue a proclaimed mutineer named Niaz Muhammad Khan. This person was not covered by the amnesty, and he was seized, duly tried, and convicted of rebellion. The Nawab expressed regret, and pleaded ignorance of the antecedents of his follower. The apology was accepted not without a serious warning to the chief, and the principle was laid down that a protected chief is bound to communicate to the British agent the name and circumstances of any suspicious persons, of any creed or profession, who may seek a refuge in his territory.

CHAPTER XII

BRITISH JURISDICTION IN THE NATIVE STATES

Three classes of British jurisdiction, delegated, residuary, and substituted.

§ 133. How essential to the Indian system is the principle that sovereignty is divisible, becomes apparent when the intrusion of British Courts into the territories of the Native sovereigns is examined. In every state in the interior of India, the British Government exercises personal jurisdiction over British subjects, as well as extra-territorial jurisdiction over all persons and things within its cantonments situated in foreign territory. Wherever a main line of railway penetrates, British jurisdiction acquired by cession and limited in extent to the objects set forth in the terms of cession follows it. In many of the protected states the Government of India shares with the sovereign his jurisdiction over his own subjects; and in some the entire administration of justice, both civil and criminal, is conducted under arrangements made by the executive Government, or, as it is termed, by the Courts of the Governor-General in Council. In the case of States which are subject to none of the disabilities under which the Indian states lie, International law tolerates and recognises some of these forms of extra-territorial jurisdiction. Although it was laid down, in the case of the *Laconia*, that as a matter of right no state

can claim jurisdiction of any kind within the territorial limits of another independent state, still a nation may, and does expressly consent, either by treaty or by its own legislation, to the introduction of foreign jurisdiction over persons who are not its subjects, or over areas occupied by the representatives of foreign powers, without thereby losing its independence. This authority derived from the sovereign of the place in which a court of foreign jurisdiction exists, coupled with the authority of the sovereign in whose name the court is established, constitutes the double foundation for the Consular jurisdiction which His Majesty's officers exercise by Orders in Council within Egypt, China, Morocco, Maskat, Turkey, Zanzibar, and other places. Its extent is more comprehensive than is generally imagined. The Orders which affect Turkey, for instance, deal with the following matters, namely, the Government of British subjects, the judicial system in Egypt, hospital dues, judicial fees, the suspension of the operation of Orders in Council as regards matters within the jurisdiction of the Egyptian Courts, fugitive offenders, and the administration of Cyprus. With the Chinese Empire His Majesty has arranged for the extension of Consular jurisdiction to maritime matters and additional ports, and for the establishment of the supreme Court at Hong-Kong, in addition to the matters mentioned under Turkey. But International law could not be strained to the length to which British jurisdiction is carried in India as, for example, in those states where the Political agent hears appeals from capital sentences passed by the Courts of the Native states upon their own subjects. In short, if the protected states are to be treated, as the Crown and Parliament have undertaken to treat them, not indeed as independent, but

still as sovereign states, we must part company with Austin and his school of International law, and hold fast to the principle laid down by the late Sir Henry Maine that sovereignty is divisible. The only alternative is that which has already been discarded in the tenth chapter of this treatise, namely, to agree with Sir George Campbell that "it is impossible to give any definite explanation of what things we do meddle with and what we do not." When it is remembered that in Africa the foreign jurisdiction of His Majesty is being exercised over any persons and in any cases over and in which territorial jurisdiction may be exercised, those who are anxious to perpetuate Native rule in India, and are jealous guardians of the rights and privileges of the protected princes, will be pardoned if they shrink from accepting the counsel of despair suggested by Sir George Campbell.

It is essential in dealing with the subjects discussed in this chapter to remember the point of view from which the obligations of the ruling princes are approached. An endeavour is being made to draw a line between what they must surrender as the price of union and what they can claim to retain. If the hand of foreign jurisdiction is to be extended according to "the circumstances of the case," and if analogies between European international usage and the treatment of the Native states are to be ruled out of court, the protected princes must lose a powerful defence against encroachment. Yet Parliament, the King's Orders in Council, and even recent treaties, constantly proclaim that the princes of India have "sovereign" rights, and while this is the case it becomes necessary to examine the intrusion of British jurisdiction into the Native states from their point of view as being sovereigns in their own internal affairs.