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Indian Citizen Series.

Indian Constitutional Documents

(1600—1918)

VOL. I

COMPILED AND EDITED
WITH AN INTRODUCTION

BY

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SECOND EDITION
(*Enlarged and Brought up-to-date*).

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To

The Sacred Memory

His Beloved Brother

The Late Sivadas Mukherji, B. A.

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

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

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

PREFACE TO THE FIRST EDITION.

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

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

In the Introduction I have attempted to give brief historical summaries of (1) the rise and growth of British power in India from 1600 A. D. to 1765 A. D.; (2) the development of the Indian Constitution from 1765 A. D. to the present day; (3) the development of the system of Provincial Financial Settlements; and (4) the development of Local Self-Government under British rule. They do not profess to be exhaustive original investigations, but are chiefly meant as a guide to the study of the various documents incorporated in this volume.

In this book it has been my aim to preserve in one place and in a permanent form all the more important original documents relating to the constitution of the Government of India so that the student of Indian constitutional history, the publicist, and the Indian legislative councillor may not have any very great difficulty in finding out references to particular documents. My labours will be amply repaid if this book be of some help to such enquirers and if it thereby promote a scientific study of the Indian constitution. I shall feel much obliged if readers of this book will offer me any suggestions or point out to me any mistakes or omissions.

Before I conclude, I deem it to be my duty to acknowledge my indebtedness to my esteemed colleague, Prof. S. C. Roy, M.A., for the constant help and encouragement which I have received from him in the compilation of this volume.

DURBHANGA LIBRARY,
September the 1st, 1915.

P. MUKHERJI.

PREFACE TO THE SECOND EDITION.

When the first edition of this book was published three years ago, I had had considerable misgivings about its success. But the subsequent reception of the book by the press and the public throughout India and their unanimous testimony as to its great usefulness showed that it supplied a keenly felt want of the educated Indian public. Emboldened by the kind patronage of an indulgent public, I have ventured to bring out this improved and enlarged edition.

The book has not only been brought up to date throughout, but many entirely new features have been added to it—so much so that the present edition is nearly double the size of the first edition. I would specially refer here to the inclusion in this edition, among various other things, of *Documents illustrating the relations of the British Government with the Native States*, *Documents relating to the Representation of India in the Imperial War Cabinet* with corresponding sections in the Introduction, and the *Montagu-Chelmsford Reform Proposals* with all their relevant documents, such as the *Recommendations of the Royal Commission on Decentralization* (1909), *the Congress-League Scheme* and the *Joint Address*. I have tried to make the book as complete and up-to-date as possible, so that the student of Indian Constitutional History and the publicist may have, ready at hand in one volume, all the materials necessary to form their judgment on the great constitutional issues now before the country. I shall deem my labours amply repaid if this book be of some help to those on whose sound and sane judgment the future of political India depends and if it leads to an unbiassed, scientific study of Indian constitutional questions.

I should be failing in my duty if I did not gratefully acknowledge the invaluable help rendered to me by my revered father, Babu Lalmohan Mukherji B.L., author of *Indian Case-law on Ejectment*, in the preparation of this volume. I should also like to take this opportunity of thanking Babus Shyamapada Banerji and Nirapada Banerji, proprietors of the *Nababibhakar Press*, but for whose ungrudging assistance in passing the book through the press, its publication would have been longer delayed.

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

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

P. MUKHERJI.

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INTRODUCTION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Total—£2,169,398.

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

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

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

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

* This was called Legislation by the Executive Government.

the Crown the supremacy in the whole administration of justice, and to place an effective check upon the affairs of the East India Company.

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

The Court issued its writs extensively throughout the country, arrested and brought to Calcutta all persons against whom complaints were lodged,—zemindars, farmers and occupiers of land, whatever their rank or consequence in the country. Revenue defaulters were set at liberty under a writ of *habeas corpus*; the criminal administration under the Nawab was declared to be illegal; the mofussil civil courts were held to have no valid jurisdiction; and the Supreme Court, itself modelled upon the Courts of England, introduced the whole system of English law and procedure. The Court exercised large powers independently of the government, often so as to obstruct it, and had complete control over legislation: such a plan could not but fail and it had to be re-modelled by another Act *viz.*, the Amending Act of 1780-81 which, among other things, exempted the Governor-General and Council of Bengal, jointly or severally, from the jurisdiction of the Supreme Court, for anything counselled, ordered or done by them in their public capacity (though this exemption did not apply to orders affecting British subjects). It also empowered the Governor-General and Council to frame regulations for the Provincial Courts of Justice without reference to the Supreme Court. It was under this statute that the so-called "regulations" were passed. The Court of Directors and the Secretary of State were to be regularly supplied with

copies of these regulations which might be disallowed or amended by the King in Council, but were to remain in force unless disallowed within two years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the same year (1861) the Indian High Courts Act was passed (24 & 25 Vict. c. 104) empowering the Crown to establish, by Letters Patent, High Courts at Calcutta, Madras and Bombay, in which the Supreme Courts, as well as the *Sadar Dewani Adálat* and the *Sadar Nizamut Adálat* were all merged, the jurisdiction and powers of the abolished courts being transferred to the new High Courts. Each of the High Courts was to be composed of a Chief Justice and not more than 15 judges, of whom not less than one-third including the Chief Justice were to be barristers, and not less than one-third were to be members of the Covenanted Civil Service. All the judges were to be appointed by and to hold office during the pleasure of the Crown. The High Courts were expressly given superintendence over, and power to frame rules of practice for, all the Courts subject to their appellate jurisdiction. Power was given by the Act to establish another High Court with the same constitution and powers as the High Courts established.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recent Statutes, 1911-1916.—Before concluding this historical summary we ought to notice a few important statutes. In 1911 was passed the Indian High Courts Act (1 & 2 Geo., V. c. 18) which (1) raised the maximum number of judges of a High Court of Judicature in India to twenty; (2) gave power to His Majesty to establish new High Courts within His Majesty's dominions in India, whether or not included within the limits of the local jurisdiction of another High Court, and to make consequential changes altering the jurisdiction of that other High Court; and, (3) empowered the Governor-General in Council to appoint temporary additional judges of any High Court for a term not exceeding two years. In exercise of the powers given by this Act a new High Court has already been established at Patna for the new Province of Behar and Orissa and the number of Judges of the Calcutta High Court was for a time raised to the maximum.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

dictional gauge in the Imperial system of Railways and Telegraphs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The whole of the revenue under heads producing £4,000,000

Half of the revenue under heads producing £8,000,000

A larger or smaller proportion under heads (chiefly land revenue) producing £23,000,000

An almost nominal share under heads producing £7,000,000

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) They should not necessarily be assigned for the same object in every Province.

Together with these changes, some variations were made in the terms of the settlements in the various Provinces before they were declared to be permanent. These are as follow :—

(1) (*a*) Forest revenue and expenditure were made wholly provincial in all the Provinces.

(*b*) Excise revenue and expenditure were made wholly provincial in Bombay, while in the Central Provinces and the United Provinces the provincial share of these heads was increased to three-fourths.

(*c*) Land revenue was made half-provincial in the Punjab and five-eighths provincial in Burma.

(*d*) The provincial interest of the Punjab in major irrigation works was raised from three-eighths to one-half.

(2) The fixed assignments of the various Provinces were reduced by the amount which these changes of classification added to the provincial share of growing revenues.

Having thus remedied the defects of the then existing settlements, the Government of India approached the task of imparting greater permanency to their financial relations with Provincial Governments. They realised, at the outset, that complete permanency was not attainable. The possibility of famine constitutes a danger to the settlement contracts against which it is impossible to provide adequate safeguards. The Famine Insurance Scheme is a convenient device for distributing the expenditure on famine in its earlier stages, or on a partial scarcity ; but a really widespread calamity would sweep it away and leave the Provinces dependent in large measure upon the bounty of the Imperial Government. In a crisis of this kind the Government of India must of necessity step in and supplement the provincial resources, as it has done in the past, and the contract obligations will, for the time being, remain partially in suspense. Subject, however, to provision against famine, the Government of India considered that the settlements, as now revised, might safely be declared to be fixed in perpetuity. They held that the time had come when Local Governments might reasonably be informed that certain grow-

ing sources of revenue had been placed, once and for all, at their disposal from which to meet the future needs of the Province which they administered. It would be for them to husband their resources and lay them out to the best economical advantage. With the introduction of this element of fixity into the financial relations, it would be possible to allow provincial authorities far greater independence within definite limits, and to relax a great measure of the control which the Government of India had hitherto exercised over the provincial bodies.

We may now summarise the rules governing the future relations of Provincial and Imperial finance as laid down in the Resolution of May 18, 1912.

(i) The provincial settlements will, in future, be permanent and not subject to revision ; in case of serious famine in a Province the question of assistance from the revenues of the Government of India will be considered. The Government of India reserve the right to call for assistance from provincial revenues in the event of grave embarrassment in their own finances.

(ii) When the fixed assignment of a Province becomes unduly high and hampers the expansion of its revenue, as compared with the legitimate and necessary growth of expenditure, it will ordinarily be converted, either in whole or in part, into a share of growing revenue as soon as the state of Imperial finances permits.

(iii) In the event of the grant of special allotments to Local Governments out of surplus revenues not required for the remission of taxation, the reduction of debt, or other purposes, the Government of India will retain the option of declaring the purposes for which the money is provided ; but

(*a*) the grants will not involve greater interference by the Central Government than at present exists;

(*b*) they will be allotted with due regard to the wishes of the recipient Government, and

(*c*) they need not necessarily be devoted to one and the same purpose in every Province.

(iv) A Local Government may not budget for a deficit, unless it satisfies the Government of India that the excess expenditure is due to an exceptional and non-recurring cause, and also, if the deficit involves a reduction of the provincial balance below the prescribed minimum, that suitable arrangements will be made for the restoration of the minimum.

(v) If a Local Government exhausts its own balances and receives permission to overdraw upon the general balances, it will be required to take the necessary amount as a short loan from the Government of India The loan will bear interest and will be repayable in such instalments as the Central Government may direct.

(vi) Future corrections by the Government of India will be restricted to—

(*a*) divided heads and

(*b*) the proposed totals of revenue and expenditure.

These rules represent, in the opinion of the Government of India, a decided advance in the path of decentralisation. They place a greater responsibility on Local Governments for the stability of their provincial finances, while at the same time investing them with wide independence.

In their Resolution of May 18, 1912 the Government of India also considered the two important questions of Provincial Taxation and Provincial Loans. Henceforth Local Governments are not to impose additional taxation without the previous sanction of the Government of India. If, in the future, there should come about a clear separation between Imperial and provincial finance, with a more effective control over the latter by the Legislative Councils, it might become practicable and necessary to allow Local Governments to levy special provincial taxation if they wished to increase their scale of provincial expenditure.

The Government of India assent to the theoretical consideration that, in a vast country of greatly varying conditions, Imperial taxation must, of necessity, be restricted in its range, as very few taxes are suitable for imposition in every part of the Indian Empire; that the incidence of an Imperial impost must be lighter in some areas

than in others; that provincial taxation might not inappropriately balance such inequalities; that a tax which would cause dissatisfaction in one part of the country might arouse no opposition in another; and that experiments in taxation might thus be made with safety on a small scale which would be imprudent or even dangerous, if applied to India as a whole.

These considerations are, however, theoretical only. No practical scheme has been submitted to the Government of India which, therefore, see no reason for removing the safe-guards which now surround its imposition. But they recognize that "financial autonomy for the Provinces, if and when it arises, must carry with it the power of taxation"; and it is contemplated that some means for enlarging the borrowing powers of Provincial Governments must be found in the new scheme of Constitutional Reforms.

As regards the raising of loans by Local Governments, they are not permitted to raise them in the open market, for that would compete with Imperial loans. A further objection to the flotation of provincial loans lies in the undesirability of increasing the non-productive debt of India. The Local Governments are, however, to be granted short-term loans from Imperial revenues to meet the cost of large non-productive works of manifest utility which they cannot finance from their own resources. "It seems to us that if Provincial Governments are to enjoy such real measure of independence as will enable them to pursue their own development policy, they must be given some powers, however limited, of taking loans". (The *Report on Constitutional Reforms, 1918, p. 73.*)

IV. THE DEVELOPMENT OF LOCAL SELF-GOVERNMENT UNDER BRITISH RULE.

Urban Self-Government.—Rudimentary institutions for the conduct of local affairs have existed in India, from time immemorial in the village communities, and trade guilds in towns. SIR CHARLES METCALFE gives an excellent description of the former in the following lines—"The village communities are little republics, having nearly everything they can want within themselves, and almost independent

of foreign relations. They seem to last where nothing else lasts. Dynasty after dynasty tumbles down; revolution succeeds to revolution; Hindu, Pathan, Mogul, Mahratta, Sikh, English, are all masters in turn, but the village community remains the same."

But between these ancient institutions and the municipality or rural board of the India of to-day there is a wide gulf, and the one class of bodies is not a historical development of the other. Local Self-Government, in the legally constituted form in which it now prevails in India, is essentially a product of British rule. The existing system of municipal administration is for the most part of comparatively recent introduction, while local institutions in rural areas are of still later origin, and have been also of slower growth.

To deal first with municipalities, the Presidency towns had some form of municipal administration, first under Royal Charters and later under statute, from comparatively early times, but outside of them there was practically no attempt at municipal legislation before 1842. An Act passed in that year for Bengal, which was practically inoperative, was followed in 1850 by an Act applying to the whole of India. Under this Act and subsequent provincial Acts a large number of municipalities were formed in all the Provinces. The Acts provided for the appointment of commissioners to manage municipal affairs, and authorised the levy of various taxes, but in most Provinces the commissioners were all nominated, and from the point of view of self-government these Acts did not proceed far enough.

Local Self-Government, as a conscious process of administrative devolution and political education dates, outside Presidency towns, from the financial reforms of LORD MAYO'S Government who, in their Resolution of 1870, introducing the system of provincial finance referred to the necessity of taking further steps to bring local interest, supervision, and care to bear on the management of funds devoted to education, sanitation, medical charity, and local public works. LORD MAYO'S Government hoped that "the operation of the Resolution, in its full meaning and integrity, would afford opportunities for the development of self-government, for strengthening municipal institutions, and for the association of Natives and

Europeans, to a greater extent than heretofore in the administration of affairs." New Municipal Acts were passed for the various Provinces between 1871 and 1874, which, among other things, extended the elective principle, but only in the Central Provinces was popular representation generally and successfully introduced.

In 1881 LORD RIPON'S Government issued a Resolution on the Extension of Provincial Finance in which they explained that intimately connected with the general scheme for the decentralisation of finance was the important question of developing local self-government. They admitted that considerable progress in that direction had been made since 1870 : a large income from local rates and cesses had been secured, and in some Provinces the management of this income had been freely entrusted to local bodies : municipalities had also increased in number and usefulness. But there was still, it was remarked, a greater inequality in progress in different parts of the country than varying local circumstances seemed to warrant. In many places services admirably adapted for local management were reserved in the hands of the central administration, while everywhere heavy charges were levied on Municipalities in connection with the Police, over which they had necessarily no executive control.

Paragraph 11 of the Resolution (1881) went on to say :—

"His Excellency the Governor-General in Council is, therefore, of opinion that the time has now arrived when further practical development might be afforded to the intentions of LORD MAYO'S Government, and that the Provincial agreements should no longer exclude from all consideration the mass of taxation under Local and Municipal management, together with the similar resources still retained in Provincial control, and ignore the question of local self-government. The Provincial Governments, while being now largely endowed from Imperial sources, may well, in their turn, hand over to local self-government considerable revenues, at present kept in their own hands, but similar in kind to many which have long been "locally" managed with success by committees, partly composed of non-official members, and subject only to a general remedial control reserved to the State by the Legislature. At the same time, such items should be generally made Local as the people are most likely to be able to understand the use of and to administer well."

The policy thus enunciated by the Government of India was loyally, and in some cases, warmly accepted by the Local Governments. Meanwhile LORD RIPON'S Government issued in 1882 another Resolution to explain somewhat more fully the general mode in which they would wish to see effect given to the principle of local self-government throughout British India outside Presidency towns. In the fifth paragraph of this famous Resolution LORD RIPON'S Government thus expressed in eloquent terms their firm faith in the principles of self-government :—

"It is not primarily with a view to improvement in administration that this measure is put forward and supported. It is chiefly desirable as an instrument of political and popular education. His Excellency in Council has himself no doubt that, in course of time, as local knowledge and local interest are brought to bear more freely upon local administration, improved efficiency will in fact follow. But at starting, there will doubtless be many failures, calculated to discourage exaggerated hopes, and even in some cases to cast apparent discredit upon the practice of self-government itself. If, however, the officers of Government only set themselves, as the Governor-General in Council believes they will, to foster sedulously the small beginnings of the independent political life; if they will accept loyally and as their own the policy of the Government, and if they come to realise that the system really opens to them a fairer field for the exercise of administrative tact and directive energy than the more autocratic system which it supersedes, then it may be hoped that the period of failures will be short, and that real and substantial progress will very soon become manifest."

In pursuance of the policy laid down by LORD RIPON'S Government, Acts were passed in 1883-4 that greatly altered the constitution, powers and functions of local bodies, a wide extension being given to the elective system, while independence and responsibility were conferred on the committees of many towns by permitting them to elect a private citizen as chairman. Arrangements were made also to increase the resources and financial responsibility of local bodies, some items of provincial revenue suited to and capable of development under local management being transferred, with a proportionate amount of provincial expenditure, for local objects. The general principles thus laid down had continued to govern the administra-

tion of municipalities down to 1915 when LORD HARDINGE'S Government issued another important Resolution declaring their future policy regarding local Self-Government.

Rural Self-Government.—The establishment of boards for dealing with local affairs in rural areas is a relatively recent development. No such boards existed in 1858, though some semi-voluntary funds for local improvements had been raised in Madras and Bombay, while in Bengal and in the United Provinces consultative committees assisted the district officers in the management of funds devoted to local schools, roads, and dispensaries. The system of raising cesses on land for purposes of this description was introduced by legislation in Madras and Bombay between 1865 and 1869; in the case of Bombay, nominated committees were to administer the proceeds of the cess. The year 1871 saw a wide development of legislation for local administrative purposes, partly due to growing needs, and partly the result of the financial decentralisation scheme of LORD MAYO'S Government, various Acts having been passed in different provinces providing for the levy of rates and the constitution of local bodies, in some cases with an elected element, to administer the funds. The whole system was reorganised in accordance with the policy of LORD RIPON'S Government which in 1881-2 issued orders for replacing the then existing local committees by a system of boards extending all over the country. The lowest administrative unit was to be small enough "to ensure both local knowledge and local interest on the part of each of the members," and the various minor boards of the district were to be under the control of a general district board and to send delegates to a district council for the settlement of measures common to all. The non-official element was to preponderate and the elective principle was to be recognized, as in the case of municipalities, while the resources and financial responsibilities of the boards were to be increased by transferring items of provincial revenue and expenditure. It was, however, recognised that conditions were not sufficiently advanced or uniform to permit of one general system being imposed in all provinces, and a large discretion was left to Local Governments. The systems introduced in different parts of India by the Acts of

1883-85 (most of which are still in force) consequently varied greatly.

The Present Local Self-Government Policy of the Government of India.—The Royal Commission on Decentralisation, in their Report of 1909, examined the whole question of Village Organisation, Rural Boards and Municipalities and recommended certain changes in their constitution, powers and functions. These recommendations were carefully considered by LORD HARDINGE'S Government who in their important Resolution, dated the 28th April, 1915, recorded their opinion on those recommendations and declared their future policy regarding local self-government in this country. We summarise below the chief recommendations of the Commission and the opinion of the Government of India thereon.

(1) The Commission recommended that Municipal Boards should ordinarily be constituted on the basis of a substantial elective majority and that nominated members should be limited to a number sufficient to provide for the due representation of minorities and official experience. This recommendation has already been adopted in several Provinces and is generally accepted by Local Governments and the Government of India, subject to the proviso that the principle should, in places where its success is doubtful, be introduced gradually, and after experiment in selected municipalities.

(2) The Commission proposed that the municipal chairman should usually be an elected non-official, that Government officers should not be allowed to stand for election, and that where a nominated chairman might still be required he should be an official. The Government of India are in full sympathy with this proposal; but they recognise that the change must be made gradually, and that in the absence of suitable candidates, it may not be possible to make it finally and once for all in particular places. They agree with the opinion expressed in many quarters that

discretion should be reserved to a Local Government to nominate a non-official as chairman.

(3) The Commission suggested that some of the largest cities should adopt the system in force in Bombay city, where there is an elected chairman, who is the official mouthpiece of the Corporation as a whole, the executive administration, however, vesting in a full-time nominated official subject to the control of the Corporation and of a standing committee thereof. The Government of India, however, do not press for the adoption of this system in provinces where it may not be suited to the local conditions.

(4) The Commission desired that sub-district boards should be universally established and that they should be the principal agencies of rural boards administration. They thought that these boards should have adequate funds and a large measure of independence, and that their jurisdiction should be so limited in area as to ensure local knowledge and interest on the part of the members, and be at the same time a unit well-known to the people. For this purpose they suggested the taluka or tahshil as a suitable unit. With regard to this proposal the Government of India accept the views of the several Local Governments in regard to their own Provinces.

(5) District and sub-district boards, in the opinion of the Commission, should contain a large preponderance of elected members, together with a nominated element sufficient to secure the due representation of minorities and of official experience. The Government of India are in sympathy with this proposal.

(6) The Commission were of opinion that an official should remain, as he usually is at present, chairman of every district and sub-district board. The Government of India agree with this view, though they will have no objection to non-official chairmen being retained where such exist,

or appointed where a Local Government or Administration desires to make the experiment.

(7) The Commission recommended the constitution and development of village *panchayats* possessed with certain administrative powers, with jurisdiction in petty civil and criminal cases, and financed by a portion of the land cess, special grants, receipts from village cattle pounds and markets and small fees on civil suits. This proposal has been favorably received by the Government of India who have laid down some general principles indicating the lines on which advance is most likely to be successful.

(8) The Commission recommended that all the Presidency Corporations should be invested with the powers possessed by the Corporation of Bombay, and that the system of administration in force in that city, *viz*, that of a nominated official Commissioner in combination with an elected Chairman should be extended to the other Presidency towns. They also considered that the same privileges should be conferred on the Rangoon municipality in view of its population, the large future which lies before it, and and the strength of its commercial community. The Government of India, in accepting in the main the recommendations of the Local Governments, which will go far towards carrying out the proposals of the Commission, observe, as a general proposition, that in cities where there is a responsible public press and representation in the Provincial Councils, the case for entrusting large powers and extended freedom to the municipalities appears to be especially strong.

While indicating, in broad outlines, the ideals which Lord Hardinge's Government had before them, the Resolution of 1915 left the Local Governments in most respects to move towards these ideals in the manner and at the pace which were considered best fitting to local circumstances. In some provinces—as in the United Provinces, Bengal and Assam—legislation has since been effected or initiated

and in others action has been taken in other ways towards securing further progress on the lines suggested by the Decentralization Commission, but as a rule the statutory provisions for Local Self-Government have remained unchanged since the Resolution of 1915 was issued and no remarkable departure of a general character has been made from the previously existing arrangements.

Altered circumstances of the present time arising out of the Declaration of August 20, 1917, necessitated a revision of the Local Self-Government policy of the Government of India so as to move in the direction of more complete Local Self-Government. A new Resolution was therefore issued on the 16th of May, 1918, declaring the policy "of the gradual removal of unnecessary Government control and of differentiating the spheres of action appropriate for Government and for local bodies respectively." The general purport of the proposals contained in the Resolution of May 16, 1918, is summarised in paragraphs 194 to 196 of the *Report on Indian Constitutional Reforms* (pp. 488-491 *of this book.*) Though the programme outlined in the Resolution does not constitute a complete scheme of Local Self-Government, yet it marks a real advance in devolution and political education ; and if it is successful, it will lay solid foundations for the edifice of Responsible Government.

INDIAN

CONSTITUTIONAL DOCUMENTS.

PART I.

GENERAL DOCUMENTS.

(1600-1858).

I. CHARTER GRANTED BY QUEEN ELIZABETH TO THE EAST INDIA COMPANY.

(Dated the 31st December, 1600.)

ELIZABETH, by the Grace of God, Queen of England, France, and Ireland, Defender of the Faith, &c. To all our officers, ministers, and subjects, and to all other people, as well within this our realm of England as elsewhere, under our obedience and jurisdiction, or otherwise, unto whom these our Letters Patents shall be seen, showed, or read, greeting. Whereas our most dear and loving Cousin, George, Earl of Cumberland, and our well-beloved subjects, Sir John Hart, of London, and others (here follow 214 other names which are omitted) have of our certain knowledge been petitioners unto us, for our Royal assent and licence to be granted unto them, that they, at their own adventures, costs, and charges, as well for the honour of this our realm of England, as for the increase of our navigation, and advancement of trade of merchandize, within our said realms and the dominions of the same, might adventure and set forth one or more voyages, with convenient number of ships and pinnaces, by way of traffic and merchandize to the East Indies, in the countries and parts of Asia and Africa and to as many of the islands, ports and cities, towns and places, thereabouts, as where trade and traffic may by all likelihood be discovered, established or had ; divers of

which countries, and many of the islands, cities and ports thereof, have long since been discovered by others of our subjects, albeit not frequented in trade of merchandize. Know ye, therefore, that we, greatly tendering the honour of our nation, the wealth of our people, and the en couragement of them, and others of our loving subjects in their good enterprizes, for the increase of our navigation, and the advancement of lawful traffick to the benefit of our Commonwealth, have of our special grace, certain knowledge, and mere motion, given and granted and by these presents, for us, our heirs and successors, do give and grant unto our said loving subjects, before in these presents expressly named, that they and every of them from henceforth be, and shall be one body corporate and politick, in deed and in name, by the name of the Governor and Company of Merchants of London, trading into the East Indies, and them by the name of the Governor and Company of Merchants of London, trading into the East Indies, one body corporate and politick, in deed and in name, really and fully for us our heirs and successors, we do order, make, ordain, constitute, establish and declare, by these presents, and that by the same name of Governor and company of merchants of London, trading into the East Indies, they shall have succession, and that they and their successors, by the name of the Governor and Company of Merchants of London, trading into the East Indies, be and shall be, at all times hereafter, persons able and capable in law, and a body corporate and politick, and capable in law to have, purchase, receive, possess, enjoy and retain lands, rents, privileges, liberties, jurisdictions, franchises and hereditaments of whatsoever kind, nature, and quality so ever they be, to them and their successors. And also to give, grant, demise, alien, assign and dispose lands, tenements and hereditaments, and to do and execute all and singular other things, by the same name that to them shall or may appertain to do. And that they and their successors, by the name of the Governor and Company of Merchants of London, trading into the East Indies, may plead and be impleaded, answer and be answered, defend and be defended, in whatsoever courts and places, and before whatsoever judges and justices, and other persons and officers, in all and singular actions, pleas, suits, quarrels, causes and demands whatsoever, of whatsoever kind, nature or sort, in such manner and form, as any other, our liege people of this our realm of England, being persons able and capable in law, may or can have, purchase, receive, possess, enjoy, retain, give,

grant, demise, alien, assign, dispose, plead and be impleaded, answer and be answered, defend and be defended, release and be released, do permit and execute. And that the said Governor and Company of Merchants of London, trading into the East Indies, and their successors, may have a common seal, to serve for all the causes and business of them and their successors. And that it shall and may be lawful to the said Governor and Company, and their successors, the same seal, from time to time, at their will and pleasure, to break, change, and to make new or alter, as to them shall seem expedient. And further, we will, and by these presents, for us, our heirs and successors, we do ordain, that there shall be from henceforth one of the same Company to be elected and appointed, in such form, as hereafter in these presents is expressed, which shall be called the Governor of the said Company, and that there shall be from henceforth twenty-four of the said Company, to be elected and appointed in such form, as hereafter in these presents is expressed, which shall be called the committees of the said Company, who, together with the Governor of the said Company for the time being, shall have the direction of the voyages, of or for the said Company, and the provision of the shipping and merchandizes thereto belonging, and also the sale of all merchandizes returned in the voyages, of or for the said Company, and the managing and handling of all other things belonging to the said Company and for the better execution of this our will and grant in this behalf we have assigned, nominated, constituted and made, and by these presents, for us, our heirs and successors, we do assign, nominate, constitute and make, the said Thomas Smith, Alderman of London, to be the first and present Governor of the said Company, to continue in the said office, from the date of these presents, until another of the said Company shall in due manner be chosen and sworn unto the said office, according to the ordinances and provisions hereafter in these presents expressed and declared, if the said Thomas Smith shall so long live; and also we have assigned, nominated and appointed, and by these presents, for us, our heirs and successors, we do assign, nominate, constitute and make, the said Paul Banning, Leonard Hollyday, John Moore, Edward Holmeden, Richard Staper, Thomas Cordell, William Garway, Oliver Style, James Lancaster, Richard Wiseman, Francis Cherry, Thomas Allabaster, William Romney, Roger How, William Chambers, Robert Sandye, John Eldred, Richard Wiche, John Hylord, John Middleton, John Comb, William Harrison, Nicholas

Ling and Robert Bell, to be the twenty-four first and present committees of the said Company, to Continue in the said office of committees of the said Company from the date of these presents, for one whole year next following. And further we will and grant, by these presents, for us, our heirs and successors, unto the said Governor and Company of Merchants of London, trading into the East Indies, and their successors, that it shall and may be lawful to and for the said Governor and Company, for the time being, or the more part of them, present at any publick assembly, commonly called the Court, holden for the said Company, the Governor of the said Company being always one, from time to time, to elect, nominate and appoint one of the said Company, to be deputy to the said Governor, which deputy shall take a corporal oath, before the Governor and five or more of the committees of the said Company for the time being, well, faithfully and truly to execute his said office of deputy to the Governor of the said Company, and after his oath, so taken, shall and may from time to time, in the absence of the said Governor, exercise and execute the office of Governor of the said Company, in such sort as the said Governor ought to do : and further we will and grant, by these presents, for us, our heirs and successors, unto the said Governor and Company of Merchants of London, trading into the East Indies, and their successors, that they or the greater part of them, whereof the Governor for the time being or his deputy to be one, from time to time, and at all times hereafter shall and may have authority and power, yearly and every year, on the first day of July, or at any time within six days after that day, to assemble and meet together, in some convenient place, to be appointed from time to time by the governor, or in his absence by the deputy of the said Governor for the time being, and that they being so assembled, it shall and may be lawful to and for the said Governor, or deputy of the said Governor, and the said Company for the time being or the greater part of them, which then shall happen to be present, whereof the Governor of the said Company or his deputy for the time being, to be one, to elect and nominate one of the said Company, which shall be Governor of the said Company for one whole year, from thence next following, which person, being so elected and nominated to be governor of the said company, as is aforesaid before he be admitted to the execution of the said office, shall take a corporal oath before the last Governor, being his predecessor or his deputy, and any six or more of

the committees of the said Company for the time being, that he shall, from time to time, well and truly execute the office of Governor of the said Company, in all things concerning the same ; and that immediately after the said oath so taken, he shall and may execute and use the said office of Governor of the said Company, for one whole year, from thence next following : And in like sort we will and grant, that as well every one above-named to be of the said Company fellowship as all others hereafter to be admitted, or free of the said Company, shall take a corporal oath before the Governor of the said Company, or his deputy for the time being, to such effect, as by the said Governor and Company, or the more part of them, in any public court to be held from the said Company, shall be in reasonable manner set down and devised, before they shall be allowed, or admitted to trade or traffick, as a freeman of the said Company. And further we will and grant, by these presents, for us, our heirs and successors, unto the said Governor and Company of Merchants of London, trading into the East Indies, and their successors, that the said Governor, or the deputy of the said Governor, and the Company and their successors, for the time being, or the greater part of them, whereof the Governor, or the deputy of the Governor, from time to time, to be one, shall and may, from time to time, and at all times hereafter, have authority and power, yearly and every year, on the first day of July, or at any time within six days after that day, to assemble and meet together, in some convenient place, to be from time to time appointed, by the said Governor of the said Company, or in his absence, by his deputy : And that they being so assembled, it shall and may be lawful, to and for the said Governor or his deputy, and the Company for the time being, or the greater part of them, which then shall happen to be present, whereof the Governor of the said Company, or his deputy for the time being, to be one, to elect and nominate twenty-four of the said Company, which shall be committee of the said Company, for one whole year, from thence next ensuing, which person being so elected and nominated to be committees of the said Company, as aforesaid, before they be admitted to the execution of their said offices, shall take a corporal oath, before the Governor or his deputy, and any six or more of the said committees of the said Company, being their last predecessors for the time being, that they and every of them shall well and faithfully perform their said office of

committees, in all things concerning the same, and that immediately after the said oath so taken, they shall and may execute and use their said offices of committees of the said Company, for one whole year, from thence next following; and moreover our will and pleasure is, and by these presents, for us our heirs and successors, we do grant unto the said Governor and Company of Merchants of London, trading into the East Indies, and to their successors, that when and as often as shall happen, the Governor of the said Company for the time being, at any time within one year, after that he shall be nominated, elected and sworn to the office of Governor of the said company, as is aforesaid, to die or to be removed from the said office, which governor, not demeaning himself well in his said office, we will to be removeable at the pleasure of the said Company, or the greater part of them, which shall be present, at any of their publick assemblies, commonly called their general court, holden for the said Company, that then and so often it shall and may be lawful, to and for the residue of the said Company for the time being, or the greater part of them, within convenient time after the death or removing of any such Governor, to assemble themselves in such convenient place as they shall think fit, for the election of the Governor of the said Company: And that the said Company, or the greater part of them, being then and there present, shall and may, then and there, before their departure from the said place, elect and nominate one other of the said company, to be Governor of the same Company, in the place or stead of him that so died or was so removed, which person, being so elected, and nominated to the office of Governor of the said company, shall have and exercise the said office for and during the residue of the said year, taking first a corporal oath as is aforesaid, for the due execution thereof; and this to be done from time to time, so often as the case shall so require. And also our will and pleasure is, and by these presents, for us, our heirs and successors, we do grant unto the said Governor and Merchants of London, trading into the East-Indies, and to their successors, that when and as often as it shall happen, any of the committees of the said Company for the time being, at any time within one year, next after that they or any of them shall be nominated, elected, and sworn to the office of committees of the said Company, as is aforesaid, to die or be removed from the said office, which committees, not demeaning themselves well in their said office, we will to be removeable, at the pleasure of the said Governor and Company or the greater

part of them, whereof the Governor of the said Company, for the time being, or his deputy for the time being, to be one that then and so often, it shall and may be lawful, to and for the said Governor and Company for the time being, or the greater part of them, whereof the Governor for the time being, or his deputy, to be one, within convenient time, after the death or removing of any of the said committees, to assemble themselves in such convenient place, as is or shall be usual and accustomed, for the election of the Governor of the said Company, or where else the Governor of the said Company for the time being, or his deputy, shall appoint; and the said Governor and Company, or the greater part of them, whereof the Governor for the time being, his deputy, to be one, being then and there present, shall and may then and there, before their departure from the said place elect and nominate one or more of the said Company, to be committees of the same Company, in the places and steads, place or stead, of him or them that so died, or were or was so removed, which person or persons, so elected and nominated to the office or offices of committee, or committees, of the said Company, shall have and exercise the said office and offices, during the residue of the said year, taking first a corporal oath as is aforesaid, for the due execution thereof, and this to be done from time to time, so often as the case shall require. And further we do, by these presents, for us, our heirs and successors, will and grant unto the said Governor and Company of Merchants of London, trading into the East Indies, and their successors, that they, and all that are or shall be of the said Company of Merchants of London, trading into the East Indies, and every of them, and all the sons of them, at their several ages of one and twenty years or upwards: And further, all such the apprentices, factors or servants of them, and of every of them, which hereafter shall be employed by the said Governor and Company, in the said trade of merchandize, of or to the East-Indies, beyond the seas, or any other the places aforesaid, in any part of the said East Indies, or other the places aforesaid, shall and may, by the space of fifteen years, from the feast of the birth of our Lord God last past, before the date hereof, freely traffick and use the trade of merchandize, by seas, in and by such ways and passages already found out and discovered, or which hereafter shall be found out and discovered, as they shall esteem and take to be fittest, into and from the said East-Indies, in the countries and parts of Asia

and Africa, and into and from all the islands, ports, havens, cities, creeks, towns and places of Asia and Africa, and America, or any of them, beyond the cape of Bona Esperanza to the straits of Magellan, where any trade or traffick of merchandize may be used or had, and to and from every of them, in such order, manner, form, liberty and condition, to all intents and purposes, as shall be, from time to time, at any publick assembly or court, held by or for the said Governor and Company, by or between them of the said fellowship or Company of Merchants of London, trading into the East Indies, or the more part of them, for the time being, present at such assembly or court, the Governor, or his deputy, being always present at such court or assembly, limited and agreed, and not otherwise, without any molestation, impeachment, or disturbance, any statute, usage, diversity of religion or faith or any other cause or matter whatsoever, to the contrary notwithstanding: So always the same trade be not undertaken nor addressed to any country, island, port, haven, city, creek, town or place, already in the lawful and actual possession of any such Christian prince or state, as at this present is, or at any time hereafter shall be in league or amity with us, our heirs or successors, and who doth not or will not accept of such trade, but doth overtly declare and publish the same to be utterly against his or their good will and liking. And further our will and pleasure is, and by these presents, for us, our heirs and successors, we do grant unto the said Governor and Company of Merchants of London, trading into the East Indies, and to their successors, that it shall and may be lawful, to and for the said Governor and Company, and their successors, from time to time to assemble themselves, for or about any the matters, causes, affairs or businesses of the said trade, in any place or places, for the same convenient, during the said term of fifteen years, within our dominions or elsewhere, and there to hold court for the said Company, and the affairs thereof; and that also it shall and may be lawful, to and for them, or the more part of them, being so assembled, and that shall then and there be present, in any such place or places, whereof the Governor or his deputy for the time being, to be one, to make, ordain, and constitute such, and so many reasonable laws, constitutions, orders and ordinances, as to them, or the greater part of them, being then and there present, shall seem necessary and convenient, for the good government of the same Company, and of all factors, masters, mariners and other officers, employed or to be

employed in any of their voyages, and for the better advancement and continuance of the said trade and traffick and the same laws, constitutions, orders and ordinance so made, to put in use and execute accordingly, and at their pleasure to revoke or alter the same, or any of them as Octatian shall require; and that the said Governo and Company, so often as they shall make, ordain or establisl any such laws, constitutions, orders or ordinances, in form aforesaid, shall and may lawfully impose, ordain, limit and provide such pains, punishments and penalties, by imprisonment of Body, or by Fines and Amerciaments, or by all or any of them upon and against all Offenders, contrary to such laws constitutions, orders and ordinances, or any of them as to the said Governor and Company for the time being, or the greater part of them, then and there being present, the said Governor or his deputy, being always one, shall seem necessary requisite and convenient, for the observation of the same laws, constitutions, orders and ordinances; and the same fine and amerciaments shall and may levy, take and have, to the use of the said Governor and Company, and their successors without the impediment of us, our heirs or successors, or of any the officers or ministers of us, our heirs or successors and without any account thereof, to us, our heirs or successors to be rendered or made; all and singular which laws, constitutions, orders and ordinances, so as aforesaid to be made, will to be duly observed and kept, under the pain and penalties therein to be contained; so always as the said laws orders, constitutions, ordinances, imprisonments, fines and amerciaments be reasonable, and not contrary or repugnant to the laws, statutes, or customs of this our realm. And for as much as the said Governor and Company of Merchants of London, trading into the East Indies, have not yet experience of the kinds of commodities and merchandizes, which are or will be vendible, or to be uttered in the said parts of the East Indies, and therefore shall be driven to carry to those parts, in their voyages outward, divers and sundry commodities, which are likely to be returned again to this our realm: we therefor of our especial grace, certain knowledge and mere motion, for the better encouraging of the said governor and Company of Merchants of London, trading into the said East Indies, and for the advancement of the said trade, do grant unto the said Governor and Company, and to their successors, that they and their successors, during the four first voyages, which they shall make, or set forth, for or towards the said East Indie

shall and may transport, and carry out of our realm of England, and the ports, creeks and havens thereof, all such and so much goods and merchandizes, being goods and merchandizes lawfully passable and transportable out of this realm, and not prohibited to be transported by any law or statute of this realm, as shall be by them, their factors or assigns, shipped in any ship or ships, vessel or vessels, to be employed in any of the said four first voyages, free of custom, subsidy or poundage, or any other duties or payments, to us or our successors, due or belonging, for the shipping or transporting of the same, or any of them; and yet nevertheless our will and pleasure is and we do, by these presents, straightly charge and command, that all and every such goods and merchandizes, so to be transported out of this realm, from time to time, during the said four first voyages, as is aforesaid, shall, from time to time, be duly entered by the customer, controller or other officer of such port, creek or place, where the same goods and merchandizes shall happen to be shipped and loaden, before such time as the same shall be shipped, or loaden, to be transported as is aforesaid: And also of our further especial grace, certain knowledge and mere motion, we do, for us, our heirs and successors, grant to and with the said Governor and Company of Merchants of London, trading into the East Indies, and their successors, that when and as often, at any time, during the said time and space of fifteen years, as any custom, poundage, subsidy, or other duties, shall be due and payable unto us, our heirs, or successors, for any goods, wares, or merchandizes whatsoever, to be returned out or from any the islands, ports, havens, cities, towns or places aforesaid, unto our port of London, or any of the havens, creeks, members or places to the same port belonging, that the customers and all other officers for the time being, of us, our heirs or successors, for or concerning receipts of customs, poundage, subsidies or other duties, unto whom it shall appertain, shall upon the request of the Governor and Company of the said Merchants of London, trading into the East Indies, or any their agents, factors or assigns give unto the said Governor and Company, their agents, factors or assigns, six months' time, for payment of the one half, and after those six months ended, other six months' time, for the payment of the other half, of their said customs, poundage, or other subsidy or duties, receiving good and sufficient bonds, with surety, to the use of us, our heirs and successors, for the true payment of the same accordingly; and

upon receipt of the said Bonds, with surety, from time to time, to give unto the said Governor and Company of Merchants of London, trading into the East Indies, for the time being their agents, factors or assigns, their cocket or other warrant, to take out and receive on land the same goods, wares, or merchandizes, by virtue thereof, without any disturbance; and that also as often as at any time, during the said time of years, any goods, wares or merchandizes of the said Governor and Company, for the time being, laden from our port of London, or any the creeks, members or places to the same port belonging, to be transported to or towards any the islands, ports, havens, cities, towns or places aforesaid, shall happen to miscarry or be lost, before their safe arrival or discharge in the ports, for and to which the same shall be sent, that then and so often so much custom poundage, subsidies, or other duties, as they answered to us, for the same, before their going forth of our said ports, havens or creeks, shall, after due proof made, before the treasurer of England, for the time being, of the said loss, and the just quantity thereof, be, by virtue hereof, allowed to the said Governor and Company, their agents or factors, by warrant of thes aid treasurer, to the said customers or officers, in the next goods, wares or merchandizes, that the said Governor and Company, or their successors, shall or may ship, for or towards those parts, according to the true rates of the customs, poundage or subsidies, before paid for the goods, wares or merchandizes, so lost or miscarrying, or any part thereof. And for that, the said Governor and Company of merchants of London, trading into the East Indies, are like to bring to this our realm, a much greater quantity of foreign commodities, from the parts of the said East Indies, than can be spent for the necessary use of the same our realm, which of necessity must be transported into other countries, and there vended, we, for us, our heirs and successors, of our epecial grace, certain knowledge and mere motion, do grant to and with the said Governor and Company of Merchants of London, trading into the East Indies, and their successors, that at all times, from time to time, during the space of thirteen months, next after the discharge of any the same foreign commodities, so to be brought in, the subsidies, poundage, customs, and other duties for the same, being first paid or compounded for as aforesaid, it shall be lawful for the said Governor and Company, and their successors, or any other the natural subjects of this our realm, which may or

shall buy the same of them, to transport the same in English bottoms, freely out of this realm as well ungarbled as garbled, without payment of any further custom, poundage, or any further subsidy, to us, our heirs or successors for the same; whereof the subsidy, poundage, customs or other duties, shall be so formerly paid or compounded for as aforesaid, and so proved; and the said customer or other officer or officers, to whom it shall in that behalf appertain, for the time being, by virtue hereof, shall, upon due and sufficient proof thereof, made in the custom-house of or belonging to the same port of London, give them sufficient cocket or certificate for the safe passing out thereof accordingly: And to the end no deceit be used herein, to us, our heirs or successors, certificate shall be brought from the collector of the customs, subsidy, poundage or other duties, inwards, of us, our heirs or successors, to the collector of the customs, subsidy, poundage or other duties, outward, of us, our heirs and successors, that the said goods, wares, and merchandizes, have, within the time limited, answered their due customs, subsidy, poundage or other duties, for the same inwards: And moreover, we of our further especial grace, certain knowledge and mere motion, have granted, and by these presents, for us, our heirs aud successors, do grant unto the said Governor and Company of Merchants of London, trading into the East Indies, that it shall and may be lawful for them, their factors or assigns, in their first voyage or fleet, which is now in preparing for their first adventure to the said East Indies, to transport out of this our ream of England, all such foreign coin of silver, either Spanish or other foreign silver, as they have procured, prepared and gotten, or shall procure, prepare or get, as likewise all such other coin of silver, as they have procured, or shall procure, to be coined in our mint, within our tower of London, out of such plate or bullion, as is or shall be provided, by the said Governor and Company of Merchants of London, trading into the East Indies, their factors or assigns before the going forth of the same fleet in this their first voyage, so as the whole quantity of coin, or monies to be transported, in this their said first voyage, do not exceed the value or sum of £30,000 sterling, and so as the sum of £6,000, at the least, parcel of the said sum of £30,000, be first coined in our mint, within our tower of London, before the same shall be transported as aforesaid, any law, statute, restraint or prohibition, in that behalf notwithstanding: And in like manner, of our like especial grace, certain

knowledge and mere motion, we have granted, and by these presents, do for us, our heirs and successors, grant unto the said Governor and Company of Merchants of London, trading into the East Indies, and their successors, that it shall and may be lawful, to and for the said Governor and Company, and their successors, after the said first voyage, set forth yearly, for and during the residue of the said term of fifteen years, to ship and transport out of this our realm of England, or dominions of the same, in any their other voyages, to or towards any the parts, aforesaid, in form afore-mentioned, all such foreign coin of silver, Spanish or other foreign silver, or bullion of silver, as they shall, during the said term, bring or cause to be brought into this realm of England, from the parts beyond the seas, either in the same kind, sort, stamp or fashion, which it shall have when they bring it in, or any other form, stamp or fashion, to be coined within our mint, within our tower of London, at their pleasure; so as the whole quantity of coin or monies, by them to be transported, in any their said voyages, during the residue of the said terms, do not exceed the value or sum of £30,000 in any one voyage; and so as the sum of £6,000 at the least, parcel of the said sum or value of £30,000, so to be transported as aforesaid, be first coined, within our said tower of London, before the same shall be transported in any of the said voyages, any law, statute, restraint or prohibition, in that behalf, in anywise notwithstanding: And further we of our ample and abundant grace, mere motion and certain knowledge, have granted, and by these presents, for us, our heirs and successors, do grant unto the said Governor and Company of Merchants of London, trading into the East Indies, and their successors, that they and their successors, and their factors, servants and assigns, in the trade of merchandize, for them and on their behalf, and not otherwise, shall, for the said term of fifteen years, have, use, and enjoy, the whole entire and only trade and traffick, and the whole entire and only liberty, use and privilege of trading and trafficking, and using feat and trade of merchandize to and from the said East Indies, and to and from all the islands, ports, havens, cities, towns and places aforesaid, in such manner and form as is above mentioned; and that they the said Governor and Company of Merchants of London, trading into the East Indies and every particular and several person, that now is or that hereafter shall be of that Company, or incorporation, shall have full and free authority, liberty, faculty, license and power, in form aforesaid,

to trade and traffick to and from the said East Indies, and all and every the parts thereof, in form aforesaid, according to the orders, ordinances and agreements hereafter to be made and agreed upon, by the said Governor and Company of Merchants of London, trading into the East Indies, and their successors, or the more part of them, present at any court or publick assembly, of or for the said Company, the Governor of the said Company, or his deputy for the time being, being always present, at such court or assembly, and not otherwise: and for that the ships, sailing into the said East Indies, must take their due and proper times, to proceed in their voyages, which otherwise, as we well perceive, cannot be performed in the rest of the year following: Therefore we of our especial grace, certain knowledge and mere motion, for us, our heirs and successors, do grant, to and with the said Governor and Company of Merchants of London trading into the East Indies, and their successors, that, in any time of restraint, six good ships and six good pinnaces, well furnished with ordnance, and other munition for their defence, and five hundred mariners, Englishmen, to guide and sail in the same six ships and six pinnaces, at all times, during the said term of fifteen years, shall quietly be permitted and suffered to depart, and go in the said voyages, according to the purport of these presents, without any stay or contradiction, by us, our heirs or successors, or by the lord high admiral, or any other officer or subject of us, our heirs or successors, for the time being, in anywise, any restraint, law, statute, usage or matter whatsoever, to the contrary notwithstanding. Provided nevertheless, that if we shall, at any time within the said term of fifteen years, have just cause to arm our navy in warlike manner, in defence of our realm, or for offence of our enemies, or that it shall be found needful to join to the navy of us, our heirs or successors, the ships of our subjects, to be also armed for the wars, to such a number as cannot be supplied, if the said six ships and six pinnaces should be permitted to depart, as above is mentioned, then upon knowledge given, by us, our heirs or successors, or by our admiral to the said Governor and Company, about the 20th day of the month of July, or three months before the said Governor and Company shall begin to make ready the same six ships and six pinnaces, that we may not spare the said six ships and six pinnaces, and the mariners requisite for them, to be out of our realm during the time that our navy shall be upon the seas, that

then the said Governor and Company shall forbear to send six such ships and six pinnaces, for their trade and merchandize, until that we shall revoke or withdraw our said navy from the said service: And we of our further royal favour, and of our especial grace, certain knowledge and mere motion, have granted, and by these presents, for us, our heirs and successors, do grant to the said Governor and Company of Merchants of London, trading into the East Indies, and to their successors that the said East Indies, nor the islands, havens, ports, cities, towns or places thereof nor any part thereof shall not be visited, frequented or haunted by any of the subjects of us, our heirs or successors, during the same term of fifteen years, contrary to the true meaning of these presents: And by virtue of our prerogative royal, which we will not in that behalf have argued, or brought in question we straightly charge, command and prohibit, for us, our heirs and successors, all the subjects of us, our heirs and successors, of what degree or quality soever they be, that none of them, directly or indirectly do visit, haunt, frequent or trade, traffick or adventure, by way of merchandize intoor from any of the said East Indies, or into or from any the islands, ports, havens, cities, towns or places aforesaid, other than the said Governor and Company of Merchants of London, trading into the East Indies, and such particular persons as now be, or hereafter shall be of that Company, their agents, factors and assigns during the said term of fifteen years, unless it be by and with such license and agreement of the said Governor and Company of Merchants of London, trading into the East Indies, in writing first had and obtained, under their common seal to be granted, upon pain that every such person or persons that shall trade or traffick into or from any of the said East Indies, other than the said Governor and Company of Merchants of London, trading into the East Indies, and their successors, shall incur our indignation, and the forfeiture and loss of the goods, merchandizes, and other things whatever, which so shall be brought into this realm of England, or any the dominions of the same, contrary to our said prohibition, or the purport or true meaning of these presents, as also the ship and ships with the furniture thereof, wherein such goods, merchandizes, or things shall be brought; the one half of all the said forfeitures to be to us, our heirs and successors, and the other half of all and every the said forfeitures, we do, by these presents, of

our especial grace, certain knowledge and mere motion, clearly and wholly for us, our heirs and successors, give, and grant unto the said Governor and Company of Merchants of London, trading into the East Indies: And further all and every the said offenders, for their said contempt, to suffer imprisonment during our pleasure, and such other punishment, as to us, our heirs or successors, for so high a contempt, shall seem meet and convenient, and not to be in anywise delivered, until they and every of them shall become bound unto the said Governor for the time being in the sum of £1,000 at the least, at no time then after, during this present grant, to sail or traffick, into any of the said East Indies, contrary to our express commandment in that behalf herein set down and published: And further, for the better encouragement of merchants, strangers or others, to bring in commodities into our realm, we for us, our heirs and successors, do grant unto the said Governor and Company of Merchants of London, trading into the East Indies, that they and their successors, may, from time to time, for any consideration or benefit, to be taken to their own use, grant or give license, to any the personor persons to sail, trade or traffick into or from any the said East Indies, so as such license be granted or given, before such goods, wares and merchandizes be laid on land, and so as such license be made by the said Governor and Company of Merchants of London, trading into the East Indies, for the time being, under their common seal: And further of our especial grace, certain knowledge and mere motion, we have condescended and granted, and by these presents, for us, our heirs and successors, we do condescend and grant unto the said Governor and Company of Merchants of London, trading into the East Indies, and their successors that we, our heirs and successors, during the said term of fifteen years, will not grant liberty, license or power to any person or persons whatsoever, contrary to the tenor of these our letters patents, to sail, pass, trade or traffick, to the said East Indies, or into or from the islands, ports, havens, cities, towns or places aforesaid, or any of them, contrary to the true meaning of these presents, without the consent of the said Governor and Company of Merchants of London, trading into the East Indies, or the most part of them: And our will and pleasure is, and hereby we do also ordain, that it shall and may be lawful, to and for the said Governor and Company of merchants of London, trading into

the East Indies, or the more part of them, whereof the governor for the time being, or his deputy, to be one, to admit into and to be of the said Company, all such apprentices, to any of the said fellowship or Company, and all such servants and factors, of and for the said Company, and all such other, as to them, or the most part of them, present at any court, held for the said Company, the Governor, or his deputy, being one, shall be thought fit and agreeable, with the orders and ordinances to be made for the government of the said Company. Provided always, that if any of the persons, before named and appointed, by these presents, to be free of the said Company of Merchants of London, trading into the East Indies, shall not before the going forth of the fleet, appointed for this first voyage, from the port of London, bring in and deliver to the treasurer or treasurers appointed, or which, within the space of twenty days next after the date hereof, shall be appointed, by the said Governor and Company, or the more part of them, to receive the contributions and adventures, set down by the several adventurers, in this last and present voyage, now in hand, to be set forth, such sums of money as have been, by any of the said persons, by these presents, nominated to be of the said Company, expressed, set down and written in a book for that purpose, and left in the hands of the said Thomas Smith, Governor of the said Company, or of the said Paul Banning, Alderman of London, and subscribed with the names of the same adventurers, under their hands, and agreed upon to be adventured in the said first voyage, that then, it shall be lawful for the said Governor and Company, or the more part of them, whereof the said Governor or his deputy, to be one, at any their general court, or general assembly, to remove, disfranchise and displace him or them at their wills and pleasures. And the said Governor and Company, of Merchants of London, trading into the East Indies, for them and their successors, do, by these presents, covenant, promise and grant, to and with us, our heirs and successors, that they the said Governor and Company, and their successors, in all and every such voyage, as they at any time or times hereafter, during the said term, shall make out of this realm, by virtue of this our grant and letters patents, the first voyage only excepted, shall and will, upon every return which shall be made back again into this realm, or any of our dominions, or within six months next after every such return, bring into this our realm of England, from the said East Indies, or from

some other parts, beyond the seas, out of our dominions as great or greater value in bullion of gold or silver, or other foreign coin of gold or silver, respectively, for every voyage, the first voyage only excepted, as shall be by force of these presents transported and carried out of this realm, by them or any of them, in any kind of silver abovesaid whatsoever, in any of the said voyages; and that all such silver, as by virtue of this our grant and letters patents, shall be shipped or laden by the said Governor and Company or their successors, to be transported out of this realm, in any of the said voyages, shall from time to time, at the setting forth of every such particular voyage, be shipped and laden at the ports or havens of London, Dartmouth, or Plymouth, or at some of the same ports or havens, and at no other port or haven whatsoever, within this our realm, or the dominions thereof; and that all and every such silver, as from time to time shall be shipped and loaden in the said ports of London, Dartmouth, or Plymouth, or any of them, to be by force of these presents transported out of this realm, as is aforesaid shall, from time to time, be duly entered by the customer, controller, collector or other officer to whom it shall appertain, of every such port or haven, where the same shall happen to be shipped or laden, in the Custom-Book belonging to the said port or haven, before such time as the same shall be shipped or laden, to be transported as is aforesaid, without any custom or subsidy, to be paid for the same; and that in like manner, all and all manner of gold and silver whatsoever, which shall be brought into this realm, or any of our dominions, by the said Governor and Company, or any of them, according to the true meaning of these presents, shall likewise be, from time to time, duly entered by the customer, controller, or other officer of every such port, creek or place, where the same gold or silver shall happen to be unshipped, or brought to land, before such time as the same gold or silver or any part thereof, shall be unshipped or brought to land, as is aforesaid. Provided always, nevertheless, and our will and pleasure is, that these our letters patents, or any thing therein contained, shall not in any sort extend to give or grant any license, power or authority unto the said Governor and Company of Merchants of London, trading into the East Indies, or to any of them to undertake or address any trade unto any country, port, island, haven, city, creek, town, or place, being already in the lawful and actual possession of any such christian prince or state, as at this

present is, or at any time hereafter shall be in league or amity, with us, our heirs or successors, and which doth not, or will not accept of such trade, but doth overtly declare and publish the same, to be utterly against his or their good-will and liking, any thing before in these presents contained, to the contrary thereof notwithstanding. Provided also, that if it shall, hereafter appear to us, our heirs or successors, that this grant or the continuance thereof, in the whole or in any part thereof, shall not be profitable to us, our heirs and successors, or to this our realm, that then, and from thenceforth, upon and after two years' warning, to be given to the said Company, by us, our heirs or successors, under our or their privy seal, or sign manual, this present grant shall cease, be void and determined, to all intents, constructions and purposes : And further of our especial grace, certain knowledge and mere motion we have condescended and granted, and by these presents for us, our heirs and successors, do condescend and grant to the said Governor and Company of Merchants of London, trading into the East Indies, and their successors that if at the end of the said term of fifteen years, it shall seem meet and convenient unto the said Governor and Company, or any the parties aforesaid, that this present grant shall be continued, and if that also it shall appear unto us, our heirs and successors, that the continuance thereof shall not be prejudicial or hurtful to thisour realm, but that we shall find the further continuance thereof profitable for us, our heirs and successors, and for our realm, with such conditions as are herein mentioned, or with some alteration or qualification thereof, that then we, our heirs or successors, at the instance and humble petition of the said Governor and Company, or any of them, to be made unto us, our heirs and successors, will grant and make unto the said Governor and Company, or any of them, so suing for the same ; and such other person and persons, our subjects, as they shall nominate and appoint, or shall be by us, our heirs or successors, newly nominated, not exceeding in number twenty-four, new letters patents, under the great seal of England, in due form of law, with the like covenants, grants, clauses and articles, as in these presents are contained, or with addition of other necessary articles, or changing of these into some other parts, for and during the full term of fifteen years, the next following ; willing hereby and straightly charging and commanding all and singular our admirals, vice-admirals, justices, mayors, sheriffs, escheators, constables, bailiffs,

and all and singular other our officers, ministers, liege men and subjects whatsoever, to be aiding, favouring, helping and assisting unto the said Governor and Company, and to their successors, and to their deputies, officers, factors, servants assigns and ministers and every of them, in executing and enjoying the premises, as well on land as on sea, from time to time, when you or any of you shall thereunto be required, any statute, act, ordinance, proviso, proclamation or restraint, heretofore had, made, set forth, ordained, or provided, or any other matter, cause or thing whatsoever, to the contrary in any way notwithstanding; although express mention of the true yearly value or certainty of the premises, or of any of them, or of any other gifts or grants, by us, or any of our progenitors, to the said Governor and Company of Merchants of London, trading into the East Indies, or to any of them, before this time made, in these presents is not made, or any statute, act, ordinance, provision, proclamation or restraint, to the contrary heretofore had made, ordained or provided, or any other thing, cause or matter whatsoever, in anywise notwithstanding. In witness whereof, we have caused these our letters to be made patents: Witness ourself, at Westminster, the thirty-first day of December, in three and fortieth year of our reign.

II. THE EAST INDIA COMPANY ACT, 1773.*

(13, Geo. 3, C. 63).

AN ACT FOR ESTABLISHING CERTAIN REGULATIONS FOR THE BETTER MANAGEMENT OF THE AFFAIRS OF THE EAST INDIA COMPANY, AS WELL IN INDIA AS IN EUROPE.

Preamble.

"Whereas the several Powers and Authorities granted by charters to the United Company of Merchants of England trading to the East Indies have been found, by experience, not to have sufficient Force and Efficacy to prevent various Abuses which have prevailed in the Government and Administration of the Affairs of the said United Company, as well at Home as in India, to the manifest Injury of the Publick Credit, and of the commercial interests of the said Company; and it is therefore become highly expedient that certain further Regulations, better

* This Act is commonly known as "The Regulating Act."

adapted to their present circumstances and condition, should be provided and established: And whereas the electing and choosing of Directors of the said United Company every year, in such manner as at present prescribed by charter, has not answered the good Purposes intended thereby, but, on the contrary, by limiting the Duration of their Office to so short a Time, evidently tends to weaken the Authority of the Court of Directors, and to produce Instability in the Councils and Measures of the said Company:" May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That etc. * * *

A Governor-General and four Counsellors to be appointed.

7. And for the better management of the said United Company's Affairs in India, be it further enacted by the authority aforesaid, that for the government of the Presidency of Fort William in Bengal, there shall be appointed a Governor-General, and four Counsellors;

In whom the whole civil and military Government of Bengal, Bihar, and Orissa shall be vested.

and that the whole civil and military government of the said Presidency, and also the ordering, management, and government, of all the territorial acquisitions and revenues in the kingdoms of Bengal, Bihar, and Orissa shall, during such time as the territorial acquisitions and revenues shall remain in the possession of the said United Company, be, and are hereby vested in the said Governor-General and Council of the said Presidency of Fort William in Bengal, in like manner, to all intents and purposes whatsoever, as the same now are, or at any time heretofore might have been exercised by the President and Council or Select Committee in the said kingdoms.

In case of difference of opinion, the decision of the major part to be conclusive; and in case of death, removal or absence, the Governor or eldest Counsellor to have a casting voice.

8. And be it enacted by the Authority aforesaid, that in all cases whatsoever wherein any difference of opinion shall arise upon any question proposed in any consultation, the said Governor-General and Council shall be bound and concluded by the opinion and decision of the major part of those present: And if it shall happen that, by the death or removal, or by the absence, of any of the Members of the said Council, such Governor-General and Council shall happen to be equally divided; then, and in every such case, the said Governor-General,

or, in his absence, the eldest counsellor present, shall have a casting voice, and his opinion shall be decisive and conclusive.

Power of the Governor-General and Council.

9. And be it further enacted by the Authority aforesaid, that the said Governor-General and Council, or the major part of them, shall have, and they are hereby authorised to have, power of superintending and controlling the government and management of the Presidencies of Madras, Bombay and Bencoolen respectively, so far and in so much as that it shall not be lawful for any President and Council of Madras, Bombay, or Bencoolen for the time being, to make any orders for commencing hostilities, or declaring or making war, against any Indian Princes or Powers, or for negotiating or concluding any treaty of peace, or other treaty, with any such Indian Princes or Powers, without the consent and approbation of the said Governor-General and Council first had and obtained, except in such cases of imminent necessity as would render it dangerous to postpone such hostilities or treaties until the orders from the Governor-General and Council might arrive; and except in such cases where the said Presidents and Councils respectively shall have received special orders from the said United Company; and any President and Council of Madras, Bombay, or Bencoolen, who shall offend in any of the cases aforesaid, shall be liable to be suspended from his or their office by the order of the said Governor-General and Council; and every President and Council of Madras, Bombay, and Bencoolen for the time being, shall, and they are hereby respectively directed and required, to pay due obedience to such orders as they shall receive, touching the premises, from the said Governor-General and Council for the time being, and constantly and diligently to transmit to the said Governor-General and Council advice and intelligence of all transactions and matters whatsoever that shall come to their knowledge, relating to the Government, Revenues or Interest, of the said United Company * * * *; and the said Governor-General and Council for the time being shall, and they are hereby directed and required to pay due obedience to all such orders as they shall receive from the Court of Directors of the said United Company, and to correspond, from time to time, and constantly and diligently transmit to the said Court an exact particular of all advices or intelligence, and of all transactions and matters whatsoever, that shall come to their knowledge, relating to the government, commerce, revenues, or interest, of the said United Company; * * * *.

10. And * * * * that Warren Hastings, Esquire shall be the first Governor-General; and that Lieutenant-General John Clavering, the Honorable George Monson, Richard Barwell, Esquire, and Phillip Francis, Esquire shall be the four first Counsellors; and they, and each of them, shall hold and continue in his and their respective offices for and during the term of five years from the time of their arrival at Fort William in Bengal, and taking upon them the government of the said Presidency, and shall not be removeable in the meantime, except by His Majesty, his Heirs and Successors, upon representation made by the Court of Directors of the said United Company for the time being * * * *; and from and after the expiration of the said term of five years, the power of nominating and removing the succeeding Governor-General and Council shall be vested in the Directors of the said United Company.

Names of the first Governor-General and Counsellors, who shall continue in office five years after arrival at Fort William in Bengal.

13. And, whereas his late Majesty King George the Second did by his letters patent, bearing date at Westminster the eighth day of January, in the twenty-sixth year of his reign, grant unto the said United Company of Merchants of England trading to the East Indies his royal charter, thereby amongst other things, constituting and establishing Courts of civil, criminal and ecclesiastical jurisdiction, at the said United Company's respective settlements at Madras-patnam, Bombay on the Island of Bombay, and Fort William in Bengal; which said charter does not sufficiently provide for the due administration of justice in such manner as the state and condition of the Company's Presidency of Fort William in Bengal, so long as the said Company shall continue in the possession of the territorial acquisitions before-mentioned, do and must require; be it therefore enacted by the Authority aforesaid, that it shall and may be lawful for His Majesty, by charter, or letters patent under the Great Seal of Great Britain, to erect and establish a Supreme Court of Judicature at Fort William aforesaid, to consist of a Chief Justice and three other Judges, being Barristers in England or Ireland, of not less than five years' standing, to be named from time to time by His Majesty, his Heirs and Successors; which said Supreme Court of Judicature shall have, and the same Court is hereby declared to have, full power and authority to exercise and perform all civil, criminal, admiralty, and ecclesiastical jurisdiction, and to appoint such clerks

His Majesty may, by charter of letters patent, establish a Supreme Court of Judicature at Fort William, etc. to consist of a Chief Justice and three other Judges.

and other ministerial officers of the said Court, with such reasonable salaries, as shall be approved of by the said Governor-General and Council; and to form and establish such rules of practice, and such rules for the process of the said Court, and to do all such other things as shall be found necessary for the administration of justice, and the due execution of all or any of the powers which, by the said charter, shall or may be granted and committed to the said Court; and also shall be, at all times, a Court of Record, and shall be a Court of Oyer and Terminer and Goal Delivery, in and for the said town of Calcutta, and factory of Fort William in Bengal aforesaid, and the limits thereof, and the factories subordinate thereto.

Extent of the jurisdiction and powers of His Majesty's charter; and of the Supreme Court of Judicature.

14. Provided nevertheless, * * * that the said new charter which His Majesty is hereinbefore impowered to grant, and the jurisdiction, powers, and authorities to be thereby established, shall and may extend to all British subjects who shall reside in the kingdoms or provinces of Bengal, Behar and Orissa, or any of them, under the protection of the said United Company; and the same charter shall be competent and effectual: And the Supreme Court of Judicature therein and thereby to be established, shall have full power and authority to hear and determine all complaints against any of his Majesty's subjects for any crimes, misdemeanours or oppressions, committed or to be committed; and also to entertain, hear and determine any suits or actions whatsoever against any of His Majesty's subjects in Bengal, Behar and Orissa, and any suit, action or complaint against any person who shall, at the time when such debt or cause of action or complaint shall have arisen, have been employed by or shall then have been, directly or indirectly, in the service of the said United Company, or of any of His Majesty's subjects.

Supreme Court to hear and determine indictments and informations etc.

15. Provided also, that the said Court shall not be competent to hear, try or determine any indictment or information against the said Governor-General, or any of the said Council for the time being, for any offence (not being treason or felony) which such Governor-General, or any of the said Council, shall or may be charged with having committed in Bengal, Behar and Orissa.

17. And it is hereby further enacted and provided, that

The Governor-General, Council, etc., not subject to be arrested or imprisoned.

nothing in this Act shall extend to subject the person of the Governor-General, or of any of the said Council or Chief Justice and Judges respectively for the time being, to be arrested or imprisoned upon any action, suit or proceeding in the said Court.

The Governor-General, or Council, shall not accept of any present; nor be concerned in any transaction by way of traffic.

23. And * * * * no Governor-General, or any of the Council of the said United Company's Presidency of Fort William in Bengal or any Chief Justice or any of the Judges of the Supreme Court of Judicature at Fort William aforesaid, shall, directly or indirectly, by themselves or by any other person, or persons, for his or their use or on his or their behalf accept, receive or take, of or from any person or persons, in any manner or on any account whatsoever, any present, gift, donation, gratuity, or reward, pecuniary or otherwise, or any promise or engagement for any present, gift, donation, gratuity, or reward; and that no Governor-General, or any of the said Council, or any Chief Justice or Judge of the said Court, shall carry on, be concerned in, or have any dealing or transactions, by way of traffic or commerce of any kind whatsoever, either for his or their use or benefit, profit or advantage, or for the benefit or advantage of any other person or persons whatsoever, (the trade and commerce of the said United Company only excepted); an usage or custom to the contrary thereof in anywise notwithstanding.

Governor-General and Council may make such regulations as may appear just; which shall not be valid until duly registered in the Supreme Court.

36. And be it further enacted by the authority aforesaid, that it shall and may be lawful for the Governor-General and council of the said United Company's settlement at Fort William in Bengal, from time to time, to make and issue such rules, ordinances, and regulations for the good order and civil government of the said United Company's settlement at Fort William aforesaid, and other factories and places subordinate or to be subordinate thereto, as shall be deemed just and reasonable, (such rules, ordinances, and regulations, not being repugnant to the laws of the realm), and to set, impose, inflict and levy, reasonable fines and forfeitures for the breach or non-observance of such rules, ordinances and regulations; but nevertheless, the same or any of them, shall not be valid or of any force or effect, until the same not be duly registered and published in the said Supreme Court,

of Judicature, which shall be, by the said new charter, established with the consent and approbation of the said Court, which registry shall not be made until the expiration of twenty days after the same shall be openly published, and a copy thereof affixed in some conspicuous part of the Court house or place where the said Supreme Court shall be held; and from and immediately after such registry as aforesaid, the same shall be good and valid in law; but, nevertheless, it shall be lawful for any person or persons in India to appeal therefrom to His Majesty, his Heirs or Successors, in Council, who are hereby impowered, if they think fit, to set aside and repeal any such rules, ordinances, and regulations respectively, so as such appeal or notice thereof, be lodged in the said new Court of Judicature within the space of sixty days after the time of the registering and publishing the same; * * *

Appeals may be made to the King in Council, who may repeal such rules.

37. Provided always * * * * that the said Governor-General and Council shall, and they are hereby required, from time to time, to transmit copies of all such rules, ordinances, and regulations as they shall make and issue to one of His Majesty's principal Secretaries of State for the time being, and that it shall and may be lawful to and for His Majesty, his heirs and successors, from time to time, as they shall think necessary, to signify to the said United Company, under his or their sign manual, his or their disapprobation and disallowance of all such rules, ordinances and regulations; and that from and immediately after the time that such disapprobation shall be duly registered and published in the said Supreme Court of Judicature at Fort William in Bengal, all such rules, ordinances, and regulations shall be null and void; but in case His Majesty, his Heirs and Successors, shall not, within the space of two years from the making of such rules, ordinances and regulations, signify his or their disapprobation or disallowance thereof, as aforesaid, that then, and in that case, all such rules, ordinances and regulations shall be valid and effectual, and have full force.

Governor-General and Council to transmit copies of their rules to one of the Secretaries of State; which, if His Majesty does not signify his disallowance of, shall have full force.

39. And * * * if any Governor-General, President or Governor or Council of any of the said Company's principal or other settlements in India, or the Chief Justice or any of the Judges of the said Supreme Court of Judicature, to be by the said New Charter

If the Governor-General, President, etc., commit offences, the same may be tried and determined in the Court of King's Bench.

established or of any other Court in any of said United Company's settlements, or any other person, or persons who now are or heretofore have been employed by or in the service of the said United Company, in any civil or military station, office, or capacity, or who have or claim, or heretofore have had or claimed any power or authority or jurisdiction by or from the said United Company, or any of His Majesty's subjects residing in India, shall commit any offence against this Act or shall have been or shall be guilty of any crime, misdemeanour or offence, committed against any of His Majesty's subjects, or any of the inhabitants of India, within their respective jurisdictions all such crimes, offences and misdemeanours may be respectively enquired of, heard, tried and determined in His Majesty's Court of King's Bench, and all such persons so offending, and not having been before tried for the same offence in India, shall on conviction, in any such case as is not otherwise specially provided for by this Act, be liable to such fine or corporal punishment as the said Court shall think fit; and moreover shall be liable, at the discretion of the said Court, to be adjudged to be incapable of serving the said United Company in any office, civil or military; and all and every such crimes, offences and misdemeanours as aforesaid, may be alleged to be committed, and may be laid, enquired of and tried, in the county of Middlesex.

Manner of procedure in cases of indictments and informations laid, in the King's Bench.

40. And whereas the provisions made by former laws for the hearing and determining in England offences committed in India have been found ineffectual by reason of the difficulty of proving in this Kingdom matters done there; be it further enacted by the authority aforesaid, that in all cases of indictments or informations laid or exhibited in the said Court of King's Bench for misdemeanours or offences committed in India, it shall and may be lawful for His Majesty's said Court upon motion to be made on behalf of the prosecutor or of the defendant or defendants, to award a writ or writs of mandamus, requiring the Chief Justice and Judges of the said Supreme Court of Judicature for the time being, or the Judges of the Mayor's Court at Madras, Bombay or Bencoolen, as the case may require, who are hereby respectively authorized and required, accordingly, to hold a Court, with all convenient speed for the examination of witnesses, and receiving other proofs concerning the matters charged in such indictments or informations respectively, and in the meantime, to cause such public notice to be given of the holding the said court and

to issue such summons or other process, as may be requisite for the attendances of witnesses and of the agents or counsel of all or any of the parties respectively, and to adjourn from time to time as occasion may require; any such examination as aforesaid shall be then and there openly and publicly taken *viva voce* in the said Court, upon the respective oaths and witnesses, and the oaths of skilful interpreters, administered according to the forms of their several religions; and shall, by some sworn officer of such Court, be reduced into one or more writing or writings on parchment, in case any duplicate or duplicates should be required by or on behalf of any of the parties interested, and shall be sent to His Majesty, in his Court of King's Bench, closed up and under the seals of two or more of the Judges of the said Court, and one or more of the said Judges shall deliver the same to the agent or agents of the party or parties requiring the same; which said agent or agents (or in case of his or their death, the person into whose hands the same shall come), shall deliver the same to one of the clerks in court of His Majesty's Court of King's Bench in the public office, and make oath that he received the same from the hands of one or more of the Judges of such Court in India (or, if such agent be dead, in what manner the same came into his hands); and the same has not been opened or altered since he so received it (which said oath such clerk in Court is hereby authorised and required to administer); * * * * *

III. THE EAST INDIA COMPANY ACT, 1784.

(24 Geo. III, Sess. 2, C. 25).

A.

AN ACT FOR THE BETTER REGULATION AND MANAGEMENT OF THE AFFAIRS OF THE EAST INDIA COMPANY, AND OF THE BRITISH POSSESSIONS IN INDIA; AND FOR ESTABLISHING A COURT OF JUDICATURE FOR THE MORE SPEEDY AND EFFECTUAL TRIAL OF PERSONS ACCUSED OF OFFENCE COMMITTED IN THE EAST INDIES.

Preamble.

'For the better Government and Security of the Territorial Possessions of this Kingdom in the East Indies,' be it enacted by the King's most

*. The Act is commonly known as "Pitt's Act of 1784."

Excellent Majesty, by and with the consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same.

His Majesty impowered to appoint six Privy Councillors to be Commissioners for the Affairs of India.

That it shall and may be lawful to and for the King's Majesty, his Heirs and Successors, by any Commission to be issued under the Great Seal of Great Britain, to nominate and appoint such persons, not exceeding six in Number, as his Majesty shall think fit, being of His Majesty's most honourable Privy Council, of whom one of his Majesty's Principal Secretaries of State for the Time being, and Chancellor of the Exchequer for the Time being, shall be two, to be and who shall accordingly be Commissioners for the Affairs of India.

Three of whom shall form a Board.

2. And be it further enacted by the Authority aforesaid, that any Number, not less than Three of the said Commissioners, shall form a Board for executing the several Powers which by this or any other Act, shall be vested in the Commissioners aforesaid.

Who shall be President.

3. And be it further enacted, that the said Secretary of State, and in his Absence, the said Chancellor of the Exchequer, and, in the absence of both of them, the Senior of the said other Commissioners, according to his Rank in Seniority of Appointment, shall preside at, and be President of the said Board ;

Powers of the Commissioners.

and that the said Commissioners shall have, and they are hereby invested with, the Superintendence and Control over all the British Territorial Possessions in the East Indies, and over the Affairs of the United Company of Merchants trading thereto, in Manner hereinafter directed.

President to have the casting Vote.

4. And be it further enacted, that in case the Members present at the said Board shall at any Time be equally divided in Opinion, in respect to any Matter depending before them, then, and in every such Case, the then President of the said Board shall have two Voices, or the casting Vote.

His Majesty may revoke the Commission at pleasure, and appoint new Commissioners.

5. And be it further enacted, that it shall and may be lawful for the King's Majesty, his Heirs and Successors, from Time to Time, at his and their Will and Pleasure, to revoke and determine the Commission aforesaid, and from Time to Time to cause any new Commission or Commissions to be sealed as aforesaid, for appointing any other Person or Persons, being of his Majesty's most Honourable Privy Council, of whom, one of his Majesty's Principal Secretaries of State, and the Chancellor of the Exchequer for the Time being, shall always be two, to be Commissioners and Members of the said Board, when and so often as his Majesty, his Heirs or Successors, shall think fit, so that the Number of Commissioners therein to be named shall in nowise exceed the aforesaid number of Six.

Government and Revenues of the British Territorial Possessions in India, subject to the control of the Board.

6. And be it further enacted, that the said Board shall be fully authorized and impowered, from Time to Time, to superintend, direct, and control, all Acts, Operations, and Concerns, which in anywise relate to the Civil or Military Government or Revenue of the British Territorial Possessions in the East Indies, in the Manner herein-after directed.

Secretaries &c. to attend the Board, how to be appointed and paid.

7. And be it further enacted, that the said Secretary of State for the Time being shall nominate and appoint such Secretaries, Clerks, and other Officers, as shall be necessary to attend upon the said Board, who shall be subject to Dismission at the Pleasure of the said Board; and that all Proceedings whatsoever to be had by or before the said Board shall be entered in proper Books; and that the said Secretaries, Clerks, and other Officers, shall be paid such Salaries as His Majesty shall, by Warrant under his Sign Manual, direct.

The Oath.

'I A. B. do faithfully promise and swear, That, as a Commissioner or Member of the Board for the Affairs of India, I will give my best Advice and Assistance for the good Government of the British Possessions in the East Indies; and will execute the several Powers and Trusts reposed in me, according to the best of my Skill and Judgment, without Favour or Affection, Prejudice or Malice, to any Person whatsoever.'

Which said Oath any Two of the Members of the said Board shall, and are hereby impowered to administer; and the said Oath shall be entered by the said Secretary amongst the Acts of the Board, and be duly subscribed and attested by the Members thereof, at the Time of their taking and administering the same to each other respectively.

10 And, for avoiding any Doubt which may arise, whether the Office or Place of a Commissioner of the said Board, for the affairs of India, or of a Secretary to the said Board, be within any of the Provisions contained in an Act of the sixth Year of the Reign of Queen Anne, intituled, *An Act for the Security of her Majesty's Person and Government, and of the Succession of the Crown of Great Britain in the Protestant Line*; or whether the Appointment, of any such Commissioner or Secretary, being a Member or Members of the House of Commons, shall vacate his or their Seat or Seats in that House; be it futher enacted and declared,

Neither the Commissioners, nor their Chief Secretary disqualified from being elected Members of Parliament.

That the said respective Offices, Places, or Appointments of a Commissioner, or of the Chief Secretary of the said Board for the Affairs of India, to be made under the Authority of this Act, shall not be deemed or taken to be within the Intent or Purview of the said Act of the sixth year of Queen Anne, whereby to disqualify any such Commissioner or Chief Secretary from being elected or sitting or voting as a Member of the House of Commons; nor shall the Appointment of any such Commissioner or Chief Secretary, if a Member or Members of the said House, vacate his or their Seat or Seats in the said House; any Thing contained in the said Act of the sixth Year of Queen Anne, or in any other Act, to the contrary notwithstanding.

11. And, to the Intent that the said Board may be duly informed of all Transactions of the said Company, in respect to the Management of their Concerns in the East Indies; be it further enacted,

Members of the Board to have access to, be furnished with copies of, any Papers belonging to the India Company.

That all the Members of the said Board shall, at all convenient Times, have Access to all Papers and Muniments of the said United Company, and shall be furnished with such Extracts or Copies thereof, as they shall from time to time require;

and that the Court of Directors of the said United Company shall, and they are hereby required and directed, to deliver to the said Board Copies of all Minutes, Orders, Resolutions, and other Proceedings, of all General and Special Courts of Proprietors of the said Company, and of the said Court of Directors, so far as relate to the Civil or Military Government or Revenues of the British Territorial Possessions in the East Indies, within eight Days after the holding of such respective Courts, and also Copies of all Dispatches which the said Directors, or any Committee of the said Directors, shall receive from any of their Servants in the East Indies immediately after the arrival thereof; and also Copies of all Letters, Orders, and Instructions whatsoever, relating to the Civil or Military Government or Revenues of the British Territorial Possessions in the East Indies, proposed to be sent or dispatched, by the said Court of Directors, or any Committee of the said Directors, to any of the Servants of the said Company in the East Indies; and that the said Court of Directors of the said United Company shall, and they are hereby required to pay due Obedience to, and shall be governed and bound by, such orders and Directions as they shall from Time to Time receive from the said Board, touching the Civil or Military Government and Revenues of the British Territorial Possessions in the East Indies.

Court of Directors to deliver to the Board Copies of all Minutes, etc., of Courts of Proprietors, or Directors, as relate to the Government or Revenues of the Territorial Possessions, etc., and shall obey all Orders received from the Board relative thereto.

12. And be it further enacted that, within fourteen days after the Receipt of such Copies last mentioned, the said Board shall return the same to the said Court of Directors, with their Approbation thereof, subscribed by three of the Members of the said Board, or their Reasons at large for disapproving the same, together with Instructions from the said Board to the said Court of Directors in respect thereto; and that the said Court of Directors shall thereupon dispatch and send the Letters, Orders, and Instructions so approved or amended, to their Servants in India, without further Delay, unless, on any Representation made by the said Directors to the said Board, the said Board shall direct any Alterations to be made in such Letters, Orders, or Instructions; and no Letters, Orders, or Instructions, until after such previous Communication thereof to the said Board, shall at any time be sent or dispatched by the said Court of Directors to the East Indies, on any Account or Pretence whatsoever.

Copies of Letters, &c. to be returned to the Directors within 14 days, &c.

13. And, for the readier Dispatch of the Civil and Military Concerns of the said United Company, be it further enacted, That whenever the Court of Directors of the said United Company shall neglect to transmit to the said Board their intended Dispatches on any Subject, within fourteen Days after Requisition made, it shall and may be lawful to and for the said Board to prepare and send to the Directors of the East India Company (without waiting for the Receipt of the Copies of Dispatches intended to be sent by the said Court of Directors as aforesaid) any Orders or Instructions to any of the Governments or Presidencies aforesaid, concerning the Civil or Military Government of the British Territories and Possessions in the East Indies; and the said Directors shall, and they are hereby required to transmit Dispatches in the usual Form (pursuant to the Tenor of the said Orders and Instructions so transmitted to them) to the respective Governments and Presidencies in India, unless, on any representation made by the said Directors of the said Board, touching such Orders or Instructions, the said Board shall direct any Alteration to be made in the same; which Directions the said Court of Directors shall in such Case be bound to conform to.

Clause relative to sending Dispatches to India.

14. And be it further enacted, that in case the said Board shall send any Orders or Instructions to the said Court of Directors, to be by them transmitted to India, which, in the Opinion of the said Court of Directors, shall relate to Points not connected with the Civil or Military Governments and Revenues of the said Territories and Possessions in India, then, and in any such Case, it shall be lawful for the said Court of Directors to apply, by Petition, to His Majesty in Council touching such Orders and Instructions; and His Majesty in Council shall decide whether the same be, or be not, connected with the Civil or Military Government and Revenues of the said Territories and Possessions in India; which Decision shall be final and conclusive.

Court of Directors, on receiving Orders from the Board not connected with the Government and Revenues of the Territorial Possessions, may appeal to His Majesty in Council.

15. Provided nevertheless, and be it further enacted, That if the said Board shall be of Opinion that the Subject Matter of any of their Deliberations concerning the levying of War or making of Peace, or treating or negotiating with any of the Native Princes or

Matters requiring Secrecy may be sent by the Board to the Secret Committee, who shall transmit their Orders to India agreeable thereto.

States in India, shall require Secrecy, it shall and may be lawful for the said Board to send secret Orders and Instructions to the Secret Committee of the said Court of Directors for the Time being, who shall thereupon, without disclosing the same, transmit their Orders and Dispatches in the usual Form, according to the Tenor of the said Orders and Instructions of the said Board, to the respective Governments and Presidencies in India; and that the said Governments and Presidencies shall pay a faithful Obedience to such Orders and Dispatches, and shall return their Answers to the same, sealed (under Cover) with their respective Seals, to the said Secret Committee, who shall forthwith communicate such Answers to the said Board.

Directors to appoint a Secret Committee.

16. And be it enacted by the Authority aforesaid, that it shall and may be lawful to and for the Court of Directors of the said United Company for the Time being, and they are hereby required from Time to Time, to appoint a Secret Committee, to consist of any Number of the said Directors for the Time being, not exceeding three;

Who are to transmit to the Governments in India Duplicates of such secret Orders sent to them from the Board, &c.

which Secret Committee shall, from Time to Time, upon the Receipt of any such secret Orders and Instructions concerning the Levying of War or making of Peace, or treating or negotiating with any of the Native Princes or States of India, from the said Commissioners for the Affairs of India, as are hereinbefore mentioned, transmit to the respective Governments and Presidencies in India a Duplicate or Duplicates of such Orders and Instructions, together with Orders in Writing, signed by them, the Members of the said Secret Committee, to carry the same into Execution; and to all such Orders and Instructions, so transmitted, the several Governments and Presidencies in India are hereby required to pay the same Obedience as if such Orders and Directions had been issued and transmitted by the Court of Directors of the said United Company.

The Board not to appoint any Servants of the Company.

17. Provided also, and be it further enacted and declared by the Authority aforesaid, That nothing in this Act contained shall extend to give unto the said Board the Power of nominating or appointing any of the Servants of the said United Company; any Thing herein contained to the contrary notwithstanding.

18. And be it further enacted, That as soon as the Office of any one of the Counsellors of the Presidency of Fort William in Bengal (other than the Commander-in-Chief) shall become vacant by Death, Removal, or Resignation, the Vacancy so happening shall not be supplied by the said Court of Directors, but the said Supreme Government shall from thenceforward consist of a Governor General and three Supreme Counsellors only; and that the Commander-in-Chief of the Company's Forces in India for the Time being shall have Voice and Precedence in Council next after the said Governor General; any Thing in any former Act of Parliament contained to the contrary notwithstanding.

The first Vacancy of a Counsellor at Fort William shall not be supplied by the Court of Directors.

19. And be it further enacted, That the Government of the several Presidencies and Settlements of Fort Saint George and Bombay shall, after the Commencement of this Act, consist of a Governor or President, and three Counsellors only, of whom the Commander-in-Chief in the said several Settlements for the Time being shall be one, having the like Precedence in Council as in the Presidency of Fort William in Bengal, unless the Commander-in-Chief of the Company's Forces in India shall happen to be present in either of the said Settlements; and in such Case the said Commander-in-Chief shall be one of the said Counsellors, instead of the Commander-in-Chief of such Settlement; and that the said Commander-in-Chief of such Settlement shall during such Time have only a Seat but no Voice in the said Council.

Clause relative to the Government of Fort St. George, and Bombay.

20. And be it further enacted, That the Court of Directors of the said United Company shall, within the Space of one Calendar Month next after the passing of this Act, nominate and appoint, from amongst the Servants of the said Company in India, or any other Persons, a fit and proper Person to be the Governor of the said Presidency or Settlement of Fort Saint George, and two other fit and proper Persons from amongst the said Servants in India, who together with the Commander-in-Chief at Fort Saint George for the Time being, shall be the Council of the same Presidency or Settlement; and that the said Court of Directors shall also, in like manner, and within the Time aforesaid, nominate and appoint fit and proper Persons to be the Governor and Council of the said Presidency or Settlement of Bombay, under the

Court of Directors to appoint a Governor and two Counsellors of Fort St. George.

same Restrictions as are herein-before provided in respect to the Governor or President and Council of Fort St. George.

Governor General &c., to have the casting Vote.

21. And be it further enacted, That in case the Members present at any of the Boards or Councils of Fort William, Fort Saint George, or Bombay, shall at any Time be equally divided in Opinion in respect to any Matter depending before them, then, and in every such Case, the said Governor General or the Governor or President, as the Case may be, shall have two Voices, or the casting Vote.

His Majesty, by Writing under his Sign Manual, or the Directors, by Writing under their Hands, may recall any Governor-General, or other officer, from India.

22. And be it further enacted, That it shall and may be lawful to and for the King's Majesty, his Heirs and Successors, by any Writing or Instrument under his or their Sign Manual, countersigned by the said Secretary of State, or for the Court of Directors of the said United Company for the Time being, by writing under their Hands, to remove or recall the present or any future Governor General of Fort William in Bengal, or any of the Members of the Council of Fort William aforesaid, or any of the Governors or Presidents, and Members of the Councils, of the Presidencies or Settlements of Fort St. George and Bombay, or of any other British Settlements in India, or any other Person or Persons holding any Office, Employment, or Commission, Civil or Military, under the said United Company at India, for the Time being; and to vacate and make void all and every or any Appointment or Appointments of any Person or Persons to any of the Offices or Places aforesaid; and that all and every the powers and Authorities of the respective Persons so removed or recalled, or whose Appointment shall be so vacated, shall cease or determine at or from such respective Time or Times as in the said Writing or Writings shall be expressed and directed: Provided always, That a Duplicate or Copy of every such Writing or Instrument, under His Majesty's Sign Manual, attested by the said Secretary of State for the Time being, shall, within eight days after the same shall be signed by His Majesty, his Heirs or Successors, be transmitted or delivered, by the said Secretary of State, unto the Chairman or Deputy Chairman for the Time being, of the said United Company, to the Intent that the Court of Directors of the said Company, may be apprized thereof.

How Vacancies of Offices in India shall be supplied.

23. And be it further enacted, That whenever any Vacancy or Vacancies of the Office of Governor-General or President, or of any Member of the Council, shall happen in any of the Presidencies aforesaid, either by Death, Resignation, or Recall, as aforesaid, then and in such Case the Court of Directors of the said United Company shall proceed to nominate and appoint a fit Person or Persons to supply such Vacancy or Vacancies from amongst their covenanted Servants in India, except to the Office of Governor General, or the Office of Governor or President of Fort Saint George or Bombay, or of any Commander-in-Chief, to which several Offices the said Court of Directors shall be at Liberty, if they shall think fit, to nominate and appoint any other Person or Persons respectively.

Commanders-in-Chief not to succeed to the Office of Governor General or President at Fort William, &c. unless specially appointed by the Directors.

24. Provided always, and be it further enacted, That the said Commanders-in-Chief, at each of the said Presidencies respectively, shall in no Case succeed to the Office of Governor General or President of Fort William, Fort Saint George, or of Bombay, unless thereunto specially appointed by the Court of Directors of the said United Company; but that in case of the Vacancy of the said Offices of Governor General or President respectively, when no Person shall be specially appointed to succeed thereunto, the Counsellor next in Rank to such Commander-in-Chief shall succeed to such Office, and hold the same, until some other Person shall be appointed thereunto by the said Court of Directors.

If Directors neglect to supply Vacancies, His Majesty may do it.

25. Provided always, and be it further enacted, That when and so often as the Court of Directors shall not, within the Space of two calendar Months, to be computed from the Day whereon the Notification of the Vacancy shall have been received by the said Court of Directors, proceed to supply the same, then and in any such Case, and so often as the same shall happen, it shall be lawful for His Majesty, his Heirs and Successors, to constitute and appoint by writing, under his or their Royal Sign Manual (under the same Restrictions and Regulations as are herein-before provided, with respect to the Nominations and Appointments made by the said Court of Directors), such Person or Persons as His Majesty, His Heirs and Successors, shall think proper to succeed to and supply the respective Office or Place, Offices or Places, so vacant, or from

which any Person or Persons shall be so recalled or removed, or whose Appointment or Appointments shall have been vacated and made void as aforesaid; and that every Person or Persons, so constituted and appointed shall have and be invested with the same Powers, Privileges, and Authorities, as if he or they had been nominated and appointed by the said Court of Directors, and shall be subject to Recall only by the King's Majesty, His Heirs or Successors; any thing herein-contained to the contrary notwithstanding.

Directors may appoint eventual Successors to the Offices of Governor General, or President, &c. of Fort St. George, or Bombay.

26. And be it further enacted, by the Authority aforesaid, That it shall and may be lawful to and for the Court of Directors of the said United Company, if they shall so think fit, subject to the like Limitations and Restrictions as are herein-before enacted respecting the persons qualified to be appointed Members of the Government of the respective Settlements of the said United Company at Fort William, Fort Saint George, and Bombay, to appoint from Time to Time, fit and proper Persons to succeed, in case of Vacancy, to the several Offices of Governor General or President of Fort Saint George or Bombay, or Commander-in-Chief of the said Company's Forces at any of the said Settlements, or Member of any of the said Councils; and such Appointments respectively at their Pleasure again to revoke; but that no Person so appointed to succeed to any of the said Offices, in case of Vacancy, shall be entitled to any Salary, Advantage, or Allowance whatsoever, by reason of such Appointment, until such Persons respectively shall take upon themselves the Offices to which they shall so respectively have been appointed.

Temporary Councillors how to be appointed at Fort William, &c.

27. And be it further enacted by the Authority aforesaid, That when and so often as the Number of Members of any of the said Councils of Fort William, Fort Saint George, or Bombay, shall by Death, or Absence, by reason of Sickness or otherwise, for fourteen Days be reduced to two, including the the Governor-General or President of such Council, the Person who shall stand Senior in such provisional Appointment as is herein-before mentioned, or in case there shall be no such Appointment, then the senior Civil Servant of the said Company upon the Spot, shall be called to such Council, and shall have a Voice therein in like Manner as if he had been appointed thereunto by the Court of Directors of the said Company, and shall

hold such Office in case the vacancy shall have happened by Death, until a Successor thereunto shall be appointed by the said Court of Directors; or if such Vacancy shall have happened by Absence or Sickness, until the Return or Recovery of such sick or absent Member; and that all Persons so exercising the Office of a Counsellor at any of the said Presidencies shall be entitled, for the Time he shall so hold the same, to the like Advantages as if he had been thereunto permanently appointed by the said Court of Directors.

Orders, &c. of the Court of Directors, approved by the Board, not to be revoked by a General Court.

29. And be it further enacted, That no Order or Resolution of any General Court of the Proprietors of the said United Company shall be available to revoke or rescind, or in any respect to affect any Act, Order, Resolution, Matter, or Proceeding, of the said Court of Directors, by this Act directed or authorized to be made or done by the said Court, after the same shall have been approved by the said Board, in the Manner herein-before directed; any Law or Usage to the contrary notwithstanding.

Part of Act 21 Geo. 3, Cap. 65, repealed.

30. And be it further enacted, That so much and such Parts of an Act, made in the twenty-first Year of the Reign of his present Majesty, as directs the Court of Directors of the said United Company to deliver to the Commissioners of the Treasury, or to the High Treasurer for the Time being, or to one of his Majesty's Principal Secretaries of State, Copies of any Letters or Orders relating to the Management of the Revenue, or the Civil and Military Affairs of the said Company; and also all such Powers and Authorities given to or vested in the Proprietors and Directors of the said United Company, or in any General or special Court thereof respectively, in and by any Act of Parliament or Charter, or are contrary or repugnant to this Act, or any Thing herein contained, shall be, and the same are hereby, repealed; any thing contained in any Act or Charter, or any Custom or Usage to the contrary notwithstanding.

Governor General and Council of Fort William, in certain points to control all the other Governments belonging to the Company.

31. And be it further enacted, That the Governor General and Council of Fort William aforesaid shall have Power and Authority to superintend, control, and direct the several Presidencies and Governments now or hereafter to be erected or established in the East Indies by the said United Company, in all such Points as

relate to any transactions with the Country Powers, or to War or Peace, or to the Application of the Revenues or Forces of such Presidencies and Settlements in Time of War, or any such other Points as shall, from Time to Time, be specially referred by the Court of Directors of the said Company to their Superintendence and Control.

Directions relative to Orders issued from Fort William to the other Governments.

32. And, in order to prevent the Embarrassment and Difficulty which may arise from any Question, whether the Orders or Instructions of the Governor General and Council of Fort William relate to other Points than those aforesaid, be it further enacted, That notwithstanding any Doubt which may be entertained by the said Presidencies or Settlements to whom such Orders or Instructions shall be given, respecting the Power of the Gevernor General and Council to give such Orders, yet the said Presidencies or Settlements shall be bound to obey such orders and Directions of the said Governor General and Council in all Cases whatever, except only where they shall have received positive Orders and Instructions from the said Court of Directors, or from the Secret Committee of the said Court of Directors, repugnant to the Orders and Instructions of the said Governor General and Council, and not known to the said Governor General and Council at the Time of dispatching their Orders and Instructions as aforesaid; and the said Governor General and Council shall, at the Time of transmitting all such Orders and Instructions, transmit therewith the Dates of, and the Times of receiving, the last Dispatches, Orders and Instructions which they have received from the Court of Directors, or from the Secret Committee on the said Court of Directors, or any of the Points contained therein: And the said Presidencies and Governments, in all Cases where they have received any Orders from the said Court of Directors, or from the Secret Committee of the said Court of Directors, as aforesaid, which they shall deem repugnant to the Orders of the said Governor General and Council at Fort William, and which were not known to the said Governor General and Council at the Time of dispatching their Orders and Instructions as aforesaid, shall forthwith transmit Copies of the same, together with an Account of all Resolutions or Orders made by them in consequence thereof, to the Governor General and Council of Fort William, who shall, after the Receipt of the same, dispatch such further Orders and Instructions to the said Presidencies and Settlements as they may judge necessary thereupon.

Directions respecting the Consideration of Business at the several Boards in India.

33. And be it further enacted, That the Governor General and Council of Fort William aforesaid, and the several Presidents and Counsellors of Fort Saint George and Bombay, shall, at their several and respective Boards and Councils, proceed, in the first Place, to the Consideration of such Questions and Business as shall be proposed by the said Governor General or Presidents respectively; and when and so often as any Matter or Question shall be propounded at any of the said Boards or Councils, by any of the Counsellors thereof, it shall be competent to the said Governor General and Presidents respectively, to postpone or adjourn the Discussion of the Matter or Question so propounded to a future Day: Provided always, That no such Adjournment shall exceed forty-eight Hours, nor shall the Matter or Question so proposed be adjourned more than twice, without the Consent of the Counsellor who originally proposed the same.

Governor General, &c. of Fort William not to declare War against any Indian Power, unless authorized by the Directors (Exception.)

34. And whereas, to pursue Schemes of Conquest and Extension of Dominion in India, are Measures repugnant to the Wish, the Honour, and Policy of the Nation; be it therefore further enacted by the Authority aforesaid, That it shall not be lawful for the Governor General and Council of Fort William aforesaid, without the express Command and Authority of the said Court of Directors, or of the Secret Committee of the said Court of Directors, in any Case, except where Hostilities have actually been commenced, or Preparations actually made for the Commencement of Hostilities, against the British Nation in India, or against some of the Princes or States dependent thereon, or whose Territories the said United Company shall be at such Time engaged by any subsisting Treaty to defend or guaranty, either to declare War or commence Hostilities, or enter into any Treaty for making War, against any of the Country Princes or States in India, or any Treaty for guarantying the Possessions of any Country Princes or States; and that in such Case it shall not be lawful for the said Governor General and Council to declare War or commence Hostilities, or enter into Treaty for making War, against any other Prince or State than such as shall be actually committing Hostilities, or making Preparations as aforesaid, or to make such Treaty for guarantying the Possessions of any Prince or State, but upon the Consideration of such Prince or State actually engag-

ing to assist the Company against such Hostilities commenced, or Preparations made as aforesaid; and in all Cases where Hostilities shall be commenced, or Treaty made, the said Governor General and Council shall, by the most expeditious Means they can devise, communicate the same unto the said Court of Directors, together with a full State of the Information and Intelligence upon which they shall have commenced such Hostilities, or made such Treaties, and their Motives and Reasons for the same at large.

No Governor or President, &c., of any subordinate Settlement shall issue any Order for levying War, &c. (except in Cases of Emergency) unless by Order of the Governor General, &c., of Fort William, or the Court of Directors.

35. And be it further enacted, That it shall not be lawful for the Governors or Presidents, and Counsellors, of Fort Saint George and Bombay, or of any other subordinate Settlement respectively, to make or issue any Order for commencing Hostilities, or levying War, or to negotiate or conclude any Treaty of Peace, or other Treaty, with any Indian Prince or State (except in Cases of sudden Emergency or imminent Danger, when it shall appear Dangerous to postpone such Hostilities or Treaty), unless in pursuance of express Orders from the said Governor General and Council of Fort William aforesaid, or from the said Court of Directors, or from the Secret Committee of the said Court of Directors; and every such Treaty shall, if possible, contain a Clause for subjecting the same to the Ratification or Rejection of the Governor General and Council of Fort William aforesaid: And the said Presidents and Counsellors of the said Presidencies and Settlements of Fort Saint George and Bombay, or other subordinate Settlement, are hereby required to yield due Obedience to all such Orders as they shall from Time to Time respectively receive from the said Governor General and Council of Fort William aforesaid, concerning the Premises.

Subordinate Presidents and Counsellors disobeying the Orders of the said Governor General, &c., may be suspended.

36. And be it further enacted, That all and singular the said Presidents and Counsellors who shall wilfully refuse to pay due Obedience to such Orders and Instructions as they shall receive from the said Governor General and Council of Fort William as aforesaid, shall be liable to be suspended from the Exercise of their respective Offices or Powers, by Order of the said Governor General and Council of Fort William; and all and every of them are hereby further required, constantly and diligently to

transmit to the said Governor General and Council of Fort William aforesaid, true and exact Copies of all Orders, Resolutions, and Acts in Council, of their respective Governments, presidencies, and Councils, and also Advice and Intelligence of all Transactions and Matters which shall come to their Knowledge, material to be communicated to the Governor General and Council of Fort William aforesaid, or which the said Governor General and Council shall from Time to Time require.

British Subjects amenable to Justice for all Acts done in India.

44. And be it further enacted, That all his Majesty's Subjects, as well Servants of the said United Company as others, shall be, and are hereby declared to be, amenable to all Courts of Justice (both in India and Great Britain) of competent Jurisdiction to try Offences committed in India, for all Acts, Injuries, Wrongs, Oppressions, Trespasses, Misdemeanors, Crimes, and Offences whatsoever, by them or any of them done, or to be done or committed, in any of the Lands or Territories of any Native Prince or State, or against their Persons or Properties, or the Persons or Properties of any of their Subjects or People, in the same Manner as if the same had been done or committed within the Territories directly subject to and under the British Government in India.

Receiving of Presents to be deemed Extortion, and punished as such.

45. And be it further enacted, That the demanding or receiving of any Sum of Money, or other valuable Thing, as a Gift or Present, or under Colour thereof, whether it be for the Use of the Party receiving the same, or for, or pretended to be for, the Use of the said Company, or of any other Person whomsoever, by any British Subject holding or exercising any Office or Employment under His Majesty, or the said United Company in the East Indies, shall be deemed and taken to be Extortion, and shall be proceeded against and punished as such, under and by virtue of this Act; and the Offender shall also forfeit to the King's Majesty, his Heirs and Successors, the whole Gift or Present so received, or the full Value thereof.

Court may order Presents to be returned, &c.

46. Provided always, and be it further enacted, that the Court of Jurisdiction before whom every such offence shall be tried, shall have full Power and Authority to direct the said Present or Gift, or the value thereof to be restored to the party who gave the same, or to order the whole, or any part thereof, or of any fine which the Court shall set on the offender, to be

paid or given to the prosecutor or Informer, as such Court in its Discretion shall think fit.

Counsellors, Physicians, &c. not prohibited from taking fees.

48. Provided always, and be it enacted, That nothing herein contained shall extend, or be construed to extend, to prohibit or prevent any Person exercising the Profession of Counsellor at Law, Physician, or Surgeon, or any Chaplain, from accepting, taking, or receiving Fees, Gratuities, or Rewards, (*bona fide*), in the way of his Profession only.

Company's Servants dismissed by any competent Court, not to be restored.

51. And be it further enacted, That after Sentence or Judgment of any Court having competent Jurisdiction, whether in Great Britain or in India, against any of the said United Company's Servants, Civil or Military, for any Debt or Penalty due or belonging to the said United Company, or for any Extortion or other Misdemeanor, it shall not be lawful for the said United Company, upon any Pretence whatsoever, to release or compound such Sentence or Judgment, or to restore any Servant or Servants of the said Company, who shall have been removed or dismissed from his or their Office or Employment, for or on account of Misbehaviour, by the Sentence of any of the said Courts.

Governor General of Fort William may issue his Warrant for securing any Person suspected of carrying on illicit correspondence, &c., and may commit him.

53. And be it further enacted, That it shall and may be lawful for the Governor General of Fort William aforesaid for the Time being, to issue his Warrant under his Hand and Seal, directed to such Peace Officers and other Persons as he shall think fit, for securing and detaining in Custody any Person or Persons suspected of carrying on, mediately or immediately, any illicit Correspondence, dangerous to the Peace or Safety of the Settlement, or of the British Possessions in India, with any of the Princes, Rajahs, Zemindars, or other Person or Persons whomsoever having Authority in India, or with the Commanders, Governors, or Presidents of any Factories established in the East Indies by any European Power, contrary to the Rules and Orders of the said Company, or of Governor General and Council of Fort William aforesaid; and if, upon Examination, taken upon Oath, in Writing, of any Person and Persons (other than the Person so secured and detained) before the Governor General and Council of Fort William aforesaid, there shall appear reasonable Grounds for the Charge, the said Governor General shall be, and is hereby

authorized and impowered to commit such Person and Persons above described to safe Custody, and shall within a reasonable Time, not exceeding five days, cause to be delivered to him or them the Charge or Accusation on which he has or they have been committed; and the party so confined shall be permitted to deliver in his Defence in Writing, together with a List of such Witnesses as he shall desire to be examined in Support of his Defence, who shall be examined accordingly in his Presence, and their Examinations taken down in Writing;

If the Party accused cannot exculpate himself, he shall remain in Custody till Trial.

and if, notwithstanding such Defence, there shall appear to the said Governor General and Council reasonable Grounds for the former Proceeding, and for continuing the Confinement, the Party shall remain in Custody until he or they shall be brought to Trial in India, or sent to England for that Purpose; and that all such Examinations and Proceedings shall be transmitted to the said Court of Directors by the first Dispatches; and in case such Person or Persons are to be sent to England, the said Governor General shall, and he is hereby required to cause such Person or Persons to be sent by the first convenient Opportunity, unless such Person or Persons shall be disabled by Illness from undertaking the Voyage.

Presidencies of Fort Saint George and Bombay to have similar powers.

54. And be it further enacted, That the several Presidencies and Governments of Fort Saint George and Bombay, shall have the like Powers, and subject to the same Regulations and Restrictions, to secure and detain Persons suspected of any such illicit Correspondence as aforesaid, within their respective Presidencies and Settlements, as are hereby given to the said Governor General and Council of Fort William.

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B.

EXTRACTS FROM MR. PITT'S SPEECH ON THE BILL FOR THE GOVERNMENT OF INDIA.

July 6, 1784.

In pursuance of the notice he had given, MR. CHANCELLOR PITT rose to open his new system for the Government of India. No one, he said, could be more deeply impressed

than he was with the importance of the subject on which he was then going to enter: in whatever point of view he considered it, he felt that no subject could possibly be more interesting. In it were involved the prosperity and strength of this country; the happiness of the natives of those valuable territories in India which belonged to England; and finally the constitution of England itself. India had at all times been of great consequence to this country, from the resources of opulence and strength it afforded: and that consequence had of course, increased in proportion to the losses sustained by the dismemberment of other great possessions, by which losses, the limits of the empire being more contracted, the remaining territories became more valuable. He was aware that nothing could be more difficult than to digest a plan, which should at once confirm and enlarge the advantages derived to this country from its connexion with India, to render that connexion a blessing to the native Indians, and at the same time preserve inviolate the essence and spirit of our own constitution from the injuries to which this connexion might eventually expose it. Gentlemen would recollect with a degree of horror, to what dangers that happy constitution was exposed last year, when a bill was introduced into Parliament which would have established a system dangerous to everything that Englishmen held dear; they would recollect, that the liberties of this country had nearly suffered shipwreck: the danger, however, was happily over; and the legislature had now an opportunity to consult about the means the most likely to reconcile and secure the interests of the people of this country, of the people of India, and of the British constitution, as far as it might be effected by the connexion with India. To his lot fell the arduous task of proposing to the House a plan which should answer all these great purposes. He was aware that no plan could be devised, to which some objections would not lie: he was aware that it was not possible to devise a plan that should be free from imperfections; he should therefore console himself if he should be able to suggest the means of doing the most good to India, and to the East India Company, with the least injury to our constitution. In the arrangements that he should propose, it would be impossible to proceed, without giving to some body of men an accession of power; but it was his duty to vest it where he should have reason to think it would be least liable to abuse, at the same time that it should be sufficient, and not more than sufficient, for all the purposes for which it should be given; sufficient to secure to

this country the wealth arising from the commerce of the Company; to the inhabitants of Hindoostan peace and tranquillity; and to enforce obedience on the part of the servants of the Company, to the orders that should be sent to them from home. In framing such a system, he thought it his duty never to lose sight of this principle—that though no charter could or ought to supersede State necessity, still nothing but absolute necessity could justify a departure from charters. He admitted that charters ought not to stand in the way of the general good and safety of the country; he admitted that no charter ought to be suffered to stand in the way of a reform, on which the being welfare of the country depended, but at the same time he contended, that a charter ought never to be invaded, except when the public safety called for its alteration: charters were sacred things. On them depended the property, franchises, and every thing that was dear to Englishmen; and wantonly, to invade them, would be to unhinge the constitution, and throw the State into anarchy and confusion.

With respect to the India Company, its affairs were not in a state that called for a revocation of the charter; the necessity which would justify a revocation did not exist in this case; and he felt no small degree of satisfaction in the assurance, that at the moment when he had to propose such measures for the government of India, and the conduct of the affairs of the East India Company, as to his judgment appeared most applicable, there no longer existed any danger of the best and most sacred rights of Englishmen being made a sacrifice to the ambitious projects of those who, under the necessity that actually existed had taken the desperate resolution, that nothing short of measures of the most decisive and extreme nature, and measures far exceeding the necessity of the case, could be effectual. He thanked God so great a sacrifice had been escaped; and he trusted that the sense plainly and incontrovertibly declared to be entertained upon the subject by the majority of the people of England, would prove to be the sense of the majority of that House; and that they would join with him in opinion, that although it must on all hands be admitted that there did exist a great and urgent necessity for the interference of the legislature with regard to the East India Company and the future government of India, yet that neither State policy nor common prudence called for the legislature's proceeding beyond the limit of the existing necessity, much less of going the length either of destroying the rights of any individuals or

bodies of men, established upon the most sacred of all foundations, the express words of solemn charters recognized and confirmed by repeated acts of Parliament, or of directly changing the constitution of the country, and departing from those known principles of government which the wisdom of our ancestors had provided, and which had proved for ages the uninterrupted source of security to the liberties of Englishmen. It was, he said, to be acknowledged on all hands, that no rights of any body of men, however confessed to be rights of the most sacred sort, could supersede State necessity. To that and that alone, they must give way; but then it ought ever to be a rule of conduct with those to whose lot it fell to act under such a necessity, to take care that they do not exceed it. Nothing but such a necessity could warrant any government in proceeding to do what must be an unwelcome task for all who had any concern in its execution; but when they found themselves obliged to discharge a duty of that irksome nature, they ought to proceed warily, and with all possible tenderness and regard for those with whose rights they felt themselves obliged to interfere; and to be assured, that in endeavouring to do all that their duty required, they did not unnecessarily tear up by the roots and annihilate those rights that were of essential consideration, and ought not to have been touched, because the exigency of the case did not actually require it. And though on a former occasion he had been derided, when he comforted himself with the idea, that, in every departure he should propose from the charter, he should have the consent and concurrence of the Company, he still continued to find great consolation in the reflection, that he did no violence to the Company; for no violence could be said to be done by regulations, to every one of which the Company most cheerfully consented.

He did not find it necessary to create any system absolutely new for the government of our territories in India; he should rather endeavour to improve on the system by which those territories were governed at present. The great considerations to be looked to in the regulation of the government of India were threefold—the commerce of this country with that, and consequently the resources we derived from it; the interests of the inhabitants there; and the connexion that the management of both had with our own constitution. Great inconvenience must, under the best possible devised form of government, necessarily arise from the circumstance of any country deriving a considerable part of her resources from a

dependency at so great a distance; and this must also add to the extreme difficulty of governing India from home, because that distance must necessarily prevent the government at home, and those who filled the executive offices in India, from acting with equal views. For this reason he must repeat what he had before taken the liberty to state, when the subject had been under the consideration of the last Parliament, that as no plan of government for India that human wisdom could suggest, was capable of perfection, so he was far from presuming to think that the plan he should propose would not occasion much difference of opinion, and be liable to a variety of objections. He could only with great humility submit that plan to the judgment of Parliament, which from the maturest consideration, he had been able to select as the most practicable and the most consonant to the present constitution; conscious at the same time, that it was impossible for him with so many different subjects to attend to, to have found leisure to do justice to a matter of sufficient importance to engross the attention of any man whose mind had been vacant and unoccupied by other objects. To proceed however to the business to be stated, he observed, that it could not be denied, that in every project of government of India there must be an accession of influence somewhere, which it became that House and the people in general always to regard with extreme jealousy. That influence, for obvious reasons, should not be left at home, but might with greater safety be trusted abroad in India, where the executive power must be lodged; as every man must see the necessity of having a government active on the spot, yet not independent of this country, but so constituted as to secure obedience to the system of measures dictated from home, while at the same time it was capable of preventing extortion in India, and frustrating the improper views of ambition and despotism. The channel of commerce, he said, must be our guide, as to our future expectations from our connexion with India, since we ought to look to the management of our manufactures there, which must chiefly depend on the establishment of the happiness of the inhabitants, and their being secured in a state of peace and tranquillity. In order to effect this, he declared it would be necessary to give the government abroad a certain degree of power, subject only to the control of a board, to be appointed at home, of the nature that he had mentioned, when he had proposed a Bill upon the same subject to the last Parliament. He observed, that in the present consideration there were mixed interests to be regarded as well

as mixed objects. Government and commerce were the two great objects to be looked to, while the interest of the East India Company, and the interest of the country, called for their most serious attention. The commerce of the Company exclusively belonged to them ; nor was it till the territorial acquisitions of the Company became considerable, that the public claimed any participation in the advantages arising from the resources of those acquisitions, in the obtainment of which they had borne so large a share. The commerce to and from India, therefore, he meant to leave, where it ought to be left, in the management of the Company.

It had, he remarked, been ever held, that commercial companies could not govern empires ; but that was a matter of speculation, which general experience proved to be not true in practice, however universally admitted in theory. The East India Company had conducted its commerce, and governed a vast empire for years, and it was to be remembered that the East India Company was no new establishment ; it rested on charters and acts of Parliament ; those charters ought undoubtedly to be regarded, and as far as possible, the rights exercised and enjoyed under them ought to be held sacred. But as he had before observed, there were no rights, that by accident or time became fatal to the interests of the public or to the safety of the State, which must not be touched. The matter was, how to connect the constitution of the Company with the national interests : from that regard and attention to chartered rights which he ever should profess, and which every man ought to practise, he had been led rather to consider, whether it was not possible to model the old constitution of the Company, so as to make it answer every view of the State, and every interest of the public, rather than to make a new one ; not thinking it necessary to confiscate, annihilate, and destroy, where the purpose could be attained without proceeding to any such violent lengths.

In the measures to be taken for the future government of India, if they had the Company's concurrence, it would surely be admitted that they took the safest line ; that they had pursued the wisest course ; and the measures he should propose, were such as the Company argeed to. The control he had mentioned ought undoubtedly to remain where the constitution had placed all power, in the executive government of the country. The management of the commerce he meant to leave with the Company. The patronage should be separate from the executive

government, but be it given where it would, he should propose regulations that would essentially curtail and diminish it, so as to render it as little dangerous as possible. The patronage, however, he would trust with no political set of men whatever. Let it be in India, it would be free from corruption then ; and when exercised under the restrictions and limitations he should propose, could, he flattered himself, be attended with no bad consequences.

He enlarged upon these points considerably ; and then said, from what he had stated, the House would doubtless observe, that the Bill he meant to move for leave to bring in, was not different from former Bills that he had stated to the House. The great point of it, as far as he had opened it, was the appointment of a separate department of Board of Control, to whom all dispatches should be transmitted, and who should be responsible for what they did, and for what they did not do ; who should blink nothing, who should be obliged to act upon every question that came before them, who should not shew any indulgence or partiality, or be guilty of procrastination ; who should not have the plea of other business, or in fine, on any pretence, or in any other way whatever, put off or delay the duties of their offices. This institution, though certainly new, was not charged with new duties ; because the same powers of control had been given to the Secretaries of State by various acts of Parliament, but unfortunately they had never been exercised, having been suffered to remain dormant. He wished, therefore, to put it out of the power of that degree of laziness natural to office, any longer to defeat the public interest, by the institution of a board necessarily active and efficient. He was aware that many persons, who in general disliked, as much as he had done, the violence of the measures proposed in another Bill, approved the idea of making the board of commissioners, to be instituted under the authority of that Bill, permanent. He was not of this opinion ; sure he was, that the permanency of such a board as that Bill proposed to institute, would have added to the mischiefs of it. Such a board would have been in itself a deviation from the principles of the constitution, and its permanency would have involved it in contradictions to the executive government that must have been attended with great public inconvenience. An institution to control the government of India must be either totally independent of the executive government of this country, or it must be subordinate to it. Ought the administration of the day to have no connexion with

what was going on? Let it be remembered that a permanent board might be hostile to those who held the government at the time; a view of it, which, he trusted, would sufficiently prove, that an actual independent permanency in any such board would be an evil. The existing government ought to be, to a degree, permanent; but the Indian department must not be independent of that: he meant, therefore, to give it a ground of dependence, upon which all the various departments had a natural and legitimate dependency; viz. upon the executive government. Every government that had no other object than the public good, that was conscious of acting upon no other principles than such as were perfectly constitutional, that was swayed by no motives of a personal, an interested, or an ambitious nature, but which possessed a sufficient share of the confidence of the Sovereign, of Parliament, and of the people at large, would, from its conduct, be permanent; and the Indian government would be so of course. Having said this, he animadverted on the danger of once departing from the constitution, by appointing such a commission as the Bill that had passed that House, but which had been rejected by the Lords in the last Parliament, authorized. He remarked, if the practice once obtained, there was no saying to what extent it might be carried, or how often the precedent might be multiplied: admitting it to pass in the instance of the late Bill, they might have proceeded to separate and tear away all the departments from the Crown, and put them one after another into so many Parliamentary commissions.

With regard to the objections that had been started, and the reasons that had been urged to prove that the Company's directors ought not to be excluded from an insight of the papers of the commissioners, he was willing so far to give way to the arguments of that nature, as to permit the Court of Directors to see the papers of the commissioners; but they were to have no power of objecting: the decision of the commissioners must be final and binding upon the directors. He meant also to invest the commissioners with a power to originate measures, as well as to revise, correct, alter, and control those of the Company: but with regard to such measures as the commissioners originated, the Company were to be obliged to carry them into execution. This, he observed, took nothing from the Company; since, in fact, it was nothing more than the power to put a negative on their measures, and the power of altering them, acting in another way. With respect to the appointment

of the commissioners, he said, it was meant to be the same as that of persons holding great offices, viz., at the nomination of the Crown. It was intended that the board should consist of none but privy counsellors; but the board should create no increase of officers, nor impose any new burthens, since he trusted there could be found persons enough who held offices of large emolument, but no great employment, whose leisure would amply allow of their undertaking the duty in question. And this circumstance, he observed, would have a good effect for the future, in rendering it necessary for ministers, when, by way of providing for their families, they appointed to offices hitherto considered as sinecures, to have some other consideration of the ability of the person about to be appointed to fill it; a consideration that could not but occasion the description of offices to which he was alluding, to be well filled for the future. The principal powers of this board, he recapitulated, would consist in directing what political objects the Company's servants were to pursue, and in recalling such as did not pay obedience to such directions, or be able to give very satisfactory reasons to shew that circumstances rendered disobedience a virtue. The board would be strictly a board of control: it would have no power to appoint, nor any patronage; consequently it would have no motive to deviate from its duty.

Thus much, the House would see, related solely to the government at home. With regard to the government abroad the first and leading ideas would be to limit the subsisting patronage, and to produce a unity of system, by investing the supreme government to be seated in Bengal, with an effectual control over every other presidency, and by investing the supreme government with executive power, and with the disposition of offices in India; but to make it a matter less invidious, and to prevent the possibility of abuse, gradation and succession should be established as the invariable rule, except in very extraordinary cases: with a view to which, there must be lodged in the supreme government, as in every other executive power, a discretion, which every man must see was actually necessary to be vested in an executive power, acting at such an extreme distance from the seat of the supreme government of all, but which was nevertheless to be subject to the control of the board of superintendency to be established here at home, whose orders in this, as in every other case, the government of India must obey. Though Bengal was designed to be the supreme government, it was not to be the source of influence;

that being as much as possible guarded against by the regulations designed to make a part of the Bill. The officers of the government of Bengal were intended to be left to the nomination of the Court of Directors, subject to the negative of the Crown; and the Court of Directors were to have the nomination of the officers of all the subordinate governments, excepting only of the commander-in-chief, who, for various reasons, would remain to be appointed by the Crown. He said, it might possibly be argued, that if the crown nominated the Commander-in-Chief, and had a negative upon the rest of the appointments, all the patronage remained in the hands of government at home. This, however, was far from being the case; the patronage of great appointments not being the sort of patronage for the public to entertain a jealousy about, and the other patronage being diffused and placed in Bengal, the influence from it was considerably weakened and diminished; add to this, all officers going by gradation and succession, would be a forcible check upon the patronage, and tend greatly to its reduction.

Having discussed this matter very fully, MR. PITT proceeded to state, that much would depend on the manner of administering the government in India, and that his endeavours should be directed to enforce clear and simple principles, as those from which alone a good government could arise. The first and principal object would be to take care to prevent the government from being ambitious and bent on conquest. Propensities of that nature had already involved India in great expenses, and cost much bloodshed. These, therefore, ought most studiously to be avoided. Commerce was our object, and with a view to its extension, a pacific system should prevail, and a system of defence and conciliation. The government there ought, therefore, in an especial manner to avoid wars, or entering into alliances likely to create wars. At the same time that he said this, he did not mean to carry the idea so far as to suggest, that the British government in India was not to pay a due regard to self-defence, to guard against sudden hostilities from the neighbouring powers, and, whenever there was reason to expect an attack, to be in a state of preparation. This was undoubtedly and indispensably necessary; but whenever such circumstances occurred, the executive power in India was not to content itself with acting there, as the nature of the case might require; it was also to send immediate advice home of what had happened, what measures had been taken in consequence of it, and of what further measures were intended to

be pursued. He mentioned also the institution of a tribunal to take cognizance of such matters, and state how far such a tribunal should be empowered to act without instructions from home. He next said, that the situation of the Indian princes, in connexion with our government, and of the number of individuals living immediately under our government, were objects that ought to be the subject of an inquiry. The debts due from one Indian prince to another, over whom we had any influence, such as the claims of the NABOB OF ARCOT upon the RAJA OF TANJORE, ought undoubtedly to be settled on a permanent footing: this, and the debts of the natives tributary to us, ought also to be the subjects of inquiry. Another object of investigation, and an object of considerable delicacy, was the pretensions and titles of the landholders to the lands at present in their possession: in the adjustment of this particular, much caution must be adopted, and means found that would answer the end of substantial justice, without going the length of rigid right, because he was convinced, and every man at all conversant with Indian affairs must be convinced, that indiscriminate restitution would be as bad as indiscriminate confiscation. Another very material regulation, or rather principle of reform, from which solid hopes of providing a surplus adequate to the debt in India might be drawn, was, the retrenchment of our establishments in that country. At present it was a well-known fact, that all our establishments there were very considerably overcharged; at any rate, therefore, there must be no augmentation suffered; and in order to prevent the possibility of such an improvident measure, a return of all the establishments must be called for. With regard to the means of reducing them, they ought to be laid before Parliament, and submitted to the determination of both Houses. Every intended increase of the establishment ought also to be submitted to Parliament, and the Company to be immediately restrained from sending out any more inferior servants. He stated that it would be necessary, by proper provisos, to compel the execution of these points: and the better to guard against the continuance of that rapacity, plunder and extortion, which was shocking to the feelings of humanity, and disgraceful to the national character, he proposed to render the Company's servants responsible for what they did in every part of India, and to declare it illegal and punishable, if they, on any pretence whatever, accepted sums of money, or other valuables, from the natives. This would, he hoped, tend effectually to check private corruption. There were, he was aware, a certain species of presents, so much

a part of the ceremonies inseparable from the manner of the East, that an attempt to direct that they should not be received, would be utterly impracticable; but even as much as possible to guard against any bad consequences resulting from the continuance of the practice in question, he meant that the Bill should oblige the Company's servants in India to keep an exact and faithful register of all such presents.

With regard to those of the Company's servants who did not comply with the directions, the Bill would hold out to them, and to such other directions as should, under the sanction and authority of the Bill, be transmitted to them from home, such persons should be considered as guilty of offences punishable in the degrees stated in the Bill, which should contain a special exception of those guilty of disobedience of orders and other crimes, which from their consequences being of a most fatal tendency, must be punished with great severity. In respect to this part of his subject, the House, he had no doubt, would go along with him in feeling the necessity, and at the same time the extreme difficulty, of providing a proper tribunal, before which persons charged with offences committed in India should be tried. He owned he had an extreme partiality to the present system of distributing justice in this country, so much so, that he could not bring himself for a moment to think seriously upon the idea of departing from that system, without the utmost reluctance: without mentioning names, however, or referring to recent instances, every man must acknowledge, that at present we had it not in our power to do justice to the delinquents of India, after their return home. The insufficiency of Parliamentary prosecutions was but too obvious; the necessity for the institution of some other process was, therefore, undeniable. A summary way of proceeding was what had struck him, and, he believed, others who had thought much upon the subject, as most advisable: the danger, however, was the example that must arise from any deviation from the established forms of trials in this country, it being perhaps the first, the dearest, and the most essential consideration in the mind of every Englishman, that he held his property and his person in perfect security, from the wise, moderate, and liberal spirit of our laws. Much was to be said with respect to the case in point: either a new process must be instituted, or offences equally shocking to humanity, opposite to justice, and contrary to every principle of religion and morality, must continue to prevail unchecked, uncontrolled and unrestrained. The neces-

sity of the case outweighed the risk and the hazard of the innovation, and when it was considered that those who might go to India hereafter, would know the danger of transgressing before they left England, he trusted it would be admitted that the expedient ought to be tried. Should such a law pass, every man who should go to India in future, would, by so doing, consent to stand in the particular predicament in which the particular law placed him ; and in thus agreeing to give up some of the most essential privileges of his country, he would do no more than a very numerous and honourable body of men did daily, without the smallest impeachment of their characters, or the purity of the motives that impelled their conduct.

MR. PITT suggested loosely what his idea of the summary species of trial he meant to authorize was. He said, there must be an exception to the general rules of law ; the trials must be held by special commission ; the court must not be tied down to strict rules of evidence ; but they must be upon their oaths to give judgment conscientiously, and pronounce such judgment as the common law would warrant, if the evidence would reach it. Much, he was aware, would depend on the constitution of the court. His design, therefore, was, that it should be composed of men of known talents, unimpeached character, and high consequence ; that their impartiality should be further secured by their election being by ballot ; and that a certain number out of the whole nominated should make a court, in order that there might exist the chance of a choice by ballot. The persons to be balloted for, should be some of them from among the judges, some members of the House of Lords, and some members of that House. Such a mixed assemblage, from the very first characters in the kingdom, would leave no room for suspicion, or possible impeachment of justice ; and in order still more strongly to fortify the subject against injustice, they should not be chosen till the hour of trial, and should then be all sworn. To effect the purposes of the institution of such a tribunal, they should be empowered to take depositions, and receive information, communicated by witnesses who were in India when the delinquent was stated to have committed the offences he might stand charged with ; and further, they should be judges both of the law and the fact. With regard to the punishments, they should be governed by the punishments the law, as it stood, authorized in case of misdemeanor, *viz.*, fine and imprisonment ; but the extent of these should rest in the discretion of the court, to apportion

according to their opinion of the proved enormity of the crime; and as a further means of rendering such a tribunal awful, and of giving effect to its plans for preventing the perpetration of crimes shocking to humanity, it should be armed with the power of examining the parties charged as delinquents, by interrogatories as to the value of their effects, in order the better to be able to govern the quantum of the fine to be levied in case of conviction; it should also be armed with the power of examining the amount of any man's property on his arrival in England from India; and since purity and abstinence were the objects which every man must desire should characterize the conduct of their countrymen in Asia, the Company should not have it in their power to employ any one of their servants convicted of a misdemeanor while he had been in India, nor should any person be suffered to return to that country after his stay in this beyond a certain limited period. MR. PITT interspersed his notification of the different principles and regulations which his intended Bill went to establish, with a variety of illustrations and arguments, and concluded with moving, "That leave be given to bring in a Bill for the better regulation and management of the East India Company, and of the possessions in India."

THE CHARTER ACT OF 1793.

An Act for continuing in the East India Company, for a further term, the possession of the British territories in India, together with their exclusive trade, under certain limitations; for establishing further regulations for the government of the said territories, and the better administrations of justice within the same; for appropriating to certain uses the revenues and profits of the said Company; and for making provision for the good order and government of the towns of Calcutta, Madras and Bombay.—(June 11, 1793.)

His Majesty may appoint commissioners for the affairs of India.

II. And be it further enacted by the authority aforesaid, that it shall and may be lawful for his Majesty, his heirs or successors, by any letters patent, or by any commission or commissions to be issued under the great seal of Great Britain, from time to time, to nominate, constitute and appoint, during his or their pleasure, such members of the privy council (of whom the two principal

Secretaries of State, and the Chancellor of the Exchequer for the time being, shall always be three), and such other two persons as his Majesty, his heirs or successors, shall think fit to be, and who shall accordingly be and be styled Commissioners for the Affairs of India.

Three commissioners may form a board, &c.

III. And be it further enacted, that any three or more of the said Commissioners shall and may form a board, for executing the several powers which by this act, or by any other act or acts, are or shall be given to or vested in the said commissioners; and that the first-named commissioner in any such letters patent or commission for the time being shall be the president of the said board; and that when any board shall be formed in the absence of the president, the commissioner whose name shall stand next in the order of their nomination in the said commission, of those who shall be present, shall for that turn preside at the said board.

Court of Directors to deliver to the board, copies of all proceedings and of dispatches received relating to the Civil or military government or revenues.

XI. And be it further enacted, that the Court of Directors of the said Company for the time being shall, and they are hereby required, from time to time, to deliver to the said board copies of all minutes, orders, resolutions and proceedings of all courts of proprietors, general or special, and of all Courts of Directors, within eight days after the holding of such courts respectively, and also copies of all letters, advices, and dispatches which shall at any time or times be received by the said Court of Directors, or any committee of directors, from the East Indies, or from any other of their settlements or factories within the limits of their exclusive trade, or from any of the servants of the said United Company, stationed at Saint Helena, Bussara, Suez, Allepo, or other parts beyond the seas, in anywise relating to or concerning the civil or military government, or the revenues of the said territories and acquisitions in India, immediately after the arrival and receipt thereof.

Board to issue orders relating to the civil or military government, or the revenues only and if directors think they do not relate to them, they may petition his Majesty.

XVI. Provided always, and be it further enacted, that nothing in this Act contained shall extend, or be construed to extend, to give to the said board of commissioners any power or authority to issue or send any orders or instructions which do not relate to points connected with the civil or military government, or revenues of the British territories or possessions in India, nor to expunge, vary, or alter any dispatches proposed

by the said Court of Directors as aforesaid, which do not relate to the said government or revenues; and that if the said board shall send any orders or instructions to the said Court of Directors, to be by them transmitted, which in the opinion of the said Court of Directors shall relate to points not connected with the said civil or military government, or revenues, then and on any such occasion it shall be lawful for the said Court of Directors to apply by petition to his Majesty in Council touching the same, and His Majesty in Council shall decide how far the same be or be not connected with the civil or military government and revenues of the said territories and possessions in India, which decision shall be final and conclusive.

Board may send orders to the Secret Committee of Directors, who shall transmit the same to India.

XIX. Provided also, and be it further enacted, That if the said Board of Commissioners shall be of opinion that the subject-matter of any of their deliberations concerning the levying war, or making peace or treating or negotiating with any of the native princes, or states in India, intended to be communicated in order to any of the Governments or Presidencies in India, shall be of a nature to require secrecy, it shall and may be lawful for the said Board to send their orders and instructions to the Secret Committee of the said Court of Directors to be appointed as is by this act directed, who shall thereupon, without disclosing the same, transmit their orders and dispatches, according to the tenor of the said orders and instructions of the said Board, to the respective Governments and Presidencies in India; and that the said Governments and Presidencies shall be bound to pay a faithful obedience thereto, in like manner as if such orders and instructions have been sent to them by the said Court of Directors.

Directors to appoint a Secret Committee.

XX. And be it further enacted, That the said Court of Directors shall, from time to time, appoint a Secret Committee, to consist of any number, not exceeding three, of the said Directors, for the particular purposes in this act specified: * * *

Presidencies in India may send dispatches to the Secret Committee who shall deliver them to the Board.

XXII. Provided also, and be it further enacted, That when any of the Governments or Presidencies in India shall be of opinion that any of their dispatches to Great Britain, concerning the Government of the said territories and acquisitions, or the levying war, or making

peace or negotiations, or treaties with any of the native princes or states of India, shall be of a nature to require the same to be kept secret, it shall be lawful for the said Governments or Presidencies respectively to address their dispatches requiring such secrecy, under cover, sealed with their seals, unto the said Secret Committee of Directors of the said Company, for the inspection of such Committee and that immediately upon the arrival of such dispatches so addressed, the said Secret Committee of Directors shall deliver the same or copies thereof to the said Board.

Government of the Presidencies vested in the Governors and three counsellors respectively.

XXIV. And be it further enacted, That the whole Civil and Military Government of the Presidency of Fort William in Bengal, and also the ordering, management, and Government of all the territorial acquisitions and revenues in the Kingdoms or Provinces of Bengal, Behar and Orissa, shall be and are hereby vested in a Governor General and three Counsellors of and for the said Presidency, subject to such rules, regulations, and restrictions, as are made, provided, or established in that behalf in this act, or in any other act or acts now in force, and not by this act repealed or altered; and that the whole civil and military government of the Presidency of Fort Saint George, on the coast of Coromandel, and the ordering, management, and government of all the territorial acquisitions and revenues on the said coast, and also so much and such parts of the territories and possessions on the coast of Orissa, with the revenues of the same, as have been and now are under the administration of the government or Presidency of Fort Saint George, shall be and are hereby vested in a Governor and three counsellors of and for the said Presidency of Fort Saint George, subject to such rules, regulations and restrictions as aforesaid; and that the whole civil and military government of the Presidency and island of Bombay on the coast of Malabar, and the ordering, management and government of all the territorial acquisitions and revenues on the said coast of Malabar, shall be and are hereby vested in a Governor and three counsellors of and for the said Presidency and island of Bombay, subject as aforesaid, and the said Governors and councils of the said presidencies of Fort Saint George, and Bombay respectively, being also subject to the superintendence and control of the said Governor General in council, in manner by this act provided or directed in that behalf, any act or acts to the contrary notwithstanding.

XXV. And be it further enacted, That all vacancies happening in the office of Governor General of Fort William in Bengal, or of any of the members of the council there, or of Governors of either of the Company's Presidencies or settlements of Fort Saint George or Bombay, or of any of the members of the council of the same respectively, or of Governor of the forts and garrisons of Fort William, Fort Saint George, or Bombay, or of Commander-in-Chief of all the forces in India, or of any provincial Commander-in-Chief of the forces there, all and every of such vacancies shall be filled up and supplied by the Court of Directors of the said United Company, the vacancies of any of the said members of council being always supplied from amongst the list of senior merchants of the said Company, who shall have respectively resided twelve years in India in their service, and not otherwise, except as is hereinafter otherwise provided.

Vacancies of Governors, &c. to be filled up by the Directors.

XXIX. And be it further enacted, That if any vacancy shall happen in the office of Governor General of Fort William, or of Governor of Fort Saint George or Bombay respectively, when no provisional or other successor, shall be upon the spot to supply such vacancy, then and in every such case, the counsellor of the Presidency wherein such vacancy shall happen, next in rank to the said Governor-General, or Governor respectively, shall hold and execute the said office of Governor General or Governor, until a successor shall arrive, or until some other person on the spot shall be duly appointed thereto ; and if the Council Board shall happen during that interval to become reduced to one only member, besides the acting Governor-General or Governor, then and in such case the person so acting as Governor-General or Governor shall be, and is hereby impowered to call to the Council Board such one of the senior merchants of the said Company, at such Presidency where the vacancy shall occur, as he shall think fit to be a temporary member of the said board, and that the person so called shall accordingly sit and act as a member of the said council, and shall have the same powers in all other respects as are given to persons appointed to the Council Board by the said Court of the Directors, until the arrival of a successor or other appointment made to the office of Governor General or Governor respectively and that every such acting Governor General, Governor, and occasional counsellor, shall, during the time of their continuing to act as such respectively, be entitled

How vacancies are to be supplied when no successors are on the spot &c.

to receive the several emoluments and and advantages appertaining to the said offices by them respectively supplied, such acting Governor General and Governor foregoing their salary and allowances of Counsellor for the same period.

Next member of council to Commander in Chief to succeed to the temporary government of a presidency, unless the Commander-in-Chief shall have been provisionally appointed.

XXX. Provided always, and be it further enacted, That if at the time of any vacancy happening in the office of Governor General, or of a Governor of any of the said Presidencies, no eventual successor appointed under the authority of this act shall be present upon the spot, any Commander-in-Chief, although he shall be then a member of the Council of the Presidency where such vacancy shall occur, shall not succeed to the temporary government of such Presidency unless such Commander-in-Chief shall have been provisionally appointed to supply the same, but that the vacancy shall be supplied by the counsellor next in rank at the Council Board to such Commander-in-Chief anything herein contained to the contrary notwithstanding.

Vacancy of Counsellors when no successors are on the spot to be supplied by the governor in council from the senior merchants.

XXXI. And be it further enacted, That if any vacancy shall happen of the office of a counsellor at either of the said presidencies, when no person provisionally or otherwise appointed to succeed thereto shall be then resident on the spot, then and on every such occasion such vacancy shall be supplied by and at the nomination or appointment of the Governor General in Council of Fort William, or the Govenor in Council of Fort Saint George or Bombay respectively, from amongst the senior merchants in the said Company's service in India; and that the person or persons so nominated shall execute the said office, and shall have the same powers in all respects as are given to persons appointed to the Council Board by the said Court of Directors, until a successor or successors shall arrive, duly appointed by the said Court of Directors, and shall have and be entitled to the salary and other emoluments and advantages appertaining to the said office or offices during his or their continuance therein respectively.

The Commander-in-Chief, when not the governor at the presidency, may by the authority of the Directors, be the second member of the council.

XXXII. And be it further enacted, That when the office of Governor General, and the office of Commander-in-Chief of all the forces in India, shall not be vested in the same person, such Commander-in-Chief shall and may, if specially authorised for that purpose by

the said Court of Directors, and not otherwise, be a member of the Council of Fort William; and that when the offices of Governor of Fort Saint George, and Commander-in-Chief of the forces there, shall be vested in different persons, or the offices of Governor of Bombay, and Commander-in-Chief of the forces in Bombay, shall be vested in different persons, such respective Commanders-in-Chief shall and may, if specially authorised by the Court of Directors, and not otherwise, be a member of council at the said respective presidencies; and that when any Commander-in-chief shall be appointed a member of any of the said council such commander shall have rank and precedence at the Council Board next to the Governor General, or Governor of the same Presidency; but no Commander-in-Chief shall be entitled to any salary or emolument in respect of his being a member of any of the said councils, unless the same shall be specially granted by the Court of Directors of the said company.

The Commander-in-chief in India, not being governor general, while resident at Fort Saint George or Bombay shall be a member of council.

XXXIII. Provided always, and be it further enacted, That when the Commander-in-Chief of all the forces in India (not being likewise Governor General) shall happen to be resident at either of the Presidencies of Fort Saint George or Bombay, the said Commander-in-Chief shall, from the time of his arrival, and during his continuance at such Presidency, be a member of the council of such Presidency, and during that period the provincial Commander-in-Chief of the forces of the same Presidency, if he shall be a member of the council thereof, shall and may continue to sit and deliberate, but shall not have any voice at the Council Board.

If any member shall be incapable of attending the Governor of the Presidency may call to the council a provisional successor &c.

XXXIV. And be it further enacted, That if any of the members of the Council of either of the said Presidencies shall by any infirmity or otherwise be rendered incapable of acting, or of attending to act as such, or if any of such members shall be absent from the Presidency, and the Governor General, or either of the said governors, shall be desirous of having the advice of a full Council upon any urgent business, the Governor General, or such Governors, respectively, shall by virtue of this act have full power and authority to call any provisional successor appointed, then on the spot, or, there being none such on the spot, then any senior merchant on the spot, to assist at the Council Board

for the turn; but that such provisional successor, or other person, shall not be entitled to any salary or other emolument in respect thereof, nor shall his acting as an occasional member of council, in manner aforesaid, deprive him of any office or emolument he before enjoyed.

His Majesty by sign manual, countersigned by the president of the Board, may remove any officer or servant of the Company in India.

XXXV. And be it further enacted, That it shall and may be lawful to and for the King's majesty, his heirs and successors, by any writing or instrument under his or their sign manual, countersigned by the president of the Board of Commissioners for the affairs of India, to remove or recall any person or persons holding any office, employment, or commission, civil or military, under the said United Company in India for the time being, and to vacate and make void all or every, or any appointment or appointments, commission or commissions, of any person or persons to any such offices or employments; and that all and every the powers and authorities of the respective persons so removed, recalled, or whose appointment or commission shall be vacated, shall cease or determine at or from such respective time or times as in the said writing or writings shall be expressed and specified in that behalf: provided always, that a duplicate or copy of every such writing or instrument, under His Majesty's sign manual, attested by the said president for the time being, shall, within eight days after the same shall be signed by his Majesty, his heirs or successors, be transmitted or delivered to the Chairman or Deputy Chairman for the time being of the said Company, to the intent that the Court of Directors of the said Company may be apprized thereof.

Act not to preclude the Directors from recalling their officers or servants.

XXXVI. Provided always, and be it further enacted, That nothing in this act contained shall extend, or be construed to extend, to preclude or take away the power of the Court of Directors of the said Company from removing or recalling any of the officers or servants of the said Company, but that the said Court shall and may at all times have full liberty to remove, recall, or dismiss any of such officers or servants, at their will and pleasure, in the like manner as if this act had not been made, any Governor-General, Governor or Commander-in-Chief, appointed by His Majesty, his heirs or successors, through the default

of appointment by the said Court of Directors, always excepted; anything herein contained to the contrary notwithstanding.

Departure from India of any Governor General &c. with intent to return to Europe, to be deemed a resignation of employment &c. While at the presidency no resignation of a Governor-General &c. to be valid, except delivered in writing to the secretary. Regulation respecting salaries.

XXXVII. And be it further enacted, That the departure from India of any Governor-General, Governor, Member of Council, or Commander-in-Chief, with intent to return to Europe, shall be deemed in law a resignation and avoidance of his office or employment, and that the arrival in any part of Europe of any such Governor-General, Governor, Member of Council, or Commander-in-Chief, shall be a sufficient indication of such intent; and that no act or declaration of any Governor-General or Governor, or Member of Council, during his continuance in the Presidency whereof he was so Governor-General, Governor, or Counsellor, except by some deed or instrument in writing, under hand and seal, delivered to the secretary for the publick department of the same Presidency, in order to its being recorded, shall be deemed or held as a resignation or surrender of his said office; and that the salary and other allowances of any such Governor-General, or other officers respectively, shall cease from the day of such his departure, resignation, or surrender; and that if any such Governor-General, or any other officer whatever in the service of the said Company, shall quit or leave the Presidency or settlement to which he shall belong, other than in the known actual service of the said Company, the salary and allowances appertaining to his office shall not be paid or payable during his absence to any agent or other person for his use, and in the event of his not returning back to his station at such presidency or settlement, or of his coming to Europe, his salary and allowances shall be deemed to have ceased from the day of his quitting such Presidency or settlement, any law or usage to the contrary notwithstanding.

Proceedings to be expressed to be made by the Governor and Council, and signed by the secretary.

XXXIX. And be it further enacted, That all orders and other proceedings of the Governor-General and Council of Fort William shall be expressed to be made by the Governor-General in Council; and that all orders and other proceedings of the Governors and Council of Fort Saint George and Bombay respectively shall be expressed to be made by the Governor in Council, and not otherwise; and that the several orders and proceed-

ings of all the said presidencies shall, previous to their being published or put in execution, be signed by the Chief Secretary to the Council of the Presidency, by the authority of the Governor-General in Council, or Governor in Council, as the case may be.

Governor General in Council at Fort William impowered to superintend the other Presidencies.

XL. And be it further enacted, That the Governor-General in Council at Fort William shall have and be invested by virtue of this act with, full power and authority to superintend, control and direct the several Governments and Presidencies of Fort Saint George and Bombay, and all other Governments erected or to be erected by the said United Company, within the limits of their said exclusive trade, in all such points as shall relate to any negotiations or transactions with the country powers or States, or levying war or making peace, or the collection or application of the revenues of the said acquisitions and territories in India, or to the forces employed at any of such Presidencies or Governments, or to the Civil or Military Government of the said Presidencies, acquisitions, or territories, or any of them.

The other presidencies to obey the orders of the Governor-General in Council at Fort William, if not repugnant to instructions from England.

XLI. And in order to prevent the embarrassment and difficulty which may otherwise arise from any doubt whether the orders or instructions of the Governor-General in Council of Fort William relate to other points than those aforesaid be it further enacted, That notwithstanding any doubt which may be entertained by the said Presidencies or Governments to whom such orders or instructions shall be given respecting the power of the Governor-General in Council to give such orders, yet the said Presidencies or Governments shall be bound to obey such orders and directions of the said Governor-General in Council, in all cases whatever, except only where they shall have received positive orders and instructions from the said Court of Directors, or from the Secret Committee of Directors, by the authority of the said Board of Commissioners for the affairs of India, repugnant to the orders and instructions of the said Governor-General in Council, and not known to the said Governor-General and Council, at the time of dispatching their orders and instructions as aforesaid; and the said Governor-General in Council shall,

at the time of transmitting all such orders and instructions transmit therewith the dates of, and the times of, receiving the last dispatches, orders, and instructions, which they have received from the Court of Directors, or from the said Secret Committee by the direction of the said Board of Commissioners, or any of the points contained therein; and the said Presidencies, Governments, and Settlements, in all cases where they have received any orders from the said Court of Directors, or from the said Secret Committee by the direction of the Board of Commissioners as aforesaid, which they shall deem repugnant to the orders of the said Governor-General in Council of Fort William, and which were not known to the said Governor-General and Council at the time of dispatching their orders and instructions as aforesaid, shall forthwith transmit copies of the same, together with an account of all instructions or orders made by them in consequence thereof, to the Governor-General in Council of Fort William, who shall, after the receipt of the same, dispatch such further orders and instructions to the said Presidencies, and Governments or Settlements, as the said Governor-General in Council may judge necessary thereupon.

Governor-General to send dates, &c. of dispatches from England on points contained in instructions to Presidencies &c. who shall transmit to him copies, of any orders they deem repugnant thereto.

XLII. And for as much as to pursue schemes of conquest and extension of dominion in India are measures repugnant to the wish, the honour, and policy of this nation: be it further enacted, That it shall not be lawful for the Governor-General in Council of Fort William aforesaid, without the express command and authority of the said Court of Directors, or of the said Secret Committee by the authority of the said Board of Commissioners for the affairs of India, in any case (except where hostilities have actually been commenced, or preparations actually made for the commencement of hostilities, against the British nation in India, or against some of the princes or states dependant thereon, or whole territories, the said United Company shall be at such time engaged by any subsisting treaty to defend or guarantee) either to declare war or commence hostilities, or enter into any treaty for making war against any of the country princes or States in India, or any treaty for guaranteeing the posses-

War not to be declared, &c. by the Governor-General in Council at Fort William without the command of the directors, &c. except preparations for hostilities shall be made, &c.

sions of any country princes or States: and that in any such case it shall not be lawful for the said Governor-General and Council to declare war or to commence hostilities, or to enter into any treaty for making war against any other prince or state, than such as shall be actually committing hostilities, or making preparations as aforesaid, or to make such treaty for guaranteeing the possessions of any prince or State, but upon the consideration of such prince or State actually engaging to assist the Company against such hostilities commenced, or preparations made as aforesaid; and in all cases where hostilities shall be commenced, or treaty made, the said Governor-General and Council shall, by the most expeditious means they can devise, communicate the same unto the said Court of Directors, or the said Secret Committee, together with a full state of the information and intelligence upon which they shall have commenced such hostilities, or made such treaties, and their motives and reasons for the same at large.

Communication of commencement of hostilities, &c. to be made to the Directors, &c.

XLIII. And be it further enacted, That it shall not be lawful for the Governors and Counsellors of Fort Saint George and Bombay, or of any other subordinate settlement, to make or issue any order for commencing hostilities or levying war, or to negotiate or conclude any treaty of peace, or other treaty, with any Indian Prince or State (except in cases of sudden emergency or imminent danger, when it shall appear dangerous to postpone such hostilities or treaty) unless in pursuance of express orders from the said Governor-General in Council of Fort William aforesaid, or from the said Court of Directors, or from the said Secret Committee by the authority of the said Board of Commissioners for the affairs of India, and every such treaty shall, if possible, contain a clause for subjecting the same to the ratification or rejection of the Governor-General in Council of Fort William aforesaid: and the said Governors and Counsellors, and other officers of of the said Presidencies of Fort Saint George and Bombay, or other Settlements respectively, are hereby required to pay and yield obedience to all such orders as they shall, from time to time, respectively receive from the said Governor-General in Council of Fort

Governments of Fort Saint George or Bombay not to declare war, &c. but by orders from Fort William or the Directors &c.

Penalty on governors &c. of Fort St. George and Bombay for neglect of orders from Fort William.

all and singular the said Governors, Counsellors, and other officers who shall refuse or wilfully neglect or forbear to pay obedience to such orders and instructions as they shall receive from the said Governor-General in Council of Fort William as aforesaid, shall be liable to be removed, dismissed, or suspended from the exercise of their respective offices or powers by order of the said Governor-General in Council of Fort William, and be sent to England, and be subject to such further pains and penalties as are or shall be provided by law in that behalf.

Presidencies of Fort St. George &c. to send to Fort William copies of all their orders &c.

XLIV. And be it further enacted, That the Governors and Counsellors of the said Presidencies of Fort Saint George and Bombay respectively for the time being, and the Governors and Counsellors, or other chief officer or officers of, and belonging to, any other British settlement in India, shall, and they are hereby respectively required constantly and diligently to transmit to the said Governor-General in Council at Fort William aforesaid, true and exact copies of all orders, resolutions, and acts in council of their respective Governments, Presidencies, and Councils, and also advice and intelligence of all transactions and matters which shall come to their knowledge, material to be communicated to the Governor-General in Council of Fort William aforesaid, or which the said Governor General in Council shall, from time to time, require.

Governor-General, or governors, may order measures proposed in council about which they differ from the other members to be adopted or suspended &c.

XLVII. And whereas it will tend greatly to the strength and security of the British possessions in India, and give energy, vigour, and dispatch to the measures and proceedings of the executive government within the respective Presidencies if the Governor general of Fort William in Bengal, and the several Governors of Fort Saint George and Bombay, were vested with a discretionary power of acting without the concurrence of their respective councils, or forbearing to act according to their opinions, in cases of high importance, and essentially affecting the publick interest and welfare, thereby subjecting themselves personally to answer to their country for so acting, or forbearing to act; be it enacted, That when and so often as any measure or question shall be proposed or agitated in the Supreme Council at Fort William in Bengal, or in either of the Councils of Fort Saint George and Bombay, whereby the interests of the said United Company, or the safety or tranquillity of the British possessions in India, or any part thereof, are,

or may, in the judgment of the Governor-General, or of the said Governors respectively, be essentially concerned or affected, and the said Governor-General or such Governors respectively shall be of opinion that it will be expedient either that the measures so proposed or agitated ought to be adopted or carried into execution, or that the same ought to be suspended or wholly rejected, and the several other Members of such Council then present shall differ in and dissent from such opinion, the said Governor-General or such Governor, and the other Members of the Council, shall, and they are hereby directed forthwith mutually to exchange with and communicate in Council to each other, in writing, under their respective hands (to be recorded at large on their secret consultations) the respective grounds and reasons of their respective opinions; and if, after considering the same, the said Governor-General, or such Governor respectively, and the other Members of the said Council, shall severally retain their opinions, it shall and may be lawful to and for the said Governor-General in the Supreme Council of Fort William, or other of the said Governors in their respective Councils, to make and declare any order (to be signed and subscribed by the said Governor-General, or by the Governor making the same) for suspending or rejecting the measure or question so proposed or agitate in part or in the whole, or to make and declare such order and resolution for adopting and carrying the measure so proposed or agitated into execution, as the said Governor-General, or such Governors in their respective Councils, shall think fit and expedient; which said last-mentioned order and resolution, so made and declared, shall be signed as well by the said Governor-General, or the Governor so making and declaring the same, as by all the other Members of the Council then present, and shall by force and virtue of this act be as effectual and valid, to all intents and purposes, as if all the said other Members had advised the same, or concurred therein; and the said Members of Council, and all officers, Civil and Military, and all other persons concerned, shall be, and they are hereby commanded, authorised and enjoined to be, obedient thereto, and to be aiding and assisting in their respective stations in the carrying the same into execution.

XLVIII. And be it further enacted, That the Governor-General, or Governor, who shall declare and command any such order or resolution to be made and recorded without the assent or concurrence of any of the other Members of Council, shall alone be held responsible for the same, and the consequences thereof.

XLIX. Provided always, and be it further enacted, That nothing in this contained shall extend, or be construed to extend, to give power to the said Governor-General of Fort William in Bengal, or to either of the said Governors of Fort Saint George and Bombay respectively, to make or carry into execution any order or resolution which could not have been lawfully made and executed with the concurrence of the councils of the respective Governments or Presidencies, any thing herein contained to the contrary notwithstanding.

Governor-General &c. making any order without the consent of the council responsible for the same, but not to make any order which could not have been made with the consent of the council.

L. Provided also, and be it further enacted and declared, That nothing in this act, contained shall extend, or be construed to extend, to give any discretionary power of acting, or forbearing to act, without the concurrence of the other Members of Council, unto any person on whom the said office of Governor-General, or the said office of Governor respectively, shall happen to devolve by the death or resignation of any Governor-General, or Governor for the time being respectively, or unto any Deputy Governor-General, unless such person shall have been provisionally appointed to succeed to such respective office by the said Court of Directors, or unless and until such person shall have been or shall be confirmed in the said office, and that in the meantime all orders, resolutions, and other acts and things in such Presidency, shall be determined by the voice of the major part in number of the Governor-General and Counsellors, or Governor and Counsellors present at the making or doing thereof, such Governor-General or Governor having on any equality of voices a casting vote, and not otherwise, or in any other manner, any thing in this act contained to the contrary notwithstanding.

No person to act, without the concurrence of the council, on whom the office of Governor-General or Governor shall devolve by death, unless provisionally appointed &c.

LIII. And be it further enacted, That when and so often as the said Governor-General shall on any occasion be absent from his own Government of Bengal, such one of the Members of the Council thereof as the said Governor-General shall nominate for the purpose, shall be styled and act as Vice-President and Deputy-Governor of Fort William, and that the Government of the said Presidency shall be exercised by such Vice-President or Deputy, and the other Members or Member of the said Council, in like manner, and no further or

Governor-General to nominate a Vice-President of Fort William to act during his absence;

otherwise than as the Government of the said Presidencies of Fort Saint George and Bomay may be exercised by Governors in Council there, subject nevertheless to the restrictions in this act contained.

But while absent, may issue orders to the officers and servants of the other Presidencies &c.,

LIV. And be it further enacted, That if the said Governor-General, during his absence from his own Government of Bengal, shall judge it necessary to issue any orders or directions to any of the said Governments or Presidencies in India, or to any of the officers or servants of the said Company acting under the authority of any of the said Presidencies, without previously communicating such orders or instructions to the said respective Governments, under the authority of which such officers or servants shall be acting, it shall and may be lawful for him to issue the same, and that the said respective Governments or Presidencies, and also such officers and servants shall, and they are hereby severally and respectively authorised and required to, obey the same, and such orders and instructions shall be of the same force as if the same had been made by the said Governor-General in Council at Fort William, but not of any greater or other force or validity; and that if such orders or directions shall be made by the said Governor General of his own sole authority, or without the concurrence of the other Members of Council of either of the said Presidencies of Fort Saint George and Bombay respectively, in that case the said Governor-General shall be alone held responsible for the same, in the like manner as for any orders or resolutions by him made in Council at Fort William, of his own sole authority, without the concurrence of the other Members of the same Council, according to the directions and true intent and meaning of this act: Provided always, that such Governor-General shall and he is hereby required to, transmit by the first opportunity, to the Governors and Councils of the respective Presidencies to which the officers or servants to whom any such orders or instructions shall be so sent to be executed shall belong, copies of such orders or instructions respectively, with his reasons or inducements for issuing the same, and also to transmit to the Court of Directors of the said Company, by the first opportunity that shall or may occur, a copy of all orders and instructions by him so sent to any of the said Governments, Presidencies, officers, or servants respectively, together with his reasons and inducements for sending or issuing the same.

Directors with the approbation of the Board, may suspend the powers of the Governor-General to act upon his own authority.

LV. Provided also, and be it further enacted, That it shall and may be lawful for the Court of Directors of the said Company, with the approbation of the Board of Commissioners for the affairs of India, to suspend all or any of the powers hereby given to the Governor-General of Fort William to act upon his own sole authority, at and for such time or times as they may judge expedient or necessary, and that the same shall be suspended accordingly, from the time of the arrival of their orders for that purpose in India: and also for the said Court of Directors with such approbation as aforesaid, to receive the said powers, when and as they shall think fit: any thing herein contained to the contrary notwithstanding.

Receiving gifts to be deemed a misdemeanor.

LXII. And be it further enacted, That the demanding or receiving any sum of money, or other valuable thing, as a gift or present, or under colour thereof, whether it be for the use of the receiving the same, or for, or pretended to be for the use of the said Company, or of any other person whatsoever, by any British subject, holding or exercising any office or employment under His Majesty, or the said United Company, in the East Indies, shall be deemed and taken to be extortion and misdemeanor at law, and shall be proceeded against and punished as such, under and by virtue of this act, and the offender shall also forfeit to the King's Majesty, his heirs and successors, the whole gift or present so received, or the full value thereof.

Counsellors-at-Law &c. may take fees in their professions.

LXIV. Provided always, and be it further enacted, That nothing herein contained shall extend, or be construed to extend, to prohibit or prevent any person exercising the profession of Counsellor-at-law, physician, or surgeon or any chaplain, from accepting, taking or receiving fees, gratuities, or rewards (bonafide) in the way of his profession only.

Neglect to execute the orders of the Directors etc. to be deemed a misdemeanor.

LXV. And be it further enacted, That the wilful disobeying, or the wilfully omitting, forbearing, or neglecting to execute the orders or instructions of the Court of Directors of the said Company, by any Governor-General, Governor, President, Counsellor, or Commander-in-Chief, or by any other of the officers or servants of the said United Company in the East Indies (unless in cases of necessity, the burthen of the proof, of which necessity shall lie on the party so

disobeying, or omitting or forbearing to execute such orders and instructions as aforesaid), and every wilful breach of the trust and duty of any office or employment, by any such Governor-General, Governor, President, Counsellor, or Commander-in-Chief, or by any of the officers or servants of the said United Company in the East Indies shall be deemed and taken to be a misdemeanor at law, and shall or may be proceeded against and punished as such by virtue of this act.

His Majesty's subjects amenable to Courts of justice in India and Great Britain for offences in the territories of native princes.

LXVII. And be it further enacted, That all his Majesty's subjects, as well servants of the said United Company as others, shall be and are hereby declared to be amenable to all Courts of Justice, both in India and Great Britian, of competent jurisdiction to try offences committed in India, for all acts, injuries, wrongs, oppressions, trespasses, misdemeanors, offences, and crimes whatever, by them or any of them, done or to be done or committed in any of the lands or territories of any native prince or State, or against their persons or properties, of the persons or properties of any of their subjects or people, in the same manner as if the same had been done or committed within the territories directly subject to and under the British Government of India.

No Governor-General etc. to trade, except on account of Company.

CXXXVII. And be it further enacted, That it shall not be lawful for any Governor-General, or Governor, or any Member of Council of the said Presidencies in India, to be concerned in any trade or traffick whatever, except on account of the said Company, nor for any Collector, Supervisor, or other person employed or concerned in the collection of the revenues, or the administration of Justice, in the provinces of Bengal, Behar and Orissa, or either of them, or their agents or servants, or any person or persons in trust for them or any of them, to carry on or be concerned in or to have any dealings or transactions, by way of traffick or trade, at any place within any of the provinces in India, or other parts, or to buy any goods, and sell the same again, or any part thereof, at the place where he or they bought the same, or at any other place within the same province, or any other such province or country respectively, except on account of the said Company ; nor shall it be lawful for any of the judges of the Supreme Court of Judicature to be concerned in any trade or traffick whatever ; nor shall it be

No judge to be concerned in any trade.

lawful for any of His Majesty's subjects in the said provinces to engage, intermeddle, or be in anywise concerned, directly or indirectly, in the inland trade in salt, beetlenut, tobacco, or rice, except on the account of the said Company, or with their permission, on pain of forfeiting all such goods or commodities which they, or any of them, shall so buy and sell again, by way of traffick, or in which any of them shall so trade, and also treble the value thereof, one moiety to the said United Company, and the other moiety to him or them who will sue for the same.

No person whatever to be concerned in the inland trade in salt, etc. except with the Company's permission.

CLI. And whereas the Governor-General and other Members of the Supreme Council of Fort William in Bengal, and the Chief Justice and other Justices of the Supreme Court of Judicature at Fort William aforesaid, are at present the only persons authorised by law to act as Justices of the Peace within and throughout the provinces, districts, and countries of Bengal, Behar, and Orissa ; and the Governor or President, and the other Members of the Council of Fort Saint George, on the coast of Coromandel ; and the Governor or President, and the other Members of the Council of Bombay, are the only persons authorised by law to act as Justices of the Peace in and for the Presidency of Fort Saint George, and the Presidency, island, town, and factory of Bombay, and the places belonging and subordinate to the said two last-mentioned Presidencies, respectively : and whereas, for preserving and maintaining the peace in the said Provinces, and Presidencies aforesaid, and the places subordinate thereto, it is expedient that a further number of persons should be appointed to act as Justices of the Peace in and for the same respectively : be it, therefore, further enacted, That it shall and may be lawful to and for the Governor-General in Council of Fort William in Bengal for the time being, by commissions to be from time to time issued under the seal of the Supreme Court of Judicature there, in the name of the King's Majesty, his Heirs, and Successors, tested in the name of the Chief Justice of the said court (which said commissions the said Supreme Court of Judicature is hereby authorised and required from time to time, by any order or warrant from the said Governor General in Council, to issue accordingly) to nominate and appoint such and so many of the covenanted servants of the said Company, or other British inhabitants,

Power given to the Governor-General in Council of Fort William etc. to appoint Justices of the Peace.

as the said Governor General in Council shall think properly qualified, to act as Justices of the Peace within and for the said Provinces and Presidencies, and Places thereto subordinate respectively, and such persons shall, according to the tenor of the respective commissions wherein they shall be so nominated and appointed, and by virtue thereof, and of this act, have full power and authority to act as Justices of the Peace, according to the tenor of the same Commissions, wherein they shall be respectively named in and for the Province and Presidencies aforesaid, and Places subordinate thereto respectively; and the said Supreme Court, upon any requisition in writing from the said Governor-General in Council, shall and may from time to time supercede such commissions, and upon like requisition issue new commissions, for the purposes aforesaid, unto the same or such other of the covenanted servants of the said Company, or other British inhabitants, as shall from time to time, be so nominated by the said Governor-General in Council in that behalf, all which commissions shall be filed of record in the respective courts of oyer and terminer of the Province, Presidency, or place wherein and for which the same shall be issued as aforesaid: provided always, that the persons who shall be so nominated and appointed as aforesaid shall not be capable of holding any such court, of oyer and terminer and gaol delivery, nor to sit in any such Court, unless the justices of the said court shall, on any particular occasion, call upon them so to do, in which case, and so often as the same shall happen, the persons so called upon shall and may for that time associate with them, and sit as justices of the said court of oyer and terminer and gaol delivery by virtue of this Act, and has a deliberative voice, being first specially authorised for that purpose by order in Council.

Such Justices not to sit in Courts of oyer and terminer unless called upon.

CLVI. And whereas, by the Charter of Justice under the great seal of Great Britain, bearing date the twenty-sixth day of March, in the fourteenth year of His present Majesty's reign, for establishing the Supreme Court of Judicature of Fort William in Bengal, His Majesty did grant, ordain, establish and appoint, that the said Supreme Court of Judicature should be a Court of Admiralty, with power and authority to enquire, hear, try, examine, and determine, by the oaths of British subjects, all treasons, murders, piracies, robberies, felonies, maimings, forestallings, extortions, trespasses, misdemeanors, offences,

Charter of Justice, dated March 26, 1774, recited.

excesses, and enormities, and maritime causes whatsoever, according to the laws and customs of the Admiralty of England, done, perpetrated, or committed upon the high seas, rivers, ports, creeks, harbours, and places overflown, within the ebbing and flowing of the sea and high water mark within, about, and throughout the Provinces, Countries, or Districts of Bengal, Behar and Orissa, and the territories or islands adjacent thereto and dependant thereon ; the cognizance whereof doth belong to the jurisdiction of the admiralty, as the same is used and exercised in that part of Great Britain called England : and whereas doubts have arisen how far the jurisdiction of the said Supreme Court, in criminal matters, is limited by the said Charter to offences committed on the coasts of Bengal, Behar and Orissa, territories or islands respectively, within the ebbing and flowing of the sea and high water mark ; and in as much as it is essentially necessary that the Admiralty jurisdiction of the said Supreme Court of Judicature should extend to crimes and offences committed on the high seas at large be it further enacted and declared, That the power and authority of the said Court, granted to them by the said Charter of Justice, shall extend and be extended to the high seas, and that the said Court shall, by force and virtue of this act, have full power and authority to enquire, hear, try, examine, and determine, by the oaths of honest and lawful men, being British subjects, resident in the town of Calcutta, all treasons, murders, piracies, robberies, felonies, maimings, forestallings, extortions, trespassers, misemeanors, offences, excesses, and enormities, and maritime causes whatsoever, according to the laws and customs of the admiralty of England, done, perpetrated, or committed upon any of the high seas, and to fine, imprison, correct, punish, chastise, and reform parties guilty, and violators, of the laws, in like and in as ample manner, to all intents and purposes, as the said Court might or could do if the same were done, perpetrated, or committed within the limits prescribed by the said Charter of Justice, and not otherwise or in any other manner.

Power given by recited Charter to the Supreme Court of Judicature, to extend to the high seas.

V. THE GOVERNMENT OF INDIA ACT OF 1800.

(39 and 40 Geo. III, C. 79).

An Act for establishing further Regulations for the Government of the British Territories in India, and the better Administration of Justice within the same. (28th July, 1800).

I. * * * Be it enacted * * * that, from and after the passing of this Act, it shall and may be lawful for the Court of Directors of the said Company for the time being, to declare and appoint what part or parts of the said territorial acquisitions, or of any other now subject to the Government of the said Presidency of Fort Saint George, or the said Presidency of Bombay, together with the revenues arising therefrom, and the establishment of Civil Servants connected therewith respectively, shall from thenceforth hearafter be subject to the Government of either and which of the said Presidencies, or of the Presidency of Fort William in Bengal, and from time to time, as occasion may require, to revoke or alter in the whole or in part such appointment, and to make such new distribution of the same as to them shall seem fit and expedient, subject nevertheless, in all cases, to the Superintendence, Direction, and Control of the Commissioners of India, in like manner as any Acts or Orders of the said Court of Directors are now by law subject; and all such territorial acquisitions, and the Revenues arising therefrom, and the establishment of Civil Servants connected herewith, shall, from and after the time, and subject as to such time to the conditions and limitations, to be by the said Court of Directors limited and appointed for such purposes respectively, be to all intents and purposes whatsoever, annexed to and made subject to such Presidency and to the Court or Courts of Judicature established or to be established therein respectively.

II. * * * Be it enacted that it shall and may be lawful for His Majesty, His Heirs and Successors, by Charter or Letters Patent under the Great Seal of Great Britain, to erect and establish a Supreme Court of Judicature at Madras aforesaid, to consist of such and the like number of persons, to be named from time to time by His Majesty, His Heirs and Successors, with full power to exercise such Civil, Criminal, Admiralty and Ecclesiastical jurisdictions, both as to Natives and British subjects, and to be invested with such powers and

authorities, privileges and immunities, for the better administrations of the same, and subject to the same limitations, restriction, and control within the said Fort Saint George and Town of Madras, and the limits thereof, and the factories subordinate thereto, and within which now are or hereafter may be subject to or dependent upon the said Government of Madras, as the said Supreme Court of Judicature at Fort William in Bengal, by virtue of any law now in force and unrepealed, or by this present Act, does consist of, is invested with, or subject to, within the said Fort William, or kingdoms of Provinces of Bengal, Behar and Orissa.

III. Provided always that the Governor and Council at Madras and the Governor-General of Fort William aforesaid, shall enjoy the same exemption, and no other, from the authority of the said Supreme Court of Judicature to be there erected, as is enjoyed by the said Governor-General and Council at Fort William aforesaid, from the jurisdiction of the Supreme Court of Judicature there already by law established.

XII. And be it further enacted, that if the Governor-General of Fort William in Bengal for the time being, or the Governor of the said Presidency of Fort Saint George, and of the said Presidency and island of Bombay respectively for the time being, shall happen to be absent from any Council to be assembled for the said respective Presidencies * * owing to indisposition or any other cause whatever, and shall signify such his intended absence to such Council, to be assembled, then and in every such case the senior Member for the time being who shall be present at the Council so assembled, shall preside at such Council, in such manner, and with such full powers and authorities, during the time that such Council shall continue to be assembled, as such Governer-General or Governor might or would have had in case such Governor-General or Governor were himself actually present at such Council: Provided nevertheless, that no Act of any Council so held shall be valid to any effect whatsoever, unless the same shall be signed by such Governor-General or Governor respectively, if such Governor-General or Governor shall at the time be resident at the Presidency at which such Council shall be so assembled, and shall not be prevented by such indisposition from signing the same: Provided always, that, in case such Governor-General or Governor, not being so prevented as aforesaid, shall decline or refuse to sign such Act of Council, he and the several Members of the Council who shall have

signed the same, shall mutually exchange with and communicate in writing to each other the Grounds and Reasons of their respective opinions, in like manner, and subject to such Regulations and ultimate responsibility of such Governor-General or Governor respectively, as are by the said Act passed in the thirty-third year of the reign of His present Majesty, provided and directed in cases where such Governor-General or Governor respectively shall, when present, dissent from any measure proposed or agitated in such Council respectively ; Provided also, that nothing herein contained shall be taken or construed to prevent such Governor-General, in case he shall be absent from his own Government of Bengal, to nominate a Vice-President and Deputy Governor of Fort William, according to the Provision for that purpose in the said Act passed in the thirty-third year of His present Majesty.

20. And whereas the Province or District of Benares has been ceded to the said United Company, and been annexed to the said Presidency of Fort William in Bengal, since the establishment of the said Supreme Court of Judicature, at Fort William aforesaid, and it is expedient that the same should be subject to the jurisdiction of the said Court, in like manner as the kingdoms or Provinces of Bengal, Behar and Orissa, and that the said Province or District, and all other Provinces or Districts, which may hereafter be at any time annexed and made subject to the said Presidency, should be subject to such Regulations as the Governor-General and Council of Fort William aforesaid have framed or may frame for the better Administration of Justice among the native inhabitants and others within the same respectively ; be it, therefore, further enacted, That (from March 1, 1801) the power and authority of the said Supreme Court of Judicature in and for the said Presidency of Fort William aforesaid, as now and by virtue of this Act established, and all such Regulations as have been or may be hereafter, according to the powers and authorities, and subject to the provisions and restrictions before enacted, framed and provided, shall extend to and over the said Province or District of Benares, and to and over all the Factories, Districts and Places, which now are or hereafter shall be made subordinate thereto, and to and over all such Provinces and Districts as may at any time hereafter be annexed and made subject to the said Presidency of Fort William aforesaid.

VI. THE INDIAN BISHOPS AND COURTS ACT OF 1823.

(4, Geo. IV. C. 71).

VII. And whereas His late Majesty King George the Second did by His Letters Patent bearing date at Westminster the eighth day of January in the twenty sixth year of His reign, grant unto the United Company of Merchants of England trading to the East Indies His Royal Charter, thereby, amongst other things constituting and establishing Courts of Civil, Criminal and Ecclesiastical Jurisdiction at the United Company's respective settlements at Madraspatam, Bombay or the Island of Bombay and Fort William in Bengal; And whereas the said Charter, in as far as it represents the Administration of Justice at Bombay, has been altered and changed by virtue of an Act passed in the thirty seventh year of His late Majesty King George the Third, intituled an Act for the better Administration of Justice at Calcutta, Madras and Bombay; and for preventing British subjects from being concerned in loans to native Princes in India; and by Letters Patent granted by His said late Majesty King George the Third, and bearing date at Westminster on the Twentieth day of February in the thirty eighth year of His reign, amongst other things, for the establishment of a Court called "The Court of the Recorder of Bombay." And whereas the said Charter of the eighth day of January in the Twenty sixth year of the reign of His Majesty King George the Second, so far as it respects the Administration of Justice at Fort William in Bengal has been altered and changed by virtue of an Act passed in the thirteenth year of His said late Majesty King George the Third, intituled an Act for establishing certain Regulations for the better Management of the affairs of the East India Company, as well in India as in Europe, and by divers subsequent statutes; And whereas the said last mentioned Charter so far as it respects the Administration of Justice at Madras, has been altered or changed by virtue of the said Act of the thirty seventh year of His said late Majesty King George the Third and also by an Act of the Thirty Ninth and Fortieth years of His said late Majesty, intituled an Act for establishing certain Regulations for the Government of the British territories in India, and the better Administration of Justice within the same; And whereas it may be expedient, for the better Administration of Justice in the said settlement of Bombay, that a Supreme Court of Judicature

Letters Patent Jan. 26. 26 G. 2.

should be established in Bombay in the same form and with the same Powers and Authorities as that now subsisting by virtue of the several Acts before mentioned at Fort William in Bengal, Be it, therefore, enacted, That it shall and may be lawful for His Majesty, His Heirs and Successors, by Charter or Letters Patent under the Great Seal of Great Britain, to erect and establish a Supreme Court of Judicature at Bombay aforesaid, to consist of such and the like number of Persons, to be named from time to time by His Majesty, His Heirs, and Successors, with full power to exercise such Civil, Criminal, Admiralty and Ecclesiastical Jurisdiction both as to Natives and British Subjects, and to be invested with such Powers and Authorities, Privileges and Immunities, for the better Administration of the same, and subject to the same Limitations, Restrictions and Controul, within the said Town and Island of Bombay, and the Limits thereof, and the Territories subordinate thereto, and within the Territories which now are or hereafter may be subject to or dependent upon the said Government of Bombay, as the said Supreme Court of Judicature at Fort William in Bengal, by virtue of any Law now in force and unrepealed doth consist of, is invested with, or subject to within the said Fort William, or the Places subject to or dependent on the Government thereof: Provided always, that the Governor and Council at Bombay, and the Governor-General at Fort William aforesaid, shall enjoy the same exemption and no other from the Authority of the said Supreme Court of Judicature to be there elected, as is enjoyed by the said Governor-General and Council at Fort William aforesaid for the Time being from the Jurisdiction of the Supreme Court of Judicature there already by Law established.

Supreme Court of Judicature established at Bombay.

XVII. And be it further declared and enacted, That it hath been and is and shall be lawful for the Supreme Court of Judicature at Madras, within Fort Saint George and the town of Madras and the Limits thereof, and the Factories subordinate thereto, and within the Territories which now are or hereafter may be subject to or dependent upon the Government of Madras; and that it shall be lawful for the said Supreme Court of Judicature at Bombay, to be created by virtue of this Act, within the said Town and Island of Bombay and the Limits thereof, and the Factories subordinate thereto, and within the Territories which now are or hereafter may be subject to or dependent upon the said Government of Bombay; and the said

Supreme Courts respectively are hereby required, within the same respectively to do, execute, perform and fulfil all such Acts, Authorities, Duties, Matters and Things whatsoever, as the said Supreme Court of Fort William is or may be lawfully authorized, empowered or directed to execute, perform and fulfil within Fort William in Bengal aforesaid, or the Places subject to or dependent upon the Government thereof.

VII. THE CHARTER ACT OF 1833.

(3 and 4 Will. IV, C. 85.)

A.

AN ACT FOR EFFECTING AN ARRANGEMENT WITH THE EAST INDIA COMPANY, AND FOR THE BETTER GOVERNMENT OF HIS MAJESTY'S INDIAN TERRITORIES, TILL THE THIRTIETH DAY OF APRIL ONE THOUSAND EIGHT HUNDRED AND FIFTY-FOUR.

His Majesty may appoint Commissioners for the affairs of India.

19. And be it enacted, That it shall and may be lawful for His Majesty by any Letters Patent or by any Commission or Commissions to be issued under the Great Seal of *Great Britain* from Time to Time to nominate, constitute, and appoint, during Pleasure, such persons as His Majesty shall think fit to be, and who shall accordingly be and be styled Commissioners for the Affairs of *India*; and every Enactment, Provision, Matter, and Thing relating to the Commissioners for the Affairs of *India* in any other Act or Acts contained, so far as the same are in force and not repealed by or repugnant to this Act, shall be deemed and taken to be applicable to the Commissioners to be nominated as aforesaid.

Ex-officio Commissioners.

20. And be it enacted, That the Lord President of the Council, the Lord Privy Seal, the First Lord of the Treasury, the Principal Secretaries of State, the Chancellor of the Exchequer for the time being shall, by virtue of their respective Offices, be and they are hereby declared to be Commissioners for the Affairs of *India*, in conjunction with the Persons to be nominated in any such Commission as aforesaid, and they shall have the same Powers respectively as if they had been expressly nominated in such Commission, in the

Order in which they are herein mentioned, next after the Commissioner first named therein.

Two Commissioners may form a Board; Who shall be President.

21. And be it enacted, That any Two or more of the said Commissioners shall and may form a Board for executing the several Powers which, by this Act, or by any other Act or Acts, are or shall be given to or vested in the Commissioners for the Affairs of *India*; and that the Commissioner first named in any such Letters Patent or Commission, for the time being, shall be the President of the said Board; and that when any Board shall be formed in the Absence of the President, the Commissioner next in order of nomination in this Act or in the said Commission, of those who shall be present, shall for that Turn preside at the said Board.

President to have the casting Vote.

22. And be it enacted, That if the Commissioners present at any Board shall be equally divided in Opinion with respect to any matter by them discussed, then and on every such occasion the President, or in his Absence the Commissioner acting as such, shall have Two Voices or the casting Vote.

The Board to control all acts concerning India, and the sale of property.

25. And be it enacted, That the said Board shall have and be invested with full Power and Authority to superintend, direct, and control all Acts, Operations, and Concerns of the said Company which in anywise relate to or concern the Government or Revenues of the said Territories, or the Property hereby vested in the said Company in Trust as aforesaid, and all Grants of Salaries, Gratuities, and Allowances, and all other Payments and Charges whatever, out of or upon the said Revenues and Property respectively, except as hereinafter is mentioned.

Directors to appoint a Secret Committee, who shall take oath.

35.. And be it enacted, That the said Court of Directors shall from Time to Time appoint a Secret Committee, to consist of any Number not exceeding Three of the said Directors, for the particular purposes in this Act specified; which said Directors so appointed shall, before they or any of them shall act in the Execution of the Powers and Trusts hereby reposed in them, take an Oath of the Tenor following; (that is to say), "I (A.B.) do swear, That I will,

according to the best of my Skill and Judgment, faithfully execute the several Trusts and Powers reposed in me as a Member of the Secret Committee appointed by the Court of Directors of the *India* Company ; I will not disclose or make known any of the secret Orders, Instructions, Dispatches, Official Letters or Communications which shall be sent or given to me by the Commissioners for the Affairs of *India*, save only to the other Members of the said Secret Committee, or to the Person or Persons who shall be duly nominated and employed in transcribing or preparing the same respectively, unless I shall be authorized by the said Commissioners to disclose and make known the same. So help me God."

Which said Oath shall and may be administered by the several and respective Members of the said Secret Committee to each other ; and, being so by them taken and subscribed, shall be recorded by the Secretary or Deputy Secretary of the said Court of Directors for the Time being amongst the Acts of the said Court.

If the Board are of opinion that any matters require secrecy they may send official communications through Secret committee.

36. Provided also, and be it enacted, That if the said Board shall be of opinion that the Subject Matter of any of their Deliberations concerning the levying War or making Peace, or treating or negotiating with any of the Native Princes or States in India, or with any other Princes or States, or touching the Policy to be observed with respect to such Princes or States, intended to be communicated in Orders, Dispatches, Official Letters or Communications, to any of the Governments or Presidencies in India, or to any Officers or Servants of the said Company, shall be of a nature to require Secrecy, it shall and may be lawful for the said Board to send their Orders, Dispatches, Official Letters or Communications, to the Secret Committee of the said Court of Directors to be appointed as is by this Act directed, who shall thereupon, without disclosing the same, transmit the same according to the Tenor thereof, or pursuant to the Directions of the said Board, to the respective Governments and Presidencies, Officers and Servants ; and that the said Governments and Presidencies, Officers and Servants shall be bound to pay a faithful Obedience thereto, in like Manner as if such Orders, Dispatches, Official Letters or Communications had been sent to them by the said Court of Directors.

Presidency of Fort William in Bengal to be divided. The Court to declare the limits from time to time of the several Presidencies.

38. And be it enacted, That the Territories now subject to the Government of the Presidency of Fort William in Bengal shall be divided into Two distinct Presidencies, one of such Presidencies, in which shall be included Fort William aforesaid, to be styled the Presidency of Fort William in Bengal, and the other of such Presidencies to be styled the Presidency of Agra ; and that it shall be lawful for the said Court of Directors, under the control by this Act provided, and they are hereby required, to declare and appoint what Part or Parts of any of the Territories under the Government of the said Company shall from Time to Time be subject to the Government of each of the several Presidencies now subsisting or to be established as aforesaid, and from Time to Time, as Occasion may require, to revoke and alter, in the whole or in part, such Appointment, and such new Distribution of the same as shall be deemed expedient.

Government of India.

39. And be it enacted, That the Superintendence, Direction, and Control of the whole Civil and Military Government of all the said Territories and Revenues in India shall be and is hereby vested in a Governor-General and Counsellors, to be styled "The Governor-General of India in Council."

Members of Council.

40. And be it enacted, That there shall be Four Ordinary Members of the said Council, Three of whom shall from Time to Time be appointed by the said Court of Directors from amongst such Persons as shall be or shall have been Servants of the said Company ; and each of the said Three Ordinary Members of Council shall at the Time of his appointment have been in the service of the said Company for at least Ten Years ; and if he shall be in the Military Service of the said Company, he shall not during his Continuance in Office as a Member of Council hold any Military Command, or be employed in actual Military Duties ; and that the Fourth Ordinary Member of Council shall from Time to Time be appointed from amongst Persons who shall not be Servants of the said Company by the said Court of Directors, subject to the Approbation of His Majesty, to be signified in Writing by His Royal Sign Manual, countersigned by the President of the said Board ; provided that such last-mentioned Member of Council shall not be entitled to sit or vote in the said Council except at Meetings thereof for making Laws and Regulations ; and it shall be lawful for the said Court of

Directors to appoint the Commander-in-Chief of the Company's Forces in India, and if there shall be no such Commander-in-Chief, or the Offices of such Commander-in-Chief and of Governor-General of India shall be vested in the same Person, then the Commander-in-Chief of the Forces on the Bengal Establishment, to be an Extraordinary Member of the said Council, and such Extraordinary Member of Council shall have Rank and Precedence at the Council Board next after the Governor-General.

Governor etc. on 22nd April, 1834 to be so under this Act.

41. And be it enacted, That the Person who shall be Governor-General of the Presidency of Fort William in Bengal on the Twenty-second Day of April one thousand eight hundred and thirty-four shall be the First Governor-General of India under this Act, and such Persons as shall be Members of Council of the same Presidency on that Day shall be respectively Members of the Council constituted by this Act.

Filling of vacancies in these offices.

42. And be it enacted, That all vacancies happening in the Office of Governor-General of India shall from Time to Time be filled up by the said Court of Directors, subject to the Approbation of His Majesty, to be signified in Writing by His Royal Sign Manual, countersigned by the President of the said Board.

The Governor-General in Council empowered to legislate for India, except as to matters herein mentioned.

43. And be it enacted, That the said Governor-General in Council shall have Power to make Laws and Regulations for repealing, amending, or altering any Laws or Regulations whatever now in force or hereafter to be in force in the said Territories or any Part thereof, and to make Laws and Regulations for all Persons, whether British or Native, Foreigners or others, and for all Courts of Justice, whether established by His Majesty's Charters or otherwise, and the Jurisdictions thereof, and for all Places and Things whatsoever within and throughout the whole and every Part of the said Territories, and for all Servants of the said Company within the Dominions of Princes and States in alliance with the said Company ; save and except that the said Governor-General in Council shall not have the power of making any Laws or Regulations which shall in any way repeal, vary, suspend, or affect any of the Provisions of this Act, or any of the Provisions of the Acts for punishing Mutiny and Desertion of

Officers and Soldiers, whether in the Service of His Majesty o the said Company, or any Provisions of any Act hereafter to b passed in anywise affecting the said Company or the said Terri tories or the Inhabitants thereof, or any Laws or Regulation which shall in any way affect any Prerogative of the Crown, o the authority of Parliament, or the Constitution or Rights of th said Company or any Part of the unwritten Laws or Constitu tion of the United Kingdom of Great Britain and Ireland where on may depend in any Degree the Allegiance of any Person t the Crown of the United Kingdom, or the Sovereignty o Dominion of the said Crown over any Part of the sai Territories.

If the Court of Directors disallow the laws, Governor-General in Council to repeal them.

44. Provided always, and be it enacted, That in case th said Court of Directors, under such Control as by this Act is provided, shall signify t the said Governor-General in Council thei Disallowance of any Laws or Regulation by the said Governor-General in Council made, then and i every such Case, upon Receipt by the said Governor-General i Council of Notice of such Disallowance, the said Governor General in Council shall forthwith repeal all Laws and Regula tions so disallowed.

All such laws and regulations to be of the same force as any Act of Parliament.

45. Provided also, and be it enacted, That all Laws and Regulations made as aforesaid, so long a they shall remain unrepealed, shall be o the same Force and Effect within an throughout the said Territories as any Ac of Parliament would or ought to be within the same Territories and shall be taken notice of by all Courts of Justice whatsoeve within the same Territories, in the same Manner as any publi Act of Parliament would and ought to be taken notice of; an it shall not be necessary to register or publish in any Court o Justice any Laws or Regulations made by the said Governor General in Council.

Restricting the power of punishing with death European subjects, etc.

46. Provided also, and be it enacted, That it shall not b lawful for the said Governor-General i Council, without the previous Sanction o the said Court of Directors, to make an Law or Regulation whereby Power shall be given to any Court of Justice, other than the Courts of Justice established by His Majesty's Charters, to sentence to the Punishment of Death any

of His Majesty's natural-born Subjects born in Europe, or the Children of such Subjects, or which shall abolish any of the Courts of Justice established by His Majesty's Charters.

The Court to submit to the Board rules for the procedure of the Governor-General in Council. Rules to be laid before Parliament.

47. And be it enacted, that the said Court of Directors shall forthwith submit, for the Approbation of the said Board, such rules as they shall deem expedient for the Procedure of the Governor-General in Council in the Discharge and Exercise of all Powers, Functions, and Duties imposed on or vested in him by virtue of this Act, or to be imposed on or vested in him by any other Act or Acts; which Rules shall prescribe the Modes of Promulgation of any Laws or Regulations to be made by the said Governor-General in Council, and of the Authentication of all Acts and Proceedings whatsoever of the said Governor-General in Council; and such Rules, when approved by the said Board of Commissioners, shall be of the same Force as if they had been inserted in this Act: Provided always, that such Rules shall be laid before both Houses of Parliament in the Session next after the Approval thereof.

Quorum of Governor-General and Members in Council.

48. Provided always, and be it enacted, That all Laws and Regulations shall be made at some Meeting of the Council at which the said Governor-General and at least Three of the Ordinary Members of Council shall be assembled, and that all other Functions of the said Governor-General in Council may be exercised by the said Governor-General and One or more Ordinary Member or Members of Council, and that in every Case of Difference of opinion at Meetings of the said Council where there shall be an Equality of Voices the said Governor-General shall have Two Votes or the casting Vote.

Manner of proceeding when any measure is proposed whereby the safety or peace of India may be essentially affected.

49. Provided always, and be it enacted, That when and so often as any Measure shall be proposed before the said Governor-General in Council, whereby the Safety, Tranquillity or Interests of the British Possessions in India, or any Part thereof, are or may be, in the Judgment of the said Governor-General, essentially affected, and the said Governor-General shall be of opinion either that the Measure so proposed ought to be adopted or carried into execution, or that the same ought to be suspended or wholly

rejected, and the Majority in Council then present shall differ in and dissent from such Opinion, the said Governor-General and Members of Council are hereby directed forthwith mutually to exchange with and communicate to each other in writing under their respective Hands, to be recorded at large on their Secret Consultations, the Grounds and Reasons of their respective Opinions; and if after considering the same the said Governor-General and the Majority in Council shall still differ in Opinion, it shall be lawful for the said Governor-General, of his own Authority and on his own Responsibility, to suspend or reject the Measure so proposed in part or in whole, or to adopt and carry the Measure so proposed into Execution, as the said Governor-General shall think fit and expedient.

Council to assemble at any place in India.

50. And be it enacted, That the said Council shall from Time to Time assemble at such Place or Places as shall be appointed by the said Governor-General in Council within the said Territories, and that as often as the said Council shall assemble within any of the Presidencies of Fort St. George, Bombay, or Agra, the Governor of such Presidency shall act as an Extraordinary Member of Council.

Act not to affect the right of Parliament to legislate for India. Express reservation, Laws, etc. to be laid before Parliament.

51. Provided always, and be it enacted, That nothing herein contained shall extend to affect in any way the Right of Parliament to make Laws for the said Territories and for all the inhabitants thereof; and it is expressly declared that a full, complete, and constantly existing Right and Power is intended to be reserved to Parliament to control, supersede, or prevent all proceedings and Acts whatsoever of the said Governor-General in Council, and to repeal and alter at any Time any Law or Regulation whatsoever made by the said Governor-General in Council, and in all respects to legislate for the said Territories and all the inhabitants thereof in as full and ample a Manner as if this Act had not been passed: and the better to enable Parliament to exercise at all Times such Right and Power, all Laws and Regulations made by the said Governor-General in Council shall be transmitted to England, and laid before both Houses of Parliament, in the same Manner as is now by Law provided concerning the Rules and Regulations made by the several Governments in India.

52. And be it enacted, That all Enactments, Provisions, Matters, and Things relating to the Governor-General of Fort William in Bengal in Council, and the Governor-General of Fort William in Bengal alone, respectively, in any other Act or Acts contained, so far as the same are now in force, and not repealed by or repugnant to the Provisions of this Act, shall continue and be in force and be applicable to the Governor-General of India in Council, and to the Governor-General of India alone, respectively.

All enactments relating to the Supreme Government to apply to the Governor-General.

56. And be it enacted, That the Executive Government of each of the several Presidencies of Fort William in Bengal, Fort Saint George, Bombay, and Agra shall be administered by a Governor and Three Councillors, to be styled the "The Governor in Council of the said Presidencies of Fort William in Bengal, Fort Saint George, Bombay, and Agra, respectively;" and the said Governor and Councillors respectively of each such Presidency shall have the same Rights and Voices in their Assemblies, and shall observe the same Order and Course in their Proceedings, as the Governors in Council of the Presidencies of Fort Saint George and Bombay now have and observe, and that the Governor-General of India for the Time being shall be Governor of the Presidency of Fort William in Bengal.

The Executive Government of the Presidencies to be administered by a Governor and three Councillors.

57. Provided always, and be it enacted, That it shall and may be lawful for the said Court of Directors, under such Control as is by this Act provided, to revoke and suspend, so often and for such Periods as the said Court shall in that behalf direct, the Appointment of Councils in all or any of the said Presidencies, or to reduce the Number of Councillors in all or any of the said Councils, and during such Time as a Council shall not be appointed in any such Presidency the Executive Government thereof shall be administered by a Governor alone.

Directors may revoke the appointment of Councils or reduce the number of Councillors.

58. And be it enacted, That the several Persons who on the said Twenty-second Day of April one thousand eight hundred and thirty-four shall be Governors of the respective Presidencies of Fort Saint George and Bombay, shall be the first Governors of the said Presidencies respectively under this Act; and that the Office of

Governors of Fort St. George and Bombay; Governors of Agra, and vacancies in Presidencies to be filled up by Court.

Governor of the said Presidency of Agra, and all vacancies happening in the Offices of the Governors of the said Presidencies respectively, shall be filled up by the said Court of Directors, subject to the Approbation of His Majesty, to be signified under His Royal Sign Manual, countersigned by the said President of the said Board of Commissioners.

Powers of Governors of Presidencies.

59. And be it enacted, That in the Presidencies in which the Appointment of a Council shall be suspended under the Provision hereinbefore contained, and during such Time as Councils shall not be appointed therein respectively, the Governors appointed under this Act, and in the Presidencies in which Councils shall from Time to Time be appointed the said Governors in their respective Councils, shall have all the Rights, Powers, Duties, Functions, and Immunities whatsoever, not in anywise repugnant to this Act, which the Governors of Fort Saint George and Bombay in their respective Councils now have within their respective Presidencies; and that the Governors and Members of Council of Presidencies appointed by or under this Act shall severally have all the Rights, Powers, and Immunities respectively, not in anywise repugnant to this Act, which the Governors and Members of Council of the Presidencies of Fort Saint George and Bombay respectively now have in their respective Presidencies; provided that no Governor or Governor in Council shall have the Power of Making or Suspending any Regulations or Laws in any Case whatever, unless in cases of urgent Necessity (the Burthen of the Proof whereof shall be on such Governor or Governor in Council), and then only until the Decision of the Governor-General of India in Council shall be signified thereon; and provided also, that no Governor or Governor in Council shall have the power of creating any new Office, or granting any Salary, Gratuity, or Allowance, without the previous Sanction of the Governor-General of India in Council.

If Court of Directors neglect for two months to supply vacancy in any office, the King to appoint.

60. Provided always, and be it enacted, That when and so often as the said Court of Directors shall neglect for the Space of Two Calender Months, to be computed from the Day whereon the Notification of the Vacancy of any Office or Employment in India in the appointment of the said Court shall have been received by the said Court, to supply such Vacancy, then and in every such

Case it shall be lawful for His Majesty to appoint, by Writing under His Sign Manual, such Person as His Majesty shall think proper to supply such Vacancy; and that every Person so appointed shall have the same Powers, Privileges, and Authorities as if he or they had been appointed by the said Court, and shall not be subject to Removal or Dismissal without the Approbation and Consent of His Majesty.

Power for the Court to make provisional appointments to any offices. Provisional appointments of certain offices to be approved by His Majesty.

61. And be it enacted, That it shall be lawful for the said Court of Directors to appoint any Person or Persons provisionally to succeed to any of the Offices aforesaid, for supplying any Vacancy or Vacancies therein, when the same shall happen by the Death or Resignation of the Person or Persons holding the same office or offices respectively, or on his or their Departure from India with Intent to return to Europe, or on any Event or Contingency expressed in any such provisional Appointment or Appointments to the same respectively, and such Appointments again to revoke. Provided that every provisional Appointment to the several offices of Governor-General of India, Governor of a Presidency, and the Member of Council of India, by this Act directed to be appointed from amongst Persons who shall not be servants of the said Company, shall be subject to the Approbation of His Majesty, to be signified as aforesaid, but that no Person so appointed to succeed provisionally to any of the said Offices shall be entitled to any Authority, Salary or Emolument appertaining thereto until he shall be in the actual Possession of such Office.

In case of vacancy in the office of Governor-General and no successor upon the spot, the ordinary member of Council next in rank to act as such.

62. And be it enacted, That if any vacancy shall happen in the office of Governor-General of India when no provisional or other successor shall be upon the spot to supply such Vacancy, then and in every such case the Ordinary Member of Council next in rank to the said Governor-General shall hold and execute the said office of Governor-General of India and Governor of the Presidency of Fort William in Bengal until a successor shall arrive, or until some other person on the spot shall be duly appointed thereto; and that every such acting Governor-General shall, during the time of his continuing to act as such, have and exercise all the rights and powers of Governor-General of India, and shall be entitled to receive the Emolu-

ments and Advantages appertaining to the office by him supplied, such acting Governor-General foregoing his salary and allowance of a Member of Council for the same period.

In case of a vacancy in the office of Governor of any of the subordinate Presidencies and no provisional or other successor on the spot.

63. And be it enacted, That if any Vacancy shall happen in the office of Governor of Fort Saint George, Bombay, or Agra when no provisional or other successor shall be upon the spot to supply such Vacancy, then and in every such case, if there shall be a Council in the Presidency in which such Vacancy shall happen, the Member of such Council, who shall be next in rank to the Governor, other than the Commander-in-Chief or officer commanding the forces of such Presidency, and if there shall be no Council, then the Secretary of Government of the said Presidency who shall be senior in the said office of Secretary, shall hold and execute the said office of Governor until a Successor shall arrive, or until some other person on the spot shall be duly appointed thereto; and that every such acting Governor shall, during the time of his continuing to act as such, receive and be entitled to the Emoluments and Advantages appertaining to the office by him supplied, such acting Governor foregoing all salaries and allowances by him held and enjoyed at the time of his being called to supply such office.

In case of a vacancy in the office of a Member of Council when no provisional or other successor on the spot.

64. And be it enacted, That if any Vacancy shall happen in the office of an Ordinary Member of Council of India when no person provisionally or otherwise appointed to succeed thereto shall be then present on the spot, then and on every such occasion such Vacancy shall be supplied by the Appointment of the Governor-General in Council; and if any Vacancy shall happen in the Office of a Member of Council of any Presidency when no person provisionally or otherwise appointed to succeed thereto shall be then present on the spot, then and on every such occasion such Vacancy shall be supplied by the Appointment of the Governor in Council of the Presidency in which such Vacancy shall happen, and until a Successor shall arrive the Person so nominated shall execute the office by him supplied, and shall have all the powers thereof and shall have and be entitled to the Salary and other Emoluments and Advantages appertaining to the said office during his continuance therein, every such temporary Member of Council foregoing all Salaries and Allowances by him held and enjoyed at the time of his being appointed to such office;

Provided always, that no person shall be appointed a temporary Member of Council who might not have been appointed by the said Court of Directors to fill the Vacancy supplied by such temporary appointment.

The Governor-General in Council to have the Control over the Presidencies.

65. And be it further enacted, That the said Governor-General in Council shall have and be invested by virtue of this Act with full Power and Authority to superintend and control the Governors and Governors in Council of Fort William in Bengal, Fort Saint George, Bombay, and Agra, in all Points relating to the Civil or Military Administration of the said Presidencies respectively, and the said Governors and Governors in Council shall be bound to obey such Orders and Instructions of the said Governor-General in Council in all Cases whatsoever.

Drafts of laws proposed by Governors to be taken into consideration by Governor-General in Council.

66. And be it enacted, That it shall and may be lawful for the Governors or Governors in Council of Fort William in Bengal, Fort Saint George, Bombay, and Agra respectively, to propose to the said Governor-General in Council Drafts or Projects of any Laws or Regulations which the said Governors or Governors in Council respectively may think expedient, together with their Reasons for proposing the same ; and the said Governor-General in Council is hereby required to take the same and such Reasons into consideration, and to communicate the Resolutions of the said Governor-General in Council thereon to the Governor or Governor in Council by whom the same shall have been proposed.

Powers of Governors of Presidencies not to be suspended.

67. And be it enacted, That when the said Governor-General shall visit any of the Presidencies of Fort Saint George, Bombay, or Agra, the Powers of the Governors of those Presidencies respectively shall not by reason of such visit be suspended.

Communications to be transmitted by Governors to Governor-General in Council.

68. And be it enacted, That the said Governors and Governors in Council of the said Presidencies of Fort William in Bengal, Fort Saint George, Bombay, and Agra respectively shall and they are hereby respectively required regularly to transmit to the said Governor-General in Council true and exact Copies of all such Orders and Acts of their respective Governments, and also Advice and Intelli-

gence of all Transactions and Matters which shall have come to their Knowledge, and which they shall deem material to be communicated to the said Governor-General in Council as aforesaid, or as the said Governor-General in Council shall from Time to Time require.

The Governor-General in Council may appoint a Deputy Governor of Bengal.

69. And be it enacted, That it shall be lawful for the said Governor-General in Council, as often as the Exigencies of the Public Service may appear to him to require, to appoint such one of the Ordinary Members of the said Council of India as he may think fit to be Deputy Governor of the said Presidency of Fort William in Bengal, and such Deputy Governor shall be invested with all the Powers and perform all the Duties of the said Governor of the Presidency of Fort William in Bengal, but shall receive no additional Salary by reason of such Appointment.

In case it shall be deemed expedient for the Governor-General to visit any part of India without his Council.

70. And be it enacted, That whenever the said Governor-General in Council shall declare that it is expedient that the said Governor-General should visit any Part of India unaccompanied by any Member or Members of the Council of India, it shall be lawful for the said Governor-General in Council, previously to the Departure of the said Governor-General, to nominate some Member of the Council of India to be President of the said Council, in whom during the Absence of the said Governor-General from the said Presidency of Fort William in Bengal, the powers of the said Governor-General in Assemblies of the said Council shall be reposed; and it shall be lawful in every such Case for the said Governor-General in Council, by a Law or Regulation for that Purpose to be made, to authorize the Governor-General alone to exercise all or any of the Powers which might be exercised by the said Governor-General in Council, except the Power of making Laws or Regulations: Provided always, that during the Absence of the Governor-General no Law or Regulation shall be made by the said President and Council without the Assent in Writing of the said Governor-General.

His Majesty may remove any officer of the Company in India.

74. And be it enacted, That it shall be lawful for His Majesty, by any Writing under His Sign Manual, countersigned by the President of the said Board of Commissioners, to remove or dismiss any Person holding any Office, Employment

or Commission, Civil or Military, under the said Company in India, and to vacate any Appointment or Commission of any Person to any such Office or Employment; provided that a Copy of every such writing, attested by the said President, shall within Eight Days after the same shall be signed by His Majesty be transmitted or delivered to the Chairman or Deputy Chairman of the said Company.

The power of Directors to remove their servants preserved.

75. Provided always, and be it enacted, That nothing in this Act contained shall take away the Power of the said Court of Directors to remove or dismiss any of the Officers or Servants of the said Company, but that the said Court shall and may at all Times have full Liberty to remove or dismiss any of such Officers or Servants at their Will and Pleasure; provided that any Servant of the said Company appointed by His Majesty through the Default of Appointment by the said Court of Directors shall not be dismissed or removed without His Majesty's Approbation, as herein-before is mentioned.

Salaries of Governor-General etc., fixed; to be in lieu of all fees, etc. Acceptance of gratuities a misdemeanor. Passage money fixed.

76. And be it enacted, that there shall be paid to the several Officers herein-after named the several Salaries set against the Names of such Officers, subject to such Reduction of the said several Salaries respectively as the said Court of Directors, with the Sanction of the said Board, may at any Time think fit; (that is to say,)

To the Governor-General of India, Two hundred and forty thousand Sicca Rupees:

To each Ordinary Member of the Council of India, Ninety-six thousand Sicca Rupees:

To each Governor of the Presidencies of Fort Saint George, Bombay, and Agra, One hundred and twenty thousand Sicca Rupees.

To each Member of any Council to be appointed in any Presidency, Sixty thousand Sicca Rupees:

And the Salaries of the said Officers respectively shall commence from their respectively taking upon them the Execution of their respective Offices, and the said Salaries shall be the whole Profit or Advantage which the said Officers shall enjoy during their Continuance in such Offices respectively; and it shall be and it is hereby declared to be a Misdemeanor

for any such Officer to accept for his own Use, in the Discharge of his Office, any Present, Gift, Donation, Gratuity, or Reward, pecuniary or otherwise whatsoever, or to trade or traffic for his own Benefit or for the Benefit of any other person or persons whatsoever; and the said Court of Directors are hereby required to pay to all and singular the Officers and persons here-in-after named who shall be resident in the United Kingdom at the Time of their respective Appointments, for the Purpose of defraying the Expenses of their Equipment and Voyage, such Sums of Money as are set against the Names of such Officers and Persons respectively; (that is to say,)

To the Governor-General, Five thousand Pounds:

To each Member of the Council of India, One thousand two hundred Pounds:

To each Governor of the Presidencies of Fort Saint George, Bombay, and Agra, Two thousand five hundred Pounds: Provided also, that any Governor-General, Governor, or Member of Council appointed by or by virtue of this Act, who shall at the time of passing this Act hold the Office of Governor-General, Governor or Member of Council respectively, shall receive the same Salary and Allowances that he would have received if this Act had not been passed.

Governor-General and Governors to forego pensions and other salaries.

77. Provided always, and be it enacted, That if any Governor-General, Governor, or Ordinary Member of the Council of India, or any Member of the Council of any Presidency, shall hold or enjoy any Pension, Salary, or any Place, Office, or Employment of Profit under the Crown or any Public Office of the said Company, or any Annuity payable out of the Civil or Military Fund of the said Company, the Salary of his Office of Governor-General of India, Governor or Member of Council, shall be reduced by the Amount of the Pension, Salary, Annuity, or Profits of Office so respectively held or enjoyed by him.

Directors to make regulations for the distribution of patronage in India.

78. And be it enacted, That the said Court of Directors, with the Approbation of the said Board of Commissioners, shall and may from Time to Time make Regulations for the Division and Distribution of the Patronage and Power of Nomination of and to the Offices, Commands, and Employments in the said Territories, and in all or any of the Presidencies thereof, among the said Governor-General in Coun-

cil, Governor-General, Governors in Council, Governors, Commander-in-Chief and other Commanding Officers respectively appointed or to be appointed under this Act.

Departure of Governor-General, etc. for Europe, to be a resignation. Resignation in India to be by deed. Salary to cease on departure or resignation. As to officers dying during absence.

79. And be it enacted, That the Return to Europe or the Departure from India with Intent to return to Europe of any Governor-General of India, Governor, Member of Council, or Commander-in-Chief, shall be deemed in Law a Resignation and Avoidance of his Office or Employment, and that no Act or Declaration of any Governor-General, or Governor, or Member of Council, other than as aforesaid, excepting a Declaration in writing under Hand and Seal, delivered to the Secretary for the Public Department of the Presidency wherein he shall be, in order to its being recorded, shall be deemed or held as a Resignation or Surrender of his said Office; and that the Salary and other Allowances of any such Governor-General or other Officer respectively shall cease from the Day of such his Departure, Resignation, or surrender; and that if any such Governor-General or Member of Council of India shall leave the said Territories, or if any Governor or other Officer whatever in the Service of the said Company shall leave the Presidency to which he shall belong, other than in the known actual Service of the said Company, the Salary and Allowances appertaining to his Office shall not be paid or payable during his Absence to any Agent or other Person for his Use; and in the event of his not returning, or of his coming to Europe, his Salary and Allowances shall be deemed to have ceased on the Day of his leaving the said Territories, or the Presidency to which he may have belonged; provided that it shall be lawful for the said Company to make such payment as is now by Law permitted to be made to the Representatives of their Officers or Servants who, having left their Stations intending to return thereto, shall die during their Absence.

Disobedience of orders and breach of trust by officers or servants of the Company in India, misdemeanors.

80. And be it enacted, That every wilful disobeying, and every wilful omitting, forbearing, or neglecting to execute the Orders or Instructions of the said Court of Directors by any Governor-General of India, Governor, Member of Council, or Commander-in-Chief, or by any other of the Officers or Servants of the said Company, unless in Cases of Necessity (the Burthen of the Proof of which Necessity shall

be on the Person so disobeying or omitting, forbearing or neglecting, to execute such Orders or Instructions as aforesaid); and every wilful Breach of the Trust and Duty of any Office or Employment by any such Governor-General, Governor, Member of Council, or Commander-in-Chief, or any of the Officers or Servants of the said Company, shall be deemed and taken to be a Misdemeanor at Law, and shall or may be proceeded against and punished as such by virtue of this Act.

87. And be it enacted, That no Native of the said Territories, nor any natural-born Subject of His Majesty resident therein, shall, by reason only of his Religion, Place of Birth, Descent, Colour, or any of them, be disabled from holding any Place, Office, or Employment under the said Company.

No disabilities in respect of religion, etc.

94. Provided always, and be it enacted, That the Bishop of Calcutta for the Time being shall be deemed and taken to be the Metropolitan Bishop in India, and as such shall have, enjoy, and exercise all such Ecclesiastical Jurisdiction and Episcopal Functions, for the Purposes aforesaid, as His Majesty shall by his Royal Letters Patent under the Great Seal of the said United Kingdom think necessary to direct, subject nevertheless to the general Superintendence and Revision of the Archbishop of Canterbury for the Time being; and that the Bishops of Madras and Bombay for the Time being respectively shall be subject to the Bishop of Calcutta for the Time being as such Metropolitan, and shall, at the Time of their respective Appointments to such Bishopricks, or at the Time of their respective Consecrations as Bishop, take an Oath of Obedience to the said Bishop of Calcutta in such Manner as His Majesty by His said Royal Letters Patent shall be pleased to direct.

The Bishop of Calcutta to be Metropolitan in India.

109. And be it enacted, That every Power, Authority, and Function by this or any other Act or Acts given to and vested in the said Court of Directors shall be deemed and taken to be subject to such Control of the said Board of Commissioners as in this Act is mentioned, unless there shall be something in the Enactments conferring such Powers, Authorities, or Functions inconsistent with such Construction, and except as to any Patronage or Right of appointing to Office vested in or reserved to the said Court.

All powers of Court of Directors to be subject to control except patronage.

Board of Control prohibited from directing the grant of allowances.

110. Provided always, and be it enacted, That nothing herein contained shall be construed to enable the said Board of Commissioners to give or cause to be given Directions ordering or authorizing the Payment of any extraordinary Allowance or Gratuity, or the Increase of any established Salary, Allowance, or Emolument, unless in the Cases and subject to the Provisions in and subject to which such Directions may now be given by the said Board, or to increase the Sum now payable by the said Company on account of the said Board, except only by such Salaries or Allowances as shall be payable to the Officers to be appointed as herein-before is mentioned to attend upon the said Board during the winding up of the Commercial Business of the said Company.

King's Courts authorized to admit Advocates and Attornies without the Company's license.

115. And be it enacted, That it shall be lawful for any Court of Justice established by His Majesty's Charters in the said Territories to approve, admit and inrol Persons as Barristers, Advocates, and Attornies in such Court without any License from the said Company, any thing in any such Charter contained to the contrary notwithstanding: Provided always, that the being entitled to practise as an Advocate in the Principal Courts of Scotland is and shall be deemed and taken to be a Qualification for Admission as an Advocate in any Court in India equal to that of having been called to the Bar in England or Ireland.

Accounts to be annually laid before Parliament.

116. And be it further enacted, That the Court of Directors of the said Company shall, within the first Fourteen sitting Days next after the First Day of May in every Year, lay before both Houses of Parliament an Account, made up according to the latest Advices which shall have been received, of the annual Produce of the Revenues of the said Territories in India, distinguishing the same and the respective Heads thereof at each of their several Presidencies or Settlements, and of all their annual Receipts and Disbursements at Home and Abroad, distinguishing the same under the respective Heads thereof, together with the latest Estimate of the same, and also the Amount of their Debts, with the rates of Interest they respectively carry, and the annual Amount of such Interest, the State of their Effects and Credits at each Presidency or Settlement, and in England or Elsewhere, accor-

ding to the latest Advices which shall have been received thereof, and also a List of their several Establishments, and the Salaries and Allowances payable by the said Court of Directors, in respect thereof; and the said Court of Directors, under the Direction and Control of the said Board of Commissioners, shall forthwith prepare Forms of the said Accounts and Estimates in such Manner as to exhibit a complete and accurate View of the Financial Affairs of the said Company; and if any new or increased Salaries, Establishments, or Pensions shall have been granted or created within any Year, the Particulars thereof shall be specially stated and explained at the Foot of the Account of the said Year.

B

EXTRACTS FROM THE DESPATCH* (ACCOMPANYING THE GOVERNMENT OF INDIA ACT, 1833) FROM THE COURT OF DIRECTORS OF THE EAST INDIA COMPANY TO THE GOVERNMENT OF INDIA, NO. 44, DATED THE 10TH DECEMBER, 1834.

1. In considering the alterations which have been made by the Act of last session of Parliament in the constitution of the Indian Government, it seems to us of importance, that a very full communication should take place between your Government and us, of the views we respectively entertain of the operation of the new enactments, and of the mode in which the powers entrusted to us can best be employed for fulfilling the benevolent intentions of the legislature.

2. You are already apprized of what has been done to constitute in the first instance the several Governments, and of the appointments which, for that purpose, it has been deemed expedient to make.

3. Of the Commercial changes, the Financial results, and Military arrangements which will be required in the new state of the Government, our observations and instructions have been or will be, transmitted to you, in the appropriate departments. At present our remarks will relate to the great change made in the legislative powers of the Supreme Government, the relation in which the Supreme Government will

* Tradition ascribes this piece to the pen of JAMES MILL. His son, J. S. MILL, was the author of the protest by the Company against the transfer to the Crown in 1858.

stand to the Subordinate Governments, the effect of the new arrangements on the two great departments of internal administration, Justice and Revenue, the increased facilities granted to Europeans of settling and holding land in the country, the measures prescribed with regard to slavery, the removal of disabilities to office, the provisions regarding ecclesiastical affairs and the sending home of estimates of vacancies in the Civil Service. Before we proceed, however, to observe on these several points, we think it expedient to draw your attention to some of the general views and intentions of the Act with respect to them. By so doing we shall render more distinct and perspicuous the particular observations into which we shall afterwards enter, and may at the same time afford you some useful suggestion in carrying into effect the provisions of the Act in matters on which, on this occasion at least, we do not think it necessary to give you any specific instructions.

4. The changes which the Act contemplates in the government and political constitution of British India are partly prospective and partly immediate. The state of things at which it aims in prospect is that which is comprehensively described in the preambulary part of the 53rd Clause, when a general system of justice and police, and a code of laws, common (as far as may be) to the whole people of India, and having its varieties classified and systematized, shall be established throughout the country. The preparation of such a system and such a code must be set about immediately ; and it is principally with a view to that object, and for the purpose of collecting and arranging the necessary materials, and of advising the Government as to the disposition of them that the Law Commissioners are to be appointed. But with whatever celerity those Commissioners proceed, their task cannot be completed in a day. The Act indeed asserts, or rather assumes, it to be expedient that the general system on prospect—"should be established in the said Territories *at an early period*" : but 'early' is a word of relation. No time should be lost by delay : none should be worse than lost by precipitation. The careful observance of these two conditions will practically determine the length of time required.

5. Thus, however, besides that ultimate state of things to which the Act looks forward, it contemplates an intermediate period ; a period of enquiry, of consideration, of preparation, in

some degree even of experiment; and it is to this interval that several of its provisions relate. As the labours of the Law Commissioners are intended to fill up the whole of this interval, one principal care of the Government will be to guide the course and promote the efficiency, of those labours; and this is plainly contemplated by the Act which, however, does not limit itself to this view of the subject. Without awaiting the result of the enquiries and deliberation of the Commissioners it proceeds at once to change the constitution of the Indian Government, by investing the Governor-General in Council with legislative powers of a new and independent kind, by extending the operation of those powers over the subordinate Governments, and by so modifying the structure of the Supreme Council internally as to adapt it to the discharge of its altered functions.

6. At first sight this change may perhaps appear premature. It may seem that the more natural course would have been to leave the Government, for the present, nearly as it is, or at least to withhold from it the extensive powers of legislation which it is to exercise under the Act; and, when the Commissioners shall have so far completed their enquiries and deliberations as to make it practicable to adopt a general scheme of law, judicature and police, then, and no sooner, to alter the constitution of the Government with an especial reference to that new sphere of action which it will have to enter.

7. But reflection will, as we believe, shew that the legislature has judged wisely, or rather has only obeyed a moral necessity in introducing immediately and without delay, the important alterations to which we have referred.

8. Although some time may elapse before the whole people of India, native and foreign, can be placed under one common system, yet it is highly desirable that approximations should previously be made to that result. In this view, it will often be advantageous to act on the suggestions of the Commissioners partially and experimentally; thus, facilitating as well as accelerating the introduction of the system in question. But in order to act on this plan, it is obviously necessary that the local Government should have the means of legislating freely and with effect; that it should be able to shape its course according to its own view, both of the results to be ultimately accomplished, and of the circumstances to be intermediately

consulted ; and at any rate that some of the anomalies which at present belong to the frame of the Government should be from time to time removed.

9. There were, however, other considerations which, much more strongly than these, dictated such alterations in the Government as should enable it to legislate for a great community. The Act unsealed for the first time the doors of British India to British subjects of European birth. Hitherto the English in India have been there only on sufferance. Now they have acquired a right, however qualified, to live in the country and even to become occupants of land, and there is every prospect of a considerable increase of their numbers. It is therefore necessary that the local Governments should have full means of dealing with them, not merely in extreme cases, and by a transcendental act of authority, but in the current and ordinary exercise of its functions and through the medium of laws carefully made and promptly and impartially administered. On no other condition could the experiment of free ingress of Europeans be safely tried.

10. While new legislative powers are conferred on the Supreme Government, the legislative powers hitherto possessed by the Subordinate Governments are to be modified and abridged. On this topic we need hardly refer to the discussions which have of late years taken place both in India and in England on the best mode of constituting the Indian Governments ; the decisive consideration with the legislature probably was the necessity of strengthening the Supreme Government in consequence of the free admission of Europeans into the interior of the country.

11. In whatever way the Europeans may disperse themselves throughout India, they will be united together by a powerful sympathy and will in fact maintain a constant communication. It is therefore both just and natural that they should live under the control of the same laws; nor would it be easy to legislate in reference to a part of them without keeping in view the whole body. It is specially to be recollected that the task of legislating in India for Europeans naturalized in the country and not dependent on the Government is altogether new and experimental. The difficulties of this task may have been overrated, but undoubtedly they are not slight or evanescent, and they would be much aggravated if the different Governments were all armed with co-equal and

independent legislative powers, and if they were to proceed to exercise such powers at their discretion respectively, and perhaps with very different views and according to inconsistent principles. While, therefore, it is important in reference to the admission of Europeans into the interior, that the subordinate Governments, commanding as they do different regions of the empire, should have their executive capacities and even that a new station should be added to them in the north of India, yet there seem good reasons for collecting and uniting all the functions of legislation in one central and metropolitan government.

15. The first principle is that no law, except one of an occasional kind, or arising out of some pressing emergency, should be passed without having been submitted to mature deliberation and discussion.

16. * * * In this country the length and publicity of the process by which a law passes from the shape of a project into that of a complete enactment, and the conflict of opinions through which the transit must be made constitute a security against rash or thoughtless legislation. There may indeed be exceptions, for there are cases in which the pressure of popular feeling forces a law prematurely into existence.

* * * When deem it of great moment, therefore, that you should by positive rules provide that every project or proposal of a law shall travel through a defined succession of stages in Council before it is finally adopted; that at each stage it shall be amply discussed; and that the intervals of discussion shall be such as to allow to each Member of Council adequate opportunity of reflection and enquiry.

18. * * * Provision must of course be made for extreme cases, and in the last resort the ultimate power specifically reserved by the 49th Clause of the new Act to the Governor-General of acting singly and on his own responsibility, will afford a refuge from the possible evil of distracted counsels and infirm resolutions. But the occasions which compel the use of these extreme remedies rarely occur in well-governed states; and in general, we are persuaded that in a punctual, constant, and even fastidious adherence to your ordinary rules of practice, you will find the best security, not only for the efficiency, but also for the despatch of your legislative proceedings.

19. While thus considering the deliberative part of your duties, our attention is necessarily led to one important alteration which the Act has made on the constitution of the Supreme Council. We allude to the appointment of the fourth ordinary member of Council, as described in the 40th Clause.

20. In the first and simplest view of this remarkable provision, the presence and assistance of the fourth counsellor must be regarded as a substitute for that sanction of the Supreme Court of Judicature which has hitherto been necessary to the validity of regulations affecting the inhabitants of the Presidencies, but which under the new system, will no longer be required. It is, however, evident that the view of the legislature extended beyond the mere object of providing such a substitute.

21. The concurrence of the fourth member of Council may be wanting to a law, and the law may be good still, even his absence at the time of enactment will not vitiate the law, but Parliament manifestly intended that the whole of his time and attention, and all the resources of knowledge and ability which he may possess, should be employed in promoting the due discharge of the legislative functions of the Council. He has indeed no pre-eminent control over the duties of this department, but he is peculiarly charged with them in all their ramifications. His will naturally be the principal share, not only in the task of giving shape and connexion to the several laws as they pass, but also in the mighty labour of collecting all that local information, and calling into view all those general considerations which belong to each occasion, and of thus enabling the Council to embody the abstract and essential principles of good government in regulation adapted to the peculiar habits, character, and institutions of the vast and infinitely diversified people under their sway.

22. It will be observed that the fourth member is declared not to be entitled to sit or vote in the Council, except at meetings for the making of laws and regulations.

23. We do not, however, perceive that you are precluded by anything in the law from availing yourselves of his presence without his vote on any occasion on which you may think it desirable; and on many, if not all, of the subjects on which your deliberation may turn, an intimate knowledge of what passes in Council will be of essential service to him in the dis-

charge of his legislative functions. Unless he is in habits of constant communication and entire confidence with his colleagues, unless he is familiar with the details of internal administration, with the grounds on which the Government acts, and with the information by which it is guided, he cannot possibly sustain his part in the legislative conferences or measures with the knowledge, readiness, and independence essential to a due performance of his duty.

24. * * * It should, we think, be open to every member of Council, to propose any law or regulation for adoption, and his proposal should be taken into discussion, even though he should, at the outset, stand alone in his opinion. In deliberative assemblies differently and more numerously constituted no proposition can be entertained which is not seconded, as well as moved. The reasonableness of the rule is obvious, but in the deliberations of a small and select body, we do not think that the same condition should be enforced.

25. * * * Another point, not less important, is to provide that in the work of legislation, you shall as far as may be practicable avail yourselves of external aid. Persons who are not members of your body may afford you valuable assistance, either by suggesting laws that are required, or by pointing out what is improbable or objectionable, in the drafts or projects of laws under consideration.

26. With respect to the suggestion of new laws, the Act (by Clause 66) expressly requires you to take into consideration the drafts or projects of laws or regulations which any of the subordinate Governments may propose to you. * * * The Act also, we need not say, contemplates constant communications from the Law Commissioners which communications are intended, to furnish the grounds or the materials for legislation. Useful intimations may also be derived from the Public Boards, from the Judges of the Supreme Court, from all persons, whether Native or European, invested with a judicial character or holding official stations of eminence, from all Colleges and other constituted bodies, perhaps from the Native heads of villages, or even private individuals of personal weight and influence. We do not mean that these Parties should by law be entitled to call on the legislature to discuss such suggestions, or to come to any decision respecting them. No such right belongs to those who petition to the Houses of Parliament.

in this country. We mean only that their suggestions should be received and should even be invited.

27. Not less material is the other object to which we have adverted, that of taking the opinions of the community, or of influential persons, on the projects of law under consideration; an advantage which in England is secured by the publicity of the discussions in Parliament, and by the time which the passing of an Act requires; but which can be obtained in India only by making special provision for it. * * *

28. * * * All, therefore, that we should require would be that, with such exceptions as you may deem requisite with a view to the progress of current and ordinary legislation, the project of intended laws shall be so made known to the Public as to afford opportunities to the persons or classes whom they may particularly affect, to offer their comments or complaints to the legislature; and that the rule which you at any time prescribe to yourselves for the purpose shall be submitted to the consideration of the Authorities at home.

30. * * * The laws are now printed in English, in the language of the Courts, and in whatever is the prevalent language of the country. And copies of them are furnished to the several functionaries of Government. It would, however, be desirable, that they were more generally made known to the people. It will deserve your consideration what measures can be taken for that end. One thing at any rate can be done. Cheap copies in the language of the country ought to be everywhere ready for sale to all who have the desire to possess them.

33. Heretofore you have been invested with executive powers of superintendence over the legislation of the subordinate Presidencies. But as those Presidencies have had the right of legislating for themselves, your superintendence has been exercised only on rare and particular occasions. Now their legislative functions, with a reserve for certain excepted cases, are to be subordinate to those of the Supreme Government. The whole responsibility rests on you; and every law which has an especial reference to the local interests of any of those Presidencies, and every general law in respect of its particular bearing and operation on such local interests, ought to be pre-considered by you with as deep and as anxious attention as if it affected only the welfare of the Presidency in which you reside. You may indeed, as we have already observed, receive

from the subordinate Presidencies suggestions or drafts of laws and these it may frequently be expedient to invite. But in no instance will this exempt you from the obligation of so considering every provision of the law as to make it really your own, the offspring of your own minds, after obtaining an adequate knowledge of the case. We say this knowing as we do, how easily the power of delegating a duty, degenerates into the habit of neglecting it ; and dreading lest at some future period, under the form of offering projects of laws, the subordinate Presidencies should be left to legislate for themselves, with as little aid from the wisdom of the Supreme Government as when the power of legislating was ostensibly in their own hands.

37. In contemplating the extent of legislative powers thus conferred immediately on our Supreme Government, and in the second instance on ourselves, in considering that in the use of this power the difference between the worst and the best of Governments mainly depends—in reflecting how many millions of men may, by the manner in which it shall in the present instance be exercised, be rendered happy or miserable—in adverting to the countless variety of interests to be studied and of difficulties to be overcome, in the execution of this mighty trust, we own that we feel oppressed by the weight of the responsibility under which we with you are conjointly laid. Whatever means or efforts can be employed on the occasion, whatever can be effected by free and active discussion, or by profound and conscientious deliberation ; whatever aids can be derived from extrinsic council or intelligence, all at the utmost will be barely commensurate with the magnitude of the sphere to be occupied, and of the service to be performed. We feel confident that to this undertaking your best thoughts and care will be immediately and perseveringly applied ; and we invite the full, the constant, and the early communication of your sentiments in relation to it. On our part, we can venture to affirm that no endeavour shall be wanting in promoting your views ; and perfecting your plans. Others also who are in a situation, by advice or exertion, to assist in the work, will contribute to it, we hope to the extent of their power, and we trust that by the blessing of Divine Providence on our united labours, the just and beneficent intentions of this country, in delegating to our hands the legislative as well as the executive administration of the mightiest, the most important, and the most interesting of its transmarine possessions will be happily accomplished.

39. For this subject we particularly refer you to the 43rd, 46th, 81st, 82nd, 83rd, 84th, 85th and 86th clauses of the Act.

40. These Clauses bring into view the legislative duties which will be imposed on you by the free admission now to be afforded to British subjects into the interior of India, among the first of which duties will be the obligation of providing, as directed by the 85th clause, for the protection of the natives from insult and outrages in their persons, properties, religions and opinions.

41. The importance and indeed the absolute necessity of extending to the natives such protection we need not demonstrate. Though English capitalists settling in the country, if they are governed by an enlightened sense of their own interests, will see the importance of acquiring the confidence of their native neighbours by a just and conciliatory course of conduct, yet even some of this class may yield to the influence of worse motives. Eagerness for some temporary advantages, the consciousness of power, the pride of a fancied superiority of race, the absence of any adequate check from public opinion, the absence also in many cases of the habitual check supplied by the stated and public recurrence of religious observances—these and other causes may occasionally lead even the settled resident to be less guarded in his treatment of the people than would accord with a just view of his situation. Much more may acts of outrage or insolence be expected from casual adventurers cut off possibly from Europe by the consequences of previous misconduct, at all events, released from the restraints which in this country the overawing influence of society imposes on all men not totally abandoned. The greater necessity is there that such persons should be placed under other checks.

43. Whatever provision may be made against occasional abuse, the views of Parliament in opening the interior of India, to Europeans are to be carefully kept in recollection. The Clauses which effect this great alteration in our Indian policy, are not *restraining* but *enabling* enactments. The legislature has avowedly proceeded on the principle that generally speaking and on the whole, the increased entrance of Europeans into the interior of India, their increased power of blending their interests with those of the country, and their increased opportunity of freely associating with the natives, will prove bene-

ficial to the native people, and promotive of their general improvement and prosperity. That which the legislature has thus assumed is also to be assumed by us and by you. Your laws and regulations, therefore, and also all your executive proceedings in relation to the admission and settlement of Europeans, like that law of the Imperial Legislature out of which they grow, must generally speaking and on the whole be framed on a principle not of restriction but of encouragement. The conditions which you shall see fit to impose on private persons coming from Europe for the highly proper purpose of placing and keeping them within the supervision of an all-seeing Police, must not be more than necessary for that object. The regulations which you shall make with the just and humane design of protecting the natives from ill-treatment must not be such as to harass the European with any unnecessary restraints or to give him uneasiness by the display of improper distrust and suspicion. Laws passed in such a spirit tend to produce the very mischiefs which they aim at preventing. To the evil-minded they suggest evil; they furnish the discontented with materials or pretexts for clamor, and they irritate the peaceably disposed into hostility.

57. The means which the present Act affords you of applying the remedy referred to are set forth in the 43rd, 45th and 46th Clauses. By the first of these, the laws and regulations which you make under the Act are to bind all Courts of Justice whether chartered by the King or not, and their jurisdictions, and also all places and things throughout the territories of British India. By the 45th Clause your Laws and Regulations are to be taken notice of by all Courts of Justice within those territories and they need not be registered in any Court. By the 46th Clause you are restrained from making without our previous sanction any Law or Regulation which shall empower any Courts other than those chartered by the king to sentence British subjects, or their children to death, or which shall abolish the Courts so chartered. In respect to the last-mentioned clause we certainly should not without much consideration give our sanction to the important changes there referred to; and for the present those changes may be regarded as out of view. * * * * Your Laws and Regulations no longer require to be authenticated by registration in the Supreme Courts, and they, notwithstanding bind those Courts and must be noticed by them without being specially pleaded or proved. This is the known privilege of sovereign legislation. Beyond

this you are expressly authorized to make laws for the jurisdiction of the Supreme Courts, a most material qualification as we conceive of the inability to abolish them; since in virtue of this authority you may reduce the extent or circumscribe the sphere of their judicial power in any degree consistent with their retaining their essential character.

58. With regard to British-born subjects, when the Act says that you shall not pass laws making them capitally punishable otherwise than by the King's Courts, it does by irresistible implication authorize you to subject them in all other criminal respects and in all civil respects whatever to the ordinary tribunals of the Country. We know not indeed that there is any crime for which within this Clause, they may not be made amenable to the Country tribunals, provided that the law in giving those tribunals jurisdiction over the crime, shall empower them to award to it some other punishment than death.

59. From these premises there are some practical inferences to which we must call your attention. First we are decidedly of opinion that all British-born subjects throughout India should forthwith be subjected to the same tribunals with the Natives. It is of course implied in this proposition that in the interior they shall be subjected to the Mofussil Courts. So long as Europeans, penetrating into the interior held their places purely by the tenure of sufferance, and bore in some sense the character of delegates from a foreign power, there might be some reason for exempting them from the authority of those judicatures to which the great body of the inhabitants were subservient. But now that they are to become inhabitants of India, they must share in the judicial liabilities as well as in the civil rights pertaining to that capacity, and we conceive that their participation in both should commence at the same moment.

60. It is not merely on principle that we arrive at this conclusion. The 85th Clause of the Act to which we have before referred, after reciting that the removal of restriction on the intercourse of Europeans with the country will render it necessary to provide against any mischiefs or dangers that may thence arise, proceeds to direct that you shall make laws for the protection of the Natives from insult and outrage—an obligation which in our view you cannot possibly fulfil, unless you render both Natives and Europeans responsible to the same judicial control. There can be no equality of protection where justice is not equally and on equal terms accessible to all.

61. In laying down this proposition however we must guard against misconception. Though an Englishman be made amenable to the same tribunal with the Native, and though his rights be placed under the same supervision and protection, it does not follow that those rights are to be determined by the same rule. It is not necessary for example that the property of an Englishman should descend by the Indian rather than by the English Law of Succession. In cases of marriage the same tribunal may observe one rule in respect to the Englishman, another in respect to the Mussulman, and a third in respect to the Hindoo. Even in criminal cases, where such distinctions are least desirable, they may yet sometimes be necessary, since it is conceivable that what would operate as a severe penalty to a Hindoo, would be felt as none by an Englishman. But variances like these do not affect the main principle. The maxim still remains that justice is to be distributed to men of every Race, Creed, and Color, according to its essence, and with as little diversity of circumstances as possible.

62. Secondly, in looking forward to the effect of making Englishman triable by the Mofussil Courts you will do well to take into your renewed and very serious consideration a question often mooted, and even partially discussed, though as yet undecided. We mean whether or not the use of Juries in Criminal Trials should be introduced into the Provinces. We would not blindly yield to the opinion or the prejudice that it is the inalienable right of an Englishman under a Criminal accusation to be tried by a Jury. The only inalienable right of an accused Englishman is justice;—and if he resides in the Interior of India, he must be content with such justice as is dispensed to the Natives. But the prospect of an increased residence of Englishmen in the Interior, considering their known attachment to the principle of this Institution, forms an additional reason for the consideration of the expediency or inexpediency of adopting it generally.

63. Even, however, if it be so adopted, it is neither necessary nor expedient that the Jury Trial which may be established in India, should be an exact copy of that which subsists in England. Whatever may be the prejudices of Englishmen we strongly deprecate the transfer to India of all the peculiarities of our Criminal Judicature. We are not satisfied that these peculiarities are virtues. There is no inherent perfection in the number twelve, nor any mysterious charm in an enforced un-

animity of opinion, and legislating for the Indian people, we should be apt to seek for precedents in the ancient usages of India rather than in the modern practice of England. The system of Criminal Judicature which you adopt must be formed with an especial regard to the advantage of the Natives, rather than of the New Settlers, not because the latter are in themselves less worthy of consideration, but because they are comparatively few, and Laws and Institutions exist for the benefit not of the few but of the many.

76. We have now completed all that we deem it necessary to say at present regarding the legislation to be exercised, and the laws to be made, in India. We will proceed to consider the new relation in which you will be placed with reference to the subordinate Governments, not by means of your legislative supremacy but in other respects.

77. The words of the 39th Clause are very comprehensive: 'The superintendence, direction, and control of the whole civil and military Government of all the said territories and revenues in India shall be vested in the said Governor-General in Council.'

78. The powers here conveyed, when the words are interpreted in all their latitude, include the whole powers of Government. And it is of infinite importance that you should well consider and understand the extent of the responsibility thus imposed upon you. The whole civil and military Government of India is in your hands, and for what is good or evil in the administration of it, the honour or dishonour will redound upon you.

79. With respect to the exercise of your legislative powers in the several Presidencies, what we have adduced of a general nature on that subject will, for the present, suffice.

80. With respect to the other powers which you are called upon to exercise, it will be incumbent upon you to draw, with much discrimination and reflection, the correct line between the functions which properly belong to a local and subordinate Government* and those which belong to the general Government ruling over and superintending the whole.

* The only Local Governments which then existed were the Presidencies of Madras and Bombay. The Bengal Presidency was at that time directly under the Governor-General in Council.

81. When this line is improperly drawn, the consequence is either that the general Government interferes with the province of the local Government, and enters into details which it cannot manage, and which preclude its consideration of more important objects; or that it withdraws its attention from the evidence of many things which may be right or wrong in the general course of the local administration, and thus partially deprives the State of the benefit of its superintendence and control.

82. It is true that the former Acts of Parliament, which made the Local Government of Bengal a supreme Government, gave the Governor-General in Council a control and superintendence over the other Presidencies as complete and paramount as it was possible for language to convey, and this we must assume to have been the intention of the Legislature. In practice, however, the Supreme Government made little exercise of its superintending authority, and the result has been that even that little exercise of it has been generally made when it was too late to be made with real effect, namely, after the subordinate Government had taken its course; thus losing the character of control and responsibility, and retaining only that of *ex post facto* intervention—a sort of intervention always invidious, and in most cases nothing but invidious, because what was already done, however open to censure, was beyond the reach of recall or correction.

83. It is evidently the object of the present Act to carry into effect that intention of the Legislature to which we have alluded. Invested as you are with all the powers of Government over all parts of India, and responsible for good government in them all, you are to consider to what extent, and in what particulars, the powers of Government can be best exercised by the local authorities, and to what extent, and in what particulars, they are likely to be best exercised when retained in your own hands. With respect to that portion of the business of Government which you fully confide to the local authorities, and with which a minute interference on your part would not be beneficial, it will be your duty to have always before you evidence sufficient to enable you to judge if the course of things in general is good, and to pay such vigilant attention to that evidence as will ensure your prompt interposition whenever anything occurs which demands it.

84. In general it is to be recollected that in all cases where there are gradations of authority the right working of the

system must very much depend on the wisdom and moderation of the supreme authority and also of the subordinate authorities. This is especially true of a system so peculiar as that of our Indian Empire. It was impossible for the Legislature, and it is equally so for us in our instructions, to define the exact limits between a just control and a petty, vexatious, meddling interference. We rely on the practical good sense of our Governor-General in Council, and of our other Governors, for carrying the law into effect in a manner consonant with its spirit, and we see no reason to doubt the possibility of preserving to every subordinate Government its due rank and power, without impairing or neutralising that of the highest.

85. The subordinate Governments will correspond directly with us as formerly, but we think that you should immediately receive copies of all their more important letters to us, both as part of the evidence of their proceedings which you should have before you, and that we may have the benefit of the observations which you may have to make, and which we desire that you will always despatch to us with the smallest possible delay.

86. It will be for you to determine what part of their records, or what other documents, it will be necessary for you regularly to receive as evidence of the general proceedings of the subordinate Governments, and as an index to the other documents which you will have occasion to call for when anything occurs which you desire to investigate.

96. Nothing is fixed by the Legislature with regard to the seat of Government in the Agra Presidency. The City of Agra is pointed out by the name adopted, and by the obvious advantage of elevating to this distinction, a capital of great antiquity and celebrity, but the consideration of preponderant convenience is not therefore excluded. The points of chief importance are, the salubrity of the place, its locality with respect to the territories which the Presidency is to comprise, and the expense which will be required in Buildings and Roads. Comparative advantage in these respects should determine the choice.

97. The Legislature has left the seat of the Supreme Government, both permanent and temporary, to its own choice. The important circumstance, however, of making the Governor-General local Governor of Bengal, renders it necessary that his habitual residence should be in the place where he can best perform both sets of his duties, that is, in Bengal. We have no doubt, therefore, that you will concur with us in thinking the

seat of the Supreme Government should be at Calcutta, where your records are now deposited, and where the requisite Buildings, public and private, already exist.

98. It is true the Governor-General may appoint a Deputy as Governor of Bengal. But this arrangement would need to be permanent, if the seat of the Supreme Government were not in Bengal ; and in that there would be considerable difficulty. The Governor can appoint as his Deputy, only one of the Ordinary Members of the Supreme Council. But if one of the four Ordinary Members of the Supreme Council is taken away, three only remain. By express enactment also it is established, that three Ordinary Members shall be present to constitute a Legislative Council. But the inconvenience of being unable to transact business without the presence of every Member of the Council must be obvious, especially in India, where the health of Europeans is so precarious.

100. There is one function of Government, with respect to which it may be a question in what hands it should be lodged ; we mean the regulation and management of the external relations. With respect to the great questions of peace and war, there is no room for deliberation. It is very obvious they should be determined wholly by the superintending Government which alone has under its eye the whole of the relations of the State. We think indeed that the diplomatic interests of the State will be placed with most advantage entirely in the hands of the Supreme Government ; and the patronage connected with that department will of course follow the duties. It does not follow, nor do we mean, that if, from proximity, or any other cause, a particular Residency, or a particular negotiation, can be better superintended by a local, than the general Government, the general Government should not delegate that superintendence.

103. By clause 87 of the Act it is provided that no person by reason of his birth, creed, or colour, shall be disqualified from holding any office in our service.

104. It is fitting that this important enactment should be understood in order that its full spirit and intention may be transfused through our whole system of administration.

105. You will observe that its object is not to ascertain qualification, but to remove disqualification. It does not break

down or derange the scheme of our government as conducted principally through the instrumentality of our regular servants, civil and military. To do this would be to abolish or impair the rules which the legislature has established for securing the fitness of the functionaries in whose hands the main duties of Indian administration are to be reposed—rules to which the present Act makes a material addition in the provisions relating to the college at Haileybury. But the meaning of the enactment we take to be that there shall be no governing caste in British India; that whatever other tests of qualification may be adopted, distinctions of race or religion shall not be of the number; that no subject of the King, whether of Indian or British or mixed descent, shall be excluded either from the posts usually conferred on our uncovenanted servants in India, or from the covenanted service itself, provided he be otherwise eligible consistently with the rules and agreeably to the conditions observed and exacted in the one case and in the other.

106. In the application of this principle, that which will chiefly fall to your share will be the employment of natives, whether of the whole or the mixed blood, in official situations. So far as respects the former class—we mean natives of the whole blood—it is hardly necessary to say that the purposes of the legislature have in a considerable degree been anticipated; you well know, and indeed have in some important respects carried into effect, our desire that natives should be admitted to places of trust as freely and extensively as a regard for the due discharge of the functions attached to such places will permit. Even judicial duties of magnitude and importance are now confided to their hands, partly no doubt from considerations of economy, but partly also on the principles of a liberal and comprehensive policy; still a line of demarcation, to some extent in favour of the natives, to some extent in exclusion of them, has been maintained; certain offices are appropriated to them, from certain others they are debarred—not because these latter belong to the covenanted service, and the former do not belong to it, but professedly on the ground that the average amount of native qualifications can be presumed only to rise to a certain limit. It is this line of demarcation which the present enactment obliterates, or rather for which it substitutes another, wholly irrespective of the distinction of races. Fitness is henceforth to be the criterion of eligibility.

107. To this altered rule it will be necessary that you

should, both in your acts and your language, conform; practically, perhaps, no very marked difference of results will be occasioned. The distinction between situations allotted to the covenanted service and all other situations of an official or public nature will remain generally as at present.

108. Into a more particular consideration of the effects that may result from the great principle which the legislature has now for the first time recognised and established we do not enter, because we would avoid disquisition of a speculative nature. But there is one practical lesson which, often as we have on former occasions inculcated it on you, the present subject suggests to us once more to enforce. While, on the one hand, it may be anticipated that the range of public situations accessible to the natives and mixed races will gradually be enlarged, it is, on the other hand, to be recollected that, as settlers from Europe find their way into the country, this class of persons will probably furnish candidates for those very situations to which the natives and mixed race will have admittance. Men of European enterprise and education will appear in the field; and it is by the prospect of this event that we are led particularly to impress the lesson already alluded to on your attention. In every view it is important that the indigenous people of India, or those among them who by their habits, character, or position may be induced to aspire to office, should as far as possible, be qualified to meet their European competitors.

Thence, then, arises a powerful argument for the promotion of every design tending to the improvement of the natives, whether by conferring on them the advantages of education, or by diffusing among them the treasures of science, knowledge, and moral culture. For these desirable results, we are well aware that you, like ourselves, are anxious, and we doubt not that, in order to impel you to increased exertion for the promotion of them, you will need no stimulant beyond a simple reference to the considerations we have here suggested.

109. While, however, we entertain these wishes and opinion, we must guard against the supposition that it is chiefly by holding out means and opportunities of official distinction that we expect our Government to benefit the millions subjected to their authority. We have repeatedly expressed to you a very different sentiment. Facilities of official advancement can little affect the bulk of the people under any Government, and perhaps least under a good Government. It is not by holding

out incentives to official ambition, but by repressing crime, by securing and guarding property, by creating confidence, by ensuring to industry the fruit of its labour, by protecting men in the undisturbed enjoyment of their rights, and in the unfettered exercise of their faculties, that Governments best minister to the public wealth and happiness. In effect, the free access to office is chiefly valuable when it is a part of general freedom.

VIII. THE CHARTER ACT OF 1853.

(16 & 17 Vict. C. 95.)

A.

AN ACT TO PROVIDE FOR THE GOVERNMENT OF INDIA.

(20th August, 1853.)

The provision of 3 & 4 W. 4. c. 85 for creating a Presidency of Agra which has been suspended by 5 & 6 W. 4. c. 52., to remain so until the same be revoked.

15. The provisions of the said Act of the Third and Fourth Years of King William the Fourth relating to the Division of the Presidency of Fort William in Bengal into Two Presidencies, and to the Measures consequent thereupon, which have been suspended under the Authority of the Act of the Session holden in the Fifth and Sixth Years of King William the Fourth, Chapter Fifty-two, shall remain suspended until the Court of Directors, under the Direction and Control of the Board of Commissioners for the Affairs of India, shall otherwise direct ; and during the Continuance of such Suspension the Provisions of such last-mentioned Act, authorizing the Appointment of a Lieutenant Governor for the North-Western Provinces, then under the Government of the Presidency of Fort William in Bengal, and the Appointments and Arrangements made thereunder, shall remain in full force.

A separate Governor may be appointed for the Presidency of Bengal :

16. It shall be lawful for the said Court of Directors, under such Direction and Control as aforesaid, if and when they think fit, at any Time after the passing of this Act, to declare that the Governor-General of India shall not be Governor of the Presidency of Fort William in Bengal, but that a separate Governor shall be appointed for such Presidency, and in such Case a separate Governor shall be

from Time to Time appointed for such Presidency accordingly, in manner provided by the said Act of the Third and Fourth Years of King William the Fourth, in the Case of Vacancies happening in the offices of the Governors of the Presidencies of Fort Saint George and Bombay; and from and after the Appointment of such Governor, the Power by the said Act vested in the Governor-General of India of appointing a Deputy Governor of the said Presidency of Fort William in Bengal shall cease; and unless and until a separate Governor of such Presidency shall be constituted as aforesaid, it shall be lawful for the Court of Directors, under such Direction and Control as aforesaid, if and when they think fit, at any Time after the passing of this Act, to authorize and direct the Governor-General of India in Council to appoint from Time to Time any servant of the said Company who shall have been Ten years in their Service in India to the Office of Lieutenant-Governor of such Part of the Territories under the Presidency of Fort William in Bengal as for the Time being may not be under the Lieutenant Governor of the said North-western Provinces, and to declare and limit the Extent of the Authority of the Lieutenant Governor to be so appointed.

In the meantime a Lieutenant Governor may be appointed.

17. It shall be lawful for the Court of Directors of the said Company, under such Direction and Control, if and when they think fit, to constitute One new Presidency within the Territories subject for the Time being to the Government of the said Company, and to declare and appoint what Part of such Territories shall be subject to the Government of such new Presidency; and unless and until such new Presidency be constituted as aforesaid, it shall be lawful for the said Court of Directors, under such Direction and Control as aforesaid, if and when they think fit, to authorize (in addition to such Appointments as are herein-before authorized to be continued and made for the Territories now and heretofore under the said Presidency of Fort William) the Appointment by the said Governor-General in Council of a Lieutenant-Governor for any Part of the Territories for the Time being subject to the Government of the said Company, and to declare for what Part of the said Territories such Lieutenant Governor shall be appointed, and the Extent of his Authority, and from Time to Time to revoke or alter any such Declaration.

Power to Directors to create one new Presidency or to authorise Governor-General to appoint a new Lieutenant Governorship.

Power to alter from time to time the limits of Presidencies and Lieutenant Governorships.

18. It shall be lawful for the said Court of Directors, under such Direction and Control as aforesaid, from Time to Time to declare and appoint what Part or Parts of the Territories for the Time being subject to the Government of the said Company shall be or continue subject to each of the Presidencies and Lieutenant-Governorships for the Time being subsisting in such Territories, and to make such Distribution and Arrangement or new Distribution and Arrangement of such Territories into or among such Presidencies or Lieutenant Governorships as to the said Court of Directors, under such Direction and Control as aforesaid, may seem expedient.

The enactments as to existing Presidencies to extend to new Presidencies.

19. The Provisions of the said Act of the Third and Fourth Years of King William the Fourth, as amended by this Act, and all other Provisions now in force for the Administration of the Executive Government of the Presidencies of Fort Saint George and Bombay respectively, and authorizing the Revocation and Suspension of the Appointment of Councils and the Reduction of the Number of Councillors in such Presidencies respectively, and as to the Powers, Duties, Functions, and Immunities of the Governors of such Presidencies respectively, and of such Governors in their respective Councils, and concerning or applicable to the Appointment and provisional Appointment of Governors and Members of Council of the said Presidencies respectively on Vacancies, and otherwise providing for Vacancies in the office of any such Governor, and concerning the Removal and Dismissal of such Governors and Members of Council, and the Revocation of Appointments and provisional Appointments of Governors and Members of Council of such Presidencies, and concerning the Salaries and Emoluments of such Governors and Members of Council, shall extend and be applicable in like manner to and in the Case of any new Presidency to be established as aforesaid under this Act, and also to and in the Case of the Presidency of Agra, in case the same be constituted under the Provisions of the said Act of the Third and Fourth Years of King William the Fourth; and the said Provisions concerning Appointments of Governors and Members of Council on Vacancies, as amended by this Act, shall extend and be applicable to and for the first Appointment of a Governor and Members of Council of such new Presidency and the Presidency of Agra aforesaid.

20. Every Appointment by the Court of Directors of any Ordinary Member of the Council of India, or of any Member of the Council of any Presidency in India, shall be subject to the Approbation of Her Majesty, to be signified under Her Royal Sign Manual countersigned by the President of the Board of Commissioners for the Affairs of India.

All appointments of Members of Council to be approved of by Her Majesty.

21. So much of the said Act of the Third and Fourth Years of King William the Fourth as provides that the Fourth Ordinary Member of the Council of India shall not be entitled to sit or vote in the said Council, except at Meetings thereof for making Laws and Regulations, shall be repealed.

As to excluding Fourth Ordinary Member from certain Meetings.

22. For the better Exercise of the Powers of making Laws and Regulations, now vested in the Governor-General of India in Council, the several Persons here-in-after mentioned shall, in addition to and together with such Governor-General and the Members of the said Council, under the said Act of the Third and Fourth Years of King William the Fourth, be Members of the said Council of India for and in relation to the Exercise of all such Powers of making Laws and Regulations as aforesaid, and shall be distinguished as Legislative Councillors thereof; (that is to say,)

Legislative councillors added to the Council of India for making Laws and Regulations;

One member for each Presidency and Lieutenant-Governorship for the Time being established in the said Territories, to be appointed from Time to Time by the Governor of such Presidency and the Lieutenant-Governor of such Lieutenant-Governorship respectively, from among the Persons having been or being at the Time of their Appointment in the Civil Service of such Company within such Presidency or Lieutenant-Governorship, and who shall have been Ten Years in the Service of the said Company:

The Chief Justice of the Supreme Court of Judicature at Fort William in Bengal, or the Chief Justice or Chief Judge of any Court of Judicature hereafter to be constituted in the said Territories to or in which the Powers of such Supreme Court may be transferred or vested:

One of the other Judges of such Supreme Court, or One of the Judges appointed by Her Majesty of any such future Court as aforesaid, to be named by the said Governor-General.

And it shall be lawful for the Court of Directors, if they think it expedient, under the Direction and Control of the Board of Commissioners for the Affairs of India, to authorize and direct the Governor-General of India to appoint from Time to Time, in addition to such Legislative Councillors as aforesaid, Two Persons, to be selected by the said Governor-General, having been Ten Years in the Service of the Company, to be Legislative Councillors of the said Council under this Act: Provided always, that the Legislative Councillors added to the Council of India by or under this Act shall not be entitled to sit or vote in the said Council, except at Meetings thereof for making Laws and Regulations.

but only to vote at meetings for that purpose.

23. It shall be lawful for such Governor-General to appoint any Member of the said Council to be Vice-President thereof at Meetings of the said Council for making Laws and Regulations who shall preside therein at such Meetings in the Absence of such Governor-General, and in the Absence of such Vice-President the senior Ordinary Member of the Council of India there present shall preside therein; and the Powers of making Laws or Regulations vested in the said Governor-General in Council shall be exercised only at meetings of the said Council, at which such Governor-General or Vice-President or some Ordinary Member of Council, and Six or more Members of the said Council shall be assembled, the Chief Justice, or Chief Judge, or such other Judge of the Supreme Court or such other Court as aforesaid, or The Fourth Ordinary Member of the said Council of India, being One; and in every Case of Difference of Opinion at Meetings of the said Council for making Laws and Regulations, where there shall be an Equality of Voices, the Governor-General, or in his Absence the Vice-President, and in the absence of the Governor-General and the Vice-President such senior Ordinary Member of Council there present and presiding, shall have Two Votes or the Casting Vote.

Appointment of a Vice-President of Council to preside at meetings in absence of Governor-General; Quorum for legislative business.

24. Provided always, That no Law or Regulation made by the said Council shall have Force or be promulgated until the same has been assented to by the said Governor-General, whether he shall or shall not have been present in Council at the making thereof.

Governor-General's assent requisite to validity of laws.

No law, etc. invalid by reason of its affecting any Prerogative of the Crown.

26. No Law or Regulation made by the Governor-General in Council shall be invalid by reason only that the same affects any Prerogative of the Crown, provided such Law or Regulation shall have received the previous Sanction of the Crown, signified under the Royal Sign Manual of Her Majesty, countersigned by the President of the Board of Commissioners for the Affairs of India.

Salary of President of Board of Control.

33. 'And whereas by the said Act of the Third and Fourth Years of King William the Fourth it is enacted, that the President of the Board of Commissioners for the Affairs of India, but no other Commissioner as such, and the Secretaries and other Officers, shall be paid by the said Company such fixed Salaries as His Majesty shall, by any Warrant or Warrants under His Sign Manual, countersigned by the Chancellor of the Exchequer for the Time being, direct :' Be it enacted, That such fixed Salary of the said President of the Board of Commissioners shall in no Case be less than the Salary which shall be paid to One of Her Majesty's Principal Secretaries of State ; and that only One of the said Secretaries to the said Board shall be capable of being elected for sitting and voting in Parliament.

Salaries.

35. There shall be paid to the several Officers hereinafter named the several annual Salaries set against the Names of such Officers respectively, subject to such Reduction as the Court of Directors, with the Sanction of the said Board, may from Time to Time think fit ; (that is to say,)

To the Commander-in-Chief of the Forces in India, One hundred thousand Company's Rupees, in lieu of all other Pay and Allowances :

To each Lieutenant-Governor, One hundred thousand Company's Rupees :

To each Ordinary Member of the Council of India, Eighty thousand Company's Rupees :

To each Legislative Councillor of the Council of India (not holding any other Office), Fifty thousand Company's Rupees :

The several Salaries aforesaid to be subject to the Provisions and Regulations of the said Act of the Third and Fourth

Years of King William the Fourth, concerning the Salaries thereby appointed : Provided always, that the Salary of any such Officer appointed before the passing of this Act shall not under this Enactment be reduced.

B

EXTRACTS FROM SIR CHARLES WOOD'S SPEECH.

In moving (June 3, 1853) for leave to bring in a Bill for the Government of India, SIR CHARLES WOOD, in the course of a long speech, said :—

"I need not trouble the House with any lengthened remarks upon the subject of the position of the Governor-General, because, according to the concurrent testimony of all the witnesses, there is not much change required. LORD DALHOUSIE is of opinion that no change is necessary. The questions that have arisen on more than one occasion as to the relative powers of the Governor-General and his Council have been settled by the opinions of the law officers here, and the orders which have been sent from the Court of Directors ; and it seems quite unnecessary to make any change in this respect. The only alteration in the position of the Governor-General which we propose to make is this. It appears from the whole of the evidence, that, entrusted as he is both with the Government of India and the Government of Bengal, he has more duties to attend to than he can fairly discharge. We propose, therefore, to relieve him of the administration of the province of Bengal. But we do not propose that any change should be made in the general control which he exercises over the whole of the Indian Government. Complaints have been made by some witnesses on behalf of the other Presidencies, of the unnecessary check on useful expenditure which they say is imposed upon them by the Governor-General. But this does not appear to be borne out by the facts. If the Governor-General was likely unfairly to favour one Presidency more than another, it would naturally be the one under his own immediate superintendence—that of Bengal. But the very reverse is the fact. It seems from a return which was prepared of the comparative expenditure for public works (and this was the question as to which the complaints were made), that the greatest expenditure for this purpose was in the North-western Provinces, the next in Madras, the

next in Bombay, and the least of all in Bengal. I do not think, however, that under any circumstances this is a matter for legislation, but is clearly a matter of discretion, which must be left to the Government in India to settle. Perhaps the existing limit on the expenditure to be incurred by the Governors of the minor Presidencies might be somewhat extended ; but it should not be forgotten that the wasteful expenditure of these Presidencies before the Act of 1833, was one of the main reasons stated by LORD GLENELG for the change in the Government of India, rendering absolutely necessary the control on the part of the Supreme Government.

Another point has been raised as to the absence of the Governor-General from Calcutta without his Council. That, again, I think, is a matter for discretion, and not for legislation. There are cases where it is desirable that the Governor-General should leave Calcutta. When LORD HARDINGE, for example, went up with the army, it was clearly for the benefit of India that he should do so ; and when LORD DALHOUSIE went up to the Punjab, it was also clearly for the interest of India that he should be there and not at Calcutta ; and there can be no doubt that his presence on the spot contributed essentially to the speedy and successful settlement of those districts. When the Governor-General goes away from Calcutta on such occasions, he generally takes with him, as it is called, the political and military powers, which enable him to direct the political movements in India ; but he leaves with his Council at Calcutta all the powers necessary for conducting the general administration of India. This portion of the duty of the Supreme Government they are perfectly competent to perform, and the inconvenience and interruption to business is avoided, which would inevitably result from moving the Council and all its attendant functionaries from the permanent seat of Government at Calcutta. No doubt, it is desirable that the Governor-General should be as much at Calcutta as possible ; but this is a matter, as I before said, which must be left to the discretion of the Governor-General and Council, for no fixed regulations can be laid down which might not subject both the Governor-General and the Empire to considerable inconvenience.

With regard to the Executive Council, we propose no change except that the members shall be named by the Court of Directors, with the check of the approbation of the Crown ; and that the fourth Ordinary Member, or the "legislative coun-

cillor," as he is called, shall sit and vote upon all subjects brought under the consideration of the Council.

The evidence is uniformly in favour of the establishment of a permanent Lieutenant-Governor in Bengal. The interests of the Presidency are stated in many cases to have suffered from the want of a permanent officer superintending the various matters connected with its administration ; and as it is desirable to relieve the Governor-General of the labour of this duty, and will clearly be to the advantage of the district, we propose that power should be taken to appoint a Lieutenant-Governor of Bengal. The evidence is, I think, in favour of maintaining the other Presidencies as they are at present. I think there is considerable advantage in sending out to these governments statesmen from England. The position of the Governors there is very different from that of the Lieutenant-Governor in the Upper Provinces. There is a large European population both at Bombay and Madras, a separate civil service, distinct armies, separate Courts of Judicature, and it is essential, I think, that the Governors in these places should be in a somewhat higher position than that of Lieutenant-Governor, and therefore we propose to leave these Presidencies with their Governors and their Councils as they stand, the appointment of Governor being open, as now, either to Indian servants or to statesmen from this country. LORD W. BENTINCK, one of the best of our Governors-General, had the advantage of having been at an early period Governor of Madras. We propose to continue the present power of having a Governor, or a Lieutenant-Governor in the North-Western provinces ; and we propose also to take power of creating, if it should hereafter be found desirable, a new Presidency or Lieutenant-Governorship in India ; and power also to regulate and alter from time to time the boundaries and limits of the respective Presidencies or Lieutenant-Governorships. In taking this power, I am looking, of course, to the large districts of the Punjab and the provinces of the Indus, which have been added to our territories since 1833 ; but I wish to leave it open to the Government to make any arrangement of the Provinces which may, after full consideration, be found most convenient for their due administration. I believe that this is all I need say about the Executive Government of India, except that the evidence, as far as it has been taken, is that it would not be desirable to place natives in the Council.

I come, now, to matters of legislation and legal reforms.

With respect to the Law Commission appointed in 1833, I have stated that no practical result followed from their labours, and that there are great defects in the law of India as it now stands. We think it very desirable that the mass of Reports and partly framed Acts which remain of the labours of that Commission should be put into a shape to be practically useful. We have the advantage of having in this country three or four gentlemen who took an active part in that Commission; and we propose, in the first place, from those gentlemen and two or three members of the English Bar, with other gentlemen who have kindly volunteered their services, to appoint a temporary Commission, whose labours shall be limited to two, or at most to three years, to digest and put into shape the Reports and Drafts which have emanated from that Commission. Of course I do not propose to invest them with any legislative power. The legislation of India must take place in India, and for that purpose we propose to improve and to enlarge the Legislative Council. We think, however, that the greatest advantage will be derived from having this mass of matter properly digested here by competent persons, put into the form of Draft Acts, and then sent out to be finally considered and passed by a competent Legislative Council in India.

Upon the manner of improving the Legislative Council the witnesses are unanimous. We propose to constitute a Legislative Council in this manner :—The Governor of each of the Presidencies, or the Lieutenant-Governor of each of the Lieutenant Governorships, will select one member of the civil service of his own district. These gentlemen, and also the Chief Justice and one of the Judges of the Supreme Court, or of the Court which, as I shall by and by explain, we propose to constitute, to be chosen by the Governor-General, will be members of the Legislative Council. These persons, in addition to the Executive Council as it is now constituted, will make a body of twelve, which we think will be sufficient for the purposes of legislation; but we propose to take a power of adding two civil servants, to be selected from all India by the Governor-General, if it should be found desirable. It was stated by LORD ELLENBOROUGH, in his evidence, that great inconvenience frequently arose in consequence of there being no member of the Legislative Council at Calcutta who knew anything of the manners and customs of other parts of India. This inconvenience will be removed by the selection of members from the other Presidencies; and although it is not proposed that these

members shall have seats in the Executive Council, there will be this further advantage, that they will supply information to the Governor-General and his Council in their executive capacity as to all matters connected with those parts of the country from which they come. The members of the civil service will bring with them that intimate acquaintance with the manners and customs of the people of India which is so requisite towards promoting sound legislation. There will also be the advantage of having in the Council three persons of legal education from England, two of the Judges of the Supreme or other Superior Court, and the Legislative Councillor. I hope that the result of this will be to introduce that improved spirit of legislation with which it is probable all those going from this country to India will be thoroughly imbued ; and with this admixture of English legal knowledge and skill, and of the intimate acquaintance possessed by the Indian civil servants of the customs and manners and wants of the different parts of India, we trust that a legislative body will be constructed fully equal to the discharge of its high and important duties. We propose to give the Governor-General a veto on their legislation, which he possesses indeed now when absent from his Council, but not when present.

IX. THE GOVERNMENT OF INDIA ACT, 1854.

(17 and 18 Vict., c. 77.)

AN ACT TO PROVIDE FOR THE MODE OF PASSING LETTERS PATENT AND OTHER ACTS OF THE CROWN RELATING TO INDIA, AND FOR VESTING CERTAIN POWERS IN THE GOVERNOR-GENERAL OF INDIA IN COUNCIL. (7TH AUGUST 1854.)

"Whereas Doubts may arise as to the mode of passing Letters Patent and other Acts of the Crown relating to India in certain cases where Her Majesty's Pleasure is to be signified under Her Royal Sign manual, and it is expedient to .remove such Doubts, and to provide an uniform Mode of proceeding in such cases : And whereas it is expedient to provide for the Administration by the Governor-General of India in Council of such Parts of the Territories for the Time being under the Government of the East India Company as it may not be advisable to include in any Presidency or Lieutenant-Governorship, and to vest in such Governor-General of India in Council

the Powers now vested in the Governor of the Presidency of Fort William in Bengal :" Be it enacted and declared, therefore, by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same as follows :

The immediate Government of any Part of the Indian Territories may be vested in the Governor-General of India in Council.

3. It shall be lawful for the Governor-General of India in Council, with the Sanction and Approbation of the Court of Directors of the East India Company, acting under the control and direction of the Board of Commissioners for the Affairs of India from time to time, by Proclamation duly published, to take under the immediate Authority and Management of the said Governor-General of India in Council any part or parts of the Territories for the Time being in the possession or under the Government of the said Company, and thereupon to give all necessary Orders and Directions respecting the Administration of such part or parts of the said Territories, or otherwise to provide for the Administration thereof : Provided always, that no Law or Regulation in force at any such Time as regards any such Portion of Territory shall be altered or repealed except by Law or Regulation made by the Governor-General of India in Council

Governor-General may limit the Powers of Governors herein named.

4. It shall be lawful for the said Governor-General of India in Council, with the like Sanction and Approbation, from time to time, to declare and limit the Extent of the Authority of the Governor in Council, Governor, or Lieutenant Governor of Bengal, or of Agra, or the North-west Provinces, who is now or may be hereafter appointed.

Certain Powers transferred to the Governor-General in Council.

5. All Powers now or at any time vested in or exercised by the Governor in Council, or Governor of the Presidency of Fort William in Bengal, or in or by the Governor-General of India in Council in respect of such Presidency, and which for the time being shall not have been transferred to the Governor in Council, Governor, or Lieutenant Governor of Bengal, or of Agra, or the North-west Provinces, shall be vested in and may be exercised by the Governor-General of India in Council, and the Governor-General of India shall no longer be the Governor of the said Presidency of Fort William in Bengal.

7. In the construction of this Act "India" shall be construed to mean the Territories for the time being in the possession and under Government of the East India Company.

X. THE GOVERNMENT OF INDIA ACT, 1858*.

(21 and 22 Vict., C. 106.)

A.

AN ACT FOR THE BETTER GOVERNMENT OF INDIA.

[2ND AUGUST, 1858]

Whereas by the Government of India Act, 1853, the territories in the possession and under the
16 and 17 Vict., C. 95 Government of the East India Company were continued under such Government, in trust for Her Majesty, until Parliament should otherwise

* It was in connection with the order for Second Reading of The Government of India (No. 3) bill that Mr. Bright made the following remarks :—

"I would propose that, instead of having a Governor-General and an Indian empire, we should have neither the one nor the other. I would propose that we should have Presidencies, and not an empire. If I were a minister, which the House will admit is a bold figure of speech—and if the House were to agree with me—which is also an essential point—I would propose to have at least five Presidencies in India, and I would have the governments of those Presidencies perfectly equal in rank and in salary. The Capitals of those Presidencies would probably be Calcutta, Madras, Bombay, Agra, and Lahore. I will take the Presidency of Madras as an illustration. Madras has a population of some 23,000,000. We all know its position on the map, and that it has the advantage of being more compact, geographically speaking, than the other Presidencies. It has a Governor and a Council. I would give to it a Governor and a Council still, but would confine all their duties to the Presidency of Madras, and I would treat it just as if Madras was the only portion of India connected with this country. I would have its finance, its taxation, its justice, and its police departments, as well as its public works and military departments, precisely the same as if it were a state having no connection with any other part of India, and recognized only as a dependency of this country. I would propose that the Government of every Presidency should correspond with the Secretary for India in England, and that there should be telegraphic communications between all the Presidencies in India, as I hope before long to see a telegraphic communication between the office of the noble Lord (Lord Stanley) and every Presidency over which he presides. I shall no doubt be told that there are insuperable difficulties in the way of such an arrangement, and I shall be sure to hear of the military difficulty. Now, I do not profess to be an authority on military affairs, but I know that military men often made great mistakes. I would have the army divided, each Presidency, having its own army, just as now, care being taken to have them kept distinct; and I see no danger of any confusion or misunderstanding, when an emergency arose in having them all brought together to carry out the views of the Government."

provide, subject to the provisions of that Act, and of othe Acts of Parliament, and the property and rights in the sai Act referred to are held by the said Company in trust for He Majesty for the purpose of the said Government :

And whereas it is expedient that the said territories shoul be governed by and in the name of Her Majesty, Be i enacted etc.

Territories under the Government of the East India Company to be vested in Her Majesty.

1. The Government of the territories now in the possessio or under the Government of the Eas India Company and all powers in relatio to Government vested in, or exercised by the said Company in trust for Her Majesty shall cease to be vested in, or exercised by, the said Company ;

and powers to be exercised in her name.

And all territories in the possession or under the Govern ment of the said Company, and all right vested in, or which if this Act had not bee passed might have been exercised by, th said Company in relation to any territories, shall become veste in Her Majesty, and be exercised in her name ; And for th purpose of this Act India shall mean the territories vested i Her Majesty as aforesaid, and all territories which may becom vested in Her Majesty by virtue of any such rights as aforesaid

India to be governed by and in the name of Her Majesty.

2. India shall be governed by and in the name of He Majesty ; And all rights in relation t any territories which might have bee exercised by the said Company if this Ac had not been passed shall and may b exercised by and in the name of Her Majesty as right incidental to the Government of India ; And all the territoria and other revenues of or arising in India and all tributes an other payments in respect of any territories which would hav been receivable by or in the name of the said Company if thi Act had not been passed shall be received for and in the nam of Her Majesty, and shall be applied and disposed of for th purposes of the Government of India alone, subject to th provisions of this Act.

Secretary of State to exercise powers now exercised by the Company.

3. Save as herein otherwise provided, one of Her Majesty' Principal Secretaries of State shall hav and perform all such or the like power and duties in anywise relating to th Government or revenues of India, and al such or the like powers over all officers appointed or continue

under this Act, as might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of the said Company, either alone or by the direction or with the sanction or approbation of the Commissioners for the Affairs of India in relation to such government or revenues, and the officers and servants of the said Company respectively, and all such powers as might have been exercised by the said Commissioners alone ;

Counter-signing of warrants, 17 & 18 Vict., C. 77.

And any Warrant of writing under Her Majesty's Royal Sign Manual which by the Government of India Act, 1854, or otherwise, is required to be counter-signed by the President of the Commissioners for the Affairs of India, shall in lieu of being so countersigned be countersigned by one of Her Majesty's Principal Secretaries of State.

Salaries of one Secretary of State and his Under Secretaries to be paid out of the revenues of India.

6. In case Her Majesty be pleased to appoint a fifth Principal Secretary of State, there shall be paid out of the revenues of India to such Principal Secretary of State and his Under-Secretaries respectively the like yearly salaries as may for the time being be paid to any other of such Secretaries of State and his Under Secretaries respectively.

Council of India established.

7. For purposes of this Act a Council shall be established, to consist of fifteen members, and to be styled the Council of India ; And henceforth the Council of India, now bearing that name shall be styled the Council of the Governor-General of India.

8. Within fourteen days after the passing of this Act the Court of Directors of the East India Company shall from among the persons then being Directors of the said Company or having been theretofore such Directors, elect seven persons to be with the persons to be appointed by Her Majesty as hereinafter mentioned the first Members of the Council under this Act. * * * * * *.

9. Every vacancy happening from time to time among the Members of the Council appointed by Her Majesty, not being Members so appointed by reason of the Refusal or Neglect of the Court of Directors or the Refusal to accept office hereinbefore mentioned, shall be filled up by Her Majesty, by Warrant under Her Royal Sign Manual, and every other

vacancy shall be filled up by the Council by election made at a meeting to be held for that purpose.

The major part of the Council to be persons who shall have served or resided ten years in India.

10. The major part of the persons to be elected by the Court of Directors and the major part of the persons to be first appointed by Her Majesty after the passing of this Act to be Members of the Council, shall be persons who shall have served or resided in India for ten years at the least, and (excepting in the case of late and present Directors and Officers on the Home establishment of the East India Company who shall have so served or resided), shall not have last left India more than ten years next preceding the date of their appointment; And no person other than a person so qualified shall be appointed or elected to fill any vacancy in the Council unless at the time of the appointment or election nine at the least of the continuing Members of the Council be persons qualified as aforesaid.

Tenure of office of Members of the Council.

11. Every Member of the Council appointed or elected under this Act shall hold his office during good behaviour; Provided that it shall be lawful for Her Majesty to remove any such Member from his office upon an address of both Houses of Parliament.

Members of Council not to sit in Parliament.

12. No Member of the Council appointed or elected under this Act shall be capable of sitting or voting in Parliament.

Salaries of Members of Council.

13. There shall be paid to each Member of the Council the yearly salary of one thousand two hundred pounds out of the revenues of India.

14. Any Member of the Council may, by writing under his hand, which shall be recorded in the minutes of the Council, resign his office, and it shall be lawful for Her Majesty, by Warrant under Her Royal Sign Manual, countersigned by the Chancellor of the Exchequer, to grant to any person who, having held the office of Member of the Council for the period of ten years or upwards shall so resign by reason of infirmity disabling him from a due execution of the duties of the office, a retiring pension during life of five hundred pounds: Provided, that if at any time hereafter it would appear to Parliament expedient to reduce the number or otherwise deal with the Constitution of the said Council, no Member of the Council who has not served in his office for a period of ten years shall be

entitled to claim any compensation for the loss of his office or for any alteration in the terms and conditions under which the same is held.

Duties of the Council.

19. The Council shall, under the direction of the Secretary of State, and subject to the provisions of this Act, conduct the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India. But every order or communication sent to India shall be signed by one of the Principal Secretaries of State; And, save as expressly provided by this Act, every order in the United Kingdom in relation to the Government of India under this Act shall be signed by such Secretary of State; And all despatches from Governments and Presidencies in India, and other despatches from India, which if this Act had not been passed should have been addressed to the Court of Directors or to their Secret Committee, shall be addressed to such Secretary of State.

Secretary of State to divide the Council into Committees, and to regulate the transaction of business.

20. It shall be lawful for the Secretary of State to divide the Council into Committees for the more convenient transaction of business, and from time to time to re-arrange such Committees, and to direct what departments of the business in relation to the Government of India under this Act shall be under such Committees respectively, and generally to direct the manner in which all such business shall be transacted.

President and Vice-President of the Council.

21. The Secretary of State shall be the President of the Council, with power to vote; And it shall be lawful for such Secretary of State in Council to appoint from time to time any Member of such Council to be Vice-President thereof; And any such Vice-President may at any time be removed by the Secretary of State.

Meetings of the Council.

22. All powers by this Act required to be exercised by the Secretary of State in Council, and all powers of the Council, shall and may be exercised at meetings of such Council, at which not less than five members shall be present; And at every meeting the Secretary of State, or in his absence the Vice-President, if present, shall preside; and in the absence of the Secretary of State and Vice President, one of the Members of the Council present shall be chosen by the

Members present to preside at the meeting : And such Council may act notwithstanding any vacancy therein. Meetings of the Council shall be convened and held when and as the Secretary of State shall from time to time direct : Provided that one such meeting at least be held in every week.

Procedure at meetings.

23. At any meeting of the Council at which the Secretary of State is present, if there be a difference of opinion on any question other than the question of the election of a Member of Council, or other than any question with regard to which a majority of the votes at a meeting is hereinafter declared to be necessary, the determination of the Secretary of State shall be final ; And in case of an equality of votes at any meeting of the Council, the Secretary of State, if present and in his absence the Vice-President, or presiding Member, shall have a casting vote ; And all acts done at any meeting of the Council in the absence of the Secretary of State, except the election of a Member of the Council, shall require the sanction or approval in writing of the Secretary of State ; And in case of difference of opinion on any question decided at any meeting, the Secretary of State may require that his opinion and the reasons for the same be entered in the minutes of the proceedings, and any Member of the Council who may have been present at the meeting may require that his opinion, and any reasons for the same that he may have stated at the meeting, be entered in like manner.

Orders, &c., to be open to the perusal to Members of Council who may record their opinions.

24. Every order or communication proposed to be sent to India, and every order proposed to be made in the United Kingdom by the Secretary of State under this Act, shall, unless the same has been submitted to a meeting of the Council be placed in the Council room for the perusal of all members of the Council during seven days before the sending or making thereof, except in the cases hereinafter provided ; And it shall be lawful for any Member of the Council to record in a minute book to be kept for that purpose his opinion with respect to each such order or communication, and a copy of every opinion so recorded shall be sent forthwith to the Secretary of State.

Secretary of State acting against the opinions of the majority to record his reasons.

25. If a majority of the Council record as aforesaid their opinions against any act proposed to be done the Secretary of State shall, if he do not defer to the opinions of the majority, record his reasons for acting in opposition thereto.

Provision for cases of urgency.

26. Provided that where it appears to the Secretary of State that the despatch of any communication or the making of any order, not being an order for which a majority of the votes at a meeting is hereby made necessary, is urgently required, the communication may be sent or order given notwithstanding the same may not have been submitted to a meeting of the Council or deposited for seven days as aforesaid, the urgent reasons for sending or making the same being recorded by the Secretary of State, and notice thereof being given to every Member of the Council, except in the cases hereinafter mentioned.

Orders now sent through Secret Committee may be sent by Secretary of State without communication with the Council.

27. Provided also, that any order, not being an order for which a majority of votes at a meeting is hereby made necessary, which might, if this Act had not been passed, have been sent by the Commissioners for the Affairs of India, through the Secret Committee of the Court of Directors to Governments or Presidencies in India, or to the officers or servants of the said Company, may, after the commencement of this Act, be sent to such Governments or Presidencies, or to any officer or servant in India, by the Secretary of State without having been submitted to a meeting, or deposited for the perusal of the Members of the Council, and without the reasons being recorded, or notice thereof given as aforesaid.

As to communication of secret despatches from India.

28. Any despatches to Great Britain which might, if this Act had not been passed, have been addressed to the Secret Committee of the Court of Directors, may be marked "secret" by the authorities sending the same ; And such despatches shall not be communicated to the Members of the Council, unless the Secretary of State shall so think fit and direct.

Appointments to be made by or with the approbation of Her Majesty.

29. The appointments of Governor-General of India and Governors of Presidencies in India now made by the Court of Directors with the approbation of Her Majesty, and the appointments of Advocate-General for the several Presidencies now made with the approbation of the Commissioners for the Affairs of India, shall be made by Her Majesty by Warrant under Her Royal Sign Manual ;

The appointment of the Lieutenant-Governors of provinces or territories shall be made by the Governor-General of

India, subject to the approbation of Her Majesty; and all such appointments shall be subject to the qualifications now by law affecting such offices respectively.

Appointments now made in India to continue to be made there.

30. All appointments to offices, commands and employments in India, all promotions, which by law, or under any regulations, usage or custom, are now made by any authority in India, shall continue to be made in India by the like authority, and subject to the qualifications, conditions, and restrictions now affecting such appointments respectively;

Power of Secretary of State in Council as to appointments, etc. in India.

But the Secretary of State in Council, with the concurrence of a majority of Members present at a meeting, shall have the like power to make regulations for the divisions and distribution of patronage and power of nomination among the several authorities in India, and the like power of restoring to their stations, offices, or employments, officers, and servants suspended or removed by any authority in India, as might have been exercised by the said Court of Directors, with the approbation of the Commissioners for the Affairs of India, as if this Act had not been passed.

Secretary of State in Council to make regulations for the admission of candidates to the Civil Service of India.

32. With all convenient speed after the passing of this Act Regulations shall be made by the Secretary of State in Council, with the advice and assistance of the Commissioners for the time being, acting in execution of her Majesty's Order in Council of twenty-first May one thousand eight hundred and fifty-five for regulating the admission of persons to the Civil Service of the Crown, for admitting all persons being natural-born subjects of Her Majesty (and of such age and qualification as may be prescribed in this behalf) who may be desirous of becoming candidates for appointment to the Civil Service of India to be examined as candidates accordingly, and for prescribing the branches of knowledge in which such candidates shall be examined, and generally for regulating and conducting such examinations under the superintendence of the said last mentioned Commissioners or of the person for the time being entrusted with the carrying out of such regulations as may be, from time to time, established by Her Majesty for examination, certificate, or other test of fitness in relation to appointments to junior situations in the Civil Service of the Crown; And the candidates who may be certified by the said Commissioners or

other persons as aforesaid, to be entitled under such regulations shall be recommended for appointment according to the order of their proficiency as shown by such examinations; And such persons only as shall have been so certified as aforesaid shall be appointed or admitted to the Civil Service of India by the Secretary of State in Council:

Provided always, that all regulations to be made by the said Secretary of State in Council under this Act shall be laid before Parliament within fourteen days after the making thereof, if Parliament be sitting, and if Parliament be not sitting then, within fourteen days after the next meeting thereof.

Regulations made by Secretary of State to be laid before Parliament.

33. All appointments to cadetships, naval and military, and all admissions to service not herein otherwise provided for, shall be vested in Her Majesty; And the names of persons to be from time to time recommended for such cadetships and service shall be submitted to her Majesty by the Secretary of State.

Other appointments and admissions to service vested in Her Majesty.

37. Save as hereinbefore provided, all powers of making regulations in relation to appointments and admissions to service and other matters connected therewith, and of altering or revoking such regulations, which, if this Act had not been passed, might have been exercised by the Court of Directors or Commissioners for the Affairs of India, may be exercised by the Secretary of State in Council; And all regulations in force at the time of the commencement of this Act in relation to the matters aforesaid shall remain in force, subject nevertheless to alteration or revocation by the Secretary of State in Council as aforesaid.

Regulations as to appointments and admissions to service.

38. Any writing under the Royal Sign Manual, renewing or dismissing any person holding any office, employment, or commission, civil or military, in India, of which, if this Act had not been passed, a copy would have been required to be transmitted or delivered within eight days after being signed by Her Majesty to the chairman or deputy of the Court of Directors shall, in lieu thereof, be communicated within the time aforesaid to the Secretary of State in Council.

Removal of officer by Her Majesty to be communicated to Secretary of State in Council.

39. All lands and hereditaments, monies, stores, goods, chattel, and other real and personal estate of the said Company, subject to the debts and liabilities affecting the same respectively, and the benefit of all contracts, covenants and engagements, and all rights to fines, penalties, and forfeitures, and all other emoluments, which the said Company shall be seized or possessed of, or entitled to, at the time of the commencement of this Act, except the capital stock of the said Company and the dividend thereon, shall become vested in Her Majesty, to be applied and disposed of, subject to the provisions of this Act, for the purposes of the Government of India.

Real and personal property of the Company to vest in Her Majesty for the purposes of the Government of India.

40. The Secretary of State in Council, with the concurrence of a majority of votes at a meeting, shall have full power to sell and dispose of all real and personal estate whatsoever for the time being vested in Her Majesty under this Act, as may be thought fit, or to raise money on any such real estate by way of mortgage, and make the proper assurances for that purpose, and to purchase and acquire any land or hereditaments or any interests therein, stores, goods, chattels and other property, and to enter into any contracts whatsoever, as may be thought fit for the purposes of this Act ;

Powers to sell and purchase, and to enter into contracts, vested in Secretary of State in Council.

And all property so acquired shall vest in Her Majesty for the service of the Government of India : and any conveyance or assurance of or concerning any real estate to be made by the authority of the Secretary of State in Council may be made under the hands and seal of three Members of the Council.

41. The expenditure of the revenues of India, both in India and elsewhere, shall be subject to the control of the Secretary of State in Council ; And no grant or appropriation of any part of such revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council.

Expenditure of revenues of India subject to control of Secretary of State in Council.

42. * * * * All the bond, debenture and other debt of the said Company in Great Britain, and all the territorial debt and all other debts of the said Company, and all sums of money, costs, charges and expenses, which if this Act had not been passed would after the

Existing and future debts and liabilities of the Company and expenses to be charged on revenues of India.

time appointed for the commencement thereof have been payable by the said Company out of the revenues of India, in respect or by reason of any treaties, covenants, contracts, grants, or liabilities then existing and all expenses, debts and liabilities which after the commencement of this Act shall be lawfully contracted and incurred on account of the Government of India, and all payments under this Act, shall be charged and chargeable upon the revenues of India alone, as the same would have been if this Act had not been passed, and such expenses, debts and liabilities lawfully contracted and incurred by the said Company; and such revenues shall not be applied to any other purpose whatsoever; And all other monies vested in or arising or accruing from property or rights vested in Her Majesty under this Act, or to be received or disposed of by the Council under this Act, shall be applied in aid of such revenues. * * *

Revenues remitted to Great Britain and monies arising in Great Britain, to be paid to Secretary of State in Council.

43. Such part of the revenues of India as shall be from time to time remitted to Great Britain, and all monies of the said Company in their treasury or under the care of their cashier, and all other monies in Great Britain of the said Company, or which would have been received by them in Great Britain if this Act had not been passed, and all monies arising or accruing in Great Britain from any property or rights vested in Her Majesty by this Act, or from the sale or disposition thereof, shall be paid to the Secretary of State in Council, to be applied for the purposes of this Act; And all such monies, except as hereinafter otherwise provided, shall be paid into the Bank of England, to the credit of an account to be opened by the Governor and Company of the Bank of England, to be intituled "The Account of the Secretary of State in Council of India"; And all monies to be placed to the credit of such account under this Act shall be paid out upon drafts or orders signed by three Members of Council and countersigned by the Secretary of State or one of his Under Secretaries; and such account shall be a public account: Provided always, that the Secretary of State in Council may cause to be kept from time to time, under the care of their, cashier, in an account to be kept at the Bank of England, such sum or sums of money as they may deem necessary for the payments now made out of money under the care of the cashier of the said Company.

46. The Secretary of State in Council shall, with respect to all Actions, Suits and all Proceedings by or against the said Com-

pany pending at the time of the Commencement of this Act, come in the place of the said Company and that without the necessity of substituting the name of the Secretary of State in Council for that of the said Company.

Audit of accounts in Great Britain.

52. It shall be lawful for Her Majesty, by Warrant under Her Royal Sign Manual, countersigned by the Chancellor of the Exchequer, to appoint from time to time a fit person to be Auditor of the Accounts of the Secretary of State in Council, and to authorize such auditor to appoint and remove from time to time such assistants as may be specified in such Warrant, and every such auditor shall hold office during good behaviour ; And there shall be paid to such auditor and assistants out of the revenues of India such respective salaries as Her Majesty, by Warrant as aforesaid, countersigned as aforesaid, may direct ; And such Auditor shall examine and audit the accounts of the receipt, expenditure, and disposal in Great Britain of all monies, shares and property applicable for the purpose of this Act ; and the Secretary of State in Council shall, by the officers and servants of the establishment produce and lay before such Auditor from time to time all such accounts, accompanied by proper vouchers for the support of the same, and shall submit to his inspection all books, papers, and writings having relation thereto ; And such Auditor shall have power to examine all such officers and servants in Great Britain of the establishment as he may see fit in relation to such accounts, and the receipt, expenditure, or disposal of such monies, shares, and property, and for that purpose, by writing under his hand, to summon before him any such officer or servants ; And such auditor shall report from time to time to the Secretary of State in Council his approval or disapproval of such accounts, with such remarks and observations in relation thereto as he may think fit, specially noting any case if there shall be, in which it shall appear to him that any money arising out of the revenues of India has been appropriated to other purposes than those of the Government of India to which alone they are declared to be applicable ; and shall specify in detail in his reports all sums of money, shares and property which ought to be accounted for, and are not brought into account, or have not been appropriated, in conformity with the provisions of this Act, or have been expended or disposed of without due authority, and shall also specify any defects, inaccuracies, or irregularities, which may appear in such accounts, or in

the authorities, vouchers, or documents having relation thereto; And all such reports shall be laid before both Houses of Parliament by such Auditor, together with the accounts of the year to which the same may relate.

Accounts to be annually laid before Parliament.

53. The Secretary of State in Council shall, within the first fourteen days during which Parliament may be sitting, next after the first day of May in every year, lay before both Houses of Parliament an account for the financial year preceding the last completed of the annual produce of the revenues of India, distinguishing the same under the respective heads thereof, at each of the several Presidencies or Governments, and of all the annual receipts and disbursements at home and abroad on account of the Government of India, distinguishing the same under the respective heads thereof, together with the latest estimate of the same for the last financial year, and also the amount of the debts chargeable on the revenues of India, with the rates of interest they respectively carry, and the annual amount of such interest, the state of the effects and credits at each Presidency or Government, and in England or elsewhere applicable to the purposes of the Government of India, according to the latest advices which have been received thereon, and also a list of the establishment of the Secretary of State in Council, and the salaries and allowances payable in respect thereof; And if any new or increased salaries or pensions of fifty pounds a year or upwards have been granted or created within a year, the particulars thereof shall be specially stated and explained at the foot of the account of such year; And such account shall be accompanied by a statement prepared from detailed reports from each Presidency and district in India in such form as shall best exhibit the moral and material progress and condition of India in each such Presidency.

When order to commence hostilities is sent to India the fact to be communicated to Parliament.

54. When any order is sent to India directing the actual commencement of hostilities by Her Majesty's forces in India, the fact of such order having been sent shall be communicated to both Houses of Parliament within three months after the sending of such order, if Parliament be sitting, unless such order shall have been in the meantime revoked or suspended, and, if Parliament not sitting at the end of such three months, then within one month after the next meeting of Parliament.

55. Except for preventing or repelling actual invasion of Her Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India shall not, without the consent of both Houses of Parliament, be applicable to defray the expenses of any military operation carried on beyond the external frontiers of such possessions by Her Majesty's forces charged upon such revenues.

Except for repelling invasion, the revenues of India not applicable for any military operation beyond the frontiers.

63. In case the person who shall be entitled under any provisions for appointment to succeed to the office of Governor-General of India upon a vacancy therein, or who shall be appointed absolutely to assume the office, shall be in India (upon or after the happening of the vacancy, or upon or after the receipt of such absolute appointment, as the case may require), but shall be absent from Fort William in Bengal, or from the place where the Council of the Governor-General of India may then be, and it shall appear to him necessary to exercise the powers of Governor-General before he shall have taken his seat in Council, it shall be lawful for him to make known by proclamation his appointment and his intention to assume the said office of Governor-General ; And after such proclamation, and thenceforth until he shall repair to Fort William or the place where the Council may assemble, it shall be lawful for him to exercise alone, all or any of the powers which might be exercised by the Governor-General in Council, except the power of making laws and regulations ; And all acts done in the exercise of the said powers, except as aforesaid shall be of the same force and effect as if they had been done, by the Governor-General in Council ; Provided that all acts done in the said Council after the date of such proclamation but before the communication thereof to such Council, shall be valid, subject nevertheless to revocation or alteration by the person who shall have so assumed the said office of Governor-General ; And when the office of Governor-General is assumed under the foregoing provision, if there be at any time before the Governor-General takes his seat in Council, no Vice-President of the Council authorised to preside at meetings for making laws and regulations (as provided by section 22 of the Government of India Act, 1853), the senior ordinary member of Council therefore sent shall preside therein, with the same powers as if a Vice-President had been appointed and were absent.

Governor-General may exercise his powers before he takes his seat in Council.

64. All Acts and provisions of law in force or otherwise concerning India shall, subject to the provisions of this Act, continue in force and be construed as referring to the Secretary of State in Council in the place of the said Company and the Court of Directors and Court of Proprietors thereof; And all enactments applicable to the officers and servants of the said Company in India, and to appointments to office or admissions to service by the said Court of Directors, shall, subject to provisions of this Act, remain applicable to the officers and servants continued and to the officers and servants appointed or employed in India and to appointments to office and admissions to service under the authority of this Act.

Existing provisions to be applicable to Secretary of State in Council.

65. The Secretary of State in Council shall and may sue and be sued as well in India as in England by the name of the Secretary of State in Council as a body corporate; And all persons and bodies politic shall and may have and take the same suits, remedies and proceedings, legal and acquitable, against the Secretary of State in Council of India as they could have done against the said Company; And the property and effects hereby vested in Her Majesty for the purposes of the Government of India, or acquired for the said purposes, shall be subject and liable to the same judgments and executions as they would, while vested in the said Company, have been liable to in respect of debts and liabilities lawfully contracted and incurred by the said Company.

Secretary of State in Council may sue and be sued.

67. All treaties made by the said Company shall be binding on Her Majesty; and all contracts, covenants, liabilities and engagements of the said Company made, incurred or entered into before the commencement of this Act, may be enforced by and against the Secretary of State in Council in like manner and in the same Courts as they might have been by and against the said Company if this Act had not been passed.

Treaties shall be binding on Her Majesty, and contracts, &c. of company may be enforced.

68. Neither the Secretary of State nor any member of the Council shall be personally liable in respect of any such contract, covenant, or engagement of the said Company as aforesaid, or in respect of any contract entered into under the authority of this Act, or other liability of the said Secretary of State or Secretary of State in Council in their official capacity; but all such liabilities, and all costs and damages in respect thereof, shall be satisfied and paid out of the revenues of India.

Members of Council not personally liable.

B.

EXTRACTS FROM VISCOUNT PALMERSTON'S SPEECH ON FEBRUARY 12TH, 1858.

In 1858 three Bills were introduced for the Better Government of India. VISCOUNT PALMERSTON in moving for leave to bring (February 12, 1858) in (the first) Bill for the Better Government of India, said :—

"I rise, Sir, in pursuance of the notice which has been given by Her Majesty's Government, to ask leave to introduce a Bill of first-rate importance. I rise to ask leave to introduce a Bill for transferring from the East India Company to the Crown the government of Her Majesty's East Indian dominions. In making that proposal I feel myself bound, in the first place, to say that I do not do it in any spirit of hostility to the East India Company, or as meaning thereby to imply any blame or censure upon the administration of India under that corporation. I believe the East India Company has done many good things in India. I believe that its administration has been attended with great advantage to the population under its rule. And it is not on the ground of any delinquency on the part of the Company, but on the ground of the inconvenience and injurious character of the existing arrangements, that I propose this measure to the House. It is perhaps one of the most extraordinary facts in the history of mankind that these British Islands should have acquired such an extensive dominion in a remote part of the globe as that which we exercise over the continent of India. It is indeed remarkable that those regions, in which science and art may be said to have first dawned upon mankind, should now be subject to the rule of a people inhabiting islands which at a time, when these eastern regions enjoyed as high a civilization and as great prosperity as that age could offer, were in a state of utter barbarism. That is a remarkable circumstance ; but still more remarkable is it that these extensive dominions should have been gained not by the power of a nation as a nation, but by an association of individuals, by a mercantile community, supported, indeed, to a certain degree by the power and resources of their country, but mainly indebted for success to their own energy and enterprise. These two circumstances are undoubtedly singular in the history of the world, but it is quite as remarkable, quite as singular, that

a nation like this, in which the science of government is perhaps better understood than in any other, in which the principle of popular representation has so long been established, should have deliberately consigned to the care of a small body of commercial men the management of such extensive territories, such vast interests, and such numerous populations. One could easily imagine that a wilderness in the northern part of America, where nothing lives except fur-bearing animals and a few wild Indians but little removed from the lower creation, might be confined to a company whose chief functions should be to strip the running animals of their fur, and to keep the bipeds sober; but that a great country like this should deliberately consign to the management of a mere commercial company, of a set of irresponsible individuals, a great territory, occupied by different races, professing diverse religions and should place in their hands the determination of all the questions of peace and war and of international relations with independent princes, which must necessarily arise, is, I believe, a circumstance unexampled in the history of mankind. But this country never designedly did any such thing. The existing state of things grew up gradually from a very small beginning. The original settlers began with a factory, the factory grew into a fort, the fort expanded to a district, and the district to a province, and then came collisions with less civilized neighbours, injuries to be resented, attacks to be repelled, and conflicts which always ended in victory and extension of territory. So, gradually, from one transaction to another, grew up that state of things in which the East India Company found itself invested with vast commercial privileges and with most important political functions. This state of things continued up to the year 1784, when there was an infusion of responsibility in respect of its political administrative functions into the affairs of the Company by the establishment of the Board of Control. Matters went on under this new arrangement for a number of years, during which the Company continued, subject to a slight interference from the Board of Control, to discharge its political functions, and at the same time to exercise all its commercial rights. One would have imagined that in a country like this that first step would have been followed up; that before anything else was done the reflective British nation would have pursued the course inaugurated in 1784, and that as the effect of the measure then adopted was to limit to a certain degree the political functions of the Company, the next step would have been to take them

away altogether, and to leave the Company in its original position as a trading association. However, it happens that in this country commercial matters often attract more attention and excite deeper interest than political affairs, and the next step was, not to meddle further with the political functions of the Company, but to take away all the commercial privileges which originally constituted the foundation of its existence. Accordingly in the year 1833 the Company altogether ceased to be a commercial association, and became, one may say, but a phantom of its original body. It lost the commercial character for which it was originally founded, and continued to be merely a political instrument, by means of which the administration of India was carried on. Now, Sir, I venture to think that the arrangement so made was a most inconvenient and most cumbrous arrangement. The principle of our political system is that all administrative functions should be accompanied by ministerial responsibility—responsibility to Parliament, responsibility to public opinion, responsibility to the Crown, but in this case the chief functions in the government of India are committed to a body not responsible to Parliament, not appointed by the Crown, but elected by persons who have no more connection with India than consists in the simple possession of so much India stock. I think that that of itself is a most objectionable arrangement. In this country we are slow to make changes. The indisposition to make changes is wise and useful. As a general principle it is wise, and nations do themselves great mischief by rapid and ill-considered alterations of their institutions. But equally unwise and equally injurious is it to cling to existing arrangements simply because they exist, and not to admit changes which can be made with advantage to the nation. What can be more cumbrous than the existing system of Indian administration which is called by the name of the "double Government"? In the debates of 1853, when the last India Bill was passed, the right honourable Gentleman the Member for Buckinghamshire (MR. DISRAELI) asked who was the Government of India, and to whom he was to look as the authority responsible for the administration of that vast empire. Why, Sir, there is no responsibility, or rather there is a conflict of responsibility. The Directors possess a power paramount, as the right honourable Gentleman said, to every thing else, the power of recalling the Governor-General, by which any great system of policy may be at once interrupted. And they have this power, although the Governor-General must have been appointed by the Crown, and the appointment sanctioned by the

Directors. The functions of Government and the responsibility have been divided between the Directors, the Board of Control, and the Governor-General in India; the Board of Control representing the Government of the day, responsible to this House, responsible to public opinion, appointed by the Crown, and exercising functions delegated by it; the Court of Directors, elected by the gentlemen and ladies who happen to be holders of India Stock, many of whom are totally ignorant of every thing relating to Indian interests, and perhaps knowing nothing about Calcutta, Bombay, or Madras, except what they learn from the candidates for the directorship as to the presidency to which the cadetship is to belong which is promised in return for their votes. The Directors are undoubtedly in general, men of great experience and knowledge of India, but they are elected by a body of persons who have no peculiar faculty for choosing persons qualified to govern a great empire in the East. Then comes the Governor-General, invested with great, separate, and independent powers, and among these three authorities it is obvious that despatch and unity of purpose can hardly by possibility exist. I won't trouble the House by going into a detailed explanation of the method in which business is done, because it is very well known to those Honourable Members, who have given their attention to Indian affairs, that before a despatch upon the most important matter can go out to India it has to oscillate between Cannon Row and the India House; that it is proposed by one party, altered by the other, altered again by the first, and sent back to the other; and that the adventures of a despatch between these two extreme points of the metropolis are often as curious as those *Adventures of a Guinea* of which we have all read. It is obvious that this system of check and counter-check must be attended with great inconvenience to the public service, and be productive of great delay. Take, for example, a body of twenty gentlemen generally agreeing in their views and make ten of them sit at the east end of the town and the other ten in Westminster. Propose to them any question of average difficulty and importance, and the probability is that the two parties will come to different conclusions, not being able to exchange opinions and arguments and to arrive at a common result. So it is with the Board of Control and the Court of Directors. The result in cases of material difference must necessarily be a middle term, satisfying the opinions of neither, carrying into effect the principle of neither, unsatisfactory therefore to both, and probably less advantageous to the public service than the opinion of either

would have been had it been entirely adopted. Therefore, I say that this system of check and counter-check may be carried too far. There is no doubt that certain checks are requisite in every political machine; but you may multiply your checks and counter-checks to such an extent that the functions of the machine, which are intended only to be controlled, are paralyzed for every useful purpose. Then what, let me ask, is the position in which Her Majesty's Government stand in this House? When Indian questions are discussed, it is the constant habit of those who take part in the debate, criticizing and impugning what has been done, to hold Her Majesty's Government responsible for everything that occurs. But Her Majesty's Government cannot be fairly answerable for things over which they have not a perfect control, and which they cannot entirely direct. It frequently happens indeed, that the Government of the day are made reponsible for acts which were done without their consent, and probably in some cases much to their dissatisfaction. * * * I say, then, it is most desirable that this complicated machine should be simplified and reduced in fact and form to that which it is imagined to be, but which it practically is not. I may be asked why we take this moment for proposing a change of system. The inconveniences of different systems of administration are forced upon the attention of the Government and the country from time to time by peculiar emergencies. * * * I say then, that as far as regards the executive functions of the Indian Government at home, it is of the greatest importance to vest complete authority where the public have a right to think that complete responsibility should rest, and that whereas in this country there can be but one governing body responsible to the Crown, to Parliament, and to public opinion consisting of the constitutional advisers of the Crown for the time being, so it is in accordance with the principles and practice of our constitution, as it would be in accordance with the best interests of the nation, that India, with all its vast and important interests, should be placed under the direct authority of the Crown, to be governed in the name of the Crown by the responsible Ministers of the Crown sitting in Parliament, and responsible to Parliament and the public for every part of their public conduct, instead of being, as now, mainly administered by a set of gentlemen who, however respectable, however competent for the discharge of the functions entrusted to them, are yet a totally irresponsible body, whose views and acts are seldom known to the public, and whether known or unknown, whether approved or disapproved, unless one of the Directors happens to have a

seat in this House, are out of the range of Parliamentary discussion. Again, as regards our interests in India I may state at once that the Bill which I am about to propose to the House is confined entirely and solely to a change in the administrative organization at home, and that we do not intend to make any alteration in the existing arrangements in India. In fact, if Parliament were to adopt the measure which we are about to propose, the only difference, as far as India is concerned, would be, that the next despatch would go out signed by the President and the Council for Indian affairs, instead of by the Court of Directors, and that the reply would be addressed to the President of the new Board, instead of the Chairman of the body sitting in Leadenhall Street. Now, I believe there can be no doubt that, so far as the impression on the minds of the people of India is concerned, the name of the Sovereign of a great empire like this must be far more respected, far more calculated to produce moral and political impressions, than the name of a Company of merchants, however respectable and able they may be. We have to deal, in that country, with Princes, some ruling independently and some in a state of modified dependence upon us, and with feudal chiefs proud of their position, cherishing traditionary recollections of a wide empire, and of great Sovereigns to whom their ancestors owed allegiance. How can we expect such men to feel any great respect for a mere Company of merchants? The respect they feel, the allegiance they yield, would be increased tenfold if the one were given and the other tendered to the Sovereign of a great and mighty empire. I believe, in fact, that what gives force to the Company in India is not the fame or authority of the Company itself, but the knowledge which the people have that behind the Company, and strengthening it, is the power of the British Empire, and that, although the ruler may be an officer of a commercial association in name, the real power which they have to look up to is the power of the Sovereign of this great country. I am, therefore, satisfied that the transfer of the Government of India to the Crown would, as far as its effect upon the people of India is concerned, be equivalent to a large reinforcement of troops; that the impression which would be produced would be most advantageous, and would tend to consolidate and strengthen the moral and political influence of England in these vast regions of the world. What, then, is the arrangement which we are about to propose? We wish to alter things as little as we can consistently with the great object which we have in view. That object is to make the responsible advisers of the Crown answer-

able for the Government of India as well as for that of all other possessions of the Crown beyond seas. We wish that the affairs of India should be administered by Ministers responsible to Parliament for the manner in which that country is governed. We propose, therefore, that the functions of the Court of Directors, and, of course, of the Court of Proprietors, shall cease; that there shall be substituted for those bodies a President, assisted by a Council for the Affairs of India; that that President, of course, shall be a member of the Government, and shall be the organ of the Cabinet with reference to all matters relating to India; but, as men who have distinguished themselves in public life in this country, and who are likely from time to time, as changes of Administration occur, to be placed at the head of that department, cannot be supposed to possess that detailed local knowledge which is essential to the wise government of the country, we propose that the President shall be assisted by a Council composed of persons named by the Crown, with the condition that they shall either have been Directors of the East India Company, have served for a certain period in India either in a civil or military capacity, or have resided there a certain number of years unconnected with the local administration. We propose that that Council shall consist of eight members, that the members shall be appointed for eight years, and that two shall retire by rotation every second year, in order that successive Administrations may have the means of renewing the Council from time to time by the introduction of persons returning from India with fresh knowledge and ideas. We think that while, on the one hand, the permanency of a Councillor for eight years will make him an independent adviser of the President, he will not, on the other, by being appointed for life, block up the way to the accession of other persons who may from time to time appear more capable of serving the country. Of course, as the proposal is to transfer to the Government of the day full responsibility for the management of Indian affairs, and as the President will be the organ of the Cabinet upon Indian matters, just as the Secretary of State for the Colonies and the Secretary of State for Foreign Affairs are the organs of the Government in regard to the departments under their respective care, the decision of the President must be final in all matters which may be treated of in the Council. But, nevertheless, we propose that, if the Councillors differ in opinion from the President, they shall have the right to record that difference, together with their reasons, upon the Minutes of the Council, so as to be able to justify themselves afterwards for the advice they

have given. The full power of the President, however, will not extend to matters involving increased expense to the Indian revenue; and, for purposes of that sort, it will be necessary that he shall have the concurrence of four Councillors to any proposals which he may have to submit. In the temporary absence of the President a Secretary of State will be able to act for him, and four members of the Council will be a quorum for the transaction of business. We propose that the Council shall have the power of distributing among themselves the business which comes to them, so as to allot different departments of business to different members of Council, who will, of course, make reports to the Council itself. We propose that the President shall be placed on the footing of a Secretary of State, and that the Councillors shall have a salary of £1,000 a year each. We propose that all powers now vested in the Court of Directors shall be transferred to this Council, and, therefore, that all appointments which have hitherto been made by the Court of Directors or by other parties subject to the approbation of the Crown, shall be made by the Crown direct, but that all appointments in India which have hitherto been made by the local authorities shall continue to be made by those authorities; so that no part of the local Indian patronage will be transferred to the Government of this country. We propose that the President shall be able to appoint one Secretary, who shall be capable of sitting in this House. It will be convenient that a Cabinet Minister holding that situation shall have the assistance of a Secretary conversant with the business which may come under discussion; but we do not propose that the Councillors shall be capable of sitting in Parliament. We think there would be great inconvenience in such an arrangement; that they would become party men; that they would necessarily associate with one side or the other in this House, and that, with changes of Administration, the relations between the President and the Councillors might then become exceedingly embarrassing. One point which has always attracted the attention of those who have considered these matters, and which has created even a very considerable constitutional difficulty, in any attempt to decide what would be the best system of Government for India, has been the question of patronage. Many men have said that they think the "double Government" a cumbrous and antiquated machine, which ought to be done away with. That was the opinion in 1853 of a great number of those honourable Members who took part in the discussion, but it was always said. "How can we manage

with the patronage? We do not wish to increase the patronage of the Government, and we fear that this transfer of power would greatly augment the patronage of the Home Government." Now, I have already said with regard to local appointments, all these appointments which have hitherto been made either by the Governor-General or by other authorities in India, will continue exactly as before to be made by them, the members of the local Council being named by the Governor-General instead of being named hence. An arrangement was made in 1853 by which all appointments to writerships were given up to open competition. That arrangement we shall of course maintain. Writerships, therefore, are beyond the range of patronage, * * *

It is proposed, with regard to local military services, that the troops shall be paid out of the revenues of India, and that their services shall be limited to Asia so long as they are paid out of the Indian revenue. At present I believe, the range of service for the Company's troops is co-extensive with the limits of the Company's charter, as far as any place eastward of the Cape. It is proposed that, if at any time a part of the local army shall be employed out of Asia, the troops shall then not be paid out of the Indian revenue. It will be left for this House to determine whether a force so employed shall be paid out of the revenue of this country, and whether their employment is consonant with what the interests of India may be. This will be a sufficient check against the employment of the Indian troops without the consent of Parliament. It is proposed that, whereas we transfer to this President of the Council the functions of the Court of Directors, and Board of Control, both of which will be abolished, the functions and powers of the secret Committee, which govern matters, involving great discretion and temporary secrecy, should be vested in the President, as representative of the responsible Minister of the Crown. But we propose that in any case in which orders shall be sent to India involving the immediate commencement of hostilities, communications thereof shall be made to Parliament within one month, if Parliament be then sitting, or within one month, after Parliament shall next meet. That interval will allow a sufficient time to elapse to prevent injury to the public service from the too early publication of orders so issued; while it will, at the same time, give Parliament an early opportunity of calling upon the Government for explanation of the causes which had led to such orders. Of

course, it will be necessary that there should be an effective audit of the revenues of India and their application. It is required by this Bill that the revenue shall be applied solely for the purpose of government in India. It is proposed that an Auditor shall be appointed, with the power of appointing assistant Auditors, for the purpose of examining minutely the account of receipts and expenditure of Indian revenue, and that the accounts, when audited, shall be laid before Parliament for its consideration. Of course, power will be given to the President of the Council to issue to the Company such sums as may be necessary to defray the expenditure required for paying their dividends and keeping their books, until the Company determine whether they will or will not avail themselves of the option given them of being paid in a certain time for their stock. This then, Sir, is, generally speaking, the outline of our measure. Of course, the details will come under the consideration of the House, if it should, as I trust it will, give us leave to bring in the Bill, and when the Bill shall be in the hands of honourable Members, they will then have to consider the details, such as I have described, as well as some other points, to which I have not thought it necessary to advert. But the question now to be considered is simply the great and large question, whether or not we shall transfer to the executive and responsible Ministers of the Crown the direction of the affairs of our Indian territories, or whether that direction shall be left, as heretofore, under the cumbrous and complicated system described as the "double Government," which, in my opinion, is full of embarrassment, and not calculated to accomplish the purposes good government ought to have in view, and which, though continued heretofore, because no great events have called on Parliament to reconsider it, ought, I think, to be abolished without further delay. Now, I do not think I shall be met by objections to this principle itself, because, when I recollect what has passed on former occasions in this House, and when I know what is the general opinion of the country on the point, I cannot persuade myself that we shall meet with any strong opposition to the general principle on which the measure is founded. When I look back to what passed in 1853, I find some of the leading Members of this House expressed strong opinions that the time must come, at no distant period, when an entire change ought to be made, and that the introduction of Government nominees into the East India Direction was only the first step to further and ulterior measures ; and the only doubt was, whether a full measure ought

not at that time to be adopted. But, whatever may have been the opinion of Parliament at that time, I am much mistaken as to the signs and indications of opinion in the country now if the nation at large has not made up its mind that this "Double Government" ought to cease.) I am convinced that this is the opinion of the country ; and great disappointment would be felt if this House should negative the Bill upon an objection to the principle itself on which it is founded. We shall, no doubt, be met by a Motion for delay, and be told that this is not the time for discussing the measure ; that India is unsettled ; that we should wait, until a better moment, a calmer period, and until the difficulties in India are over. Why, that plea for delay is invariably the plea set up by those who are anxious to oppose that which they cannot resist directly, but which they wish to get rid of by the intermediate policy of proposing delay. Why, Sir, what is the force of any argument of that kind ? They say, "Do not alter the machine of Government at a time when India is unsettled and in difficulty, when you have not fully and finally got rid of the mutiny, and when you have not entirely re-established authority in every part of the Country." What does that argument amount to when it is analyzed ? It is said, "Do not change your Government now, because there is in India that to be done which is difficult to be accomplished, and which, therefore, it might require great power to accomplish." Will then, any man pretend that a single Government at home will not be a much more effectual instrument for the purpose than a "Double Government" ? Will any man pretend to tell me, that with a view to rapidity of discussion and execution, unity of purpose, and responsibility to the public, a Government administered by the responsible advisers of the Crown would not be a far more efficient instrument for everything to be done here than the existing conflict of checks and counter-checks, the system of previous communications and subsequent communications, of objections to a despatch and its transfer by cabs from one part of the town to another, by which delay was created, so that a despatch, which ought to go out to-morrow, might not go out for a month, or be ready until it was too late to send it out. (Why, no reasonable man will venture to get up and tell the House that the present machine can be so effective and so powerful a machine for administration at home as the machine we propose to substitute for it. Will any man acquainted with India tell me that the name of the Company—which is now pretty well seen through

by all the Natives in India—can have half, or the tenth part of the powerful influence the name of the Crown would carry with it? I declare it is non-sense to say that the Indian chiefs would not feel ten times more respect for the Rajah of England than for the name of any unknown Company. Well, then, I say, if we look to England, the machine we propose to substitute is a much more powerful machine, and if we look to India it is a machine infinitely more influential than the existing one. Then we are told that there is a state of difficulty in India, and what is the proposal of those who want delay? They say, that in order to overcome this difficulty, and to restore tranquillity in India which we are told is a matter of great difficulty, and will require great strength and power to effect, we should prolong the existence of the present weak instrument, instead of substituting for it a stronger, more powerful, and more effectual machine. In that argument there is no sense, I submit. However, we shall be told by some that the Government of India is a great mystery—that the unholy ought not to set foot in that temple—that the House of Commons should be kept aloof from any interference in Indian affairs—that if we transfer the Government to the Ministers responsible to Parliament, we shall have Indian affairs made the subject and plaything of party passions in this House, and that great mischief would arise therefrom. I think that argument is founded on an overlooking of the fundamental principles of the British constitution. It is a reflection on the Parliamentary government. Why, Sir, what is there in the management of India which is not mainly dependent on those general principles of statesmanship which men in public life in this country acquire here, and make the guidance of their conduct. I do not think so ill of this House as to imagine that it would be disposed, for factious purposes, or for the momentary triumph of party, to trifle with the great interests of the country as connected with the administration of our Indian affairs. I am accustomed to think that the Parliament of this country does comprise in itself as much administrative ability, and as much statesmanlike knowledge and science as are possessed by any number of men in any other country whatever; and I own, with all respect for the Court of Directors, that I cannot bring myself to think that the Parliament of England is less capable of wisely administering the great affairs of State in connection with India than the Court of Directors in Leadenhall Street. I am not afraid to trust Parliament with an insight into Indian affairs. I believe, on the contrary, that if things have not gone

on so fast in India as they might have done—if the progress of improvement has been somewhat slower than might have been expected, that effect has arisen from the circumstance that the public of England at large were wholly ignorant of Indian affairs, and had turned away from them, being daunted by the complications they imagined them to be involved in; and because Parliament has never had face to face, in this and the other House, men personally and entirely responsible for the administration of Indian affairs. No doubt a good deal has been done in the way of substantial improvement of late years, but that which has been done, I may venture to say, has been entirely the result of debates in this and the other House of Parliament. And, so far from any discussion on India having worked evil in India, I believe that the greater part of those improvements which the East India Directors boast of in that publication, which has lately issued from Leadenhall Street, has been the result of pressure on the Indian administration by debates in Parliament and discussions in the public press. Therefore, so far from being alarmed at the consequences which may arise from bringing Indian affairs under the cognizance of Parliament, I believe that a great benefit to India, and through India to the British nation, will result therefrom. Therefore, I say, I see no reason, either on the score of principle or on the score of the augmentation of patronage, or on the score of time, or constitutional danger, why we should not at once pass the measure which it will be my duty to present to the House. Sir, I trust that Parliament will feel that great power is not given to nations without corresponding duties to be performed. We have, by an almost miraculous train of events, been intrusted with the care of the destinies of 150 or 160 millions of men—with the government, directly or indirectly, of a vast empire larger in extent than the whole face of Europe, putting the Russian empire out of the question. That is a task which involves great responsibility. Do not imagine that it is the intention of Providence that England should possess that vast empire, and that we should have in our hand the destinies of that vast multitude of men, simply that we may send out to India the sons of gentlemen or of the middling classes to make a decent fortune to live on. That power has been entrusted to us for other and better purposes; and, without pointing to anything particular, I think it is the duty of this nation to use it in such a manner as to promote, as far as they can, the instruction, the enlightenment, and the civilization of those great populations which are now subject to our

rule. We have lately had our attention called to scenes of barbarity in India, which would make any man shudder, but are we wholly irresponsible for those scenes? If, during the century for which we have exercised power in India, we had used that power to enlighten and civilize the people, do you think their nature would not, in some measure at least, have been changed, and that the atrocious crimes which they have committed would not have been as repugnant to their feelings as they are to those of the people of this country? We ought to bear these things in mind—to remember that we have a great duty to fulfil in India, and I am sure that that duty will be best discharged if we commit its performance to the hands of men, who will be accountable to Parliament for their conduct and who feel themselves bound to acquaint the public of this country, step by step, with the arrangements which they make. I am confident, if Parliament should adopt the measure we are about to propose, that while on the one hand it will add to the strength of our position in India, while it will increase the power of this country, and render our influence more firm and secure, it will, on the other hand, enable us more efficiently to perform those important duties which, in my view, it was intended that we should discharge when the great Indian empire was transferred to our control. Sir, I beg to move for leave to bring in a Bill for the better Government of India.

C.

Extracts from the Speech of the Earl of Derby in the House of Lords on July 15, 1858.

On July 15, 1858, the Earl of Derby, in moving the second reading of the (third) Government of India Bill (which subsequently received the Royal Assent on August 2, 1858), said :—

My Lords, in rising to move the second reading of this Bill I cannot but express the deep regret which I feel that this task should have devolved upon me rather than upon my noble Friend and late colleague (the Earl of Ellenborough), whose intimate knowledge of everything connected with Indian affairs would have enabled him to speak with a weight and authority which certainly I cannot command. But my noble Friend, unfortunately, is no longer a Member of Her Majesty's Government, and it therefore becomes my duty to state to your Lordships, as shortly and as clearly as I can, the main principles and provisions of the Bill to which I ask you to give a second reading this evening. Without attempting in the slightest degree to derogate from the importance of the measure, I cannot conceal from myself that a far greater degree of interest and attention has been attracted to it than would perhaps have been called forth by its intrinsic importance, in consequence of the political circumstances which accompanied its introduction and its progress through the other House of Parliament. This additional advantage, however, has accrued from that circumstance—that the Bill has received a greater degree of care and of patient investigation in the other House than possibly it might otherwise have obtained.

My Lords, I must, in the first place, observe that I think the title of the Bill is open to the objection of being somewhat infelicitous. It is not, as it purports to be, a Bill for the better government of India. It is a Bill which will, I hope, tend to the better government of India ; but the government of India must, as cannot be too often repeated, be on the whole carried on in India, and this Bill does not pretend to deal with all those complicated and difficult questions which will no doubt, within the next few years, frequently engage the anxious consideration of Parliament and of the country. It does not pretend to deal with the revenue, with the finance, with the land regulations,

with the condition of the Natives, and the possibility of extending their admission into the public service after this unhappy revolt shall have been suppressed. It does not profess to deal with any of these grave and extensive questions; and although such questions will no doubt engage the attention of Parliament, at future periods, and although Parliament will doubtless feel it to be both its right and its duty to lay down broad principles of action with regard to most of them, I cannot help expressing my opinion, that with regard to the details of the government of India, the less interference there is on the part of Parliament the better prospect will there be of securing the happiness and contentment of the people of India. I need not remind your Lordships that at the commencement of the present Session Her Majesty's Government announced that it was their intention to legislate during that Session with respect to the affairs of India. Without entering into the merits of the particular legislation which they proposed, I must remark that I was certainly of opinion at the time—and that opinion was shared by many—that although it might be necessary within a very short time to deal with this question, the period when the Government were engaged in suppressing a serious revolt was not the most convenient one for the consideration of a measure affecting the government of the country. But that opinion was overruled by a large majority in the other House; for, when a Right Hon. Friend of mine (MR. DISRAELI) thought it his duty to take the somewhat unusual course of moving that leave should not be given to introduce the Bill, on the express ground that it was not the time for legislation—thus especially preventing his motives from being misconstrued, and his opposition from being regarded as directed against any of the provisions of the measure—a majority of, I believe, about two to one, in a tolerably full House, decided that it was expedient and desirable that a Bill for the regulation of the Home Government of India should be introduced in the course of the present Session; and you will observe that this Bill is not, in fact, for the "government of India," but for the improvement of the machinery by which, in this country, Indian Government may be superintended and controlled. In consequence of that decision the noble Viscount, lately at the head of Her Majesty's Government, introduced a measure to carry into effect the views of himself and his colleagues Very shortly after that, circumstances occurred which caused the resignation of the noble Viscount, and a consequent change of Government. In several of the provisions of the Bill of the late Government—indeed, in

most of them—I, and those with whom I have the honour to act, cordially concurred ; but there were at the same time provisions of no minor importance on which we held entirely opposite opinions. It then became a question with us whether we should take the course of proceeding with the Bill of the noble Viscount, and propose in Committee such Amendments as we might think necessary. But it was the opinion of Her Majesty's servants—and, I think, it was a correct opinion—that a measure of such vast importance as one regulating the machinery for superintending the Government of India, ought to be conducted and carried through, not by any private Member, but on the responsibility of the Government as a whole. The consequence of that was, that under the auspices of my noble Friend (THE EARL OF ELLENBOROUGH) a Bill was introduced and laid upon the table shortly before the Easter recess. In the course of the observations which I shall have to make it may be my duty to contrast some of the provisions of that Bill and of the Bill now before your Lordships with those of the measure introduced by the late Government ; but at present I shall only say that the course which we pursued although I think it was the necessary and proper course—had this inevitable consequence :—that there being, as it were two rival Bills on the table of the House of Commons, there might, in the then state of political excitement, occur this unfortunate result, that the House would be called upon to decide between those Bills, not with regard to their respective merits, but with regard to the persons and parties by whom they were introduced ; and that, consequently, the affairs of India, which required the most careful and dispassionate consideration of Parliament, might be made—what I was most anxious to avoid—a battle-field for contending political parties. In those circumstances the noble Lord the Member for London (LORD JOHN RUSSELL) made a suggestion, which was, I think, as wise and patriotic as it was certainly just and conciliatory, and it tended to relieve Parliament from what might have been a very serious embarrassment. LORD J. RUSSEL suggested—and the Government at once adopted the suggestion ; indeed, to a certain extent it had already been anticipated by us—that, instead of proceeding to match, as it were, one Bill as a whole against the other, we should enable the House to consider one by one in Committee Resolutions, the principles of which were involved in each, and out of those Resolutions to frame a measure which might receive the sanction of the Legislature. The Government, therefore, acting on that suggestion, prepared a series of Resolutions, which were submitted

seriatim to the consideration of the House of Commons; and it is only doing that House the barest justice to say, that during the whole of my experience in Parliament I have never known a question which has been treated by that House with more patience, with more deliberate attention, with greater temper, and with more entire absence on all sides of party feeling or acrimonious discussion. The result of that course of proceeding is, that there has been sent up to your Lordships' House a measure—not carried by a bare majority, not depending for its success upon this or upon that political party, but a measure to a great extent the work of the House of Commons itself, and to which all parties concurred in giving their tribute of praise—the noble Viscount at the head of the late Government uniting with the noble Lord the Member for the City of London in according to the third reading not his hesitating but his cordial approval, and expressing his wishes for its success before your Lordships' House. My Lords, I now proceed very shortly to lay before your Lordships the principles and chief provisions of this Bill. * * *

When it was determined that a change should take place in the Home Government of India, there was one principle which could not but meet with uniform and unanimous assent—namely, that it was absolutely indispensable that a transfer of the nominal as well as the real authority should be made directly from the Company to the Crown, and the affairs of India should thenceforth be conducted in the name of the Crown. My noble Friend (THE EARL OF ELLENBOROUGH) who is not desirous of any very extensive change, laid the greatest stress on the necessity of that transfer, and dwelt upon the beneficial effects which it was likely to produce in India. Now, as before intimated, I consider that the Government of the East India Company, both here and in India, has been marked by singular prudence and ability, and I should be very sorry if this Bill was considered—what it was represented to be at a meeting held at the India House yesterday—a Bill of Pains and Penalties against the Directors. It is nothing of the sort. I believe no men could have conducted business better under the system which they found in operation than the Directors of the East India Company have done. But the complaints against the system itself, the encumbrances connected with its machinery, the delay which unavoidably attended the most important transactions, make it quite obvious that in any remodelling which may take place, India must be put on the same footing as the other possessions of the Crown, and be administered by

a Minister responsible to Parliament. I may add that, in point of fact, the transfer of authority to the Crown is more nominal than real, because, although the Court of Directors have been in a position to exercise certain powers of obstruction and delay I believe that, with the single exception of the power of recalling the Governor-General, there was no single act which they were enabled to perform without the assent of the President of the Board of Control. Not only does the President of the Board of Control possess the power of altering or of vetoing the instructions proposed by the Court of Directors, but he has the power, and it has been sometimes exercised, of sending out instructions diametrically opposed to those which the Court intended. There is a question whether the Court might not have interposed delay, and even persisted, until compelled by a mandamus; but in point of fact they have generally been obliged to yield to the suggestions of the President of the Board of Control. We all remember that my noble Friend below me (THE EARL OF ELLENBOROUGH) who has on various occasions been at the head of the Board of Control, told the Committee that when he was in office the government of India was in his hands altogether. Upon the subject, then, of the transfer of the powers of the Court of Directors to a responsible Minister of the Crown, and of carrying on all business both here and in India in the name and by the direct authority of the Crown, there was no difference of opinion between the two parties into which the House of Commons was divided. Nor was there any difference of opinion on this point—that although it was expedient that the business should be conducted by a high Ministerial officer, under whatever denomination he might be known, who should, like the holders of other offices in the Government, be appointed by the Crown and responsible to Parliament, yet, inasmuch as it is impossible to conceive that any person so appointed would have sufficient knowledge and experience to discharge duties so various and so complicated as those connected with the administration of all the different provinces of India, it was necessary for the good Government of India, to associate with the Minister a Council more or less numerous by whom he might be assisted and advised. It was with regard to the constitution of that Council that there existed the main difference of opinion between Her Majesty's late Government and Her Majesty's present Government. Her Majesty's late Government proposed that the Council should consist of eight members who should each hold office for six years, all nominated by the Minister of the Crown, and two of whom should retire from

office each alternate year. Now, the present Government was of opinion that, although in that manner the President of the Board of Control might surround himself with many able and experienced advisers, due provision was not made for securing to the Council that character of independence which was absolutely essential to the proper discharge of its functions. It was quite clear that when one-third of the members of the Board had been only recently appointed by the actual President of the Board, and another third would soon vacate their offices, and were hoping, perhaps, to be re-appointed by the same Minister, there would be great temptation presented to the Council to defer, more than they ought to do, to that Minister, and to refrain from freely expressing their opinions. It was, moreover, the opinion of the members of the present Government that a Council of eight members would not be sufficiently numerous, having regard to the great extent of the duties which would have to be performed, and we thought that eighteen—the present number of the Directors—were not more than were required by the business of India. The Council of India we thought out not to be—as the Directors may have been before—a screen between the Minister and Parliament, but a body of men well acquainted with the affairs of India, to give the Minister advice, which on his own responsibility, he might be at liberty either to accept or reject. I have heard it said that, according to the peculiar character of the President of the Board of Control, the Council, as proposed to be constituted would be either his masters, his advisers, or his puppets. It must, no doubt, depend on the character and the self-reliance of the head of any great Department how far he is influenced or controlled, how far he is guided, by those who filled permanent situations, and to what extent he is the master of his own Department. For my own part, I certainly hope and believe that the Council proposed by the Government under this Bill will be found neither the masters of the Secretary of State nor his puppets, but that they will prove that, which their qualifications prepare them to be, most valuable advisers to the Minister in all matters relating to India. But, to secure the independence of the Council we considered that one portion of it should be, as at present, elected, and the other portion nominated by the Crown. We were also of opinion that both the elective and the nominated portions of the Council should have a longer term of service than was provided for by the Bill of the late Government, and that this would be of great importance as tending to increase their independence. Accordingly, it is

proposed in the Bill before the House that the members of the Council, whether elective or nominative, shall hold their offices during good behaviour ; there being a proviso that at the expiration of ten years' service, if they are disabled by infirmity, they shall be entitled to retire upon suitable pensions. When we came to consider the elective principle, we found, I must confess, considerable difficulty. My noble Friend (THE EARL OF ELLENBOROUGH) who is not now a Member of the Government, but for whose proposition we are all responsible, laid before Parliament,on behalf of the Cabinet, a very elaborate scheme, a scheme involving considerations which ought, as it appeared to me, to be borne in mind by any Government when dealing with such a subject. My noble Friend proposed so to constitute a Council that it should be a representation of the civil and military services of India—not merely of India, but of the three Presidencies ; because the qualifications which enable a man to give very valuable opinions with regard to Bengal may be utterly useless in relation to Madras or Bombay. The only objection which I have heard to the noble Earl's proposition is this—not that it was wrong in itself, but that it was imperative, and would be found to fetter too much the hands of the Crown, who might under it be compelled to choose inefficient men and to pass over the most competent. There was another proposition of the Government which did not meet with seeming great favour ; I mean the proposition by which they endeavoured to obtain, what it was very difficult to secure, a representation of the commercial interests connected with India in the Council. We proposed in that Bill to supply that deficiency by giving the appointment of four of the Councillors to the constituencies of the largest towns connected with the trade to India. That proposal was, I believe, a good one in itself ; but it did not meet with such an amount of support in Parliament, or in the country, as would justify us in insisting on its adoption. The conclusion at which we then arrived was, that with a view to secure the three great requisites of intelligence, experience, and independence in the Councillors, it was necessary that a portion of their body should be elected, that another portion should be nominated, and that all the parties elected should have served, or should at least have resided, for a considerable period in India, and should, consequently, have possessed opportunities of obtaining a knowledge of the feelings and of the wants of the people of that country ; while they were to hold office during the pleasure of the Crown, but should, of course, be removable, like other public servants, on an Address from both Houses of

Parliament. But when we came to apply the principle of election we found that we had considerable difficulties to encounter. It could not be argued with hardly more than plausibility that the Court of Proprietors, as at present constituted, possessed any such interest in the affairs of India as to entitle them to elect the Councillors ; and yet there was no other body besides the Court of Proprietors to whom that duty could be committed. The functions of the Court of Proprietors, as your Lordships are aware, are limited to the mere receipt of the dividends on their stock ; and even under the system of Indian Government which has hitherto prevailed, although they could pass Resolutions, they had no means of giving effect to any decisions at which they might arrive. It was proposed that there should be added to the Court of Proprietors all those persons who had for a certain period been engaged either in the civil or in the military service of India. But it was found that such a constituency would be very difficult to bring together, that it would be inconveniently large, and that it would in point of fact aggravate those disadvantages of the present system which prevent some of the most competent and most high-minded men from entering on the career necessary to ensure their return as Members of the Court of Directors. Such men will not now go through a canvass for the appointment of Directors, and still less would they go through a canvass of a more extensive body for the purpose of being elected Members of Council. Under these circumstances, and after much consideration, Her Majesty's Government determined on adopting an arrangement under which one-half of the Councillors should be elected and one-half should be nominated by the Crown, and under which the elected members should be chosen by the existing Court of Directors, in conformity with a suggestion which had been thrown out by a noble Earl not now present (EARL GREY) at the commencement of the Session. Some arguments were certainly advanced against that scheme, but on the whole it met with no considerable opposition ; and I believe it was the best escape which could be devised from the difficulties in which the question was involved. This Council, so constituted, would be entitled to tender its advice to the Secretary of State. And when I say "Secretary of State," I must add that, although the name which may be given to the head of the Indian Government may not be a matter of much importance, we thought that in the formation of such an office it would be more advisable and more in conformity with constitutional practice to give the name of Secretary of State to a high officer upon whom Her Majesty is

pleased to devolve the exercise of duties under Her Royal sanction. As regards the Colonies and Foreign Affairs, so as regards India, the same title is given to the presiding officer, and there will be this additional convenience, though not at first contemplated, that either of the Secretaries of State will be able to sign papers and perform duties in the absence of the Secretary of State for India. I must also observe that there are two qualifications of the power which is given by this Bill to the Secretary of State of setting aside the authority and advice of his Council. He has full power of acting in opposition to their advice; but if he should act in opposition to a majority of the body, he must state and place on record the reasons why he set aside their opinion; and any Councillor whose advice is not adopted may also enter on the records of the office the reasons which induced him to give it. There is also a provision in the Bill which requires that the Secretary of State should call the Council together at periods of not more than one week. The measure, further, contains a provision to the effect that the Secretary may, if he should think fit, issue orders on an emergency without calling the Council together; but he must in that case lay those orders before them at their next meeting. There is another provision, which I think your Lordships will believe to be absolutely necessary, for transferring to the Secretary of State that power which was exercised by what was called the "Secret Committee" of the Court of Directors—namely, the power of sending out orders and instructions to India on particular subjects, without previously communicating those orders and instructions to the Council. Now I do not mean to say that that power has not in certain cases been abused; I do not mean to say that it has not been too extensively employed; but I am sure your Lordships will agree with me that with regard to the two cases to which alone it is properly applicable—namely, the carrying on of war or of diplomatic arrangements with Native States, it is absolutely necessary the Secretary of State should possess the right of preserving entire secrecy even from the Members of the Council. There are two occasions on which the Secretary of State may be overruled by the judgment of the majority of the Council, and I think it is only reasonable that those two limitations should be imposed on his powers. The first of those limitations will arise in the case of the election of Members of the Council. It is obvious that that election would be a farce if the authority of the Secretary of State were to be paramount in the matter. The only other limitation will be with regard to the expenditure

of the revenues of India. With regard to this expenditure we must bear in mind the effective and bona-fide control over the Secretary of State by an independent body, such as I hope this Council will be.

There are, I believe, only two other subjects to which I need now direct your Lordships' attention, and I allude to them because I think that, as far as they are concerned, the principle and the object of the Bill have been somewhat misunderstood. One relates to the employment of the Indian army, and the other relates to the admission to the civil service of India. The 55th clause deals with the first of those subjects; and it has been objected to that clause that it appears to interfere with the prerogative of the Crown, inasmuch as it provides that none of Her Majesty's forces maintained out of the revenues of India shall be taken, except in cases of urgent emergency, beyond the frontiers of that country without the previous consent of Parliament. Now, it has been thought—and I confess that the wording of the clause makes it open to a construction which was not intended by its framers—it has been thought that that would be an interference with the undoubted prerogative of the Crown to make war or peace. But your Lordships will recollect that although there is no prerogative of the Crown more indisputable than that of making war or peace, the constitution has provided an equally indisputable check on the practical exercise of that prerogative by rendering it necessary for the Crown to come to Parliament for the supplies necessary to raise and maintain the troops, without which it would be impossible to carry on a war. But with regard to the troops in India there is, and there can be, no such Parliamentary control; and consequently, if there were no such provision in the Bill as that to which I have referred, it might have been competent—I do not say there is any danger, but the danger might be possible under a Sovereign less constitutional than Her under whom we have the happiness to live—for the Crown to employ the Indian troops in wars wholly and entirely unsanctioned by Parliament, and the whole force of India might be carried to any portion of the world without the interposition of that practical pecuniary check to which I have alluded. In the Bill of the late Government that principle of restricting the power of the Crown was enforced by a clause which provided that Her Majesty should not be enabled to send out of Asia (not out of India) any part of the forces maintained out of the Indian revenues. Now, as far as regards the restriction of the prerogative of the Crown, the principle is precisely the same, whether the provision be that

the troops should not be sent beyond the limits of Asia, or that they should not be sent beyond the limits of our Indian possessions; and it would be perfectly competent to Parliament, in handing over to the Crown the Government of that vast empire to make the restriction even greater, and to provide that for the future the Indian forces should be placed on the footing of a militia, and should not be liable to serve beyond their own territory. But while the principle of the exception in the Bill of the late Government was the same as ours, the limitation which they put upon that principle allowed that which is the true and substantial danger in this matter. Within Asia the Crown might carry on a war with Persia, or with China, or even with Russia, with no further exception that the forces should not serve out of Asia, and that might be done without Parliament having any control over the expenditure, or any right to express an opinion on the propriety of the war. Our intention, however, is not to limit the prerogative of the Crown, but to protect the revenues of India; and consequently when we come to that clause I mean to propose in it an Amendment which will, I think, remove all ambiguity upon this point. It will be to the effect that, except for the purpose of preventing or repelling actual invasion of Her Majesty's Indian possessions, or in order to meet some sudden and urgent emergency, the revenues of India shall not, without the consent of Parliament, be applicable to the expense of any military operations carried on beyond India by Her Majesty's forces chargeable on such revenues. That provision will impose a pecuniary check on the prerogative of the Crown in regard to the army of India, such as already exists in the case of all other portions of Her Majesty's forces. The other point to which I wish to advert is the admission to the civil service of India, which is dealt with by the 32nd or 33rd clause of the Bill. As the law at present stands, all persons are admitted to that service after such examinations as shall from time to time be prescribed, and under such regulations as may be laid down by the Court of Directors and the President of the Board of Control. That power we now propose to transfer to the Secretary of State. But the Bill, as it stands at present, goes further, I think, than the justice of the case warrants; it gives to the principle of competitive examination that which it has never yet received—namely, the sanction of an Act of Parliament binding the hands of the Executive in all cases, and rendering compulsory a strict adherence to the principle, not of examination, but of competitive examination. It is my intention to move the omission from the clause of the words which

render it necessary for the Government to admit candidates to the civil service in the order of their proficiency in the competitive examination, leaving the law as it stands with regard to admission to the Indian civil service, subject to such regulations as may be issued by the Secretary of State, with the approval of the Crown, and laid before Parliament.

My Lords—There is one other most important point—namely, the reconstruction and organization of the future Indian army. That is a question of the most vital importance, and will require the most careful consideration; and Her Majesty has been advised, and will, I believe, act upon the advice, to issue a Commission for the purpose of instituting an inquiry into all the subjects connected with the re-organisation of the future forces to be employed in India. This Commission will have to consider the proportion of Europeans to be employed, the mode in which they shall be relieved, the conditions upon which they shall serve, the number of the Native army, and the conditions upon which they shall be engaged, and every other question connected with the future permanent military establishment of India when the revolt shall have been happily put down. In the meantime it will be necessary for Parliament to provide for the maintenance of the present state of things until the result of this Commission shall be known, and until Parliament shall have acted upon its recommendations. The Bill, therefore, provides what may be necessary for the present, leaving to Her Majesty the perfect freedom of making such regulations for the future administration of the Army, both as regards the European and Native troops, as she may be advised. The Bill also provides, as far as it refers to individuals and bodies, that they shall have reserved to them all the rights, privileges, and expectations which they were led to form at the time of their admission to the service. It would be the grossest injustice to introduce a similar system at once in both descriptions of the Indian force, and to apply the same principles to those who shall hereafter enter and those who entered the service under different expectations.

I have now stated to your Lordships—I trust not at too great length—the principles of the measure to which I ask your Lordships to assent. The Bill has received the careful deliberation and attention of the House of Commons, and it has been sent up to your Lordships with the universal concurrence of that House. I have perhaps entered at too great

length into an explanation of a measure to which no objection will probably be made; but while the labours of the House of Commons render it probable that no very numerous Amendments will be necessary, Her Majesty's Government will be happy to give the fullest and most impartial consideration to any Amendments which may be suggested in the course of the discussion of this Bill.

PART II.

DOCUMENTS RELATING TO THE CONSTITUTION OF THE COUNCIL OF INDIA.

(1869-1907.)

1. THE GOVERNMENT OF INDIA ACT, 1869.

(32 & 33 Vict., Ch. 97.)

AN ACT TO AMEND IN CERTAIN RESPECTS THE ACT FOR THE BETTER GOVERNMENT OF INDIA.

(11th August, 1869.)

Whereas it is expedient that the Act of the twenty-first and twenty-second years of Victoria, Chapter one hundred and six, intituled, "An Act for the better Government of India," should be amended as regards the duration of service and the remuneration of Members of the Council of India, and in certain other respects :

And whereas it is provided by the said recited Act that every Member of the said Council elected or appointed under that Act shall hold office during good behaviour :

Be it therefore enacted etc. * * * as follows :

Vacancies to be filled up by Secretary of State.

1. After the passing of this Act, all vacancies that shall take place in the said Council shall be filled up by appointment by the Secretary of State.

Members of Council of India to be in future appointed for ten years.

2. Every Member of the said Council who shall, after the passing of this Act, be so appointed, shall be appointed for a term of ten years, and except as hereinafter provided, shall not be re-eligible.

Re-appointment of a member for further period of five years.

3. It shall be lawful for the Secretary of State to re-appoint for a further period of five years any person whose term of office as Member of Council under this Act shall have expired, provided such re-appointment be made for special

on so fast in India as they might have done—if the progress of improvement has been somewhat slower than might have been expected, that effect has arisen from the circumstance that the public of England at large were wholly ignorant of Indian affairs, and had turned away from them, being daunted by the complications they imagined them to be involved in; and because Parliament has never had face to face, in this and the other House, men personally and entirely responsible for the administration of Indian affairs. No doubt a good deal has been done in the way of substantial improvement of late years, but that which has been done, I may venture to say, has been entirely the result of debates in this and the other House of Parliament. And, so far from any discussion on India having worked evil in India, I believe that the greater part of those improvements which the East India Directors boast of in that publication, which has lately issued from Leadenhall Street, has been the result of pressure on the Indian administration by debates in Parliament and discussions in the public press. Therefore, so far from being alarmed at the consequences which may arise from bringing Indian affairs under the cognizance of Parliament, I believe that a great benefit to India, and through India to the British nation, will result therefrom. Therefore, I say, I see no reason, either on the score of principle or on the score of the augmentation of patronage, or on the score of time, or constitutional danger, why we should not at once pass the measure which it will be my duty to present to the House. Sir, I trust that Parliament will feel that great power is not given to nations without corresponding duties to be performed. We have, by an almost miraculous train of events, been intrusted with the care of the destinies of 150 or 160 millions of men—with the government, directly or indirectly, of a vast empire larger in extent than the whole face of Europe, putting the Russian empire out of the question. That is a task which involves great responsibility. Do not imagine that it is the intention of Providence that England should possess that vast empire, and that we should have in our hand the destinies of that vast multitude of men, simply that we may send out to India the sons of gentlemen or of the middling classes to make a decent fortune to live on. That power has been entrusted to us for other and better purposes; and, without pointing to anything particular, I think it is the duty of this nation to use it in such a manner as to promote, as far as they can, the instruction, the enlightenment, and the civilization of those great populations which are now subject to our

rule. We have lately had our attention called to scenes of barbarity in India, which would make any man shudder, but are we wholly irresponsible for those scenes? If, during the century for which we have exercised power in India, we had used that power to enlighten and civilize the people, do you think their nature would not, in some measure at least, have been changed, and that the atrocious crimes which they have committed would not have been as repugnant to their feelings as they are to those of the people of this country? We ought to bear these things in mind—to remember that we have a great duty to fulfil in India, and I am sure that that duty will be best discharged if we commit its performance to the hands of men, who will be accountable to Parliament for their conduct and who feel themselves bound to acquaint the public of this country, step by step, with the arrangements which they make. I am confident, if Parliament should adopt the measure we are about to propose, that while on the one hand it will add to the strength of our position in India, while it will increase the power of this country, and render our influence more firm and secure, it will, on the other hand, enable us more efficiently to perform those important duties which, in my view, it was intended that we should discharge when the great Indian empire was transferred to our control. Sir, I beg to move for leave to bring in a Bill for the better Government of India.

C.

Extracts from the Speech of the Earl of Derby in the House of Lords on July 15, 1858.

On July 15, 1858, the Earl of Derby, in moving the second reading of the (third) Government of India Bill (which subsequently received the Royal Assent on August 2, 1858), said :—

My Lords, in rising to move the second reading of this Bill I cannot but express the deep regret which I feel that this task should have devolved upon me rather than upon my noble Friend and late colleague (the Earl of Ellenborough), whose intimate knowledge of everything connected with Indian affairs would have enabled him to speak with a weight and authority which certainly I cannot command. But my noble Friend, unfortunately, is no longer a Member of Her Majesty's Government, and it therefore becomes my duty to state to your Lordships, as shortly and as clearly as I can, the main principles and provisions of the Bill to which I ask you to give a second reading this evening. Without attempting in the slightest degree to derogate from the importance of the measure, I cannot conceal from myself that a far greater degree of interest and attention has been attracted to it than would perhaps have been called forth by its intrinsic importance, in consequence of the political circumstances which accompanied its introduction and its progress through the other House of Parliament. This additional advantage, however, has accrued from that circumstance—that the Bill has received a greater degree of care and of patient investigation in the other House than possibly it might otherwise have obtained.

My Lords, I must, in the first place, observe that I think the title of the Bill is open to the objection of being somewhat infelicitous. It is not, as it purports to be, a Bill for the better government of India. It is a Bill which will, I hope, tend to the better government of India ; but the government of India must, as cannot be too often repeated, be on the whole carried on in India, and this Bill does not pretend to deal with all those complicated and difficult questions which will no doubt, within the next few years, frequently engage the anxious consideration of Parliament and of the country. It does not pretend to deal with the revenue, with the finance, with the land regulations,

with the condition of the Natives, and the possibility of extending their admission into the public service after this unhappy revolt shall have been suppressed. It does not profess to deal with any of these grave and extensive questions; and although such questions will no doubt engage the attention of Parliament, at future periods, and although Parliament will doubtless feel it to be both its right and its duty to lay down broad principles of action with regard to most of them, I cannot help expressing my opinion, that with regard to the details of the government of India, the less interference there is on the part of Parliament the better prospect will there be of securing the happiness and contentment of the people of India. I need not remind your Lordships that at the commencement of the present Session Her Majesty's Government announced that it was their intention to legislate during that Session with respect to the affairs of India. Without entering into the merits of the particular legislation which they proposed, I must remark that I was certainly of opinion at the time—and that opinion was shared by many—that although it might be necessary within a very short time to deal with this question, the period when the Government were engaged in suppressing a serious revolt was not the most convenient one for the consideration of a measure affecting the government of the country. But that opinion was overruled by a large majority in the other House; for, when a Right Hon. Friend of mine (MR. DISRAELI) thought it his duty to take the somewhat unusual course of moving that leave should not be given to introduce the Bill, on the express ground that it was not the time for legislation—thus especially preventing his motives from being misconstrued, and his opposition from being regarded as directed against any of the provisions of the measure—a majority of, I believe about two to one, in a tolerably full House, decided that it was expedient and desirable that a Bill for the regulation of the Home Government of India should be introduced in the course of the present Session; and you will observe that this Bill is not, in fact, for the "government of India," but for the improvement of the machinery by which, in this country, Indian Government may be superintended and controlled. In consequence of that decision the noble Viscount, lately at the head of Her Majesty's Government, introduced a measure to carry into effect the views of himself and his colleagues. Very shortly after that, circumstances occurred which caused the resignation of the noble Viscount, and a consequent change of Government. In several of the provisions of the Bill of the late Government—indeed, in

most of them—I, and those with whom I have the honour to act, cordially concurred ; but there were at the same time provisions of no minor importance on which we held entirely opposite opinions. It then became a question with us whether we should take the course of proceeding with the Bill of the noble Viscount, and propose in Committee such Amendments as we might think necessary. But it was the opinion of Her Majesty's servants—and, I think, it was a correct opinion—that a measure of such vast importance as one regulating the machinery for superintending the Government of India, ought to be conducted and carried through, not by any private Member, but on the responsibility of the Government as a whole. The consequence of that was, that under the auspices of my noble Friend (THE EARL OF ELLENBOROUGH) a Bill was introduced and laid upon the table shortly before the Easter recess. In the course of the observations which I shall have to make it may be my duty to contrast some of the provisions of that Bill and of the Bill now before your Lordships with those of the measure introduced by the late Government ; but at present I shall only say that the course which we pursued—although I think it was the necessary and proper course—had this inevitable consequence :—that there being, as it were two rival Bills on the table of the House of Commons, there might, in the then state of political excitement, occur this unfortunate result, that the House would be called upon to decide between those Bills, not with regard to their respective merits, but with regard to the persons and parties by whom they were introduced ; and that, consequently, the affairs of India, which required the most careful and dispassionate consideration of Parliament, might be made—what I was most anxious to avoid—a battle-field for contending political parties. In those circumstances the noble Lord the Member for London (LORD JOHN RUSSELL) made a suggestion, which was, I think, as wise and patriotic as it was certainly just and conciliatory, and it tended to relieve Parliament from what might have been a very serious embarrassment. LORD J. RUSSEL suggested—and the Government at once adopted the suggestion ; indeed, to a certain extent it had already been anticipated by us—that, instead of proceeding to match, as it were, one Bill as a whole against the other, we should enable the House to consider one by one in Committee Resolutions, the principles of which were involved in each, and out of those Resolutions to frame a measure which might receive the sanction of the Legislature. The Government, therefore, acting on that suggestion, prepared a series of Resolutions, which were submitted

seriatim to the consideration of the House of Commons; and it is only doing that House the barest justice to say, that during the whole of my experience in Parliament I have never known a question which has been treated by that House with more patience, with more deliberate attention, with greater temper, and with more entire absence on all sides of party feeling or acrimonious discussion. The result of that course of proceeding is, that there has been sent up to your Lordships' House a measure—not carried by a bare majority, not depending for its success upon this or upon that political party, but a measure to a great extent the work of the House of Commons itself, and to which all parties concurred in giving their tribute of praise—the noble Viscount at the head of the late Government uniting with the noble Lord the Member for the City of London in according to the third reading not his hesitating but his cordial approval, and expressing his wishes for its success before your Lordships' House. My Lords, I now proceed very shortly to lay before your Lordships the principles and chief provisions of this Bill. * * *

When it was determined that a change should take place in the Home Government of India, there was one principle which could not but meet with uniform and unanimous assent—namely, that it was absolutely indispensable that a transfer of the nominal as well as the real authority should be made directly from the Company to the Crown, and the affairs of India should thenceforth be conducted in the name of the Crown. My noble Friend (THE EARL OF ELLENBOROUGH) who is not desirous of any very extensive change, laid the greatest stress on the necessity of that transfer, and dwelt upon the beneficial effects which it was likely to produce in India. Now, as before intimated, I consider that the Government of the East India Company, both here and in India, has been marked by singular prudence and ability, and I should be very sorry if this Bill was considered—what it was represented to be at a meeting held at the India House yesterday—a Bill of Pains and Penalties against the Directors. It is nothing of the sort. I believe no men could have conducted business better under the system which they found in operation than the Directors of the East India Company have done. But the complaints against the system itself, the encumbrances connected with its machinery, the delay which unavoidably attended the most important transactions, make it quite obvious that in any remodelling which may take place, India must be put on the same footing as the other possessions of the Crown, and be administered by

a Minister responsible to Parliament. I may add that, in point of fact, the transfer of authority to the Crown is more nominal than real, because, although the Court of Directors have been in a position to exercise certain powers of obstruction and delay I believe that, with the single exception of the power of recalling the Governor-General, there was no single act which they were enabled to perform without the assent of the President of the Board of Control. Not only does the President of the Board of Control possess the power of altering or of vetoing the instructions proposed by the Court of Directors, but he has the power, and it has been sometimes exercised, of sending out instructions diametrically opposed to those which the Court intended. There is a question whether the Court might not have interposed delay, and even persisted, until compelled by a mandamus; but in point of fact they have generally been obliged to yield to the suggestions of the President of the Board of Control. We all remember that my noble Friend below me (THE EARL OF ELLENBOROUGH) who has on various occasions been at the head of the Board of Control, told the Committee that when he was in office the government of India was in his hands altogether. Upon the subject, then, of the transfer of the powers of the Court of Directors to a responsible Minister of the Crown, and of carrying on all business both here and in India in the name and by the direct authority of the Crown, there was no difference of opinion between the two parties into which the House of Commons was divided. Nor was there any difference of opinion on this point—that although it was expedient that the business should be conducted by a high Ministerial officer, under whatever denomination he might be known, who should, like the holders of other offices in the Government, be appointed by the Crown and responsible to Parliament, yet, inasmuch as it is impossible to conceive that any person so appointed would have sufficient knowledge and experience to discharge duties so various and so complicated as those connected with the administration of all the different provinces of India, it was necessary for the good Government of India, to associate with the Minister a Council more or less numerous by whom he might be assisted and advised. It was with regard to the constitution of that Council that there existed the main difference of opinion between Her Majesty's late Government and Her Majesty's present Government. Her Majesty's late Government proposed that the Council should consist of eight members who should each hold office for six years, all nominated by the Minister of the Crown, and two of whom should retire from

office each alternate year. Now, the present Government was of opinion that, although in that manner the President of the Board of Control might surround himself with many able and experienced advisers, due provision was not made for securing to the Council that character of independence which was absolutely essential to the proper discharge of its functions. It was quite clear that when one-third of the members of the Board had been only recently appointed by the actual President of the Board, and another third would soon vacate their offices, and were hoping, perhaps, to be re-appointed by the same Minister, there would be great temptation presented to the Council to defer, more than they ought to do, to that Minister, and to refrain from freely expressing their opinions. It was, moreover, the opinion of the members of the present Government that a Council of eight members would not be sufficiently numerous, having regard to the great extent of the duties which would have to be performed, and we thought that eighteen—the present number of the Directors—were not more than were required by the business of India. The Council of India we thought out not to be—as the Directors may have been before—a screen between the Minister and Parliament, but a body of men well acquainted with the affairs of India, to give the Minister advice, which on his own responsibility, he might be at liberty either to accept or reject. I have heard it said that, according to the peculiar character of the President of the Board of Control, the Council, as proposed to be constituted would be either his masters, his advisers, or his puppets. It must, no doubt, depend on the character and the self-reliance of the head of any great Department how far he is influenced or controlled, how far he is guided, by those who filled permanent situations, and to what extent he is the master of his own Department. For my own part, I certainly hope and believe that the Council proposed by the Government under this Bill will be found neither the masters of the Secretary of State nor his puppets, but that they will prove that, which their qualifications prepare them to be, most valuable advisers to the Minister in all matters relating to India. But, to secure the independence of the Council we considered that one portion of it should be, as at present, elected, and the other portion nominated by the Crown. We were also of opinion that both the elective and the nominated portions of the Council should have a longer term of service than was provided for by the Bill of the late Government, and that this would be of great importance as tending to increase their independence. Accordingly, it is

proposed in the Bill before the House that the members of the Council, whether elective or nominative, shall hold their offices during good behaviour ; there being a proviso that at the expiration of ten years' service, if they are disabled by infirmity, they shall be entitled to retire upon suitable pensions. When we came to consider the elective principle, we found, I must confess, considerable difficulty. My noble Friend (THE EARL OF ELLENBOROUGH) who is not now a Member of the Government, but for whose proposition we are all responsible, laid before Parliament,on behalf of the Cabinet, a very elaborate scheme, a scheme involving considerations which ought, as it appeared to me, to be borne in mind by any Government when dealing with such a subject. My noble Friend proposed so to constitute a Council that it should be a representation of the civil and military services of India—not merely of India, but of the three Presidencies ; because the qualifications which enable a man to give very valuable opinions with regard to Bengal may be utterly useless in relation to Madras or Bombay. The only objection which I have heard to the noble Earl's proposition is this—not that it was wrong in itself, but that it was imperative, and would be found to fetter too much the hands of the Crown, who might under it be compelled to choose inefficient men and to pass over the most competent. There was another proposition of the Government which did not meet with seeming great favour ; I mean the proposition by which they endeavoured to obtain, what it was very difficult to secure, a representation of the commercial interests connected with India in the Council. We proposed in that Bill to supply that deficiency by giving the appointment of four of the Councillors to the constituencies of the largest towns connected with the trade to India. That proposal was, I believe, a good one in itself ; but it did not meet with such an amount of support in Parliament, or in the country, as would justify us in insisting on its adoption. The conclusion at which we then arrived was, that with a view to secure the three great requisites of intelligence, experience, and independence in the Councillors, it was necessary that a portion of their body should be elected, that another portion should be nominated, and that all the parties elected should have served, or should at least have resided, for a considerable period in India, and should, consequently, have possessed opportunities of obtaining a knowledge of the feelings and of the wants of the people of that country ; while they were to hold office during the pleasure of the Crown, but should, of course, be removable, like other public servants, on an Address from both Houses of

Parliament. But when we came to apply the principle of election we found that we had considerable difficulties to encounter. It could not be argued with hardly more than plausibility that the Court of Proprietors, as at present constituted, possessed any such interest in the affairs of India as to entitle them to elect the Councillors ; and yet there was no other body besides the Court of Proprietors to whom that duty could be committed. The functions of the Court of Proprietors, as your Lordships are aware, are limited to the mere receipt of the dividends on their stock ; and even under the system of Indian Government which has hitherto prevailed, although they could pass Resolutions, they had no means of giving effect to any decisions at which they might arrive. It was proposed that there should be added to the Court of Proprietors all those persons who had for a certain period been engaged either in the civil or in the military service of India. But it was found that such a constituency would be very difficult to bring together, that it would be inconveniently large, and that it would in point of fact aggravate those disadvantages of the present system which prevent some of the most competent and most high-minded men from entering on the career necessary to ensure their return as Members of the Court of Directors. Such men will not now go through a canvass for the appointment of Directors, and still less would they go through a canvass of a more extensive body for the purpose of being elected Members of Council. Under these circumstances, and after much consideration, Her Majesty's Government determined on adopting an arrangement under which one-half of the Councillors should be elected and one-half should be nominated by the Crown, and under which the elected members should be chosen by the existing Court of Directors, in conformity with a suggestion which had been thrown out by a noble Earl not now present (EARL GREY) at the commencement of the Session. Some arguments were certainly advanced against that scheme, but on the whole it met with no considerable opposition ; and I believe it was the best escape which could be devised from the difficulties in which the question was involved. This Council, so constituted, would be entitled to tender its advice to the Secretary of State. And when I say "Secretary of State," I must add that, although the name which may be given to the head of the Indian Government may not be a matter of much importance, we thought that in the formation of such an office it would be more advisable and more in conformity with constitutional practice to give the name of Secretary of State to a high officer upon whom Her Majesty is

pleased to devolve the exercise of duties under Her Royal sanction. As regards the Colonies and Foreign Affairs, so as regards India, the same title is given to the presiding officer, and there will be this additional convenience, though not at first contemplated, that either of the Secretaries of State will be able to sign papers and perform duties in the absence of the Secretary of State for India. I must also observe that there are two qualifications of the power which is given by this Bill to the Secretary of State of setting aside the authority and advice of his Council. He has full power of acting in opposition to their advice; but if he should act in opposition to a majority of the body, he must state and place on record the reasons why he set aside their opinion; and any Councillor whose advice is not adopted may also enter on the records of the office the reasons which induced him to give it. There is also a provision in the Bill which requires that the Secretary of State should call the Council together at periods of not more than one week. The measure, further, contains a provision to the effect that the Secretary may, if he should think fit, issue orders on an emergency without calling the Council together; but he must in that case lay those orders before them at their next meeting. There is another provision, which I think your Lordships will believe to be absolutely necessary, for transferring to the Secretary of State that power which was exercised by what was called the "Secret Committee" of the Court of Directors—namely, the power of sending out orders and instructions to India on particular subjects, without previously communicating those orders and instructions to the Council. Now I do not mean to say that that power has not in certain cases been abused; I do not mean to say that it has not been too extensively employed; but I am sure your Lordships will agree with me that with regard to the two cases to which alone it is properly applicable—namely, the carrying on of war or of diplomatic arrangements with Native States, it is absolutely necessary the Secretary of State should possess the right of preserving entire secrecy even from the Members of the Council. There are two occasions on which the Secretary of State may be overruled by the judgment of the majority of the Council, and I think it is only reasonable that those two limitations should be imposed on his powers. The first of those limitations will arise in the case of the election of Members of the Council. It is obvious that that election would be a farce if the authority of the Secretary of State were to be paramount in the matter. The only other limitation will be with regard to the expenditure

of the revenues of India. With regard to this expenditure we must bear in mind the effective and bona-fide control over the Secretary of State by an independent body, such as I hope this Council will be.

There are, I believe, only two other subjects to which I need now direct your Lordships' attention, and I allude to them because I think that, as far as they are concerned, the principle and the object of the Bill have been somewhat misunderstood. One relates to the employment of the Indian army, and the other relates to the admission to the civil service of India. The 55th clause deals with the first of those subjects; and it has been objected to that clause that it appears to interfere with the prerogative of the Crown, inasmuch as it provides that none of Her Majesty's forces maintained out of the revenues of India shall be taken, except in cases of urgent emergency, beyond the frontiers of that country without the previous consent of Parliament. Now, it has been thought—and I confess that the wording of the clause makes it open to a construction which was not intended by its framers—it has been thought that that would be an interference with the undoubted prerogative of the Crown to make war or peace. But your Lordships will recollect that although there is no prerogative of the Crown more indisputable than that of making war or peace, the constitution has provided an equally indisputable check on the practical exercise of that prerogative by rendering it necessary for the Crown to come to Parliament for the supplies necessary to raise and maintain the troops, without which it would be impossible to carry on a war. But with regard to the troops in India there is, and there can be, no such Parliamentary control; and consequently, if there were no such provision in the Bill as that to which I have referred, it might have been competent—I do not say there is any danger, but the danger might be possible under a Sovereign less constitutional than Her under whom we have the happiness to live—for the Crown to employ the Indian troops in wars wholly and entirely unsanctioned by Parliament, and the whole force of India might be carried to any portion of the world without the interposition of that practical pecuniary check to which I have alluded. In the Bill of the late Government that principle of restricting the power of the Crown was enforced by a clause which provided that Her Majesty should not be enabled to send out of Asia (not out of India) any part of the forces maintained out of the Indian revenues. Now, as far as regards the restriction of the prerogative of the Crown, the principle is precisely the same, whether the provision be that

the troops should not be sent beyond the limits of Asia, or that they should not be sent beyond the limits of our Indian possessions; and it would be perfectly competent to Parliament, in handing over to the Crown the Government of that vast empire to make the restriction even greater, and to provide that for the future the Indian forces should be placed on the footing of a militia, and should not be liable to serve beyond their own territory. But while the principle of the exception in the Bill of the late Government was the same as ours, the limitation which they put upon that principle allowed that which is the true and substantial danger in this matter. Within Asia the Crown might carry on a war with Persia, or with China, or even with Russia, with no further exception that the forces should not serve out of Asia, and that might be done without Parliament having any control over the expenditure, or any right to express an opinion on the propriety of the war. Our intention, however, is not to limit the prerogative of the Crown, but to protect the revenues of India; and consequently when we come to that clause I mean to propose in it an Amendment which will, I think, remove all ambiguity upon this point. It will be to the effect that, except for the purpose of preventing or repelling actual invasion of Her Majesty's Indian possessions, or in order to meet some sudden and urgent emergency, the revenues of India shall not, without the consent of Parliament, be applicable to the expense of any military operations carried on beyond India by Her Majesty's forces chargeable on such revenues. That provision will impose a pecuniary check on the prerogative of the Crown in regard to the army of India, such as already exists in the case of all other portions of Her Majesty's forces. The other point to which I wish to advert is the admission to the civil service of India, which is dealt with by the 32nd or 33rd clause of the Bill. As the law at present stands, all persons are admitted to that service after such examinations as shall from time to time be prescribed, and under such regulations as may be laid down by the Court of Directors and the President of the Board of Control. That power we now propose to transfer to the Secretary of State. But the Bill, as it stands at present, goes further, I think, than the justice of the case warrants; it gives to the principle of competitive examination that which it has never yet received—namely, the sanction of an Act of Parliament binding the hands of the Executive in all cases, and rendering compulsory a strict adherence to the principle, not of examination, but of competitive examination. It is my intention to move the omission from the clause of the words which

render it necessary for the Government to admit candidates to the civil service in the order of their proficiency in the competitive examination, leaving the law as it stands with regard to admission to the Indian civil service, subject to such regulations as may be issued by the Secretary of State, with the approval of the Crown, and laid before Parliament.

My Lords—There is one other most important point—namely, the reconstruction and organization of the future Indian army. That is a question of the most vital importance, and will require the most careful consideration; and Her Majesty has been advised, and will, I believe, act upon the advice, to issue a Commission for the purpose of instituting an inquiry into all the subjects connected with the re-organisation of the future forces to be employed in India. This Commission will have to consider the proportion of Europeans to be employed, the mode in which they shall be relieved, the conditions upon which they shall serve, the number of the Native army, and the conditions upon which they shall be engaged, and every other question connected with the future permanent military establishment of India when the revolt shall have been happily put down. In the meantime it will be necessary for Parliament to provide for the maintenance of the present state of things until the result of this Commission shall be known, and until Parliament shall have acted upon its recommendations. The Bill, therefore, provides what may be necessary for the present, leaving to Her Majesty the perfect freedom of making such regulations for the future administration of the Army, both as regards the European and Native troops, as she may be advised. The Bill also provides, as far as it refers to individuals and bodies, that they shall have reserved to them all the rights, privileges, and expectations which they were led to form at the time of their admission to the service. It would be the grossest injustice to introduce a similar system at once in both descriptions of the Indian force, and to apply the same principles to those who shall hereafter enter and those who entered the service under different expectations.

I have now stated to your Lordships—I trust not at too great length—the principles of the measure to which I ask your Lordships to assent. The Bill has received the careful deliberation and attention of the House of Commons, and it has been sent up to your Lordships with the universal concurrence of that House. I have perhaps entered at too great

length into an explanation of a measure to which no objection will probably be made; but while the labours of the House of Commons render it probable that no very numerous Amendments will be necessary, Her Majesty's Government will be happy to give the fullest and most impartial consideration to any Amendments which may be suggested in the course of the discussion of this Bill.

PART II.

DOCUMENTS RELATING TO THE CONSTITUTION OF THE COUNCIL OF INDIA.

(1869-1907.)

1. THE GOVERNMENT OF INDIA ACT, 1869.

(32 & 33 Vict., Ch. 97.)

AN ACT TO AMEND IN CERTAIN RESPECTS THE ACT FOR THE BETTER GOVERNMENT OF INDIA.

(11th August, 1869.)

Whereas it is expedient that the Act of the twenty-first and twenty-second years of Victoria, Chapter one hundred and six, intituled, "An Act for the better Government of India," should be amended as regards the duration of service and the remuneration of Members of the Council of India, and in certain other respects :

And whereas it is provided by the said recited Act that every Member of the said Council elected or appointed under that Act shall hold office during good behaviour :

Be it therefore enacted etc. * * * as follows :

Vacancies to be filled up by Secretary of State.

1. After the passing of this Act, all vacancies that shall take place in the said Council shall be filled up by appointment by the Secretary of State.

Members of Council of India to be in future appointed for ten years.

2. Every Member of the said Council who shall, after the passing of this Act, be so appointed, shall be appointed for a term of ten years, and except as hereinafter provided, shall not be re-eligible.

Re-appointment of a member for further period of five years.

3. It shall be lawful for the Secretary of State to re-appoint for a further period of five years any person whose term of office as Member of Council under this Act shall have expired, provided such re-appointment be made for special

of Council shall have rank and precedence at the Council Board next after the Governor-General.

Present members of Council to continue.

4. The present ordinary Members of the Council of the Governor-General of India shall continue to be ordinary Members under and for the purposes of this Act; and it shall be lawful for Her Majesty, on the passing of this Act, to appoint by warrant as aforesaid an ordinary Member of Council, to complete the number of five hereby established; and there shall be paid to such ordinary Member, and to all other ordinary Members who may be hereafter appointed, such amount of salary as may from time to time be fixed for Members of the Council of the Governor-General by the Secretary of State in Council, with the concurrence of a majority of Members of Council present at a meeting; and all enactments of any Act of Parliament or law of India respecting the Council of the Governor-General of India and the Members thereof shall be held to apply to the said Council as constituted by this Act, except so far as they are repealed by or are repugnant to any provisions of this Act.

Power of making provisional appointments of members of Council by Secretary of State.

5. It shall be lawful for the Secretary of State in Council, with the concurrence of a majority of Members present at a meeting, and for Her Majesty, by warrant as aforesaid, respectively, to appoint any person provisionally to succeed to the office of ordinary Member of the Council of the Governor-General, when the same shall become vacant by the death or resignation of the person holding the said office, or on his departure from India with intent to return to Europe, or on any event and contingency expressed in any such provisional appointment, and such appointment again to revoke; but no person so appointed to succeed provisionally to such office shall be entitled to any authority, salary, or emolument appertaining thereto until he shall be in the actual possession of such office.

Provision on absence of Governor-General in other parts of India.

6. Whenever the said Governor-General in Council shall declare that it is expedient that the said Governor-General should visit any part of India unaccompanied by his Council, it shall be lawful for the said Governor-General in Council, previously to the departure of the said Governor-General, to nominate some Member of the said Coun-

cil to be President of the said Council, in whom, during the time of such visit, the powers of the said Governor-General in assemblies of the said Council shall be reposed, except that of assenting to or withholding his assent from, or reserving for the signification of Her Majesty's pleasure, any law or regulation, as hereinafter provided; and it shall be lawful in every such case for the said Governor-General in Council by an order for that purpose to be made, to authorize the Governor-General alone to exercise all or any of the powers which might be exercised by the said Governor-General in Council in every case in which the said Governor-General may think it expedient to exercise the same, except the power of making laws or regulations.

Provision on absence of Governor-General from meeting.

7. Whenever the Governor-General, or such President so nominated as aforesaid, shall be obliged to absent himself from any meeting of Council (other than meetings for the purpose of making laws and regulations, as hereinafter provided), owing to indisposition or any other cause whatsoever, and shall signify his intended absence to the Council, then and in every such case the senior Member for the time being who shall be present at such meeting, shall preside thereat, in such manner, and with such full powers and authorities during the time of such meeting, as such Governor-General or President would have had in case he had been present at such meeting: provided always, that no act of Council made at any such meeting shall be valid to any effect whatsoever unless the same shall be signed by such Governor-General or President respectively, if such Governor-General or President shall at the time be resident at the place at which such meeting shall be assembled, and shall not be prevented by such indisposition from signing the same: Provided always, that in case such Governor-General or President, not being so prevented as, aforesaid, shall decline or refuse to sign such act of Council, he, and the several Members of Council who shall have signed the same, shall mutually exchange with and communicate in writing to each other the grounds and reasons of their respective opinions, in like manner and subject to such regulations and ultimate responsibility as are by an Act of the thirty-third year of King George the Third, Chapter fifty-two, sections forty-seven, forty-eight, forty-nine, fifty, fifty-one, provided and described in cases where such Governor-General shall, when present, dissent from any measure proposed or agitated in the Council.

8. It shall be lawful for the Governor-General from time to time to make rules and orders for the more convenient transaction of business in the said Council; and any order made or act done in accordance with such rules and orders (except as hereinafter provided respecting laws and regulations) shall be deemed to be the order or act of the Governor-General in Council.

Power of Governor-General to make rules for conduct of business.

9. The said Council shall from time to time assemble at such place or places as shall be appointed by the Governor-General in Council within the territories of India; and as often as the said Council shall assemble within either of the Presidencies of Fort Saint George or Bombay, the Governor of such Presidency shall act as an extraordinary Member of Council; and as often as the said Council shall assemble within any other division, province, or territory having a Lieutenant-Governor, such Lieutenant-Governor shall act as an additional Councillor at meetings of the Council, for the purpose of making laws and regulations only, in manner hereinafter provided.

Power to Council to assemble at any place in India.

10. For the better exercise of the power of making laws and regulations vested in the Governor-General in Council, the Governor General shall nominate, in addition to the ordinary and extraordinary Members above mentioned, and to such Lieutenant-Governor in the case aforesaid, such persons, not less than six nor more than twelve in number, as to him may seem expedient, to be Members of Council for the purpose of making laws and regulations only, and such persons shall not be entitled to sit or vote at any meeting of Council, except at meetings held for such purpose: Provided that not less than one-half of the persons so nominated shall be non-official persons, that is, persons who, at the date of such nomination, shall not be in the civil or military service of the Crown in India, and that the seat in Council of any non-official Member accepting office under the Crown in India shall be vacated on such acceptance.

Additional members to be summoned for the purpose of making laws and regulations.

11. Every additional Member of Council so nominated shall be summoned to all meetings held for the purpose of making laws and regulations, for the term of two years from the date of such nomination.

Additional members to be appointed for two years.

12. It shall be lawful for any such additional Member of Council to resign his office to the Governor-General and on acceptance of such resignation by the Governor-General such office shall become vacant.

Resignation of additional members.

13. On the event of a vacancy occurring by the death, acceptance of office, or resignation, accepted in manner aforesaid, of any such additional Member of Council, it shall be lawful for the Governor-General to nominate any person as additional Member of Council in his place, who shall exercise the same functions until the termination of the term for which the additional Member so dying, accepting office, or resigning, was nominated; Provided always, that it shall not be lawful for him by such nomination to diminish the proportion of non-official additional Members hereinbefore directed to be nominated.

Powers to fill up vacancy in number of additional members.

14. No law or regulation made by the Governor-General in Council, in accordance with the provisions of this Act shall be deemed invalid by reason only that the proportion of non-official additional Members hereby provided was not complete at the date of its introduction to the Council or its enactment.

Law not invalid if number of non-official members incomplete.

15. In the absence of the Governor-General and of the President, nominated as aforesaid, the senior ordinary Member of the Council present shall preside at meetings of the Council for making laws and regulations; and the power of making laws and regulations vested in the Governor-General in Council shall be exercised only at meetings of the said Council at which such Governor-General or President, or some ordinary Member of Council, and six or more Members of the said Council, (including under the term 'Members of the Council' such additional Members as aforesaid) shall be present; and in every case of difference of opinion at meetings of the said Council for making laws and regulations, where there shall be an equality of voices, the Governor-General, or in his absence the President, and in the absence of the Governor-General and President such senior ordinary Member of Council there presiding, shall have two votes or the casting vote.

Senior ordinary member of Council to preside at meetings for making laws etc. in absence of Governor-General, &c. Quorum.

Governor-General to appoint first meeting for making laws and regulations.

16. The Governor-General in Council shall, as soon as conveniently may be, appoint a place and time for the first meeting of the said Council of the Governor-General for making laws and regulations under this Act, and summon thereto as well the additional Councillor nominated by and under this Act as the other Members of such Council; and until such first meeting the powers now vested in the said Governor-General of India in Council of making laws and regulations shall and may be exercised in like manner and by the same Members as before the passing of this Act.

Power to appoint and adjourn meetings for making laws and regulations.

17. It shall be lawful for the Governor-General in Council from time to time to appoint all other times and places of meeting of the Council for the purpose of making laws and regulations under the provisions of this Act, and to adjourn, or from time to time to authorize such President, or senior ordinary Member of Council in his absence, to adjourn any meeting for the purpose of making laws and regulations from time to time and from place to place.

Governor-General to make rules for conduct of business at such meetings.

18. It shall be lawful for the Governor-General in Council to make rules for the conduct of business at meetings of the Council for the purpose of making laws and regulations under the provisions of this Act, prior to the first of such meetings; but such rules may be subsequently amended at meetings for the purpose of making laws and regulations, subject to the assent of the Governor-General; and such rules shall prescribe the mode of promulgation and authentication of such laws and regulations: Provided always, that it shall be lawful for the Secretary of State in Council to disallow any such rule, and to render it of no effect.

Business to be transacted at such meetings.

19. No business shall be transacted at any meeting for the purpose of making laws and regulations, except as last hereinbefore provided, other than the consideration and enactment of measures introduced into the Council for the purpose of such enactment; and it shall not be lawful for any Member or additional Member to make or for the Council to entertain any motion, unless such motion be for leave to introduce some measure as aforesaid into Council or have reference to some

measure actually introduced thereinto: Provided always, that it shall not be lawful for any Member or additional Member to introduce, without the previous sanction of the Governor-General, any measure affecting,—

(i) The Public Debt or public revenues of India, or by which any charge would be imposed on such revenues :

(ii) The religion or religious rights and usages of any class of Her Majesty's subjects in India :

(iii) The discipline or maintenance of any part of Her Majesty's Military or Naval Forces :

(iv) The relations of the Government with foreign Princes or States.

Assent of Governor-General to laws made at such meetings.

20. When any law or regulation has been made by the Council at a meeting for the purpose of making laws and regulations as aforesaid, it shall be lawful for the Governor-General, whether he shall or shall not have been present in Council at the making thereof, to declare that he assents to the same or that he withholds his assent from the same, or that he reserves the same for the signification of the pleasure of Her Majesty thereon; and no such law or regulation shall have validity until the Governor-General shall have declared his assent to the same, or until (in the case of law or regulation so reserved as aforesaid) Her Majesty shall have signified her assent to the same to the Governor-General, through the Secretary of State for India in Council, and such assent shall have been duly proclaimed by the said Governor-General.

Power of the Crown to disallow laws made at such meetings.

21. Whenever any such law or regulation has been assented to by the Governor-General, he shall transmit to the Secretary of State for India an authentic copy thereof; and it shall be lawful for Her Majesty to signify, through the Secretary of State for India in Council, her disallowance of such law; and such disallowance shall make void and annul such law from or after the day on which the Governor-General shall make known, by proclamation or by signification to his Council, that he has received the notification of such disallowance by Her Majesty.

22. The Governor-General in Council shall have power at meetings for the purpose of making laws and regulations as aforesaid, and subject to the provisions herein contained, to make laws and regulations for repealing, amending, or altering any laws or regulations whatever, now in force or hereafter to be in force in the Indian territories now under the dominion of Her Majesty, and to make laws and regulations for all persons, whether British or Native, foreigners or others, and for all courts of justice whatever, and for all places and things whatever within the said territories, and for all servants of the Government of India within the dominions of Princes and States in alliance with Her Majesty; and the laws and regulations so to be made by the Governor-General in Council shall control and supersede any laws and regulations in anywise repugnant thereto which shall have been made prior thereto by the Governors of the Presidencies of Fort St. George and Bombay respectively in Council, or the Governor or Lieutenant-Governor in Council of any Presidency or other territory for which a Council may be appointed, with power to make laws and regulations, under and by virtue of this Act: Provided always, that the said Governor-General in Council shall not have the power of making any laws or regulations which shall repeal or in any way affect any of the provisions of this Act:

Extent of the powers of the Governor-General in Council to make laws and regulations at such meetings.

Or any of the provisions of the Acts of the third and fourth years of King William the Fourth, Chapter eighty-five, and of the sixteenth and seventeenth years of Her Majesty, Chapter ninety-five, and of the seventeenth and eighteenth years of Her Majesty, Chapter seventy-seven, which after the passing of this Act shall remain in force:

Or any provisions of the Acts of the twenty-first and twenty-second years of Her Majesty, Chapter one hundred and six, entitled, "An Act for the Better Government of India"; or of the Acts of the twenty-second and twenty-third years of Her Majesty, Chapter forty-one, to amend the same:

Or of any Act enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India:

Or of the Acts for punishing mutiny and desertion in Her Majesty's Army or in Her Majesty's Indian Forces respectively, but subject to the provision contained in the Act of the third

and fourth years of King William the Fourth, Chapter eighty-five, section seventy-three, respecting the Indian Articles of War:

Or any provisions of any Act passed in this present session of Parliament, or hereafter to be passed, in anywise affecting Her Majesty's Indian territories, or the inhabitants thereof:

Or which may affect the authority of Parliament, or the constitution and rights of the East India Company, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or the sovereignty or dominion of the Crown over any part of the said territories.

Governor-General may make ordinances having force of law in case of urgent necessity.

23. Notwithstanding anything in this Act contained, it shall be lawful for the Governor-General, in cases of emergency, to make and promulgate, from time to time, ordinances for the peace and good government of the said territories or of any part thereof, subject however to the restrictions contained in the last preceding section; and every such ordinance shall have like force of law with a law or regulation made by the Governor-General in Council, as by this Act provided, for the space of not more than six months from its promulgation, unless the disallowance of such ordinance by Her Majesty shall be earlier signified to the Governor-General by the Secretary of State for India in Council, or unless such ordinance shall be controlled or superseded by some law or regulation made by the Governor-General in Council at a meeting for the purpose of making laws and regulations as by this Act provided.

No law, &c. invalid for affecting prerogative of Crown.

24. No law or regulation made by the Governor-General in Council (subject to the power of disallowance by the Crown, as hereinbefore provided), shall be deemed invalid by reason only that it affects the prerogative of the Crown.

Laws made for the non-regulation provinces declared valid.

25. "Whereas doubts have been entertained whether the Governor-General of India, or the Governor-General of India in Council, had the power of making rules, laws, and regulations for the territories known from time to time as "Non-regulation Provinces," except at meetings for making

laws and regulations in conformity with the provisions of the said Acts of the third and fourth years of King William the Fourth, Chapter eighty-five, and of the sixteenth and seventeenth years of Her Majesty, Chapter ninety-five, and whether the Governor, or Governor in Council, or Lieutenant-Governor of any Presidency or part of India had such power in respect of any such territories:" Be it enacted, that no rule, law, or regulation which prior to the passing of this Act shall have been made by the Governor-General or Governor-General in Council, or by any other of the authorities aforesaid, for and in respect of any such non-regulation Province, shall be deemed invalid only by reason of the same not having been made in conformity with the provisions of the said Acts, or of any other Act of Parliament respecting the constitution and powers of the Council of India or of the Governor-General, or respecting the powers of such Governors, or Governors in Council, or Lieutenant-Governors as aforesaid.

Provisions for leave of absence to member of Council.

26. It shall be lawful for the Governor-General in Council, or Governor in Council of either of the Presidencies as the case may be, to grant to an ordinary Member of Council leave of absence under medical certificate, for a period not exceeding six months; and such Member, during his absence shall retain his office, and shall, on his return and resumption of his duties, receive half his salary for the period of such absence; but if his absence shall exceed six months, his office shall be vacated.

Power of making temporary appointments of members of Council by Governor-General or Governor of a Presidency.

27. If any vacancy shall happen in the office of an ordinary Member of the Council of the Governor-General, or of the Council of either of the Presidencies, when no person provisionally appointed to succeed thereto shall be then present on the spot, then and on every such occasion, such vacancy shall be supplied by the appointment of the Governor-General in Council, or the Governor in Council as the case may be; and until a successor shall arrive the person so nominated shall execute the office to which he shall have been appointed, and shall have all the powers thereof and shall have and be entitled to the salary and other emoluments and advantages appertaining to the said office during his continuance therein, every such temporary Member of Council foregoing all salaries and allowances by him held and enjoyed at the time of his being ap-

pointed to such office; and if any ordinary Member of the Council of the Governor-General, or of the Council of either of the Presidencies, shall, by any infirmity, or, otherwise, be rendered incapable of acting or of attending to act as such, or if any such Member shall be absent on leave, and if any person shall have been provisionally appointed as aforesaid, then the place of such Member absent or unable to attend, shall be supplied by such person; and if no person provisionally appointed to succeed to the office shall be then on the spot, the Governor-General in Council, or Governor in Council, as the case may be, shall appoint some person to be a temporary Member of Council; and, until the return of the Member so absent or unable to attend, the person so provisionally appointed by the Secretary of State in Council, or so appointed by the Governor-General in Council, or Governor in Council, as the case may be, shall execute the office to which he shall have been appointed, and shall have all the powers thereof, and shall receive half the salary of the Member of Council whose place he supplies, and also half the salary of his office under the Government of India, or the Government of either of the Presidencies, as the case may be, if he hold any such office, the remaining half of such last-named salary being at the disposal of the Government of India, or other Government as aforesaid: Provided always, that no person shall be appointed a temporary Member of the said Council who might not have been appointed as hereinbefore provided to fill the vacancy supplied by such temporary appointment.

Governors of Fort Saint George and Bombay may make rules for the conduct of business in their Councils.

28. It shall be lawful for the Governors of the Presidencies of Fort Saint George and Bombay, respectively, from time to time, to make rules and orders for the conduct of business in their Councils, and any order made or act done in accordance with such directions, (except as hereinafter provided respecting laws and regulations), shall be deemed to be the order or act of the Governor in Council.

Power to summon additional members to Councils of Fort Saint George and Bombay for the purpose of making laws and regulations.

29. For the better exercise of the power of making laws and regulations hereinafter vested in the Governors of the said Presidencies in Council respectively, each of the said Governors shall, in addition to the Members whereof his Council now by law consists, or may consist, termed herein ordinary

Members, nominate to be additional Members the Advocate-General of the Presidency, or officer acting in that capacity, and such other persons, not less than four nor more than eight in number, as to him may seem expedient, to be Members of Council, for the purpose of making laws and regulations only; and such Members shall not be entitled to sit or vote at any meeting of Council, except at meetings held for such purpose; provided that no less than half of the persons so nominated shall be non-official persons, as hereinbefore described; and that the seat in Council of any non-official Member accepting office under the Crown in India shall be vacated on such acceptance.

Additional members appointed for two years.

30. Every additional Member of Council so nominated shall be summoned to all meetings held for the purpose of making laws and regulations for the term of two years from the date of such nomination.

Resignation of additional members.

31. It shall be lawful for any such additional Member of Council to resign his office to the Governor of the Presidency; and on acceptance of such resignation by the Governor of the Presidency, such office shall become vacant.

Power to fill up vacancy in the number of additional members.

32. On the event of a vacancy occurring by the death, acceptance of office, or resignation accepted in manner aforesaid, of any such additional Member of Council, it shall be lawful for the Governor of the Presidency to summon any person as additional Member of Council in his place, who shall exercise the same functions until the termination of the term for which the additional Member so dying, accepting office, or resigning, was nominated: Provided always, that it shall not be lawful for him by such nomination to diminish the proportion of non-official Members hereinbefore directed to be nominated.

Law not invalid from number of non-official members being incomplete.

33. No law or regulation made by any such Governor in Council in accordance with the provisions of this Act shall be deemed invalid by reason only that the proportion of non-official additional Members hereby established was not complete at the Council or its enactment.

Senior civil ordinary member of Council to preside in absence of Governor of Presidency.

34. At any meeting of the Council of either of the said Presidencies from which the Governor shall be absent, the senior civil ordinary Member of Council present shall preside; and the power of making laws and regulations hereby vested in such Governor in Council shall be exercised only at meetings of such Council at which the Governor or some ordinary Member of Council, and four or more Members of Council (including under the term 'Members of Council' such additional Members as aforesaid), shall be present and in any case of difference of opinion at meetings of any such Council for making laws and regulations, where there shall be an equality of voices, the Governor, or in his absence the senior Member then presiding shall have two votes or the casting vote.

Governor-General to fix first meeting of Councils of Presidencies.

35. The Governor-General in Council shall, as soon as conveniently may be, appoint the time for the first meeting of the Councils of Fort Saint George and Bombay respectively, for the purpose of making laws and regulations under this Act; and the Governors of the said Presidencies respectively shall summon to such meeting as well the additional Councillors appointed by and under this Act as the ordinary Members of the said Councils.

Governors of Presidencies to appoint subsequent meetings.

36. It shall be lawful for every such Governor to appoint all subsequent times and places of meeting of his Council for the purpose of making laws and regulations under the provisions of this Act, and to adjourn or from time to time to authorize such senior ordinary Member of Council in his absence to adjourn any meeting for making laws and regulations from time to time and from place to place.

Governors to make rules and orders for conduct of business at such meetings.

37. Previously to the first of such meetings of their Councils for the purpose of making laws and regulations under the provisions of this Act, the Governors of the said Presidencies in Council respectively shall make rules for the conduct of business at such meetings, subject to the sanction of the Governor-General in Council; but such rules may be subsequently amended at meetings for the purpose of making laws and regulations, subject to the assent of the Governor; Provided always, that it shall be lawful for the

Governor-General in Council to disallow any such rule, and render the same of no effect.

Business to be transacted at such meetings.

38. No business shall be transacted at any meeting of the Council of either of the said Presidencies for the purpose of making laws and regulations (except as last herein before provided), other than the consideration and enactment of measures introduced into such Council for the purpose of such enactment; and it shall not be lawful for any Member or additional Member to make, or for the Council to entertain, any motion, unless such motion shall be for leave to introduce some measure as aforesaid into Council, or have reference to some measure actually introduced thereinto: Provided always that it shall not be lawful for any Member or additional Member to introduce, without the previous sanction of the Governor, any measure affecting the public revenues of the Presidency, or by which any charge shall be imposed on such revenues.

Governors to assent to laws etc. of Presidencies.

39. When any law or regulation has been made by any such Council at a meeting for the purpose of making laws and regulations as aforesaid, it shall be lawful for the Governor, whether he shall or shall not have been present in Council at such meeting, to declare that he assents to, or withholds his assent from, the same.

Governor-General to assent to laws and regulations of Presidencies.

40. The Governor shall transmit forthwith an authentic copy of every law or regulation to which he shall have so declared his assent to the Governor-General; and no such law or regulation shall have validity until the Governor-General shall have assented thereto, and such assent shall have been signified by him to and published by the Governor: Provided always, that in every case where the Governor-General shall withhold his assent from any such law or regulation, he shall signify to the Governor in writing his reason for so withholding his assent.

Power of the Crown to disallow laws and regulations of Presidencies.

41. Whenever any such law or regulation shall have been assented to by the Governor-General, he shall transmit to the Secretary of State for India an authentic copy thereof; and it shall be lawful for Her Majesty to signify, through the Secretary of State for India in Council, her

disallowance of such law or regulation, and such disallowance shall make void and annul such law or regulation from or after the day on which such Governor shall make known by proclamation, or by signification to the Council, that he has received the notification of such disallowance by Her Majesty.

Extent of power of Governor of Presidency in Council to make laws and regulations.

42. The Governor of each of the said Presidencies in Council shall have power, at meetings for the purpose of making laws and regulations as aforesaid, and, subject to the provisions herein contained, to make laws and regulations for the peace and good government of such Presidency, and for that purpose to repeal and amend any laws and regulations made prior to the coming into operation of this Act by any authority in India, so far as they affect such Presidency: Provided always, that such Governor in Council shall not have the power of making any laws or regulations which shall in any way affect any of the provisions of this Act, or of any other Act of Parliament in force, or hereafter to be in force, in such Presidency.

Governor of Presidency, except with sanction of Governor-General, not to make or take into consideration certain laws and regulations.

43. It shall not be lawful for the Governor in Council of either of the aforesaid Presidencies, except with the sanction of the Governor-General, previously communicated to him, to make regulations or take into consideration any law or regulation for any of the purposes next hereinafter mentioned; that is to say,

1. Affecting the Public Debt of India, or the customs duties, or any other tax or duty now in force and imposed by the authority of the Government of India for the general purposes of such Government:

2. Regulating any of the current coin, or the issue of any bills, notes, or other paper currency:

3. Regulating the conveyance of letters by the post office or messages by the electric telegraph within the Presidency:

4. Altering in any way the Penal Code of India, as established by Act of the Governor-General in Council, No. 42 of 1860:

5. Affecting the religion or religious rites and usages of any class of Her Majesty's subjects in India:

6. Affecting the discipline or maintenance of any part of Her Majesty's Military or Naval Forces:

7. Regulating patents or copyright:

8. Affecting the relations of the Government with foreign Princes or States:

Provided always, that no law, or provision of any law or regulation which shall have been made by any such Governor in Council, and assented to by the Governor-General as aforesaid shall be deemed invalid only by reason of its relating to any of the purposes comprised in the above list.

Governor-General may establish Councils for making laws and regulations in the Presidency of Fort William in Bengal, &c.

44. The Governor-General in Council, so soon as it shall appear to him expedient, shall, by proclamation, extend the provisions of this Act touching the making of laws and regulation for the peace and good government of the Presidencies of Fort St. George and Bombay to the Bengal Division of the Presidency of Fort William, and shall specify in such proclamation the period at which such provisions shall take effect, and the number of Councillors whom the Lieutenant-Governor of the said division may nominate for his assistance in making laws and regulations; and it shall be further lawful for the Governor-General in Council, from time to time and in his discretion, by similar proclamation, to extend the same provisions to the territories known as the North-Western Provinces and the Punjab respectively.

Constitution of such Councils.

45. Whenever such proclamation as aforesaid shall have been issued regarding the said division or territories respectively, the Lieutenant-Governor thereof shall nominate, for his assistance in making laws and regulations, such number of Councillors as shall be in such proclamation specified; provided, that not less than one-third of such Councillors shall in every case be non-official persons, as hereinbefore described, and that the nomination of such Councillors shall be subject to the sanction of the Governor-General; and provided further, that at any meeting of any such Council from which the Lieutenant-Governor shall be absent, the Member highest in official rank among those who may hold office under the Crown shall preside; and the power of making laws and regulations shall be exercised only at meetings at which the Lieutenant-Governor, or some

Member holding office as aforesaid, and not less than one-half of the Members of Council so summoned as aforesaid, shall be present ; and in any case of difference of opinion at any meetings of such Council for making laws and regulations where there shall be an equality of voices the Lieutenant-Governor, or such Member highest in official rank as aforesaid then presiding, shall have two votes or the casting vote.

Power to constitute new provinces, and appoint Lieutenant-Governors.

46. It shall be lawful for the Governor-General, by proclamation as aforesaid, to constitute from time to time new Provinces for the purposes of this Act, to which the like provisions shall be applicable ; and further to appoint from time to time a Lieutenant-Governor to any Province so constituted as aforesaid, and from time to time to declare and limit the extent of the authority of such Lieutenant-Governor, in like manner as is provided by the Act of the seventeenth and eighteenth years of Her Majesty, Chapter seventy-seven, respecting the Lieutenant-Governors of Bengal and the North-Western Provinces.

Power to alter boundaries of presidencies.

47. It shall be lawful for the Governor-General in Council, by such proclamation as aforesaid, to fix the limits of any Presidency, Division, Province, or Territory in India for the purpose of this Act, and further by proclamation to divide or alter from time to time the limits of any such Presidency, Division, Province, or Territory for the said purposes : Provided always, that any law or regulation made by the Governor or Lieutenant-Governor in Council of any Presidency, Division, Province, or Territory shall continue in force in any part thereof which may be severed therefrom by any such proclamation, until superseded by law or regulation of the Governor-General in Council, or of the Governor or Lieutenant-Governor in Council of the Presidency, Division, Province, or Territory to which such parts may become annexed.

Former provisions of this Act extended to future Councils.

48. It shall be lawful for every such Lieutenant-Governor in Council thus constituted to make laws for the peace and good government of his respective Division, Province, or Territory ; and except as otherwise hereinbefore specially provided, all the provisions in this Act contained respecting the nomination of additional Members for the purpose of making laws and regulations for the Presidencies of Fort Saint George and Bombay,

and limiting the power of the Governors in Council of Fort Saint George and Bombay for the purpose of making laws and regulations, and respecting the conduct of business in the meetings of such Councils for that purpose, and respecting the power of the Governor-General to declare or withhold his assent to laws or regulations made by the Governor in Council of Fort Saint George and Bombay, and respecting the power of Her Majesty to disallow the same, shall apply to laws or regulations to be so made by any such Lieutenant-Governor in Council.

Previous assent of the Crown necessary to give validity to any such proclamation.

49. Provided always, that no proclamation to be made by the Governor-General in Council under the provisions of this Act for the purpose of constituting any Council for the Presidency, Division, Provinces, or Territories hereinbefore named, or any other Provinces, or for altering the boundaries of any Presidency, Division, Province, or Territory, or constituting any new Province for the purpose of this Act, shall have any force or validity until the sanction of Her Majesty to the same shall have been previously signified by the Secretary of State in Council to the Governor-General.

Provision for the supply of the office of Governor-General in certain circumstances.

50. If any vacancy shall happen in the office of Governor-General of India when no provisional successor shall be in India to supply such vacancy, then and in every such case the Governor of the Presidency of Fort Saint George or the Governor of the Presidency of Bombay who shall have been first appointed to the office of Governor by Her Majesty, shall hold and execute the said office of Governor-General of India and Governor of the Presidency of Fort William in Bengal until a successor shall arrive, or until some person in India shall be duly appointed thereto; and every such acting Governor-General shall, during the time of his continuing to act as such, have and exercise, all the rights and powers of Governor-General of India, and shall be entitled to receive the emoluments and advantages appertaining to the office by him supplied, such acting Governor-General foregoing the salary and allowances appertaining to the office of Governor to which he stands appointed; and such office of Governor shall be supplied for the time during which such Governor shall act as Governor-General, in the manner directed in section sixty-three of the Act of the third and fourth years of King William the Fourth, Chapter eighty-five.

51. If, on such vacancy occurring, it shall appear to the Governor, who by virtue of this Act shall hold and execute the said office of Governor-General, necessary to exercise the powers thereof before he shall have taken his seat in Council, it shall be lawful for him to make known by proclamation his appointment, and his intention to assume the said office of Governor-General; and after such proclamation, and thenceforth until he shall repair to the place where the Council may assemble, it shall be lawful for him to exercise alone all or any of the powers which might be exercised by the Governor-General in Council, except the power of making laws and regulations; and all acts done in the exercise of the said powers, except as aforesaid, shall be of the same force and effect as if they had been done by the Governor-General in Council; provided that all acts done in the said Council after the date of such proclamation, but before the communication thereof to such Council, shall be valid, subject nevertheless to revocation or alteration by such Governor who shall have so assumed the said office of Governor-General; and from the date of the vacancy occurring until such Governor shall have assumed the said office of Governor-General, the provisions of section sixty-two of the Act of the third and fourth years of King William the Fourth, Chapter eighty-five, shall be, and the same are declared to be, applicable to the case.

If it appears to Governor necessary to exercise powers before taking his seat in Council, he may make his appointment, &c. known by proclamation.

52. Nothing in this Act contained shall be held to derogate from or interfere with (except as hereinbefore expressly provided) the rights vested in Her Majesty, or the powers of the Secretary of State for India in Council, in relation to the Government of Her Majesty's dominions in India, under any law in force at the date of the passing of this Act; and all things which shall be done by Her Majesty, or by the Secretary of State as aforesaid, in relation to such Government, shall have the same force and validity as if this Act had not been passed.

Nothing in this Act shall derogate from the powers of the Crown or Secretary of State for India in Council.

53. Wherever any act or thing is by this Act required or authorized to be done by the Governor-General or by the Governors of the Presidencies of Fort Saint George and Bombay in Council, it is not required that such act or thing should be

Meaning of term "in Council."

done at a meeting for making laws and regulations, unless where expressly provided.

Time when Act shall come into operation.

54. Except as hereinbefore specially provided, this Act shall commence and come into operation as soon as the same shall have been published by the said Governor-General in Council by proclamation.

B.

EXTRACTS FROM SIR CHARLES WOOD'S SPEECH IN THE HOUSE OF COMMONS ON JUNE 6, 1861.

In moving (June 6, 1861) for leave to bring in the East India Council Bill, SIR CHARLES WOOD said—

"I rise to move for leave to bring in a Bill of the greatest possible importance to our Indian Empire. It modifies to a great extent the Executive Government, and—what is of still greater importance—it alters the means and manner of legislation. I can assure the House that I never felt more responsibility than in venturing to submit to it a proposal of so important and grave a character. It is hardly necessary for me to mention that the power of legislating for 150,000,000 of people, and nearly 50,000,000 whose welfare it indirectly affects, is a matter of the gravest importance, and I am quite sure that to those who have ever studied India the inherent difficulties of the question will be no less apparent. We have to legislate for different races, with different languages, religions, manners, and customs, ranging from the bigoted Mahomedan, who considers that we have usurped his legitimate position as the ruler of India, to the timid Hindoo, who, though bowing to every conqueror, is bigotedly attached to his caste, his religion, his laws, and his customs, which have descended to him uninterruptedly for countless generations. But, added to that, we have English settlers in India differing in almost every respect from the Native population—active, energetic, enterprising, with all the pride of race and conquest, presuming on their superior powers, and looking down in many respects and I am afraid violating in others, the feelings and prejudices of the Native population with whom, nevertheless, they must be subject to laws passed by the Legislative body in India.

I have always thought that the gravest question in modern times is the relation between civilized and less civilized nations, or between civilized portions and less civilized portions of nations, when they came in contact. The difficulty is seen in America, in Africa, in New Zealand, but nowhere in the widely extended dominions of Her Majesty has it reached such a magnitude as in India. And in this particular case the difficulty is aggravated by the circumstance that the English, who form a portion of those who are to be subjected to this legislation, are not a permanent body. They go there for a time. Officials, when their term of service has expired, and persons engaged in commercial or agricultural pursuits, when they have made a fortune, return to this country, and though the English element in India is permanent as beloning to a nation, it is most transitory when we come to consider the individuals who compose it. Such are the circumstances under which we are to legislate, and I regret to say that the recent mutiny has aggravated these difficulties. The unlimited confidence which a few years ago was felt by the European population in the Natives of India has given way to feelings of distrust. Formerly there was, at all events, no feeling of antagonism between the higher portion of official persons and the great mass of the population. The latter looked up to the Government as to a protector, and if any feeling of antagonism or jealousy existed, it existed only between them and those members of the service or the English settlers who were brought into antagonistic contact with them. When I heard some time ago that the feeling of antagonism was extending itself lower among the Natives and higher among the officers I deeply regretted it, as the most alarming symptom of altered circumstances, which must obviously tend to increase the dangers of our position. I do not wish to dwell on this matter, but it would be folly to shut our eyes to the increasing difficulties of our position in India, and it is an additional reason why we should make the earliest endeavour to put all our institutions on the soundest possible foundations.

It is notoriously difficult for any European to make himself intimately acquainted with either the feelings or opinions of the Native population, and I was struck the other day by a passage in a letter from one of the oldest Indian servants, SIR MARK CUBBON, whose death we have had recently to regret. He had been in the service for sixty years; he had administered the affairs of Mysore for

nearly thirty years; he had been living in the most intimate intercourse with the Natives, possessing their love and confidence to an extent seldom obtained by an English officer, and yet he said "that he was astonished that he had never been able to acquire a sufficient acquaintance with the opinions and feelings of the Natives with whom he was in daily communication."

Many of the greatest mistakes into which we have been led have arisen from the circumstance that we have been, not unnaturally, perhaps, for arranging everything according to English ideas. In Bengal we converted the collectors of taxes into the permanent landowners of the country, and left the ryots to their mercy. In Madras, SIR THOMAS MUNRO, from the most benevolent motives, and to avoid the evils of the Bengal settlement, introduced the ryotwary system. It is now asserted that a more impoverished population than that of Madras does not exist. When I was at the Board of Control, it was said that the system of the North-Western provinces was perfect. In consequence of that opinion it was introduced into the newly-acquired province of Oudh. We fancied that we were benefiting the population, and relieving them from the oppression of their chiefs, but in the rebellion the ryots of Oudh took part against us and joined their chiefs in the rebellion. Subsequent to the rebellion the Indian Government, profiting by the circumstance, reverted to the old system in Oudh, and happily with the greatest success; and recently at an interview between LORD CANNING and the Talookdars they expressed their gratification at the restoration of the former system, and the Governor-General justly congratulated them on the fact that tranquillity prevailed in a district which had been so frequently the scene of violence and outrage, and that in the most newly acquired of Her Majesty's Indian dominions confidence existed which was not surpassed in the oldest settlements.

The House can hardly be aware of the extraordinary and inherent difficulties in devising a system applicable to the whole of India. It behoves us to be most careful, as a rash step may lead to most dangerous consequences. It is easy to go forward. It is difficult to go back, and I confess I am dispossed to err on the side of caution and to profit by the warning of one of the ablest Indian officers, MOUNTSTUART ELPHINSTONE, who said, "Legislation for India should be well considered, gradual, and

slow." The measure which I propose to introduce will effect some changes in the executive Government of India. About two years ago the Government thought it right to send to India a distinguished Member of this House, MR. WILSON, in order to aid in putting the finances of that country in a more satisfactory condition. As far as I can learn, the changes which MR. WILSON had the opportunity of inaugurating, and which have to a considerable extent been carried out, have gone a great way to convince the authorities of India of the mistaken way in which they were proceeding, and to lay the foundation of a sounder system of finance. Judging from the accounts which we have received by the last mail, I believe that a change has come over the financial affairs of India, and that we may look forward to a more satisfactory state of things than has prevailed for many years.

There can be no doubt that the Council of the Governor-General has suffered serious inconvenience from the absence of any Member thoroughly acquainted with the laws and principles of jurisprudence; and LORD CANNING, in one of his despatches, points out how desirable it is that a gentleman of the legal profession, a jurist rather than a technical lawyer, should be added to the Council. I propose, therefore, to take powers to send out an additional Member of Council. Although it is not so specified, it is intended that he should be a lawyer, and I must endeavour to find a man of high character and attainments, competent to assist the Governor-General and his Council in framing laws.

The main change proposed is, however, in the mode in which laws and regulations are enacted. The history of legislative power in India is very short. In 1773 the Governor-General in Council was empowered to make regulations for the Government of India, and in 1793 those regulations were collected into a code by LORD CORNWALLIS. Similar regulations were applied in 1799 and 1801 to Madras and Bombay, and in 1803 they were extended to the North-West Provinces. The territory of Delhi, however, which was nominally under the sovereignty of the Great Mogul, was administered by officers of the Government of India, and with such good effect that in 1815, when LORD HASTINGS acquired certain provinces, he determined that they should be administered in the same way by Commissioners appointed by the Government. The same system has been applied to the Punjab,

Sind, Pegu, and the various acquisitions made in India since that date. The laws and regulations under which they are administered are framed either by the Governor-General in Council or by the Lieutenant-Governors or Commissioners, as the case may be, and approved by the Governor-General. This difficult mode of passing ordinances for the two classes of Provinces, constitutes the distinction between the regulation and the non-regulation Provinces, the former being those subject to the old regulations, and the latter those which are administered in the somewhat irregular manner which, as I have stated, commenced in 1815. There is much difference of opinion as to the legality of the regulations adopted under the latter system, and Sir BARNES PEACOCK has declared that they are illegal unless passed by the Legislative Council. The Act of 1833 added to the Council of the Governor-General a Member whose presence was necessary for the passing of all legislative measures, and put the whole of the then territory of India under that body, at the same time withdrawing from Madras and Bombay the power of making regulations. In that way the whole legislative power and authority of India were centralized in the Governor-General and Council, with this additional Member. So matters stood in 1853, but great complaints had emanated from other parts of India of the centralization of power at Calcutta. The practice was then introduced of placing in the Governor-General's Council Members from different parts of India. The tenour of the evidence given before the Committee of 1852-53 was to point out that the Executive Council alone, even with the assistance of the legislative Member, was incompetent to perform the increased duties which were created by the extension of territory. MR. M'CLEOD, a distinguished Member of the Civil Service of India, and who had acted at Calcutta as one of the Law Commissioners, gave the following evidence before the Committee :—

"The Governor-General with four Members of Council, however highly qualified those individuals may be, is not altogether a competent Legislature for the great empire which we have in India. It seems to me very desirable that, in the Legislative Government of India, there should be one or more persons having local knowledge and experience of the minor Presidencies; that is entirely wanting in the Legislative Government as at present constituted. It appears to me that this is one considerable and manifest defect. The Governor-General and Council have not sufficient leisure and previous knowledge to conduct, in addition to their executive and administrative functions, the whole duties of legislation for the Indian empire. It seems to me that it would be advisable to enlarge the Legislative Council and have representatives of the minor Presidencies in it, without enlarging the Executive Council, or in any way altering its present constitution."

MR. HILL, another eminent Civil Servant, said—

"The mode of carrying out improvements must be by strengthening the hands of the Legislature * * * * . It would be a great improvement if, after the preparation of Laws by the Executive Government and its officers, when the Legislature met, they had the addition to their number of the Chief Justice and perhaps another Judge of the Supreme Court, one of two Judges of the Sudder Court, and the Advocate-General, or some other competent persons—so that there should be a more numerous deliberative body."

I quote these two opinions only, because they are so clearly and concisely expressed. In consequence of the general evidence to that effect, I proposed, in 1853, a measure adding to the Council of the Governor-General, when sitting to make laws and regulations, Members from the different Provinces of India, together with the Chief Justice and another Judge of the Supreme Court of Bengal. My intention was, in accordance with the opinions I have cited, to give to the Council the assistance of local knowledge and legal experience in framing laws. The Council, however, quite contrary to my intention, has become a sort of debating society, or petty Parliament. My own view of its duties is expressed in a letter I wrote to LORD DALHOUSIE in 1853, in which I said—

"I expect the non-official Members of your enlarged Legislative Council to be constantly employed as a Committee of Council in working at Calcutta, on the revision of your laws and regulations."

It was certainly a great mistake that a body of twelve Members should have been established with all the forms and functions of a Parliament. They have standing orders nearly as numerous as we have; and their effect has been, as LORD CANNING stated in one of his despatches, to impede business, cause delay, and to induce a Council, which ought to be regarded as a body for doing practical work, to assume the debating functions of a Parliament. In a letter which is among the papers upon the Table of the House, MR. GRANT bears testimony to the success which has attended their labours in framing laws; and I will quote the words of another able Indian Civil Servant to the same effect. He says—

"If it be assumed that the enlargement of the Council by the addition of two Judges of the Supreme Court and four Councillors of the different Presidencies of India was designed only as a means of improving the legislation of the country, the measure must be regarded as a complete success. The Council has effected all that could be expected, and may with just pride point to the statutes of the last seven years as a triumphant proof that the intention of Parliament has been fulfilled."

I think that is a very satisfactory proof that as far as my intentions—and what I believe were the intentions of the Legislature of this country—are concerned, the objects of the change in the position of the Governor-General's Council, when sitting for legislative purposes, have been most completely fulfilled. I do not wish to say anything against a body, the constitution of which I am about to alter, but I think that the general opinion, both in India and England, condemned the action of the Council when it attempted to discharge functions other than those which I have mentioned—when it constituted itself a body for the redress of grievances, and engaged in discussions which led to no practical result. So much has this struck those most competent to form an opinion, that I find that the first Vice-President, SIR LAURENCE PEEL, expresses a very decided opinion against it, and says of the Council in a short memorandum—

"It has no jurisdiction in the nature of that of a grand inquest of the nation. Its functions are purely legislative, and are limited even in that respect. It is not an Anglo-Indian House of Commons for the redress of grievances, to refuse supplies, and so forth."

These obvious objections were pointed out to me by the Government of India last year, and it was my intention to have introduced a measure upon the subject in the course of that Session. I felt, however, so much difficulty in deciding in what shape the measure should be framed, that I deferred its proposal until the present year; and LORD CANNING, who was very anxious that such a measure should be passed, consented to defer his departure from India in order that he, with his great experience of that country, might introduce the change. The present constitution of the Council for legislative purposes having failed, we have naturally to consider what should be substituted, and in doing so we must advert to the two extreme notions with regard to legislation which prevail in India. The notion of legislation which is entertained by a Native is that of a chief or Sovereign, who makes what laws he pleases. He has little or no idea of any distinction between the executive and legislative functions of Government. A Native Chief will assemble his nobles around him in the Durbar, where they freely and frankly express their opinion; but having informed himself by their communications, he determines by his own will what shall be done. Among the various proposals which have been made for the Government of India is one that the power of legislation should rest entirely on the Executive, but that there should be a consultative body; that is, that the Governor-General should

assemble, from time to time, a considerable number of persons, whose opinions he should hear, but by whose opinions he should not be bound ; and that he should himself consider and decide what measures should be adopted. In the last Session of Parliament LORD ELLENBOROUGH developed a scheme approaching this in character in the House of Lords ; but Hon. Gentlemen will see, in the despatches which have been laid upon the Table, that both LORD CANNING considers this impossible, and all the Members of his Government, as well as the Members of the Indian Council, concur in the opinion that, in the present state of feeling in India, it is quite impossibe to revert to a state of things in which the Executive Government alone legislated for the country. The opposite extreme is the desire which is natural to Englishmen wherever they be—that they should have a representative body to make the laws by which they are to be governed. I am sure, however, that everyone who considers the condition of India will see that it is utterly impossible to constitute such a body in that country. You cannot possibly assemble at any one place in India persons who shall be the real representatives of the various classes of the Native population of that empire. It is quite true that when you diminish the area over which legislation is to extend you diminish the difficulty of such a plan. In Ceylon, which is not more extensive than a large collectorate in India, you have a legislative body consisting partly of Englishmen and partly of Natives, and I do not know that that Government has worked unsuccessfully ; but with the extended area with which we have to deal in India, it would be physically impossible to constitute such a body. The Natives who are resident in the towns no more represent the resident Native population than a highly educated native of London at the present day, represents a highland chieftain or a feudal baron of half a dozen centuries ago. To talk of a Native representation is, therefore, to talk of that which is simply and utterly impossible. Then comes the question to what extent we can have a representation of the English settlers in India. No doubt, it would not be difficult to obtain a representation of their interests, but I must say that of all governing or legislative bodies, none is so dangerous or so mischievous as one which represents a dominant race ruling over an extended Native population. All experience teaches us that where a dominant race rules another, the mildest form of government is a despotism. It was so in the case of the democratic republics of Greece, and the more aristocratic or autocratic sway of Rome ; and it has been so, I believe, at

all times and among all nations in every part of the world. The other day I found in MR. MILL'S book upon *Representative Government*, a passage which I will read—not because I go its entire length, but because it expresses in strong terms what I believe is in the main correct. MR. MILL says—

"Now, if there be a fact to which all experience testifies, it is that when a country holds another in subjection, the individuals of the ruling people who resort to the foreign country to make their fortunes are, of all others, those who most need to be held under powerful restraint. They are always one of the chief difficulties of the Government. Armed with the prestige and filled with the scornful overbearingness of the conquering nation, they have the feelings inspired by absolute power without its sense of responsibility."

I cannot, therefore, consent to create a powerful body of such a character. It must be remembered, also, that the Natives do not distinguish very clearly between the acts of the Government itself and the acts of those who apparently constitute it, namely, the Members of the Legislative Council; and in one of LORD CANNING'S despatches he points out the mischiefs which have on that account arisen from publicity. He says that, so far as the English settlers are concerned, publicity is advantageous; but that if publicity is to continue, care must be taken to prevent the Natives confounding the measures which are adopted with injudicious speeches which may be made in the Legislative Council. I feel it, therefore, necessary to strengthen the hands of the Government, so as to enable them not only by veto to prevent the passing of a law, but to prevent the introduction of any Bill which they think calculated to excite the minds of the Native population, repeating the caution which I have before given, I say it behoves us to be cautious and careful in our legislation. I have seen a measure which I myself introduced in 1853, with one view, changed by the mode in which it was carried into execution so as to give it an operation totally different from that which I intended. The mischiefs resulting from that change have been great; and I am, therefore, anxious that in any measure which I may propose, and which the House, I hope, will adopt, we should take care, as far as possible, to avoid the likelihood of misconstruction or misapplication by the Government of India. It is easy at any future time to go further, but it is difficult to draw back from what we have once agreed to.

The despatches of LORD CANNING contain pretty full details of the scheme which he would recommend. Those despatches have been long under the consideration of the Council of India,

and with their concurrence I have framed a measure which embodies the leading suggestions of LORD CANNING. I propose that when the Governor-General's Council meets for the purpose of making laws and regulations, the Governor-General should summon, in addition to the ordinary Members of the Council, not less than six nor more than twelve additional Members, of whom one-half at least shall not hold office under Government. These additional Members may be either Europeans, persons of European extraction, or Natives. LORD CANNING strongly recommends that the Council should hold its meetings in different parts of India, for the purpose of obtaining at times the assistance of those Native Chiefs and noblemen whose attendance at Calcutta would be impossible, or irksome to themselves. I do not propose that the judges *ex-officio* shall have seats in the Legislature; but I do not preclude the Governor-General from summoning one of their number if he chooses. They were useful members of a body meeting as a committee for the purpose of discussing and framing laws, but I think it is inexpedient and incompatible with their functions that they should belong to a body partaking in any degree of a popular character. I propose that the persons nominated should attend all meetings held within a year. If you compel their attendance for a longer period you render it very unlikely that any Natives except those resident upon the spot will attend the meetings of the Council. This also is recommended by LORD CANNING. Hon. Gentlemen will have noticed the great success which has attended the association with us of the Talookdars of Oudh and of the Sirdars in the Punjab in the duties of administering the revenue, and LORD CANNING has borne testimony to the admirable manner in which they have performed their duties. I believe greater advantages will result from admitting the Native Chiefs to co-operate with us for legislative purposes; they will no longer feel, as they have hitherto done, that they are excluded from the management of affairs in their own country, and nothing, I am persuaded, will tend more to conciliate to our rule the minds of Natives of high rank. I have no intention of doing anything to make this Council a debating society. I wish, to quote an expression of SIR LAURENCE PEEL, to render them a body for making laws. The Council of the Governor-General, with these additional Members, will have power to pass laws and regulations affecting the whole of India and will have a supreme and concurrent power with the minor legislative bodies which I propose to establish in the Presidencies and in other parts of India. I

come now to the power of making laws which I propose to give the Governors and Councils of the other Presidencies. LORD CANNING strongly feels that, although great benefits have resulted from the introduction of Members into his Council who possess a knowledge of localities—the interests of which differ widely in different parts of the country—the change has not been sufficient, in the first place, to overcome the feeling which the other Presidencies entertain against being overridden, as they call it, by the Bengal Council, or, on the other hand, to overcome the disadvantages of having a body legislating for these Presidencies without acquaintance with local wants and necessities. This must obviously be possessed to a much greater extent by those residing on and nearer the spot. And, therefore, I propose to restore, I may say, to the Presidencies of Madras and Bombay the power of passing laws and enactments on local subjects within their own territories, and that the Governor of the Presidency, in the same manner as a Governor-General, when his Council meets to make laws, shall summon a certain number of additional Members, to be, as before, either European or Native, and one-half of whom at least shall not be office-holders. It is obviously necessary that these bodies should not be empowered to legislate on subjects which I may call of Indian rather than of local importance. The Indian debt, the Customs of the country, the Army of India, and other matters, into the details of which it is not necessary that I should enter, belong to a class of subjects which the local Legislatures will be prohibited from entering upon without the sanction of the Governor-General. I propose that Councils rather differently constituted should be established at Bengal, and, if the Governor-General thinks right, as he obviously does from his despatches, that he shall be empowered hereafter—but not without the sanction of the Secretary of State —to create a Council for the North-West Provinces, or the Punjab or any other part of India, which he may think desirable. It has been represented that the province of Pegu might perhaps, be constituted into a separate Government with a Council. I somewhat doubt whether it is at present ripe for such a change; but when it has acquired sufficient importance, no doubt the district will be better administered in that way than it is at present. By this means, while we shall attain a general uniformity of legislation, with a sufficient diversity for the differences of each part of India, we shall, I hope, adapt the system to the wants of particular localities. It is quite clear that the public works may be better dealt with by local bodies

than by a central authority ; but as each district might be disposed to repudiate liability to maintain its share of the army, on the ground that it would not be first exposed to danger, and as it is highly desirable that the distribution of troops should be in the hands of the central authority, I think that the army, among others, is a subject which should be left to the general Council. The Bill also gives power to the Governor-General in cases of emergency to pass an ordinance having the force of law for a limited period. Questions might arise about the Arms Act, or the Press, as to which it would be very injudicious that delay should occur ; and we, therefore, propose to empower the Governor-General on his own authority to pass an ordinance having the force of law, to continue for a period of six months, unless disallowed by the Secretary of State or superseded by an Act of the Legislature. I believe I have now gone through the main provisions of the Bill. They have been carefully considered by the Members of the Indian Council, men drawn from every part of India, of every profession, and with the most varied experience. The measure has been prepared with their entire concurrence, and it has the approval of most of the persons with whom I have conversed on the subject. All I can say is that every precaution has been taken in the framing of the Bill to make it effectual for the accomplishment of the object which it is designed to achieve. Every one has been consulted whose opinion, I thought, ought to be taken. It has been carefully considered by the Government in India and the Government at home. I venture, therefore, to submit it to the House in the hope that, with such Amendments as may be made in it in its progress through Parliament, it may tend to the happiness of India and the prosperity of the Queen's subjects in that portion of Her Majesty's dominions.

II. THE INDIAN COUNCILS ACT, 1869.

(32 & 33 Vict., Ch. 98.)

AN ACT TO DEFINE THE POWERS OF THE GOVERNOR-GENERAL OF INDIA IN COUNCIL AT MEETINGS FOR MAKING LAWS AND REGULATIONS FOR CERTAIN PURPOSES.

(11th August, 1869.)

Whereas doubts have arisen as to the extent of power of the Governor-General of India in Council to make laws binding upon native Indian subjects beyond the Indian territories under the dominion of Her Majesty ;

And whereas it is expedient that better provision should be made in other respects for the exercise of the power of the Governor-General in Council :

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows :—

Power to make laws for native Indian subjects beyond the Indian territories.

1. From and after the passing of this Act, the Governor-General of India in Council shall have power at meetings for the purpose of making laws and regulations to make laws and regulations for all persons being native Indian subjects of Her Majesty, Her heirs and successors, without and beyond, as well as within the Indian territories under the dominion of Her Majesty.

Former laws to be valid.

2. No law heretofore passed by the Governor-General of India, or by the Governors of Madras and Bombay, repectively in Council, shall be deemed to be invalid solely by reason of its having reference to native subjects of Her Majesty not within the Indian territories under the dominion of Her Majesty.

Power to repeal or amend certain sections of 3 and 4, Will. 4, c. 85.

3. Notwithstanding anything in the Indian Councils Act or in any other Act of Parliament contained, any law or regulation, which shall hereafter be made by the Governor-General in Council in manner in the said Indian Councils Act provided, shall not be invalid by reason only that it may repeal or affect any of the provisions of the said Act of the third and fourth years of King William the Fourth, Chapter eighty-five, contained in sections eighty-one, eighty-two, eighty-three, eighty-four, eighty-five and eighty-six of the said Act.

III. THE INDIAN COUNCILS ACT, 1870.

(33 Vict., Ch. 3.)

AN ACT TO MAKE BETTER PROVISION FOR MAKING LAWS AND REGULATIONS FOR CERTAIN PARTS OF INDIA, AND FOR CERTAIN OTHER PURPOSES RELATING THERETO.

(25th March, 1870.)

Whereas it is expedient that provision should be made to enable the Governor-General of India in Council to make regulations for the peace and good government of certain territories

in India otherwise than at meetings for the purpose of making laws and regulations held under the provisions of the Indian Councils Act, 1861, and also for certain other purposes connected with the Government of India :

Be it enacted by the Queen's Most Excellent Majesty' by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Power to Executive Government of British India to make regulations for certain parts thereof.

1. Every Governor of a Presidency in Council, Lieutenant-Governor, or Chief Commissioner, whether the Governorship, or Lieutenant-Governorship, or Chief Commissionership, be now in existence or may hereafter be established, shall have power to propose to the Governor-General in Council drafts of any regulations, together with the reasons for proposing the same, for the peace and good government of any part or parts of the territories under his government or administration to which the Secretary of State for India shall from time to time by resolution in Council declare the provisions of this section to be applicable from any date to be fixed in such resolution.

And the Governor-General in Council shall take such drafts and reasons into consideration ; and when any such draft shall have been approved of by the Governor-General in Council, and shall have received the Governor-General's assent, it shall be published in the "Gazette of India" and in the local "Gazette" and shall thereupon have like force of law and be subject to the like disallowances as if it had been made by the Governor-General of India in Council at a meeting for the purpose of making laws and regulations.

The Secretary of State for India in Council may, from time to time, withdraw such power from any Governor, Lieutenant-Governor, or Chief Commissioner, on whom it has been conferred, and may from time to time, restore the same as he shall think fit.

Copies of regulations to be sent to Secretary of State. Subsequent enactments to control regulations.

2. The Governor-General shall transmit to the Secretary of State for India in Council an authentic copy of every regulation which shall have been made under the provision of this Act ; and all laws or regulations hereafter made by the Governor-General of India in Council, whether at a meeting for the purpose of making laws

and regulations, or under the said provisions, shall control and supersede any regulation in anywise repugnant thereto which shall have been made under the same provisions.

Lieutenant-Governors etc., to be members ex-officio of the Governor-General's Council for making laws and regulations.

3. Whenever the Governor-General in Council shall hold a meeting for the purpose of making laws and regulations at any place within the limits of any territories now or hereafter placed under the administration of a Lieutenant-Governor or a Chief Commissioner, the Lieutenant-Governor or Chief Commissioner respectively shall be *ex-officio* an Additional Member of the Council of the Governor-General for that purpose, in excess (if necessary) of the maximum number of twelve specified by the said Act.

Sec. 49. of 3 and 4 Will. 4, c. 85 repealed.

4. Section forty-nine of the Act of the third and Fourth years of King William the Fourth, Chapter eighty-five, is hereby repealed.

Procedure in case of difference between the Governor-General and the majority of his Council.

5. Whenever any measure shall be proposed before the Governor-General of India in Council whereby the safety, tranquillity, or interests of the British possessions in India, or any part thereof are or may be, in the judgment of the said Governor-General, essentially affected, and he shall be of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority in Council then present shall dissent from such opinion, the Governor-General may, on his own authority and responsibility, suspend or reject the measure in part or in whole, or adopt and carry it into execution, but in every such case any two Members of the dissentient majority may require that the said suspension, rejection, or adoption, as well as the fact of their dissent, shall be notified to the Secretary of State for India, and such notification shall be accompanied by copies of the minutes (if any) which the Members of the Council shall have recorded on the subject.

Power to appoint natives of India to certain offices without certificate from the Civil Service Commissioners.

6. Whereas it is expedient that additional facilities should be given for the employment of Natives of India, of proved merit and ability, in the Civil Service of Her Majesty in India: Be it enacted, that nothing in the "Act for the Government of India," twenty-one and twenty-two Victoria, Chapter one hundred and six, or in

the "Act to confirm certain appointments in India, and to amend the law concerning the Civil Service there," twenty-four and twenty-five Victoria, Chapter fifty-four, or in any other Act of Parliament or other law now in force in India, shall restrain the authorities in India by whom appointments are or may be made to offices, places, and employments in, the Civil Service of Her Majesty in India from appointing any Native of India to any such office, place, or employment, although such Native shall not have been admitted to the said Civil Service of India in manner in section thirty-two of the first-mentioned Act provided, but subject to such rules as may be from time to time prescribed by the Governor-General in Council and sanctioned by the Secretary of State in Council, with the concurrence of a majority of Members present; and that for the purpose of this Act the words "Natives of India" shall include any person born and domiciled within the dominions of Her Majesty in India, of parents habitually resident in India, and not established there for temporary purposes only; and that it shall be lawful for the Governor-General in Council to define and limit from time to time the qualification of 'Natives of India' thus expressed; provided that every resolution made by him for such purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for thirty days before both Houses of Parliament.

IV. THE INDIAN COUNCILS ACT, 1871.

(34 & 35 Vict., Ch. 34.)

AN ACT TO EXTEND IN CERTAIN RESPECTS THE POWER OF LOCAL LEGISLATURES IN INDIA AS REGARDS EUROPEAN BRITISH SUBJECTS.

(29th June, 1871.)

Whereas it is expedient that the power of making laws and regulations conferred on Governors of Presidencies in India in Council by the Indian Councils Act, 24 & 25 Vict., Ch. 67, sec. 42 should in certain respects be extended:

Be it enacted by the Queen's Most Excellent Majesty etc. * * as follows:—

Power to Local Legislatures to confer jurisdiction over European British subjects to Magistrates in certain cases.

1. No law or regulation heretofore made or hereafter to be made by any Governor or Lieutenant-Governor in Council in India in manner prescribed by the aforesaid Act shall be invalid only by the reason that it confers on Magistrates, being Justices of the Peace, the same jurisdiction over European British subjects as such Governor or Lieutenant-Governor in Council, by regulations made as aforesaid, could have lawfully conferred or could lawfully confer on Magistrates in the exercise of authority over Natives in the like cases.

Committal of defendant (being an European British subject), to the High Court. (Indian Act No. XXV of 1861, s. 226.)

2. When evidence has been given in any proceeding under this Act before a Magistrate, being a Justice of the Peace, which appears to be sufficient for the conviction of the accused person, being a European British subject of an offence for which, if a Native, he would under existing law be triable exclusively before the Court of Session, or which, in the opinion of the Magistrate is one which ought to be tried by the High Court, the accused person, if such European British subject shall be sent for trial by the Magistrate before the High Court.

Power to local Legislatures to amend and repeal certain laws.

3. And whereas by an Act passed by the Governor General of India in Council, Indian Act No. XXII of 1870, it is provided that certain Acts heretofore passed by the Governors of Madras and Bombay respectively in Council, and by the Lieutenant-Governor of Bengal in Council, shall, so far as regards the liability of European British subjects to be convicted and punished thereunder, be and be deemed to be as valid as if they had been passed by the Governor-General of India in Council at a meeting for the purpose of making laws and regulations: Be it further enacted, that the said Governors and Lieutenant-Governor in Council respectively shall have power to repeal and amend any of the said Acts so declared valid, by Acts to be passed under the provisions of the Indian Councils Act.

V. THE INDIAN COUNCILS ACT, 1892.

(55 and 56, Vict., Ch. 14.)

A.

AN ACT TO AMEND THE INDIAN COUNCILS ACT, 1861.

Be it enacted by the Queen's Most Excellent Majesty etc. * * as follows :—

Provisions for increase of number of members of Indian Councils for making laws and regulations, 24 and 25 Vict., c. 67.

1.—(1) The number of additional Members of Council nominated by the Governor-General under the provisions of section ten of the Indian Councils Act, 1861, shall be such as to him may seem from time to time expedient, but shall not be less than ten nor more than sixteen ; and the number of additional Members of Council nominated by the Governors of the Presidencies of Fort St. George and Bombay respectively under the provisions of section twenty-nine of the Indian Councils Act, 1861, shall (besides the Advocate-General of the Presidency or officer acting in that capacity) be such as to the said Governors respectively may seem from time to time expedient, but shall not be less than eight nor more than twenty.

(2) It shall be lawful for the Governor-General in Council by proclamation from time to time to increase the number of Councillors whom the Lieutenant-Governors of the Bengal Division of the Presidency of Fort William and of the North-Western Provinces and Oudh respectively may nominate for their assistance in making laws and regulations : Provided always, that not more than twenty shall be nominated for the Bengal Division, and not more than fifteen for the North-Western Provinces and Oudh.

(3) Any person resident in India may be nominated an additional Member of Council under sections ten and twenty-nine of the Indian Councils Act, 1861, and this Act, or a Member of the Council of the Lieutenant-Governor of any Province to which the provision of the Indian Councils Act, 1861, touching the making of laws and regulations, have been or are hereafter extended or made applicable.

(4) The Governor-General in Council may from time to time with the approval of the Secretary of State in Council, make regulations as to the conditions under which such nominations, or any of them, shall be made by the Governor-General, Governors, and Lieutenant-Governors respectively and prescribe the manner in which such regulations shall be carried into effect.

Modification of provisions of 24 & 25 Vict., c. 67 as to business at Legislative meetings.

2. Notwithstanding any provision in the Indian Councils Act, 1861, the Governor-General of India in Council may from time to time make rules authorising at any meeting of the Governor-General's Council for the purpose of making laws and regulations the discussion of Annual Financial Statement of the Governor-General in Council and the asking of questions, but under such conditions and restrictions as to subject or otherwise as shall be in the said rules prescribed or declared: And notwithstanding any provisions in the Indian Councils Act, 1861, the Governors in Council of Fort St. George and Bombay respectively, and the Lieutenant-Governor of any Province to which the provisions of the Indian Councils Act, 1861, touching the making of laws and regulations, have been or are hereafter extended or made applicable, may from time to time make rules for authorising at any meeting of their respective Councils for the purpose of making laws and regulations the discussion of the Annual Financial Statement of their respective local Governments, and the asking of questions, but under such conditions and restrictions, as to subject or otherwise, as shall in the said rules applicable to such Councils respectively be prescribed or declared. But no Member at any such meeting of any Council shall have power to submit or propose any resolution, or to divide the Council in respect of any such financial discussion, or the answer to any question asked under the authority of this Act, or the rules made under this Act: Provided that any rule made under this Act by a Governor in Council, or by a Lieutenant-Governor, shall be submitted for and shall be subject to the sanction of the Governor-General in Council, and any rule made under this Act by the Governor-General in Council shall be submitted for and shall be subject to the sanction of the Secretary of State in Council: Provided also that rules made under this Act shall not be subject to alteration or amendment at meetings for the purpose of making laws and regulations.

3. It is hereby declared that in the twenty-second section of the Indian Councils Act, 1861, it was and is intended that the words "Indian territories now under the dominion of Her Majesty" should be read and construed as if the words " or hereafter " were and had at the time of the passing of the said Act been inserted next after the word "now," and further, that the Acts third and fourth William the Fourth, Chapter eighty-five, and sixteenth and seventeenth Victoria, Chapter ninety-five, respectively, shall be read and construed as if at the date of the enactment thereof respectively, it was intended and had been enacted that the said Acts respectively should extend to and include the territories acquired after the dates thereof respectively by the East India Company, and should not be confined to the territories at the dates of the said enactments respectively in the possession and under the Government of the said Company.

Meaning of 24 & 25 Vict., c. 67, s. 22; 3 & 4 Will. IV, c. 85; & 16 & 17 Vict., c. 95.

4. Sections thirteen and thirty-two of the Indian Councils Act, 1861, are hereby repealed, and it is enacted that—

Repeal.

(1) If any additional Member of Council, or any Member of the Council of a Lieutenant-Governor, appointed under the said Act or this Act, shall be absent from India or unable to attend to the duties of his office for a period of two consecutive months, it shall be lawful for the Governor-General, the Governor, or the Lieutenant-Governor, to whose Council such additional Member or Member may have been nominated (as the case may be) to declare, by a notification published in the Government Gazette, that the seat in Council of such person has become vacant :

Power to fill up vacancy in number of additional members.

(2) In the event of a vacancy occurring by the absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, of any such additional Member or Member of the Council of a Lieutenant-Governor, it shall be lawful for the Governor-General, for the Governor, or for the Lieutenant-Governor, as the case may be, to nominate any person as additional Member or Member, as the case may be, in his place ; and every Member so nominated shall be summoned to all meetings held for the purpose of making laws and regulations for the term of two years from the date of such nomination : Provided always that it shall not be lawful by such nomination, or by any other nomination made under this

Act, to diminish the proportion of non-official Members directed by the Indian Councils Act, 1861, to be nominated.

Powers of Indian provincial legislatures.

5. The local legislature of any Province in India may from time to time, by Acts passed under and subject to the provisions of the Indian Councils Act, 1861, and with the previous sanction of the Governor-General but not otherwise, repeal or amend as to that Province any law or regulation made either before or after the passing of this Act by any authority in India other than that local legislature: 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 the Indian Councils Act, 1861, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under this section.

Definitions.

6. In this Act—The expression, "local legislature", means—

(1) The Governor in Council for the purpose of making laws and regulations of the respective Provinces of Fort St. George and Bombay; and

(2) The Council for the purpose of making laws and regulations of the Lieutenant-Governor of any Province to which the provisions of the Indian Councils Act, 1861, touching the making of laws or regulations have been or are hereafter extended or made applicable:

The expression "Province" means any Presidency, Division, Province, or Territory over which the powers of any local legislature for the time being extend.

Saving of powers of Governor-General in Council.

7. Nothing in this Act shall detract from or diminish the powers of the Governor-General in Council at meetings for the purpose of making laws and regulations.

Short title.

8. This Act may be cited as the Indian Councils Act, 1892, and the Indian Councils Act, 1861, and this Act may be cited together as the Indian Councils Acts, 1861 and 1892.

B.

EXTRACTS FROM MR. (NOW LORD) CURZON'S SPEECH IN THE HOUSE OF COMMONS ON THE SECOND READING OF THE INDIAN COUNCILS BILL OF 1892.

MR. (now LORD) CURZON, Under-Secretary of State for India, in moving the second reading of the Indian Councils Bill (1892), said that the object of this Bill was to widen the basis and expand the functions of the Government of India, to give further opportunities than at present existed to the non-official and native element in Indian society to take part in the work of government, and in that way to lend official recognition to that remarkable development both in political interest and capacity which had been visible among the higher classes of Indian society since the government was taken over by the Crown in 1858. In form this Bill was one to amend the Indian Councils Act of 1861. Legislative powers of some sort or other, but of a somewhat confused character, had existed in India for a very long time. They existed under the rule of the old East India Company ; but the modern Legislative system under which India at present existed owed its origin to LORD CANNING when Viceroy, and SIR CHARLES WOOD when Secretary of State in 1861, in which year, the latter carried the Indian Councils Bill through the House.

The Act of 1861 constituted three Legislative Councils in India—the Supreme Council of the Viceroy and the Provincial Councils of Madras and Bombay. The Supreme Council of the Viceroy, or, as it was called, the Council for the purpose of making laws and regulations only, consisted of the Governor-General and an executive Council of a *minimum* of six and a *maximum* of 12 members, nominated by the Governor-General. The Legislative Councils of Madras and Bombay were also recruited by a *minimum* of four and a *maximum* of eight additional Members nominated by the Provincial Governor, of whom half, at least, must be non-official. Since the passing of the Act of 1861 Legislative Councils had also been called into existence in Bengal and in the North-Western Provinces. In Bengal the Council consisted of the Lieutenant-Governor and 12 nominated Councillors, and in the North-Western Provinces the Council consisted of the Lieutenant-Governor and nine nominated Councillors. In both cases one-third of the nomi-

nated Members must be non-official. This system had undoubtedly worked well. It had justified itself and the anticipation of its promoters. Operating to a very large extent through the agency of sub-committees, composed of experts, it had proved to be an efficient instrument for the evolution of law. The publicity which had attended its proceedings, had had a good effect, a number of native gentlemen of capacity and public spirit had been persuaded to come forward and lend their services, and undoubtedly the standard of merit in the Councils had been high.

At the same time these Councils had been subject to restrictions and limitations which were intentionally, and he thought wisely, imposed upon them. In the first place, they were in no sense of the term Parliamentary bodies. They were deliberative bodies with a comparatively narrow scope, inasmuch as they were assembled for the discussion of the immediate legislation which lay before them and were not permitted to travel outside that very circumscribed area. Under these circumstances it had been felt that there was wanting to the Government an opportunity for explaining policy and for replying to hostile criticism or attack, and at the same time that there was also wanting to the non-official element—to those who might legitimately call themselves the guardians of the public interest—an opportunity of asking for information, of stating their grievances, and of becoming acquainted with the policy of the Government. These feelings had been expressed in many memorials that had been addressed, over a large number of years, to the Government of India by important public bodies and associations throughout the country. LORD DUFFERIN, in February, 1887, the occasion being the celebration of the Queen's Jubilee, spoke of the desirability of reconstituting the Supreme Legislative Council of the Viceroy on a broader basis and of enlarging its functions ; and in November of the following year he sent home a despatch in which he recommended, in the first place, an early financial discussion in the Supreme Legislative Council of the Budget of the year. LORD DUFFERIN said in that despatch that he did not mean that votes should be taken in regard to the various items of the Budget, or that the heads of expenditure should be submitted in detail to the Council, but simply that the opportunity should be given for a full, free, and thorough criticism and examination of the financial policy of the Government. In the same des-

patch LORD DUFFERIN suggested that questions should be asked in the Supreme Legislative Council on matters dealing with native as opposed to Imperial interest.

In 1888 LORD DUFFERIN left India, and early in the following year he was succeeded by the eminent statesman who now held the office of Viceroy. Since his accession to the Viceroyalty LORD LANSDOWNE had signified his approbation of the annual discussion of the Budget in the manner suggested, and also of the right of addressing questions to the Government on matters of public interest. Both these propositions were treated of in a despatch by the Secretary of State in August, 1889, and he dealt with them in relation to the Legislative Council of the Viceroy and also to the Provincial Councils. In the same despatch the noble Lord signified his desire for the enlargement of the representation of the public in India by an addition to the number of Members of the Council and by some extension of the present system of nomination. In as much as this could not be carried into effect without legislation, the noble lord had enclosed in the despatch a draft Bill, upon which he invited the opinions of the Central and the Provincial Governments of India. These and other criticisms and suggestions were found to be eminently favourable to the contemplated measure, and from these germs sprang the Indian Councils Bill of which he now moved the second reading.

A few words as to the Parliamentary history of the measure. It had been in no ordinary degree the victim of Parliamentary vicissitudes, and up to the present its career had been one of mingled success and disappointment. It was introduced for the first time in the House of Lords in 1890, and a most important discussion—a model of what such a discussion should be—took place on the second reading. In Committee a number of important and valuable amendments were made by noble lords who had had experience in the government of India. So amended, the Bill passed and came down to the House of Commons, where it did not succeed in getting beyond the first reading. In 1891 it was introduced in the House of Commons and fell a victim to hardship of fortune or the immoderate interest displayed by the Opposition in other topics of Parliamentary interest. In the present year the Bill was again introduced into the House of Lords in its amended form of 1890, and it had passed through its various stages without alteration, but supported by expressions of strong approval from several noble lords. The delay in passing

the Bill had naturally been a source of regret to the Government at home, and regret had been equally felt in India, where there was a good deal of disappointment at the tardy arrival of a long-promised reform and at the apparent willingness of this House to postpone the consideration of a non-controversial and constitutional change for India to the perennial and unprofitable discussion of constitutional changes of a highly controversial character for other parts of the United Kingdom nearer home, which, from an Indian point of view, were infinitesimally small and comparatively unimportant. This disappointment in India had been legitimate, and undoubtedly it had been felt by the present Viceroy, who, having inaugurated his term of office by signifying his hearty approval of this Bill, had naturally looked forward to being able to carry it into execution before his term of office expired. These feelings were shared by Members of the House, if he might judge from questions addressed to his predecessor, and also by those who held extreme opinions, and who, while regarding the Bill as inadequate, were yet desirous that it should pass into law. In July of last year the British Committee of the Indian National Congress, who might be supposed to represent the more extreme views on this subject, addressed a letter to the Secretary of State, in which they expressed their deep regret at the withdrawal of the Bill, which would cause such bitter disappointment in India. In the present year LORD KIMBERLEY, who had been Secretary of State for India, had spoken in the same sense, adding—

"I echo most sincerely the hope that this measure will be pressed by Her Majesty's Government and will pass into law. It is really a misfortune that a measure of this kind should be hung up Session after Session. However important to us may be our domestic legislation, let us not forget that we have an immense responsibility in the government of that great Empire in India, and that it is not well for us to palter long with questions of this kind. And I am the more desirous that this measure should be dealt with because I have observed with great pleasure that in India the tone has much moderated in dealing with this subject, and that very sensible views have been expressed at meetings held in India; and there is now a reasonable promise that there will be an agreement as to a tentative and commencing measure upon this subject. We must not look for it all at once; but if we can make a beginning I believe we shall lay the foundation for what may be a real benefit and a real security to our Indian Empire."

It was a legitimate inference from these expressions of opinion that the Bill would be welcomed on both sides of the House, and that even those who held advanced views would facilitate its passing. The changes which it was proposed to

make by the Bill were, broadly speaking, three in number. The first was the concession of the privilege of financial criticism in both the Supreme and the Provincial Councils; the second was the concession of the privilege of interpellation; the third was the addition to the number of Members in both classes of Councils. First as regarded financial discussion, he had already pointed out that under the existing law this was possible only when the Finance Minister proposed a new tax. At other times the Budget in India was circulated in the form of a pamphlet, and no discussion could take place upon it. During the 30 years since the Councils Act of 1861 there had been 16 occasions upon which new legislation had been called for and such discussion had taken place and there had been 14 on which there had been no discussion at all. By this Bill power would be given to discuss the Budget annually in both the Supreme and the Provincial Councils. It was not contemplated, as the extracts he had read from the despatch of LORD DUFFERIN would show, to vote the Budget in India, item by item, as was done in that House, and to subject it to all the obstacles and delays Parliamentary ingenuity could suggest; but it was proposed to give opportunity to the Members of the Councils to indulge in a full and free criticism of the financial policy of the Government, and he thought that all parties would be in favour of such a discussion. The Government would gain, because they would have the opportunity of explaining their financial policy, of removing misapprehension, and of answering criticism and attack; and they would profit by criticism delivered on a public occasion with a due sense of responsibility and by the most competent representatives of unofficial India. The native community would gain, because they would have the opportunity of reviewing the financial situation independently of the mere accident of legislation being required for any particular year, and also because criticism upon the financial policy of the Government, which now found vent in anonymous and even scurrilous papers in India, would be uttered by responsible persons in a public position. Lastly, the interests of finance would gain by this increased publicity and the stimulus of a vigorous and instructive scrutiny. These discussions could have no other result than to promote sound economical administration in India. It was now 20 years since LORD MAYO, that wise and enlightened Viceroy, first proposed the submission of Provincial Budgets to Provincial Councils. At that time he was overruled by the Government at home, which he believed was one of the Governments of the right hon.

gentleman opposite, at any rate he hoped both sides of the House would now co-operate in making a change which spoke for itself. The second change introduced by the Bill was the concession of the right of interpellation or of asking questions. It was proposed to give to Members of both Councils, the Supreme and the Provincial Councils, this right of asking questions on matters of public interest. But both this privilege and the one to which he had previously alluded would be subject, under the terms of the Act, to such conditions and restrictions as might be prescribed in rules made by the Governor-General or the Provincial Governors. The merits of the proposal, he thought, were obvious. It was desirable, in the first place, in the interests of the Government, which at the present moment was without the means of making known its policy or of answering criticisms or animadversions or of silencing calumny. And it was also desirable in the interests of the public of India who, in the absence of official information, were apt to be misled, to form erroneous apprehensions, and to entertain unjust ideas. The third proposal was to add to the number of Members upon the Councils. The Supreme Legislative Council consisted at present, in addition to its *ex-officio* Members, who number seven, of a minimum of six and a maximum of 12 nominated members ; under the Bill the minimum would be raised to ten and the maximum to 16. The Madras and Bombay Councils consisted, in addition to their four *ex-officio* Members, of a minimum of four and a maximum of eight nominated Members, of whom half were non-official ; under the Bill the minimum would be eight and the maximum 20. The Council of Bengal consisted at present of 12 nominated Members of whom one-third were non-official ; under the Bill the number would be increased to 20. The Council of the North-Western Provinces at present consisted of nine nominated Members, of whom also one-third must be non-official ; under the Bill they would be raised to 15. The object of these additions was easily stated and would be as easily understood. It was simply, by extending the area of selection in each case, to add to the strength and representative character of the Councils. The late MR. BRADLAUGH, who at different times introduced two Bills dealing with the reform of the Indian Councils into the House, proposed in those measures to swell the numbers to quite impracticable and unmanageable proportions. Under his first Bill their totals would have amounted to 260 and under the second to 230.

MR. SCHWANN asked whether the figures just quoted referred to the Councils altogether or to each separately ?

Mr. CURZON replied that he was speaking of the five Councils he had mentioned, and the totals for those five Councils. Any one who had any practical acquaintance with India must be aware that the number of persons both competent and willing to take part in the functions of those Councils was nothing like adequate to supply those ambitious totals. At the same time the number of persons so available was sufficient to justify an addition, and, perhaps, a not inconsiderable addition, to the present totals. Every year most fortunately the number of native gentlemen who were both qualified and willing to take part in the work of Government was increasing, and every year the advantage of their co-operation in government increased in the same ratio. More especially in the case of the Provincial Councils had it been thought that more effectual means were wanted to reinforce in those Councils unofficial and native opinion. The Government believed that the moderate extension of the numbers which they proposed would have the effect which they contemplated, and at the same time would be compatible with efficiency. Coming to the concluding question, the mode in which those additional Members were to be appointed, he noticed that the hon. Member for North Manchester had on the paper an amendment declaring that no reform of the Indian Councils which does not embody the elective principle would prove satisfactory. But the Bill, he had to point out, does not exclude some such principle, be the method election, or selection, or delegation, or whatever particular phrase they liked to employ. The 4th subsection of Clause I runs as follows :—

"The Governor-General in Council may from time to time, with the approval of the Secretary of State in Council, make such regulations as to the conditions under which such nominations, or any of them shall be made by the Governor-General, Governors, and Lieutenant-Governors respectively, and prescribe the manner in which such regulations shall be carried into effect."

LORD KIMBERLEY himself had elsewhere, in an earlier stage of this Bill, expressed himself with reference to this clause as follows :—

"I am bound to say that I express my own satisfaction because I regard this as, to a certain extent, an admission of the elective principle," * * *—"I myself believe that under this clause it would be possible for the Governor-General to make arrangements by which certain persons may be presented to him, having been chosen by election, if the Governor-General should find that such a system can be established."

MR. MACLEAN.—Does the Government accept that view of LORD KIMBERLEY ?

MR. CURZON.—Undoubtedly, Sir, the opinions expressed by LORD KIMBERLEY are also shared by the Secretary of State. Under this Act it would be in the power of the Viceroy to nvite representative bodies in India to elect or select or delegate epresentatives of themselves and of their opinions to be nominated to those Houses, and thus by slow degrees, by entative measures—and measures like this could not be otherwise than tentative—they should perhaps approximate to the ideal which the hon. member for Manchester had in view. He might mention as indicating and nothing more—the character of the bodies and associations to which he alluded, such bodies as the association of the Zemindars of Bengal, the Chambers of Commerce of India, the municipalities of the great cities, the Universities, and perhaps the various great religious denominations in that country. He could not conceive anything more unfortunate than that this House should draw up and send out to India a hard and fast elective scheme within the four walls of which the Government of that country should find itself confined, and which, if at some future period it proved inadequate or unsuitable, it would be impossible to alter without coming back to this House, and experiencing all the obstacles and delays of Parliamentary government in this House. He was well aware the proposal of the Government might not altogether suit those hon. gentlemen on the other side whose ideas of political progress had been formed in the breathless atmosphere of our life in the West and who were perhaps unable to accommodate their mood to the slower movement of life in the East. The hon. Member opposite, for instance, was anxious to have the elective principle more clearly defined and more systematically enforced. He had put an amendment on the paper in which he asked the House to express the opinion that no reform of the Indian Councils which does not embody the elective principle will prove satisfactory to the Indian people or will be compatible with good government of India. The amendment was vitiated by a two-fold fallacy. It affected to speak on behalf of the Indian people, and it ignored the primary conditions of Indian life. When the hon. Member presumed to be the mouthpiece of the people of India he must, with all respect, decline to accept his credentials on that point. No system of representation ever devised, no system of representation that the ingenuity of the hon. Member

could suggest, no system of representation which would bear 24 hours' test of operation could possibly represent the people of India. The people of India were voiceless millions, who could neither read nor write in their native tongue, who had no knowledge whatever of English, and who were not perhaps universally aware that the English were in their country as rulers. The people of India were ryots and peasants, and the plans and policies of the Congress party in India would leave this amorphous residuum absolutely untouched. He did not desire to speak in any other than respectful terms of the Congress party, which contained a number of intelligent, capable, and public-spirited men. They undoubtedly represented that part of the Indian population which had profited by the educational advantages we had placed at their doors ; but the constituencies the Congress party represented could not be described otherwise than as a minute and microscopic minority of the population. According to the last census the population of British India was 221 millions, and of that total it was calculated that not more than three or four per cent. could read or write in any of their native tongues, and only one-fourth or one-third per cent. could read or write in English. It appeared to him that we could as little judge of the feelings and political aspirations of the people of India,—if, indeed they had any aspirations outside the more material needs of their existence—from the plans and policies of the Congress party as we could judge of the physical configuration of a country which was wrapped in the mists of the early morn, though all its topmost peaks might happen to be touched by the sun. To propose an elaborate system of representation for people in this stage of development might be at least premature and unwise ; and even with such a scheme to speak of the representation of the people of India would be a misuse of terms. The Government assumed the responsibility of stating that in their opinion the time had not come when representative institutions, as we understood the term, could be extended to India. The idea of representation was alien to the Indian mind. We had ourselves only arrived at it by slow degrees, and it was only in the last 25 years that we had in this country entered into the full enjoyment of that system. While it was impossible so to remodel the Indian Council as to give them the character of representative chambers, he would be sorry to deny the importance of criticism by gentlemen representing the native society in India. At present the sole vent available for that opinion was in the native Press and in organized meetings, such as the Indian National Congress.

Everybody agreed that this knowledge and activity might be better utilized, and the Government believed that the subsection of Clause I would provide means by which representatives of the most important sections of native society would be appointed to the Councils. The Bill was, perhaps, not a great or an heroic measure, but at the same time it marked a decisive step, and a step in advance. As such it had been welcomed by every living Viceroy in India. It was foreshadowed by LORD DUFFERIN, it was earnestly asked for by LORD LANSDOWNE, and it had received the emphatic approval of LORD NORTHBROOK not less than of LORD RIPON. There were two main objects which the House was entitled to require in new legislation for India—that it should in no sense impair the efficiency of government and that it should also promote the interests of India. It was because he believed the measure would promote both these ends that he commended the Bill to the sympathetic attention of the House.

C.

EXTRACTS FROM MR. W. E. GLADSTONE'S SPEECH IN THE HOUSE OF COMMONS ON THE SECOND READING OF INDIAN COUNCILS BILL OF 1892.

MR. GLADSTONE said—As far as controversy is concerned, I hope that this debate may be compressed within narrow limits. My hon. friend the Member for Manchester has asked the House by his amendment to declare that, in its opinion, no reform of the Indian Councils can be satisfactory which does not embody the elective principle. Looking at the Bill and at the amendment, I have to ask myself whether there is between them such a difference of opinion and principle as to make me desirous of going to an issue on that difference. Undoubtedly, looking at the Bill standing by itself, I am disposed to agree with my hon. friend that its language is insufficient and unsatisfactory in as far as it is ambiguous. But the Under-Secretary has introduced the Bill in a comprehensive and lucid speech, and if I were to criticize any portion of that speech it would be that portion of it in which the hon. gentleman addressed himself to the amendment before the House, because it appeared to be his object to put upon the amendment the most hostile construction it would bear. I, however, desire to put upon the speeches I have heard, and upon the Bill itself, the least controversial construction of which they are fairly

susceptible. While the language of the Bill cannot be said to embody the elective principle, it is very peculiar language, unless it is intended to pave the way for the adoption of that principle. I believe it was suggested by a nobleman in the House of Lords, who is friendly to the elective principle in India, that, unless it had been intended to leave room for some peculiarities not yet introduced into the Indian system in the appointment of the Members of the Councils under this Bill, it would have been a very singular form of speech to provide not simply that the Governor-General might nominate, but that he might make regulations as to the conditions under which such nominations should be made either by himself or by the Government in Council. It is plain that those who have adopted that language have in view something beyond mere nomination. Then I come to the speech of the Under-Secretary, which distinctly embodies something which I confess appears to me to be not very different from the assertions of my honourable friend, except in the important point that the Under-Secretary proposes to leave everything to the discretion, judgment, and responsibility of the Governor-General and the authorities in India. With that limitation the speech of the Under-Secretary appears to me to embody the elective principle in the only sense in which we should expect it to be embodied. My construction of the Under-Secretary's speech is that it implies that a serious effort should be made to consider carefully those elements which, in the present condition of India, might furnish material for the introduction into the Council of the elective principle. If that serious effort is to be made, by whom is it to be made? I do not think that it can be made by the House of Commons except through the medium of empowering provisions. The hon. baronet, the Member for Evesham has spoken of a plan of that kind, and I observed with pleasure the genuinely liberal views of the hon. baronet with respect to Indian affairs and to the government of the Indian people, and were the hon. baronet to propose a plan of the kind he has indicated to the House it would no doubt contain much that would be useful, and wise, and honourable to the spirit of such an assembly as the House of Commons. It may, however, be doubted whether, even under such enlightened guidance, it would be wise on our part, with our imperfect knowledge, to proceed to the determination of the particulars of such a plan. I think that the best course to take would be to commend the plan to the authorities in India with a clear indication of the principle on which we desire they should proceed. It

is our business to give to those representing Her Majesty's Government in India ample information as to what we believe to be sound principles of government. It is the function of this House to comment upon any case in which we think the authorities in India have failed to give due effect to those principles ; but in the discharge of their high administrative functions, or as to the choice of means, there is no doubt that that should be left in their hands. It is evident that the great question—and it is one of great and profound interest—before the House is that of the introduction of the elective element into the government of India. That question overshadows and absorbs everything else. It is a question of vital importance ; but it is at the same time of great difficulty. No more difficult office has ever been intrusted to a Governor-General than that of administering a Bill such as that which is now before the House in a manner that shall be honourable and wise. I am not disposed to ask of the Governor-General, or of the Secretary of State, that they shall at once produce large and imposing results. What I wish is that their first steps shall be of a genuine nature, and that whatever scope they give to the elective principle shall be real.

There are, of course, dangers in their way. There is the danger of subserviency. There is the danger of having persons who represent cliques, classes, or interests, and who may claim the honour of representing the people of India. The old story of the three tailors of Tooley-street does, after all, embody an important political truth, and it does exhibit a real danger. What we want is to get at the real heart and mind, the most upright sentiments, and the most enlightened thoughts of the people of India, but it is not an easy matter to do that. I think, however, that upon this point we are justified in being a little more sanguine than the Under-Secretary has been in his speech. The honourable Member, however, did not venture to indicate where the materials for the elective element in India are to be found. Undoubtedly, as far as my own prepossessions go, I should look presumptively with the greatest amount of expectation and hope to the municipal bodies of India, and to the local authorities, in which the elective element is already included in that country. My honourable friend, in moving the amendment, has pointed out authorities in favour of the elective principle, these including men who have been responsible for the actual administration of India. It is there that we stand upon solid ground, and Her Majesty's Government ought to understand that it will be regarded as a most grave

disappointment if, after all the assurances we have received that an attempt will be made to bring into operation this powerful engine of government, there should not be some such result as we anticipate from their action. I do not speak of its amount, I speak more of its quality. In an Asiatic country like India, with its ancient civilization, with its institutions so peculiar, with such a diversity of races, religions, and pursuits, with such an enormous extent of country, and such a multitude of human beings as probably, except in the case of China, were never before under a single Government, I can understand that there should be difficulties in carrying what we desire to see accomplished ; but great as the difficulties are, the task is a noble task, and will require the utmost prudence and care in conducting it to a successful termination. But after the assurances we have had from persons of the highest capacity, and the greatest responsibility, I believe we are justified in looking forward, not merely to a nominal, but to a real living representation of the people of India. The great nation to which we belong has undoubtedly had to do most difficult tasks in the government and in the foundation of the institutions of extraneous territories. But all the other parts of the British empire have presented to us a simple problem in comparison with the great problem presented to us by India. Its magnitude, its technicality, is such that the task of Great Britain in this respect is far greater than that which any other country has attempted, and far greater than that which it has itself attempted beyond the sea in any of the dependencies of the empire. I rejoice to think that a great and real advance has been made, both before and especially since the direct transfer of the Indian Government to the immediate superintendence of the Executive at home, and to the authority of the Imperial Legislature. The progress thus made has been made by the constant application to the government of India of the minds of able men acting under a strong sense of duty, and also a strong sense of political responsibility. All these things induce us to look forward cheerfully to a great future for India, and to expect that a real success will attend the genuine application, even though it may be a limited one, of the elective principle to the government of that vast and almost immeasurable community. If this attempt be successful, it will be the accomplishment of a task to which it would be difficult to find a parallel in history. I see no such difference between my hon. friend's language and the language of the Bill as ought to induce my hon. friend to divide the House. If the

language of my hon. friend is to receive a perfectly legitimate and not a strained construction, it is only an amplification and not a contradiction of what the speech of the hon. gentleman the Under-Secretary implies. I think it would be a great misfortune if the House were to divide on the subject. I think that the acceptance of the elective principle by the hon. gentleman, though guarded, was on the whole not otherwise than a frank acceptance. I do not think there is on that side of the House any jealousy of the introduction into India of that principle which, undoubtedly, if it did exist, would form a strong mark of difference between the party who sits there and the party who sits on this side of the House. In reality, and in substance, we have the same objects in view, and are prepared te recommend the employment of the same means. If that be so, it would be unfortunate that any division should take place even though the numbers might be very unequal. I certainly could not take part in any division hostile, or apparently hostile, to the Bill. After the speech of the hon. gentleman such a division would convey a wrong impression. It would be well that the people of India should understand that united views on this question substantially prevail in this House. My persuasion is that those views are united, and that they are such as tend to the development of an enlightened and not only a liberal but a free system of government. I venture to submit that the hon. gentleman has no substantial quarrel with the intentions of the Government, and that we should do well to allow this Bill to receive the unanimous assent of the House in the present Session, in the hope that without serious difficulty it may shortly become law and fulfil the beneficent purposes with which it has been framed.

VI. THE INDIAN COUNCILS ACT, 1909.

AN ACT TO AMEND THE INDIAN COUNCILS ACTS, 1861 AND 1892, AND THE GOVERNMENT OF INDIA ACT, 1833.

(May 25, 1909.)

Be it enacted by the King's Most Excellent Majesty * * * as follows :—

1.—(1) The additional Members of the Councils for the purpose of making laws and regulations (hereinafter referred to as Legislative Councils) of the Governor-General and of the Governors of Fort St. George and Bombay, and the Members of the Legisla-

Amendment of constitution of Legislative Councils. 24 & 25 Vict., C. 67. 55 & 56 Vict., C. 14.

tive Councils already constituted, or which may hereafter be constituted, of the several Lieutenant-Governors of Provinces, instead of being all nominated by the Governor-General, Governor, or Lieutenant-Governor in manner provided by the Indian Councils Acts, 1861 and 1892, shall include Members so nominated and also Members elected in accordance with regulations made under this Act, and references in those Acts to the Members so nominated and their nomination shall be construed as including references to the Members so elected and their election.

(2) The number of additional Members or Member so nominated and elected, the number of such Members required to constitute a quorum, the term of office of such Members and the manner of filling up 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 regulations made under this Act :

Provided that the aggregate number of Members so nominated and 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 the second column of that schedule.

Constitution and procedure of Executive Councils of Governors of Fort Saint George and Bombay.

2.—(1) The number of ordinary Members of the Councils of the Governors of Fort Saint George and Bombay shall be such number not exceeding four as the Secretary of State in Council may from time to time direct, of whom two at least shall be persons who at the time of their appointment have been in the service of the Crown in India for at least twelve years.

(2) If at any meeting of either of such Councils there is an equality of votes on any question the Governor or other person presiding shall have two votes or the casting vote.

Power to constitute provincial Executive councils.

3.—(1) It shall be lawful for the Governor-General in Council, with the approval of the Secretary of State in Council, by proclamation, to create a Council in the Bengal Division of the Presidency of Fort William for the purpose of assisting the Lieutenant-Governor in the executive Province, and by such proclamation—

(*a*) to make provision for determining what shall be the number (not exceeding four) and qualifications of the Members of the Council ; and

(*b*) to make provision for the appointment of temporary or acting Members of the Council during the absence of any Member from illness or otherwise, and for the procedure to be adopted in case of a difference of opinion between a Lieutenant-Governor and his Council, and in the case of equality of votes, and in the case of a Lieutenant-Governor being obliged to absent himself from his Council from indisposition or any other cause.

(2) It shall be lawful for the Governor-General in Council, with the like approval, by a like proclamation, to create a Council in any other Province under a Lieutenant-Governor for the purpose of assisting the Lieutenant-Governor in the executive government of the Province : Provided that before any such proclamation is made a draft thereof shall be laid before each House of Parliament for not less than sixty days during the session of Parliament, and, if before the expiration of that time an Address is presented to His Majesty by either House of Parliament against the draft or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft.

(3) Where any such proclamation has been made with respect to any Province the Lieutenant-Governor may, with the consent of the Governor-General in Council, from time to time make rules and orders for the more convenient transaction of business in his Council, and any order made or act done in accordance with the rules and orders so made shall be deemed to be an act or order of the Lieutenant-Governor in Council.

(4) Every Member of any such Council shall be appointed by the Governor-General, with the approval of His Majesty, and shall, as such be a Member of the Legislative Council of the Lieutenant-Governor, in addition to the Members nominated by the Lieutenant-Governor and elected under the provisions of this Act.

Appointment of Vice-Presidents.

4. The Governor-General, and the Governors of Fort Saint George and Bombay, and the Lieutenant-Governor of every Province respectively shall appoint a Member of their respective councils to be Vice-President thereof, and, for the purpose of

temporarily holding and executing the office of Governor-General or Governor of Fort Saint George or Bombay and of presiding at meetings of Council in the absence of the Governor-General, Governor, or Lieutenant-Governor, the Vice-President so appointed shall be deemed to be the senior Member of Council and the Member highest in rank, and the Indian Councils Act, 1861, and sections sixty-two and sixty-three of the Government of India Act, 1833, shall have effect accordingly.

3 & 4 Will. 4, c. 85.

Power to extend business of Legislative Councils.

5.—(1) Notwithstanding anything in the Indian Councils Act, 1861, the Governor-General in Council, the Governors in Council of Fort Saint George and Bombay respectively, and the Lieutenant-Governor or Lieutenant-Governor in Council of every Province, shall make rules authorising at any meeting of their respective Legislative Councils the discussion of the annual financial statement of the Governor-General in Council or of their respective Local Governments, as the case may be, and of any matter of general public interest, and the asking of questions, under such conditions and restrictions as may be prescribed in the rules applicable to the several Councils.

(2) Such rules as aforesaid may provide for the appointment of a Member of any such Council to preside at any such discussion in the place of the Governor-General, Governor, or Lieutenant-Governor, as the case may be, and of any Vice-President.

(3) Rules under this section, where made by a Governor in Council, or by a Lieutenant-Governor, or a Lieutenant-Governor in Council, shall be subject to the sanction of the Governor-General in Council, and where made by the Governor-General in Council shall be subject to the sanction of the Secretary of State in Council, and shall not be subject to alteration or amendment by the Legislative Council of the Governor-General, Governor, or Lieutenant-Governor.

Power to make regulations.

6. The Governor-General in Council shall, subject to the approval of the Secretary of State in Council, make regulations as to the conditions under which and manner in which persons resident in India may be nominated or elected as Members of the Legislative Councils of the Governor-General, Governors, and Lieutenant-Governors and as to the qualifications for being,

and for being nominated or elected, a Member of any such Council, and as to any other matter for which regulations are authorised to be made under this Act, and also as to the manner in which those regulations are to be carried into effect. Regulations under this section shall not be subject to alteration or amendment by the Legislative Council of the Governor-General.

Laying of proclamations etc., before Parliament.

7. All proclamations, regulations, and rules made under this Act, other than rules made by a Lieutenant-Governor for the more convenient transaction of business in his Council, shall be laid before both Houses of Parliament as soon as may be after they are made.

Short title, construction, commencement, and repeal. 32 & 33 Vict., c. 98. 33 & 34 Vict., c. 34.

8. (1)—This Act may be cited as the Indian Councils Act, 1909, and shall be construed with the Indian Councils Acts, 1861, and 1892, and those Acts, the Indian Councils Act, 1869, the Indian Councils Act, 1871, the Indian Councils Act, 1874, the Indian Councils Act, 1904, and this Act may be cited together as the Indian Councils Acts, 1861 to 1909.

37 & 38 Vict., c. 91. 4 Edw. 7. c. 26.

(2) This Act shall come into operation on such date or dates as the Governor-General in Council, with the approval of the Secretary of State in Council, may appoint, and different dates may be appointed for different purposes and provisions of this Act and for different Councils.

On the date appointed for the coming into operation of this Act as respects any Legislative Council, all the nominated Members of the Council then in office shall go out of office, but, may, if otherwise qualified, be renominated or be elected in accordance with the provisions of this Act.

(3) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

SCHEDULES.

FIRST SCHEDULE.

Maximum Numbers of Nominated and Elected Members of Legislative Councils.

Legislative Council.	Maximum number.
Legislative Council of the Governor-General	60
Legislative Council of the Governor of Fort Saint George ...	50
Legislative Council of the Governor of Bombay	50
Legislative Council of the Lieutenant-Governor of the Bengal division of the Presidency of Fort William...	50
Legislative Council of the Lieutenant-Governor of the United Provinces of Agra and Oudh	50
Legislative Council of the Lieutenant-Governor of the Provinces of Eastern Bengal and Assam	50
Legislative Council of the Lieutenant-Governor of the Province of the Punjab	30
Legislative Council of the Lieutenant-Governor of the Province of Burma	30
Legislative Council of the Lieutenant-Governor of any Province which may hereafter be constituted	30

SECOND SCHEDULE.

Enactments Repealed.

Section and Chapter.	Short title.	Extent of Repeal.
24 and 25 Vict., c. 67.	The Indian Councils Act, 1861.	In section ten, the words "not less than six nor more than twelve in number." In section eleven, the words "for the term of two years from the date of such nomination." In section fifteen, the words from "and the power of making laws and regulations" to "shall be present." In section twenty-nine, the words "not less than four nor more than eight in number." In section thirty, the words "for the term of two years from the date of such nomination." In section thirty-four, the words from "and the power of making laws and regulations," to "shall be present." In section forty-five, the words from "and the power of making laws and regulations," to "shall be present."
55 and 56 Vict., c. 14.	The Indian Councils Act, 1892.	Sections one and two. In section four, the words "appointed under the said Act or this Act" and paragraph (2.)

B.

LORD MINTO'S MINUTE * OF AUGUST, 1906.

I feel sure my colleagues will agree with me that Indian affairs and the methods of Indian administration have never attracted more public attention in India and at home than at the present moment. The reasons for their doing so are not far to seek. The growth of education, which British rule has done so much to encourage, is bearing fruit. Important classes of the population are learning to realise their own position, to estimate for themselves their own intellectual capacities, and to compare their claims for an equality of citizenship, with those of a ruling race, whilst the directing influences of political life at home are simultaneously in full accord with the advance of political thought in India.

To what extent the people of India as a whole are as yet capable of serving in all branches of administration, to what extent they are individually entitled to a share in the political representation of the country, to what extent it may be possible to weld together the traditional sympathies and antipathies of many different races and different creeds, and to what extent the great hereditary rulers of Native States should assist to direct Imperial policy, are problems which the experience of future years can alone gradually solve.

But we, the Government of India, cannot shut our eyes to present conditions. The political atmosphere is full of change, questions are before us which we cannot afford to ignore, and which we must attempt to answer, and to me it would appear all important that the initiative should emanate from us, that the Government of India should not be put in the position of appearing to have its hands forced by agitation in this country or by pressure from home, that we should be the first to recognise surrounding conditions and to place before His Majesty's Government the opinions which personal experience and a close touch with the everyday life of India entitled us to hold.

This view I feel sure my colleagues share with me. MR. MORLEY cordially approves it, and in pursuance of it announced, on my authority, in his recent Budget speech my intention of

* Being an extract from the Proceedings of the Legislative Council of the Governor-General, dated the 25th of January, 1910.

appointing a Committee from the Viceroy's Council to consider the question of possible reforms.

Such enquiries have, as you are aware, taken place before. There was the Commission, over which SIR CHARLES AITCHISON presided, to enquire into the employment of Indians in the public services, and we have also the notable report of the Committee appointed by LORD DUFFERIN to consider proposals for the reconstruction of Legislative Councils on a representative basis (1888), over which SIR GEORGE CHESNEY presided, and of which the present LORD MACDONNEL was secretary. It is curious to see from that report how similar conditions and arguments were then to what they are now; with one great exception what we have now to deal with a further growth of nearly twenty years of increasing political aspirations.

But though increased representation is still the popular cry as it was in 1888, other demands or rather suggestions are shaping themselves out of a foreshadowed metamorphosis. We are told of a Council of Princes, of an Indian Member of the Viceroy's Executive Council, of an Indian Member on the Secretary of State's Council, and in addition to the older claims put forward on behalf of increased representation on the Legislative Councils, we are asked to consider new procedure as to presentation of the Budget to the Viceroy's Legislative Council, a prolongation of the Budget Debate, and further opportunity for financial discussion. As to possibilities such as these, I would be grateful for the opinion of the Committee I hope to appoint, limiting myself for the present to only one opinion that in any proposal for the increase of representation it is absolutely necessary to guard the important interests existing in the country, as expressed in paragraph 7, Page 3, of the Report of SIR CHARLES AITCHISON'S Committee, viz.,—

(*a*) the interests of the hereditary nobility and landed classes who have a great permanent stake in the country;

(*b*) the interests of the trading, professional and agricultural classes;

(*c*) the interests of the planting and commerical European community; and

(*d*) the interests of stable and effective administration.

The subjects I should propose to refer to the Committee are:—

(*a*) A Council of Princes, and if this is not possible, might they be represented on the Viceroy's Legislative Council?

(*b*) An Indian Member of the Viceroy's Council.

(*c*) Increased representation on the Legislative Council of the Viceroy and of Local Governments.

(*d*) Prolongation of the Budget Debate. Procedure as to presentation of the Budget and powers of moving amendments.

'This Minute is circulated for the information of Members of Council from whom I shall be glad to receive any suggestions or expressions of opinion which they may desire to make, and which will be communicated to the Committee.'

'When the Committee has reported, their Report will be laid before Council for full consideration.'

C.

EXTRACTS FROM LORD MINTO'S SPEECH TO THE IMPERIAL LEGISLATIVE COUNCIL ON THE 27th MARCH, 1907.

The HON'BLE MR. GOKHALE tempts me to foreshadow the future. I am afraid at present I can only do so faintly. I recognise with him that politically India is in a transition state, that new and just aspirations are springing up amongst its people, which the ruling power must be prepared not only to meet but to assist. A change is rapidly passing over the land, and we cannot afford to dally. And to my mind nothing would be more unfortunate for India than that the Government of India should fail to recognise the signs of the times. I have deemed it all important that the initiative of possible reforms should emanate from us. I have felt that nothing would be more mischievous to British Administration in India in the future than a belief that its Government had acted on no conviction of their own, but simply in submission to agitation in this country and in accordance with instructions conveyed to them from home. If there has been misconception as to this, I hope I may be allowed this opportunity of correcting it. The story as far as I can tell it at present is simply this : that last autumn I appointed a Committee of my Council to consider the possibility of a development of administrative machinery in accordance with the new conditions we were called upon to face. The Committee's report was considered by my Council, and a despatch expressing the views of my colleagues and

myself has been forwarded to the Secretary of State. What I would impress upon you is that this move in advance has emanated entirely from the Government of India, and that we are justly entitled to deny any accusation of an 'inadequate appreciation of the realities of the present situation.'

D.

CIRCULAR FROM THE GOVERNMENT OF INDIA TO THE LOCAL GOVERNMENTS AND ADMINISTRATIONS, DATED SIMLA, THE 24th AUGUST, 1907.

In a speech addressed to the Legislative Council on the 27th March last His Excellency the Viceroy announced that with the object of satisfying the constitutional requirements of the Indian Empire, the Government of India had of their own initiative taken into consideration the question of giving the people of India wider opportunities of expressing their views on administrative matters. The Secretary of State for India has since intimated in his speech in the House of Commons on the Indian Budget that His Majesty's Government have examined the proposals submitted to them by the Government of India, and have authorised the Governor-General in Council to consult Local Governments and invite public opinion on this important subject.

2. It is now 20 years since LORD DUFFERIN'S Government initiated the discussions which resulted in the passing of the Councils Act of 1892. The reforms then introduced, comprising the enlargement of the Legislative Councils, the recognition of the elective principle, the admission of interpellations and the free discussion of the Budget, were held to be justified by the spread of English education, by the increased employment of Natives of India in the actual administration of the country and by the indubitable proof which they had given of their intellectual fitness for such employment. The extent of the advance that has since taken place in the development of the educated classes can hardly be judged by statistical tests. But it may be mentioned that within the last 20 years the number of scholars studying English has risen from 298,000 to 505,000 ; whilst the number of students passing the annual Matriculation Examination of the Indian Universities has increased from

4,286 in 1886 to 8,211 in 1905, and the number of Bachelors of Arts from 708 in the former year to 1,570 in the latter. During this period higher education has penetrated to circles which a generation ago had hardly been affected by its influence. The ruling chiefs and the landholding and commercial classes, possessing a material stake in the country, and representing the most powerful and stable elements of Indian society, have now become qualified to take a more prominent part in public life, and to render a larger measure of assistance to the Executive Government. They no longer stand aloof from the new social and political conditions which affect the course of Indian affairs ; they have profited greatly by the educational advantages offered to them under British rule ; and they are anxious to be afforded an opportunity of expressing their views on matters of practical administration. No scheme of constitutional reform would meet the real requirements of the present time which did not make adequate provision for representing the landed aristocracy of India, the mercantile and industrial classes, and the great body of moderate men who, under existing conditions, have no sufficient inducement to enter political life, and find but little scope for the exercise of their legitimate influence. For the present at any rate the needs and sentiments of the masses of the people must find expression through those, whether officials or non-officials, who are acquainted with their daily life and are qualified to speak with authority on their behalf. Nor does the scheme now put forward contemplate any surrender or weakening of paramount British power in India upon which depend the safety and welfare of the vast populations there committed to it. Subject to this essential condition, that the Executive authority of the Government is maintained in undiminished strength, the Government of India believe that the proposals outlined below represent a considerable advance in the direction of bringing all classes of the people into closer relations with the Government and its officers, and of increasing their opportunities of making known their feelings and wishes in respect of administrative and legislative questions. The classes which will be enabled, under the present scheme, to take a more effective part in shaping the action of Government, may reasonably look forward, as the necessary outcome of the measures now in contemplation, to a larger share in the actual work of administration and more extensive employment in the higher offices of the State. The Government of India recognise the essential justice of the claim that is put forward, and they are convinced that it is

possible, without neglecting the other interests and obligations involved, to move gradually forward towards the fulfilment, in no grudging spirit, of a pledge which the people of India are entitled to regard as inviolable.

3. The Governor-General in Council has been much struck by the difficulty encountered by the Governments in India in making their measures and motives generally understood, and in correcting erroneous and often mischievous statements of fact or purpose imputed to them. When the right of interpellation was granted by the Indian Councils Act of 1892 to the Legislative Councils, it was hoped that by that means correct information on public affairs might be more widely diffused. The Legislative Councils, however, are called together only when there is legislation to be undertaken, their meetings are too infrequent to offer the means of confidential and intimate consultation between Government and its subjects, and the strict procedure by which they are restrained naturally tends to formality. A means for this free and close consultation might be supplied by Advisory Councils of the type explained below, and in the opinion of the Government of India their organisation should be undertaken with this as a principal object in view.

An Imperial Advisory Council.

4. All Indian Governments, and all administrative officers in their respective positions, have made it their business to elicit the opinions on administrative measures and proposals for action of those qualified to advise them in all ranks of society; and this process will, of course, continue. Such advice and opinion as are thus obtained are the indispensable foundation upon which good administration is built up, and the regular consulation of persons qualified to give them is part of the necessary procedure of Government. It has, however, long been felt that considerable advantages might be expected from any measures which, without impeding the free action of the Executive Government of India in the general conduct of affairs, would in some degree associate the great Ruling Chiefs and the territorial magnates of British India with the Governor-General in the guardianship of common and Imperial interests. The realisation of this idea has now been rendered more practicable by the closer conformity of the general principles and methods of administration in the more

advanced Native States to those followed in British territory and by the fact that common interests have arisen, and that certain measures, such as famine relief or education, may from time to time affect their own subjects and dominions, calling for co-operation between the States and the British Government. A measure of the kind contemplated would thus to some extent satisfy a growing want in India. It would give a greater sense of responsibility to those whose advice is sought on questions submitted to them, and it would at the same time commend itself to public opinion as tending to promote more intimate relations between the component parts of the Indian Empire. The establishment and recognition of a determinate body of advisers, who, while requiring no legislative recognition, and possessing in themselves no formal powers of initiative, would be consulted individually by the Governor-General, and would occasionally be called together, either in whole or in part, for the purpose of collective deliberation, and would be entitled, when so summoned, to offer their counsel on matters affecting the welfare of the people, would, in the opinion of the Government of India, be a marked step in constitutional progress. It would maintain unimpaired the authority and responsibility of the executive government, and it would be in accordance with the best traditions of oriental polity. These have always recognised that the Sovereign, however absolute, should make it his business to consult competent advisers, and should exercise his rule in accordance with what, after such consultation, he deems to be the best mind of his people. The scheme would thus be no innovation in principle (as are some applications of Western methods to Eastern society), and if judiciously applied would, by evoking the stable forces fundamentally so strong in India, lend valuable aid to the orderly working of Government. For this purpose, what appears to be needed is an Imperial Advisory Council of sufficient size and weight to represent the views of the hereditary leaders of the people, both in British India and in the principal Native States, to be consulted by the Governor-General either individually or collectively or by means of Committees appointed from among their number, on questions of sufficient moment to call for their advice, and to be used by him not only to draw out opinion on measures in contemplation, but also—what is hardly less important—as an agency for the diffusion of correct information upon the acts, intentions, and objects of Government.

5. It seems to the Government of India that the purposes

which they have in view might possibly be attained somewhat on the lines of the following proposals :—

(1) That a Council to be called "The Imperial Advisory Council" should be formed for purely consultative purposes.

(2) That all the Members should be appointed by the Viceroy and should receive the title of "Imperial Councillors."

(3) That the Council should consist of about sixty Members for the whole of India, including about twenty Ruling Chiefs, and a suitable number of the territorial magnates of every Province where landholders of sufficient dignity and status are to be found.

(4) That the Members should hold office for a substantial term, say for five years, and should be eligible for re-appointment.

(5) That the Council should receive no legislative recognition, and should not be vested with formal powers of any sort.

(6) That its functions should be purely advisory, and that it should deal only with such matters as might be specifically referred to it from time to time.

(7) That the proceedings of the Council, when called together for collective consultation, should, as a rule, be private, informal and confidential, and they would not be published, although Government would be at liberty to make any use of them that it thought proper. The Government of India believe that only confidential communications will secure frank interchange of opinion, but they are disposed to think that it might be advisable, after matters had been threshed out in confidential consultation, to provide for some public conferences at any rate on those occasions when the Government desires to make its motives and intentions better known, to correct mis-statements, and to remove erroneous impressions.

Provincial Advisory Councils.

6. The main work of Indian administration, however, is carried on by the various Provincial Governments, and it appears to the Governor-General in Council desirable that these should, in like manner, when the local conditions admit, be furnished with a selected body of advisers, chosen upon a wider basis, whom it should be understood that they would consult upon all measures of importance affecting the populations committed to their charge. The constitution proposed for the Imperial Advisory Council provides for the appointment of Members chosen with reference to their status and influence from each of the Provinces of British India. These Provincial

Members of the Imperial Council, representing as a rule the great landholders of the Province to which they belong, might, it is thought, with advantage form the nucleus of a Provincial Advisory Council which would discharge in respect of provincial questions consultative functions similar to those entrusted to the Members of the Imperial Council. The Provincial Councils would be of smaller size than the Imperial Council, but their membership should be large enough to embrace all interests of sufficient importance to claim representation on such a body. The great landholders would be represented by the Imperial Advisory Councillors, but it is essential that the smaller landholders, industry, commerce, capital, and the professional classes should also be included in the Council; while the association of non-official Europeans, standing for these important interests, with the natural leaders of Indian society in common consultation on matters of public importance would tend to promote a better understanding, and to clear away on both sides injurious prejudices and misconceptions. The number required for this purpose might be made up by adding to the Imperial Advisory Councillors, who as stated above would represent the landholders, representatives of other important provincial interests who would be nominated for the Viceroy's approval by the head of the Local Government. Each Local Government should be at liberty to consult its Advisory Council either individually or collectively in regard to any provincial question. In the former case they would be consulted by letter, and would submit their views in writing. In the latter case they would be specially called together by the head of the Province and would tender a collective opinion. On such occasions the head of the Government himself, or some high official deputed by him for the purpose, would preside over their deliberations, and the conclusions arrived at would be recorded by one of the Secretaries to Government, who would attend the meeting for the purpose of furnishing such information as might be required regarding the matters under discussion. The Government of India attach the highest importance to collective deliberation, since the opinions thus obtained are different from and frequently more valuable than those elicited by individual consultation.

7. It will be observed that these Advisory Councils are intended to be entirely distinct from the Legislative bodies, whose powers are defined by Statute, and whose functions are restricted to dealing with measures of legislation laid before

them, to discussing the Budget, and to approaching the Government on matters of administration by means of formal interpellations. It may, of course, happen that Members of the Advisory Councils may sit on the Legislative Council, either of the Governor-General or of the Local Government. In their capacity of advisers they will be consulted both on matters on which no legislation is contemplated, and on measures which may eventually assume legislative shape, but the principles and scope of which call for enquiry and deliberation before they are cast into the form of an enactment. This is, in fact, the process now followed ; and the object of the Government of India, in proposing the constitution of the new advisory bodies, is to give clearer definition and continuity to methods already partially and occasionally adopted.

Enlargement of the Legislative Councils.

8. As long ago as May 1889 LORD LANSDOWNE'S Government expressed their opinion—

> (*a*) That the opportunities accorded to the Legislative Council of the Governor-General for passing under review the financial situation of the country should occur with regularity and independently of the necessity of financial legislation in any particular years ; and
>
> (*b*) That Members of the Council ought to have, under proper safeguards, the right of addressing questions to the Government on matters of public interest.

They considered it desirable to extend these two changes of procedure to the Provincial Legislative Councils, and they suggested that any changes in the law which might prove to be necessary for this purpose, and in order to enlarge the size and extend the functions of the Councils, should be simultaneously effected both for the Legislative Council of the Governor-General and for the Provincial Legislative Councils. The discussion thus initiated resulted in the passing of the Indian Councils Act of 1892. In forwarding a copy of that Act to the Government of India, the Secretary of State referred briefly to the beneficial results of the Indian Councils Act of 1861, and to the general considerations which justified the enlargement of the Legislative Councils, and drew atten-

tion to the provision authorising the Governor-General in Council, with the approval of the Secretary of State, to make regulations as to the conditions under which nominations of Additional Members should be made and to prescribe the manner in which those regulations should be carried into effect. He observed that the spread of education and enlightened public spirit, and the recent organisation of local self-government, might render it possible to give representation to the views of different races, classes, and localities through the medium of corporations vested with definite powers upon a recognised administrative basis, or of associations formed upon a substantial community of legitimate interests, professional, commercial, and territorial.

9. When the Councils were thus enlarged and the elective principle was introduced, it was recognised that territorial representation was unsuited to India, but an endeavour was made to constitute the electorates so that all the more important classes and interests should, as far as possible, be represented. In the case of Provincial Councils it is admitted that the results have not justified the expectations formed. The District Boards in particular have conspicuously failed to fulfil the expectation that they would represent the landed interest. Out of 54 Members elected by them to the Provincial Councils, only 10 have been landholders, while 36 have been barristers and pleaders. Similarly, out of 43 Members elected by the District Municipalities, 40 have been barristers or pleaders and only two landholders. Something has been done by nomination to remedy these defects; but of the 338 non-official Members who have been appointed, whether by election or by nomination, to the Provincial Councils since election was introduced in 1893, as many as 123 or 36 per cent. have been lawyers and only 77 or 22 per cent, landowners. It is thus apparent that the elective system has given to the legal profession a prominence in the Provincial Councils to which it is not entitled, while it has signally failed to represent other important elements of the community. These shortcomings are reflected in the Legislative Council of the Governor-General, where of the non-official Members nominated or elected since 1893, 27 or 40 per cent. have been lawyers or school masters, while the landholders have numbered only 16 or 23·5 per cent. and the mercantile community has been represented by 17 or 25 per cent. The Government of India are far from denying that the professional classes are entitled to a share of represent-

ation proportioned not merely to their numbers, which are small, but to their influence, which is large and tends continually to increase. But they are not prepared to allow them a virtual monopoly of the power exercised by the Councils, and they believe that the soundest solution of the problem is to be found in supplying the requisite counterpoise to their excessive influence by creating an additional electorate recruited from the landed and monied classes.

10. It is the desire of the Governor-General in Council that the Legislative Councils in India should now be enlarged to the fullest extent compatible with the necessary authority of the Government. He desires, moreover, that these bodies should be so constituted in respect of non-official Members as to give due and ample representation to the different classes and interests of the community. In carrying out this system, which the Government of India agree with LORD LANSDOWNE'S Government in regarding as the only one in any way applicable to Indian conditions, they consider it essential that the Government should always be able to reckon on a numerical majority, and that this majority should be strong enough to be independent of the minor fluctuations that may be caused by the occasional absence of an official Member. The principle of a standing majority is accepted by the Government as an entirely legitimate and necessary consequence of the nature of the paramount power in India, and so far as they know it has never been disputed by any section of Indian opinion that does not dispute the legitimacy of the paramount power itself. That is not an open question, and if two men are not able to wield one sceptre, it is idle to dissemble that fact in constructing political machinery. The question then arises what number of official Members of the requisite standing and experience can, without detriment to the public service, be spared from their regular duties for attendance in Legislative Councils? The enlargement of the Councils is certain to add considerably to protraction of debate, thus entailing larger calls upon the time of their Members. The necessity of maintaining an official majority thus implies the necessity of limiting the number of non-official Members; and the problem which faces the Government of India now, as it faced LORD LANSDOWNE'S Government fifteen years ago, is how to provide for the due representation, within the narrow limits thus imposed, of the vast diversity of classes, races, and interests in the Indian Empire.

The Imperial Legislative Council.

11. The most logical and convenient mode of dealing with the question would have been first to discuss and settle the composition of the electorates, and the powers of the Provincial Legislative Councils and then to build up on the basis of these materials a revised constitution for the Imperial Council. That was the procedure followed with great care and thoroughness by LORD LANSDOWNE'S Government in the years 1889 to 1893 when no single step was taken without the amplest consultation with the Provincial Governments. It may no doubt be said that the scheme set forth below for the enlargement of the Imperial Legislative Council will afford a convenient model for the guidance of the Local Governments in framing their own proposals. This statement, however, is true only to a limited extent. From the nature of the case that scheme makes no provision for the representation of the Municipalities and District Boards, the Universities, the Presidency Corporations, the Trades Associations, the European Planting and Industrial interests and Indian Commerce, so that in respect of these essential elements of the Provincial Councils it can hardly be said to afford sufficient guidance to Local Governments. The constitution of the Imperial Legislative Council is in fact so closely bound up with that of the Provincial Councils, by which a certain proportion of its Members are elected, that it is almost impossible to formulate final proposals for the one without having first determined the character of the other. It must be understood, therefore, that the scheme set forth below for the enlargement of the Legislative Council of the Governor-General is intended to be entirely provisional and suggestive, that it indicates only the main lines upon which, in the unaided judgment of the Government of India, the extension of the Council might be effected, and that they reserve to themselves the fullest discretion to modify their proposals in the light of the comments and criticisms which those proposals may elicit from the Local Governments and the public.

12. With these introductory remarks the Government of India pass on to consider how the principle of the representation of classes and interests can be given effect to in the Governor-General's Legislative Council. They suggest that the Council might in future be constituted on the following lines :—

(1) The maximum strength of the Council might be 53, or, including the Viceroy, 54.

(2) This number might be made up thus—

A.—Ex-officio, the Lieutenant-Governor of Bengal (or of the Punjab when the Council assembles in Simla), the Commander-in-Chief, and the Members of Executive Council	8
B.—Additional officials to be nominated, not exceeding ...	20
C.—A Ruling Chief to be nominated by the Viceroy ...	1
D.—Elected Members—	
(*a*) By the Chambers of Commerce of Calcutta and Bombay	2
(*b*) By the non-official Members of the Provincial Councils of Madras, Bombay, Bengal, Eastern Bengal and Assam, the United Provinces, the Punjab and Burma	7
(*c*) By the nobles and the great landowners of Madras, Bombay, Bengal, Eastern Bengal and Assam, the United Provinces, the Punjab, and the Central Provinces	7
(*d*) By Mahomedans	2
E.—Non-officials nominated by the Viceroy to represent minorities or special interests, not less than two to be Mahomedans	4
F.—Experts to be nominated by the Viceroy, when necessary, for special purposes	2
Total ...	53
or, including His Excellency the Viceroy ...	54

13. Under the present system four additional Members are elected by the non-official Members of the Councils of Bombay, Madras, Bengal, and the United Provinces. The Government of India propose to raise the number to seven by extending the privilege of election to the non-official Members of the Councils of Eastern Bengal and Assam, the Punjab, and Burma. The number of non-official Members of such Councils will no doubt be materially increased. This will remove the objections which have been taken to entrusting the privilege of election to so important a post as that of

Member of the Viceroy's Council to an electorate consisting of only about ten persons.

14. The Government of India are impressed with the necessity for giving substantial representation to the great landholders, who not only constitute the aristocratic and stable elements in Indian society, but also represent the interests of the landlords, great and small. For the purpose of securing the adequate representation of this class, it has been suggested that a list of electors should be formed in each Province, and that they should be required to elect direct. The precise details of the electorate will require careful consideration, and they will necessarily vary with the circumstances of each Province, but the general idea is that a provincial electorate varying in size from one hundred to one hundred and fifty should be aimed at, and that the amount of land revenue giving the right to vote should not be less than Rs. 10,000/- a year. The exact limit to be fixed must, of course, depend on the status of the landholders in the Province concerned. In every case it would be made a condition that the Member elected to represent this class must himself belong to it. Owing to the peculiar conditions of Burma, where there are no large landowners outside the primitive Shan States, that Province would be excluded from this category.

15. The question may be raised whether a satisfactory constituency for the purpose of electing a Member of the Imperial Legislative Council can be formed by massing together for voting purposes the entire body of landholders in so large and in many respects so heterogeneous an area as an entire Province. It may be thought that an electorate thus constituted would be wanting in solidarity, that it would be apt to fall into the hands of wirepullers, and that by reason of the incongruous elements which it comprised, it might fail to choose a suitable representative on the Imperial Council. On this point, therefore, the Governor-General in Council reserves judgment until he is in possession of the views of Local Governments. As an alternative solution the suggestion has been made that a representative of the landholders should be elected to the Imperial Council by the landholding members of the provincial Council either from among their own number, or from among landholders paying the amount of land revenue that may be fixed as giving the right to vote for or to be a Member of the Provincial Council. It is also a matter for consideration whether in some Provinces representatives of this class, whether on the Provincial or on the

Imperial Council cannot be better obtained by a system of nomination.

16. The last point that remains for consideration under this head relates to the representation of special interests and minorities, and in particular of the Mahomedan community. In this connection I am to invite attention to the observations made by His Excellency the Viceroy in reply to the address presented to him by a large and representative deputation on the 1st October, 1906. The Government of India concur with the presenters of the address 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, and they desire to lay stress upon His Excellency's observation that "any electoral representation in India would be doomed to mischievous failure which aimed at granting a personal enfranchisement regardless of the beliefs and traditions of the communities composing the population of this continent." Under the system of election hitherto in force, Hindus largely predominate in all or almost all the electorates, with the result that comparatively few Mahomedan Members have been elected. These have been supplemented by nominations made by Government. But the total representation thus effected has not been commensurate with the weight to which the Mahomedan community is entitled; and it has, moreover, been strongly urged that even the system of nomination has frequently failed to secure the appointment of Mahomedans of the class by whom the community desires to be represented.

17. The Government of India suggest, therefore, for the consideration of Local Governments, the adoption of the following measures:—Firstly, in addition to the small number of Mahomedans who may be able to secure election in the ordinary manner, it seems desirable in each of the Councils to assign a certain number of seats to be filled exclusively by Mahomedans. Secondly, for the purpose of filling the latter, or a proportion of them, a special Mahomedan electorate might be constituted consisting of the following classes:—

(1) All who pay land revenue in excess of a certain amount. The figure need not be the same in each Province; but should in all cases be sufficiently low to embrace the great body of substantial landholders.

(2) All payers of income tax. This would comprise the trading and professional classes, with incomes exceeding Rs 1,000 a year.

(3) All registered graduates of an Indian University of more than say, five years' standing.

The electoral lists would be prepared on a district basis, and the distribution of seats would be settled by the Local Governments. It would not be necessary, however, to throw open all the seats to election. Indian gentlemen of position sometimes refuse to offer themselves as candidates to a wide electorate, partly because they dislike canvassing, and partly by reason of their reluctance to risk the indignity of being defeated by a rival candidate of inferior social status. For these reasons it would probably be advisable to reserve a proportion of the seats to be filled, as at present, by nomination.

18. In the case of the Governor-General's Council, it has been suggested that of the four seats which the Government of India have proposed to set apart for Mahomedans, two should be filled by nomination by the Viceroy. For the other two election by the following Provinces in rotation, viz., Bengal, Eastern Bengal and Assam, the United Provinces, the Punjab, Bombay and Madras, is suggested. In Burma and the Central Provinces the proportion of Mahomedans is not large enough to entitle them to special representation. The composition of the electorate in the six Provinces mentioned above formed the subject of representations by some prominent Members of the Mahomedan deputation which waited upon His Excellency the Viceroy in October 1906. They proposed that the electorate should be constituted as follows :—

(*a*) The Mahomedan non-official Member of the Provincial Councils as ultimately expanded.

(*b*) The Mahomedan Fellows of the local University, where one exists.

(*c*) Mahomedans paying income-tax upon an annual income of Rs 25,000/-, or paying an amount of land revenue to be determined for each Province separately, which will indicate a corresponding income.

The Government of India apprehend that some difficulty may be experienced in compiling a list of voters under the last of these heads, but this is a matter on which they will be guided by the opinion of Local Governments. Should it be found impracticable to compile a register of voters under (*c*), then they are disposed to think that the electorate should be confined to the Mahomedan non-official Members of the Provincial Councils. This proposal is open to the objection that the number of electors will be small ; but it has the merit of being uniform with the system under which the other non-official Members are elected by the Members of the Provincial Councils.

19. Of the four seats provided by the nomination of non-officials under head E, two would be reserved for Mahomedans, to whom not less than four seats in the Governor-General's Council would thus be definitely appropriated. In as much as in two of the seven Provinces with Legislative Councils, namely Eastern Bengal and Assam and the Punjab, the followers of this religion constitute a majority of the population, it seems possible that a certain number of Mahomedans may also be returned to the Council under sub-head (*b*) of head D.

The Provincial Legislative Councils.

20. The foregoing scheme for the Imperial Legislative Council necessarily omits several elements which may form part of the Provincial Councils. Having regard to the wide variety of conditions in different parts of India, it is improbable that any one scheme will prove to be equally adapted to all Provinces. For instance, the principle of having recourse to election may be distasteful to the landed classes in some Provinces, while in others, where it has become familiar, it may be accepted without objection. The general principle to be borne in mind is, as already stated, that the widest representation should be given to classes, races, and interests, subject to the condition that an official majority must be maintained.

21. At present the larger number of the elected Members of the Provincial Councils, who again constitute the majority of the electorate for the Imperial Council, are chosen by Municipalities and District Boards. The Government of India have examined the franchises which have been framed for these bodies and they find that the qualifications required both for electors and for candidates are extraordinarily low. Thus, in all but three of the Mufassil towns of Bengal, any one who pays Rs. 1-8 a year in rates is entitled to vote in the election of Municipal Commissioners, and is himself eligible for membership, not only of the Municipal Committee, but also of the Provincial Legislative Council ; while any one who pays Re. 1 a year as road cess may take part in the elections for the Local Boards, who in their turn elect the Members of the District Boards. This is the franchise upon which the election of the Bengal Members, not only of the Province, but also in a large degree of the Imperial Council, rests ultimately, though not immediately. And in the other Provinces the qualifications are of much the same order of magnitude. The franchises were primarily devised with a view not to election of Councils,

but to the management of local affairs; and their unsuitability as a foundation for the election of legislators seems to have escaped notice in 1893. The Government of India do not propose to withdraw from District Boards and Municipalities the privilege of election to the Provincial Councils which they have enjoyed for the last 14 years. But it does not follow that the present system of voting must be maintained unchanged, and a solution might, perhaps, be arrived at by introducing special qualifications for Members of Council while leaving the electoral franchise in other respects unchanged.

22. It would be well also to consider whether, in view of the constitution of Indian society, it would not be advisable to introduce some such system for the representation of classes now liable to be crowded out by any predominant section of the population, as has already been admitted to be necessary in the case of Mahomedans. The Government of India do not wish to impose upon Provincial Governments any special line of action in making proposals with this object, but they desire to draw attention to the following scheme which has been suggested to them for the due representation of classes in local Councils and Boards :—

(*a*) The Local Government shall determine how many seats are to be filled by elected representatives of the most important classes into which the population of the Province is divided by race, caste, or religion and shall allot these seats to the several classes.

(*b*) For the election of representatives of each class the Local Governments shall publish a list of voters consisting of members of that class who have held or are holding office in the Municipal or Local Boards, supplemented by others whom the Government may nominate after consultation with the *anjumans*, *panchayats* or other bodies who have been constituted by the class in question for the direction of its own affairs.

(*c*) As the constitutions of the Provincial Councils must largely depend upon the Municipal and Local Boards, it is suggested that Local Governments should introduce into their systems of election and nomination for these Boards, the principle of assigning a fixed proportion of seats to each of the leading classes into which the population is divided by race, caste, or religion and permitting the members of that class to select its own representative. In the Municipalities of Rangoon and Mandalay and to a limited extent in certain Municipalities in the United Provinces this principle of class representation has been adopted with successful results. In the case of district and local Boards it might perhaps be possible to distribute the seats to be filled by election among groups en-

gaged in the same occupation, such as landholders, cultivators, traders and professional men and to select certain castes as representing each group. The members of those castes who paid a certain sum in taxes or possessed certain property qualifications might then be empowered to elect one of their own number to represent the occupational group on the Board. Suppose, for example, that in a particular area eight members had to be elected to serve on the local Board, four seats might be allotted to the Mahomedans and the remaining four distributed among the Hindus, so that one seat should be given to the landholders, one to the traders, one to the cultivators and one to the professional classes. The census statistics supplemented by local enquiries would afford the means of determining what castes should be selected for the purpose of electing a Member for each of these groups, and only persons belonging to those castes and having certain property qualifications would be entitled to vote in the electoral group to which their caste had been assigned and to elect a representative from one of the castes so assigned. It seems probable that by some plan of this kind the voting power might be distributed over a wider circle than at present, and would be less liable to become concentrated in the hands of a single section of the community.

Discussion of the Budget in the Legislative Council.

23. The discursive and unfruitful character of the Budget debates, both in the Imperial and Provincial Councils, has on many occasions formed the subject of comment and criticism. The Government of India entirely recognise the defects of the practice which prevails under the existing regulations, and they are anxious to introduce such changes as will make the debates less unreal and will bring them into closer relation with the financial policy and administrative decisions of the Government. To this end they propose that the Budget should be discussed, in the first instance, by separate heads, or groups of heads, which would be explained severally by the Member in administrative charge, this discussion being followed by a general debate in which Members would enjoy the same freedom as at present of criticising the administration. This change would evidently involve an extension of the time now allotted to the discussion, and it would afford a far better opportunity for systematic criticism than exists under present arrangements. These compel a Member of Council to include within the limits of a single speech all the observations that he has to offer on any of the numerous subjects that naturally present themselves in an annual review of the administration of the revenues of India. Remarks made in the course of the

ampler and more practical discussion which is now contemplated would be borne in mind by the Government of India or the Local Government when making financial arrangements in subsequent years, and it might perhaps on occasion be found possible to alter the Budget actually under review.

24. These are the provisional and tentative proposals which, with the approval of His Majesty's Government, the Governor-General in Council now lays before the Governor in Council (His Honour the Lieutenant-Governor or you) in the fullest confidence that they will receive the careful scrutiny and sympathetic consideration that their high importance demands. I am to request that after consultation with important bodies and individuals representative of the classes of the community, the Governor in Council (Lieutenant-Governor or you) will submit his matured conclusions on each branch of the subject to the Government of India, together with a detailed statement of the alterations that the Governor in Council (the Lieutenant-Governor or you) desire (s) to make in the Council regulations in order to carry his proposals into effect.

25. I am to ask that a reply to this letter may be received by the Government of India not later than the 1st March 1908.

E.

EXTRACTS FROM THE DESPATCH FROM THE GOVERNMENT OF INDIA TO THE SECRETARY OF STATE (THE RT. HON'BLE VISCOUNT MORLEY OF BLACKBURN, O. M.), NO. 21, DATED THE 1ST. OF OCTOBER, 1908.

We have the honour to address you on the subject of the constitutional reforms which were initiated more than two years ago by His Excellency the Viceroy in a Minute reviewing the political situation in India. LORD MINTO then pointed out how the growth of education, encouraged by British rule, had led to the rise of important classes claiming equality of citizenship, and aspiring to take a larger part in shaping the policy of the Government, and he appointed a Committee of his Council to consider the group of questions arising out of these novel conditions. From the discussions thus commenced there was developed, by stages which we need not detail, the tentative project of reform outlined in the Home Department letter to Local Governments, No. 2310-17, dated the 24th August, 1907.

After receiving your approval in Council, that letter was laid before Parliament and was published in England and India. The local Governments to whom it was addressed were instructed to consult important bodies and individuals representative of various classes of the community before submitting their own conclusions to the Government of India. These instructions have been carried out with great care and thoroughness.

Reception of the scheme.

2. The provisional scheme thus submitted to the judgment of the Indian public comprised the creation of Imperial and Provincial Advisory Councils, the enlargement of the Legislative Councils, and more ample facilities for discussing the Imperial and Provincial Budgets. Every feature of our proposals has aroused keen interest, and has met with ample and outspoken criticism from the most intelligent members of Indian society, and the voluminous correspondence which we now enclose may be regarded as an adequate and exhaustive expression of the views of those who are qualified to pronounce an independent opinion on the weighty and intricate matters now under consideration. In a country where the separation of classes, castes, races and communities is so marked as in India, and little common national sentiment has as yet been evolved, the natural tendency is, as the Bombay Government have pointed out, for the advocates of each particular class or interest to consider how their own advantages can best be furthered, and to overlook the wider aspects of the subject. This tendency comes out strongly in the non-official opinions forwarded by the Local Governments. From the landholders, whether Hindu or Mahomedan, the scheme has met with a generally favourable reception. With very few exceptions, they either approve of the proposals regarding Advisory Councils or make suggestions which leave their principle untouched. They welcome the separate representation of the landowning interest on the Legislative Councils, and many of them lay stress on the condition that the member elected to represent their class must himself belong to it. The Mahomedans point out that the reforms of 1892 paid no regard to the diversity of the interests involved, and that territorial representation, in so far as it was then introduced, has placed a monopoly of voting power in the hands of the professional class. Most of them express their satisfaction with

the scheme of Advisory Councils, and they are unanimous in their commendation of the proposal to assign special seats to Mahomedans on the Legislative Councils, though some of them urge that the measure of representation offered to them falls short of that which their numbers and influence entitle them to demand. On the other hand the leaders of the professional class regard the Advisory Councils as superfluous and illusory; they protest against class electorates for the Legislative Councils; and they demand the formation of territorial constituencies on a scale which would render their own influence predominant. Comparatively few opinions have been received from the commercial and industrial classes. But all of them, whether European or Indian, agree in complaining that their interests have received insufficient consideration and that they ought to have more Members on the Imperial Legislative Council.

3. The divergent opinions briefly summarised here bear striking testimony to the wisdom of LORD LANSDOWNE'S Government in describing Indian society as "essentially a congeries of widely separated classes, races and communities, with divergences of interests and hereditary sentiment which for ages have precluded common action or local unanimity," and in insisting that the representation of such a community could only be secured by assigning to each important class a Member specially acquainted with its views. The conditions which existed then are shown by the present correspondence to continue still. Indeed, the advance in general education, that has taken place since 1892, has added to the complexity of the problem by bringing to the front classes which were then backward, and by making them more keenly conscious of their individual interests and more disposed to claim separate representation by means of special electorates. In framing the greatly enlarged scheme of reform, which is explained below, we have given careful consideration to the views of all classes, and we desire to acknowledge the value of opinions which have been submitted by the educated members of all communities who, though their number is relatively small, deservedly occupy a special position by reason of their intellectual attainments and the attention they have given to public questions. With these preliminary observations we pass to the consideration, in fuller detail, of the actual proposals upon which we now submit our final recommendations to His Majesty's Government.

An Imperial Advisory Council.

4. *Opinions on its composition.*—The considerations by which we were influenced in proposing the creation of an Imperial Advisory Council are fully stated in paragraph 4 of our letter of 24th August, 1907. The Council then suggested was to consist of about sixty Members, of whom twenty were to be Ruling Chiefs and the rest territorial magnates. The opinions of Local Governments on the advantages of the scheme are divided. The views of the Madras Government are wholly adverse; the Government of Bombay cordially agree with the principle involved, but demur to the combination of Chiefs and territorial magnates, and suggest an Advisory Council of Ruling Chiefs for consultation on questions affecting them alone; the Lieutenant-Governors of Bengal and the United Provinces approve. The Lieutenant-Governor of the Punjab is opposed to a mixed Council, but thinks that a smaller Council of Princes to discuss matters of Imperial and general importance might be of advantage, and suggests that to this Council there might be admitted a few men of wide reputation throughout India. The Chief Commissioner of the Central Provinces takes substantially the same view. The Lieutenant-Governors of Burma and of Eastern Bengal and Assam approve generally of the scheme. Most of the non-officials receive with enthusiasm the general principle of associating the people more directly with the Government, but there is no unanimity in regard to the means by which this end may be attained, and the leading features of the Government proposal are generally condemned on various grounds. The main objections are that Ruling Chiefs will not sit with subjects of the British Government, who are necessarily of inferior status: that they have no knowledge of the conditions of British India, and that they would for that reason be useless either for the purpose of advising the Government, or of diffusing information to the people. As regards territorial magnates, it is alleged that they are out of touch with the people, and that their interests are necessarily adverse to those of the great body of agriculturists.

5. *Criticisms on the functions of the Council.*—Apart from the qualifications of its personnel the proposed Council is criticised on the grounds that it would have no legal recognition and no formal powers; that the Government would be under no obligation to consult it or to be guided by its advice; that its proceedings would be secret, and that Government

would have discretion to publish or not to publish them as it thought fit; and that the views of a nominated Council would command no respect if they were in conflict with those of the elected Members of the Legislative Council, while if the two bodies concurred in opposing the Government the difficulties of the situation would be increased. The views of a number of Ruling Chiefs have been ascertained by letter and by personal consultation, and several political officers have also been consulted. The majority of Ruling Chiefs are opposed to the formation of a Council on which Ruling Chiefs and territorial magnates would sit together. Nearly all the political officers are of the same opinion.

6. *Recommendations of the Government of India.*—We have carefully considered and discussed these criticisms. In view of the opposition of the Chiefs to a Council of mixed composition, and of the unfavourable reception which our proposal has met with in British India, we consider that the published scheme should not be proceeded with at present. It is possible that in course of time the relations of Native States to British India may become more intimate, and that common interests may arise which might with advantage be referred for discussion to a mixed Council, or to a Council consisting of two Chambers, one of Chiefs and the other of Notables. But in present conditions we are of opinion that an attempt to create a mixed Council in any form would result in failure. We think, however, that there should be an Imperial Council composed only of Ruling Chiefs. The scope of such a Council would necessarily be narrower than that of a mixed Council, but there are many questions of an Imperial character on which the advice of Ruling Chiefs would be of great value, and we are of opinion that the time has come when they should be invited to assist the Governor-General in the guardianship of common and Imperial interests.

7. *Proposal for the Council of British Indian Notables.*—The question then arises whether, in addition to a Council of Chiefs, there should be an Advisory Council composed exclusively of Notables of British India. As to this our view is that if an experiment is to be made in the direction of Advisory Councils, it should be made, in the first instance, by the institution of Provincial Advisory Councils on the lines indicated below, and that the question of an Imperial Council of Notables for British India only should not be entertained until the success of that experiment has been vindicated. It

will always be open to the Viceroy to ask for the advice o Members of Provincial Councils if he so desires.

8. *The Council of Chiefs.*—Concerning the manner in which a Council of Chiefs should be called into existence we observe that legislation is not necessary and would not be appropriate; we consider that the Council should be created in the exercise of the right of the Viceroy to choose his own advisers in respect of matters which are under his control as the head of the Government. This disposes of the various suggestions put forward in the papers as to local recognition, statutory powers, election of the whole or part of the Council, periodical meetings, right of initiative, power to block Government measures by the vote of a majority of a certain strength, public discussion, and so forth. It puts the scheme on its proper footing and leaves it to develop by the natural process of growth to which all successful political institutions are due.

9. *Number and term of office.*—Passing now to the question of the number of the Council, the mode of appointment and the term of office, we recommend that it should be limited to such a number as is appropriate in view of the claims and traditions which have to be considered. We observe that the Imperial Privy Council proposed by LORD LYTTON included only 12 Chiefs, and that His Lordship said that he could not recommend a larger number "without extending the honour to minors, or Chiefs of a rank too low for so high and honourable an office or to Chiefs not wholly fitted for the dignity of Councillors." Eventually only eight Chiefs were given the title of Councillor of the Empress. As the Council should, in our opinion, be appointed by the Viceroy, it follows that neither hereditary tenure nor election would be admissible. The Members would hold office during the Viceroy's pleasure, and it would be at his discretion to consult any of them, individually or collectively, as he might think fit from time to time.

10. *Subjects for discussion*—There is abundant evidence in the opinions that have come before us of the existence of a strong feeling that the Council ought to be given some power of initiative and that their discussions should not be strictly limited to matters formally referred to them. This view appears to us natural and reasonable, and we recommend that any Member should have power at any time to ask that a question be referred to the Council. It would of course be entirely in the discretion of the Viceroy to grant such a request.

We do not, however, think it desirable in announcing the creation of the Council to enumerate by way of catalogue the subjects to be referred to it. Such an enumeration, would, on the one hand, tend to limit consultation, while on the other, it might lead to the Council being overburdened at starting with a list of subjects, some of which did not call for immediate consideration. We have little doubt that questions will arise from time to time the disposal of which will be materially facilitated by the deliberations of such a Council as we contemplate. We do not think it advisable to define the scope of consultation more precisely, and for the present, at any rate, we would leave the whole matter to the unfettered discretion of the Viceroy.

11. *Meetings and procedure.*—For much the same reasons it does not appear to us to be necessary, until further experience has been gained of the actual working of the Council, to determine whether it should meet periodically, and, if so, at what intervals. That will obviously depend partly upon the amount of business to be brought before the Council and partly on the question whether the nature of the business is such as to call for personal and collective discussion, or whether it can more conveniently be dealt with by means of correspondence. It is true that the opinions on the subject, both those of the Chiefs and those sent up by Local Governments, are in general agreement that the Council should meet once a year at least. It has, however, been pointed out by several critics that the expense of assembling the Council would be considerable, and could not fairly be charged either on the taxpayers of British India or on those of the Native States. We observe, moreover, that some of the more important Chiefs dislike the idea of collective consultation, that they hint at difficulties of precedence among themselves, and that they evidently consider free discussion to be only possible among equals. These Chiefs express a preference for consultation by letter, or for the appointment of certain Chiefs to offer advice when they think it necessary. They do not wish to be invited to attend meetings, both for the personal reasons already suggested, and because of the expense and inconvenience and the interruption of their regular administrative work. It appears to us that there is much force in these objections. We believe, however, that they might be got over by holding a meeting in the first instance for the purpose of inaugurating the Council, and of giving opportunity for an informal interchange of views, and then conducting the business of the Council by means of

correspondence, unless some occasion should render it desirable to call together the entire body. In our opinion the proceedings of the Council when invited to assemble for collective consultation should ordinarily be confidential ; but it would rest with the Viceroy after consultation with the Council to cause a statement of the subjects discussed and the decisions arrived at to be published.

Provincial Advisory Councils.

12. *The Government of India's original proposal.*—In our letter of the 24th August, 1907, we suggested that the various Provincial Governments should, when the local conditions admit, be furnished with a selected body of advisers, whom they would consult upon all measures of importance affecting the populations committed to their charge. The Provincial Councils were to be of smaller size than the Imperial Council then contemplated, but their membership was to be large enough to embrace all interests of sufficient importance to claim representation on such a body. The greater and smaller landholders, industry, commerce, capital, and the professional classes were to be included in the Council ; and it was observed that the association of non-official Europeans standing for these important interests, with the natural leaders of Indian society in common consultation on matters of public importance would tend to promote a better understanding, and to clear away on both sides injurious prejudices and misconceptions. Each Local Government was to be at liberty to consult its Advisory Council, either individually or collectively, in regard to any provincial question.

13. *Views of Local Governments.*—The replies of Local Governments are not unanimous, but on the whole they are in favour of the proposal. The Government of Bombay approve of the general idea, but consider that the practical success of the Council must depend on the personal weight and influence of its Members, each of whom should, as far as possible, represent some important class or interest. Their number should not exceed 20 ; all should be nominated for three years ; and the Council should elect its own President in the absence of the Governor. A separate Council of not more than five Members should be appointed for Sind. The Lieutenant-Governor of Bengal proposes a Council of about 30 members representing large and small landholders, Feudatory Chiefs, European and Indian Commerce, tea and indigo, the professions, the Univer-

sity, the district boards and the municipalities. The Lieutenant-Governor of the United Provinces suggests that the Council should consist of 35 nominated Members, including representatives of the Province on the Imperial Council, and four elected Members of the Provincial Legislative Council, the balance being made up by representatives of land, industry, commerce, the planting community, the professional classes, and educational and religious interests. The Council should be free to choose its own President and Secretary, and should conduct its deliberations in the absence of any Government official. The Lieutenant-Governor of Burma approves of the scheme as a general measure of policy, but considers that the Province is not yet ripe for such a measure. The Lieutenant-Governor of Eastern Bengal and Assam thinks it doubtful whether a Provincial Advisory Council could be easily got together owing to the expense and labour of attending meetings. He suggests a Council composed of the Members of the Legislative Council and representatives of other interests, including Members elected by the District Advisory Councils which he thinks should be formed. The Lieutenant-Governor of the Punjab dwells on the difficulty of finding suitable men for an Advisory Council and a Legislative Council and observes that if, for the sake of uniformity, it is necessary to have an Advisory Council in the Punjab, its number should be the smallest compatible with adequate representation of the main creeds, classes and interests. He considers that five or at the most seven Councillors would be sufficient. The Chief Commissioner of the Central Provinces proposes a Council of 25, comprising 8 Members elected by district boards and large municipalities, 6 Members nominated to represent the commercial classes and minorities, and 11 official Members. The Madras Government criticise the published scheme on the grounds stated at length in their letter of 13th March, and, instead of creating a Provincial Advisory Council, propose to consult the non-official Members of their Legislative Council informally when they require advice. In regard to the question whether the proceedings of the Council should be strictly private and confidential, or whether some provision should be made for public conferences, we find few definite expressions of the opinion of Local Governments. The Governments of Eastern Bengal and the United Provinces appear to contemplate giving a certain amount of publicity to the proceedings of the comparatively large Councils which they propose, and the Government of Bombay, though they propose a relatively small Council, do not suggest that its proceedings

should necessarily be confidential. On the other hand, the Lieutenant-Governor of Bengal advises that the proceedings should be "informal, private, and confidential", while for the Punjab a small confidential Council is proposed.

14. *Views of other persons.*—The opinions before us from other persons are beyond doubt in favour of the creation of some form of Provincial Advisory Council, in order to bring the people more closely into touch with Local Governments. There is, however, considerable diversity of opinion as to the size and constitution of the proposed Council. Suggestions vary from a small Council of not less than 10 representing land, commerce, the professions and retired officials, to larger bodies of 50, 60 or 80 Members partly elected and partly nominated. Generally speaking, the tendency of the professional middle class is to propose a rather large statutory Council, wholly or partly elected so as to represent a variety of interests, holding public sittings at regular intervals, and exercising extensive legal powers, which would include an unlimited initiative, power to ask questions and to call for information and papers, and an absolute or suspensory vote on Government proposals. The landholders are mainly concerned with securing adequate or preponderant representation for themselves, but many of them make much the same proposals as the professional class. The MAHARAJA OF BENARES puts forward the suggestion, which has been adopted by the United Provinces Government, that the Council should have its own President and Secretary; SIR FAIYAZ ALI KHAN proposes an elected Council; the RAJA OF MALABAR pleads for legal recognition, periodical meetings, public discussion, and election of Members. The British Indian Association advocate district representation, power of initiating questions, and publication of opinions. The Mahomedan opinions are almost unanimous in desiring a Council, but differ as to its composition. Some ask for large Councils on which each district would have a representative; others propose smaller bodies with 25 or 30 Members. Several writers suggest that religious interests should be specially represented. Among the Mahomedans of the Punjab the best opinion accepts a small Council of six or seven Members as appropriate.

15. *Final recommendations of Government of India*—The demand for Advisory Councils of large size, and for opportunities of public debate, appears to us to have its origin mainly in the feeling, which has been generally expressed, that there ought to be greater facilities for the discussion of public measures than now exist. We recognise the force of this claim,

but we think that it should be met rather by extending the powers of the existing Legislative Councils than by setting up large rival Councils which must to some extent conflict with them. In the recommendations which we shall presently submit to Your Lordship in regard to the Legislative Councils we have suggested the removal of the restrictions which now prevent debate on matters which are not before the Council in the form of legislation, and we believe that this change should satisfy those who ask for large Advisory Councils for the reason given above. But the question remains whether it would not be of advantage for the Head of a Local Government to have a small body of Councillors to whom he could turn for advice before his policy was definitely shaped, or whom he could use as a channel of communication with the public in the matters which could not conveniently be brought before the Legislative Council. Beyond doubt the bulk of opinion is in favour of the formation of some consultative body, and we recommend that Advisory Councils of the character indicated above should be constituted in those Provinces in which the Head of the Government is of opinion that they would be of service. Conditions vary, and we would not compel any Local Government to make what, after all, can only be an experiment, unless local conditions were held to warrant it. But we believe that such Councils, if wisely directed, might become of marked value in some Provinces. They would provide a means of obtaining advice both on proposals for legislation and on administrative questions, and of conveying information as to the intentions and motives of Government, and further they would be a visible sign of the desire of the Government to take the best minds in the Province into their confidence. It is, however, in our opinion, essential that such Councils should be limited in size and that the decision as to their numbers should rest with the Government of India. The reason for this is plain; the effect of any departure from the standard model would not be confined to a single Province, but would inevitably affect the administration of other Provinces and of India as a whole. The appointment of Members would naturally rest with the Local Government, and in our judgment the criterion of membership should be distinction of some kind, whether arising from intellectual capacity, personal influence, or representative position. It follows from the fact that the Councils are to be advisory bodies only, that no legislation is required for their creation. We do not propose to attempt any formal enumeration of the subjects with which such Councils should deal. We think it sufficient

to say that the Council should consider matters referred to it by the Head of the Government, but that any Member should have power at any time to ask that a question be referred to the Council. It would of course be entirely in the discretion of the Head of the Government to decline to refer a particular question to the Council. We are of opinion that a record should in all cases be kept of the subjects discussed and of the conclusions arrived at, and that it should rest with the Head of the Government to determine in consultation with the Council whether and in what form a statement of the views of the Council should be published.

The Imperial Legislative Council.

16. The history of the various stages by which the Imperial Legislative Council has developed into its present form is given in SIR COURTENAY ILBERT'S *Government of India* and need not be repeated here. Under the law and rules at present in force the Council stands thus :—

Ex-Officio.

The Lieutenant-Governor of Bengal (or of the Punjab when the Council assembles in Simla), the Commander-in-Chief and the Members of the Executive Council 8

Additional.

A.—Nominated Members ; not more than 6 to be officials ; the non-officials to be nominated with reference to legislative business or to represent interests 11

B.—Elected Members 5

(*a*) By the Legislative Councils of Madras, Bombay, Bengal and the United Provinces... 4

(*b*) By the Calcutta Chamber of Commerce 1

Total ... 24

or, including His Excellency the Viceroy 25

17. In our letter of 24th August, 1907 we suggested that effect might be given to the principle of the representation of classes and interests by means of a Council constituted in the following manner :—

Ex-officio.

The Lieutenant-Governor of Bengal (or of the Punjab when the Council assembles in Simla), the Commander-in-Chief, and the Members of the Executive Council 8

Additional.

A.—Nominated Members ; not more than 20 to be officials ; of the non-officials, one to be a Ruling Chief ; four to represent minorities or special interests, not less than two being Mahomedans ; and two, when necessary, to be experts nominated for special purposes 27

B.—Elected Members 18

(*a*) by the Chambers of Commerce of Calcutta and Bombay 2

(*b*) by the non-official Members of the Provincial Councils of Madras, Bombay, Bengal, Eastern Bengal and Assam, the United Provinces, the Punjab and Burma. 7

(*c*) by the nobles and the great landowners of Madras, Bombay, Bengal, Eastern Bengal and Assam, the United Provinces, the Punjab, and the Central Provinces ... 7

(*d*) by Mahomedans 2

Total ... 53

or, including His Excellency the Viceroy 54

18. *Principle of representation.*—We have carefully considered the proposal of Local Governments on the subject and the large body of non-official opinions submitted. In our judgment these papers bear out to the fullest extent the conclusion that representation by classes and interests is the only practicable method of embodying the elective principle in the constitution of the Indian Legislative Councils. A great array of authorities may be cited in support of this opinion. Twenty years ago, in the course of the discussions leading up to the report of SIR GEORGE CHESNEY'S Committee, MR. (NOW LORD) MACDONELL, then Home Secretary to LORD DUFFERIN'S Government, said in a note which was forwarded to the India Office : "The process of modifying the existing constitution of the Councils should proceed on a clear recognition and firm grasp of the fact that India is a congeries of races, nationalities and creeds, widely differing *inter se* in a variety of ways." On the same occasion SIR GEORGE CHESNEY expressed similar views, and SIR CHARLES AITCHISON observed that "the division of the people into creeds, castes, and sects with varying and conflicting interests" rendered representation in the European sense an obvious impossibility. A passage in LORD DUFFERIN'S Minute annexed to the Government of India's Despatch of the 6th November, 1888 describes the population of India as "composed of a large number of distinct nationalities, professing various religions, practising diverse rites, speaking different languages,

while many of them are still further separated from one another by discordant prejudices, by conflicting social usages, and even antagonistic material interests." This opinion is not confined to Englishmen, but is shared by competent Indian observers at the present day. In a recent address to a modern political association on the duty of patriotic Indians, HIS HIGHNESS the AGA KHAN has given emphatic expression to similar sentiments. "In India," he says, "no such union as is essential to the creation of a strong, independent, homogeneous state is possible without centuries of consolidation. Even if we assume that the forces tending to unification are quickened by the machinery of modern civilisation, generations must pass before India is a nation. In very truth we can detect signs of the advent of that unity which is the first essential to the creation of a modern State."

19. These views receive striking independent confirmation from the debates in Parliament on the Indian Councils Bill which became law in 1892. In the Upper House LORD RIPON referred to the extreme difficulty of "selecting men who represented the various classes of the community, and the various sections of opinion, as well as the various localities of India." LORD KIMBERLEY said—"The notion of a Parliamentary representation of so vast a country—almost as large as Europe—containing so large a number of different races is one of the wildest imaginations that ever entered the minds of men." He went on to emphasise the necessity of ascertaining the feelings of "a most important body.....the Mahomedans of India. If you were to be guided entirely by the Hindu popular opinion you would find yourself in great difficulty." LORD NORTHBROOK considered that provision should be made "for the representation of different classes of people—people of different races and different religions." In a later stage of the discussion LORD KIMBERLEY agreed with LORD NORTHBROOK, and observed—"It has been found in this country not very easy to protect the interests of minorities by any contrivance that can be devised; but there must be found some mode in India of seeing that minorities such as the important body of Mahomedans, who are frequently in a minority in parts of that country, are fully represented." In the House of Commons the weightiest utterance was that of MR. GLADSTONE, who referred to the difficulty of introducing the elective principle "in an Asiatic country like India with its ancient civilization, with institutions so peculiar, with such diversities of races, religions and pursuits." He also drew atten-

tion to "the danger of having persons who represent particular cliques or classes or interests, and who may claim the honour of representing the people of India," thus anticipating the observation, now made by the Bombay Government, that "the educated classes, although a very small minority, appear to claim to represent the interests of all sections of the people, and are inclined to oppose any measures which appear likely to lessen their influence." MR. SAMUEL SMITH spoke of "the endless shades of caste, race, and religion in India"; SIR WILLIAM PLOWDEN and SIR RICHARD TEMPLE followed in the same strain; and the latter observed that "in fixing the ratio of Members, the interests to be represented, and the classes which constitute the bulk of the people, ought to be the determining factors rather than the population."

20. To the principle thus affirmed by both Houses of Parliament LORD LANSDOWNE'S Government endeavoured to give as wide a scope as was then possible, in the regulations framed by them for the constitution of the Provincial Legislative Councils. In the letters addressed by them to Local Governments on the 15th August, 1892, they enumerated the interests which seemed to be of sufficient importance to require representation, and indicated the manner in which the seats to be filled by recommendation should be allotted so as to secure the object in view. The question of the direct representation of those interests on the Imperial Legislative Council did not at that time arise, as it was believed that the non-official Members of the Provincial Legislative Councils, as reconstituted under the regulations then about to be made, would form a sufficiently wide electorate for the Supreme Council. This electorate, however, 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 the professional middle class; the landholders have obtained 27 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 representative at all. The advance of English education, and the demand of influential classes and interests for representation on a more ample scale, now render it necessary to examine the whole subject in the light of the experience of the last fifteen years, and to treat it on more liberal and comprehensive lines than we have hitherto been able to follow. With the enlargement of the Imperial Council it ceases to be possible to

rely exclusively upon a single source of recruitment. New constituencies must be formed, and in framing them we have to consider what sections of the population can properly claim representation for British India as a whole. With due regard for the limitations of a purely numerical test, we would refer to the following statistics of communities, interests, and adult male persons who can read and write, as indicating in a general way the main factors which enter into the problem. The figures are taken from the Census of 1901 and relate to British India only :—

Communities.

	Number.	Per cent.
Hindus	158,601,000	... 68
Mahomedans	53,804,000	... 23
Buddhists	9,411,000	... 4
Christians	1,904,000	... ·81
Sikhs	1,574,000	... ·67
Jains	479,000	... ·20

Interests.

Agriculture	155,678,000	... 67. 1
Commerce and Industry ...	38,302,000	... 16. 5
Professions	3,871,000	... 1. 6

Adult Males.

Literate in English ...	652,000	... 1
Literate in Vernacular ...	8,616,000	... 14

21. Starting from these data and bearing in mind the principles laid down by Parliament in 1892 for the guidance of LORD LANSDOWNE'S Government, we propose that the Imperial Legislative Council should be constituted as follows :—

A.—*Ex-officio* Members 8

B.—Officials representing Provinces 8

C.—Nominated Members ; not more than 15 to be officials ; the non-officials to be representatives of minorities or special interests, or experts 18

D.—Elected Members 28

(*a*) by the Provincial Legislative Councils and by the Advisory Council of the Central Provinces 12

(*b*)	by the landholders of Madras, Bombay, Bengal, Eastern Bengal and Assam, the United Provinces, the Punjab and the Central Provinces	7
(*c*)	by Mahomedans of Bengal, Eastern Bengal and Assam, the United Provinces, the Punjab, and (alternately) Madras and Bombay	5
(*d*)	by Chambers of Commerce of Calcutta and Bombay...	2
(*e*)	by representatives of Indian Commerce	2
	Total...	62
	or, including His Excellency the Viceroy	63

The Council, when assembled in full strength, would be composed (excluding the Viceroy) of 31 officials and the same number of non-officials, so that His Excellency would only be called upon to vote in the event of the Council being equally divided. Our reasons for the constitution which we propose are stated in detail in the following paragraphs.

22. *Enlargement of the Council.*—In our letter of 24th August, 1907 we suggested that the size of the Council should be more than doubled. Among Local Governments, Bengal, the United Provinces, and Burma approve of the proposal and make suggestions tending to raise the number still further. The Chief Commissioner of the Central Provinces is alarmed at the demand for additional official Members, and throws out the suggestion that their number might be reduced by giving each official vote a double value. Most of the opinions forwarded favour enlargement, and a number of persons either propose a number in excess of 54, or make suggestions for the representation of particular interests which necessarily involve an expansion of the Council beyond that limit. We are impressed with the unanimity of the feeling in favour of a large Council, and we consider that the rise in the standard of general intelligence, and the universal desire for a greater share in the management of public business, render an increase inevitable and desirable. In view of the various classes and interests which claim representation, we find it impossible to propose a smaller number than 62 or, including His Excellency the Viceroy, 63.

23. *Power to create an official majority.*—The principle of an official majority was accepted by His Majesty's Government in the correspondence which took place last year, and was embodied, with their authority, in our letter of 24th August, 1907. We can discover nothing in the present correspondence that would justify us in proposing its surrender. It is obvious

that under existing constitutional conditions the Government cannot resign, it must be able to settle the Budget and procure supplies for the service of the country : and it cannot divest itself of the power to give effect by legislation to the decisions of His Majesty's Government. Those non-officials who approach the subject from its practical side clearly realise the anomaly of the Executive Government being placed in a permanent minority. In the scheme submitted to us by the HON'BLE MR. GOKHALE, who may be taken to represent the better informed section of Indian publicists, he carefully guards himself against any such idea. On the Councils outlined by him the Government is "assured of a standing majority behind it" and the Head of the Government is further vested with a general veto. He asks only for "a minority—but a respectable minority" of non-official Members. In all Provinces the opinions which carry most weight, owing to the position of the writers and their experience as Members of a Legislative Council, proceed on similar lines ; though the strength of the official majorities proposed by them differs slightly, and some suggest that official votes should have a double value, or that the official proposals should prevail and that no cognizance should be taken of the votes. We gladly recognize the moderation and good sense by which these views are inspired. At the same time in order to avoid the inconvenience and waste of power involved in taking a number of officers away from their ordinary work merely for the purpose of voting on the Government side, we would reduce the official majority to the narrowest limits. Our scheme provides (excluding His Excellency the Viceroy) for 31 official Members,—8 *ex-officio*, 8 representing Provinces, and 15 appointed from among those officials at the headquarters of Government whose services can be made available without undue interruption of their ordinary duties. In the event of the Council being equally divided so that 31 officials were on one side and 31 non-officials on the other, the Viceroy's vote would turn the scale.

24. *Ordinary constitution of the Council.*—We have stated in the last paragraph our reasons for deeming it essential to retain the power of procuring, in the last resort, the support of a majority of officials in our Legislative Councils. Subject to this essential condition, we are prepared, in the Councils as constituted for ordinary purposes, to make a far larger concession than has as yet been suggested and to dispense with an official majority. We have every hope that the confidence we are willing to place in the intelligence and public spirit of the

non-official Members will be justified, and that increased responsibility will bring with it the requisite forbearance. We believe that on all ordinary occasions the Government may reckon with practical certainty upon securing sufficient non-official support to enable them to carry on the work of legislation with a Council containing less than the full quota of official Members, and we are willing to give this system a fair trial. Our specification of the Council has been framed accordingly. The provision that of the nominated Members not more than 15 shall be officials will enable us to dispense with an official majority for ordinary purposes, and we anticipate that it will hardly ever be necessary to appoint so large a number of officials as would secure an absolute official majority. In short, we propose to work normally with a minority, but to reserve power in the last resort to transform it into a majority.

25. *Omission of the Ruling Chief.*—The inclusion of a Ruling Chief in the Imperial Legislative Council proposed last year is objected to by a large number of persons on the ground that it is anomalous that an outsider should take part in making laws by which neither he nor his subjects will be affected, and that in most cases a Chief can know very little about the subjects with which British Indian legislation is concerned. We have considered these arguments, and we recommend that a Ruling Chief should not form an obligatory element of the Council. When there happen to be special reasons for appointing one, it will always be open to His Excellency to appoint him to one of the seats reserved for nomination, where he might at the same time serve the purpose of representing a minority such as the Mahomedans or the Sikh community.

26. *Representation of the professional middle class.*—Our proposal to assign seven seats to the non-official Members of the Provincial Councils of Madras, Bombay, Bengal, Eastern Bengal and Assam, the United Provinces, the Punjab, and Burma is accepted by all Local Governments except the Punjab, which observes that as the number of non-official Members on its Provincial Council will probably remain small, "it would be difficult, though not of course impossible, to concede to them the right of electing a Member for the Imperial Council." This portion of the published scheme has, however, been attacked on the ground that it gives to the professional middle class only three more seats (corresponding to the three additional Provinces to be represented) than they now possess. Several suggestions are made for increasing

the number by assigning two or more Members to each of the Provincial Councils. We have considered these proposals, but we find it impossible to give each of the seven Provincial Councils as many as two Members without raising the total strength of the Imperial Council to an extent that would be inconvenient. We recommend, therefore, that the four Provinces, which will have comparatively large Provincial Councils, namely, Madras, Bombay, Bengal and the United Provinces, should be allowed to elect two Members, the three Provinces with smaller Councils, namely, the Punjab, Eastern Bengal and Assam and Burma getting only one Member each. This would raise the number of Members elected by Provincial Legislative Councils from seven to eleven, which seems a fair allotment so far as the Provinces with Councils are concerned. The case of the Central Provinces has also to be considered. There is at present no Legislative Council in those Provinces, and there are difficulties in forming any kind of suitable electorate. For the present, therefore, we think that some use may legitimately be made of the Advisory Council, and we consider that the representative might be nominated by the Chief Commissioner in consultation with that Council. This is perhaps not a very great advance, but it represents a somewhat nearer approach to election than nomination pure and simple, which appears to be the only practicable alternative.

27. *Representation of Landholders.*—The proposal made in our letter of 24th August, 1907 that the nobles and great landowners of Madras, Bombay, Bengal, Eastern Bengal and Assam, the United Provinces, the Punjab, and the Central Provinces should be represented by seven Members, is generally approved by the Local Governments, and has been well received by the landholders themselves, and we consider that it gives sufficient representation to the landed interest. The question, however, of the manner in which the Members are to be selected is a difficult one, and there is little uniformity in the answers. The Governments of Madras and Bengal propose to form electorates based upon income from land. The United Provinces has a scheme for election proper in Agra, and another for election by associations in Oudh. The Government of Bombay make no suggestion as to the manner in which the representative of the Bombay landowners on the Imperial Council should be selected. The Chief Commissioner of the Central Provinces thinks that the formation of an electorate is impossible and puts forward a scheme for election by Durbaris combined with nomination. The Lieutenant-Governor of Eastern Bengal

and Assam proposes election by an association, and the Lieutenant-Governor of the Punjab is in favour of nomination. Among these conflicting opinions it is impossible for us, with the materials available, to make any definite proposal which would admit of general application, nor is it probable that any uniform system would be feasible throughout India.

28. We may, however, discuss, as briefly as possible, the various suggestions that have been made. Of the proposals put forward in our published letter election by the landholding Members of the Provincial Councils is rightly objected to on the ground that the electors, numbering from two to four only, would be likely to differ over the selection of the candidates. Election by a constituency comprising all landholders who pay a certain amount of land revenue, or derive a certain income from land, is approved in principle by most people, though there is some difference of opinion as to the exact sums which should confer the franchise. But doubts are expressed by some Governments and several landholders as to the possibility of working such an electorate over an area so large as an entire Province, and the question is one that can only be settled by actual experiment. If the landholders themselves take a real interest in the matter, and are anxious to demonstrate their fitness to exercise the privilege of voting, Provinces will compete with each other in devising methods of election and the best system will in the long run prevail. Meanwhile we may point out that the success of the Calcutta University in organising the election of Fellows by a large number of graduates scattered all over India furnishes some ground for believing that the difficulties anticipated will not be found insuperable.

29. When regular electorates cannot be formed, the simplest and most convenient method of selecting Members would be to recognise election by associations. This practice has precedent in its favour. It was mentioned with approval in the Parliamentary debates on the Act of 1892, and in one form or another it appears in all of the existing regulations. There are, however, certain possibilities connected with it which may become more serious if the expansion of the Councils and the enlargement of their powers should stimulate the electioneering spirit in India. If election by associations is admitted as the standard means of giving representation to classes, it seems probable that rival associations may claim recognition, and that it may be difficult to decide between them. There is also the danger that an association may be captured by a

small ring of politicians; that its original character may be transformed by changing the conditions of membership or by manipulating admissions; or again that the whole organization may exist, as the HON'BLE MALIK UMAR HAIYAT KHAN has suggested, "more on paper than in practice." Lastly, where parties are formed within an association, with the result that the validity of an election is disputed and each party charged the other with fraud, it is obvious that the Government would find some difficulty in determining which of two rival candidates should be held to have been elected. For these reasons we consider that the recognition of associations as electoral agencies should be regarded as a provisional arrangement, to be maintained only until the interests which they purport to represent demand the formation of a regular electorate, and succeed in satisfying the Government that this step in advance is practicable. Where there are no representative associations, and electorates cannot be formed, the only possible alternative is to have recourse to nomination until the community has developed sufficiently to be fit for a more independent system. In applying each of these methods regard would be had to local conditions. For instance in the United Provinces the claim of the British Indian Association, which represents the Oudh Talukdars, to elect a Member deserves special consideration; but the principle to be borne in mind is that election by the wishes of the people is the ultimate object to be secured, whatever may be the actual machinery adopted for giving effect to it. We are in agreement with most of the landholders who have discussed the subject in considering it essential that in all cases the candidates for election should themselves be Members of the electorate.

In framing these proposals we have not lost sight of the fact that the interests of landlords and tenants are by no means indentical; that our electorates will consist mainly, if not exclusively, of the former class, and that no means can at present be devised of giving the great body of tenants direct representation on the Legislative Councils. Their interests, however, are in no danger of being overlooked. In the debate in the House of Lords on the 6th March, 1890 both LORD RIPON and LORD KIMBERLEY pointed out that when the Bengal Tenancy Act was under discussion in LORD DUFFERIN'S Council "the only representative of the ryots was the Government." Among the official Members of the Legislative Councils there will always be some experts in Indian land questions, who will be qualified to represent the views of the cultivators.

30. *Representation of Mahomedans.*—All Local Governments approve of the proposals for the special representation of Mahomedans which were made in our letter of 24th August, 1907. These proposals are, as a rule, adversely criticised by the Hindus, who regard them as an attempt to set one religion against the other, and thus to create a counterpoise to the influence of the educated middle class. Some Hindus, however, recognise the expediency of giving special representation to the Mahomedan community, and the Bombay Presidency Association, while they object strongly to the creation of a special Mahomedan electorate, make provision in their scheme of a Council for the election of two Members by the Mahomedan community. Notwithstanding their formal protest against the principle of religious representation, the Association doubtless realise that the Indian Mahomedans are much more than a religious body. They form in fact, an absolutely separate community, distinct by marriage, food, and custom, and claiming in many cases to belong to a different race from the Hindus.

The first question is how many seats should be allotted to the Mahomedan community. After carefully considering the demands of the Mahomedans themselves and views expressed by the Hindus, we think that the claims of the former will be adequately met if four elective seats are assigned to them, and provision is made for a fifth seat being filled by nomination until suitable machinery for election can be devised. The four elective seats should be permanently assigned to the four Provinces which have the largest Mahomedan population, namely, Bengal, Eastern Bengal and Assam, the Punjab and the United Provinces. The fifth seat should be given alternately to Bombay and Madras, where the Mahomedan population is smaller, and for this it will be necessary to have recourse to nomination until satisfactory electorates can be formed. The question of a Mahomedan electorate presents much the same difficulties as the formation of a landholding electorate. In most Provinces the Mahomedans are in favour of election and regard nomination as an inferior method of obtaining admission to the Legislative Council. The Governments of Madras and the United Provinces propose electorates, based partly upon property and partly upon literary qualifications, which appear to us to be well devised, but the former Government have since expressed a preference for nomination. The Mahomedans of Bombay are said to be widely scattered over the Presidency, and at present unorganised for common purposes, so that a

special electorate cannot be treated. In course of time it may be possible to arrange for election by a central association, but for the present their proportionate representation can be secured only by careful nomination. The Government of Bengal proposes a scheme of a similar character which includes graduates of five years' standing and holders of recognised titles; both of these are doubtful features. The Government of Eastern Bengal and Assam suggests that the Mahomedan representative should be elected by the Provincial Mahomedan Association. The Lieutenant-Governor of the Punjab considers it impossible to form a Mahomedan electorate, and proposes that the Mahomedan representative should be nominated by the Lieutenant-Governor. We would deal with the question in the same way as we have proposed to deal with the representation of landholders. Our view is that in Provinces where election by a regular Mahomedan electorate is feasible, that method should be adopted; that Mahomedan associations should be made use of where electorates cannot be formed; and that nomination by Government should be resorted to where neither of the first two methods is practicable. It will be for the Local Government to determine, in consultation with the leaders of the Mahomedan community, which plan should be adopted.

31. *Representation of Commerce.*—In the scheme put forward by us in August 1907, two seats on the Council were assigned to the Chambers of Commerce of Calcutta and Bombay. No provision was made for the representation of Indian commerce otherwise than by nomination. The opinions show that there is a general feeling in favour of increasing the number of commercial representatives. It is difficult, however, to find room for more than four such Members, and it is doubtful whether merchants not residing in Calcutta will be willing to leave their own business to attend meetings of the Legislative Council. Taking four seats as the maximum that can be permanently allotted, we propose—

(1) that two seats should be given to the Chambers of Commerce, of Calcutta and Bombay as representing in the largest sense European commerce throughout the whole of India;

(2) that two seats should be reserved for Indian commerce, the Members to be nominated by the Governor-General, in consultation with Local Governments, until a method of election by commercial associations is developed.

It may be said that the first proposal excludes from representation the European commercial interests of Burma, Madras, Upper India, Sind and the Punjab. On the other hand the figures noted in the margin show how enormously the commercial interests of Bengal and Bombay preponderate over those of the other Provinces. It may be added that the Chambers of Commerce of Calcutta and Bombay will naturally receive references from the other Chambers on subjects affecting European commercial interests, and will arrange to have them brought to the notice of the Council by their own Members; that representatives of the other Chambers can be brought in by nomination as experts or in the place of officials; and that all of these bodies will recommend Members for the Provincial Councils who will bring forward their views in the debates on the Budget. None of the Local Governments suggest any practicable arrangement for the representation of Indian commerce by means of election, but we are disposed to think that if two permanent seats are assigned to that interest, associations will in course of time be formed which will be sufficiently stable and representative to admit of their being utilised as electoral agencies.

Value of sea-borne trade in 1907-08.

Bengal ...	... Rs. 1,64, 84, 29, 000
Bombay ...	... „ 1,67, 53, 10, 000
Sind ...	... „ 42, 65, 26, 000
Madras ...	... „ 43, 70, 37, 000
Burma ...	... „ 63, 55, 69, 000
Eastern Bengal and Assam	„ 7, 22, 49, 000

32. *Seats reserved for nomination.*—We have explained above our reasons for recommending that the full Council should comprise not more than 15 nominated officials, exclusive of the additional officials required for the purpose of representing the Provinces. We find it impossible without increasing the size of the Council, to assign more than three seats to nominated non-officials. This number, however, appears to us sufficient to enable the Governor-General to give occasional representation to the interest of minorities such as the Sikhs, the Parsis, the Indian Christians, the Buddhists, and the domiciled community and sometimes to appoint one or two experts in connexion with legislation pending before the Council. It may reasonably be expected that some, at least, of these minorities, will obtain seats by the ordinary process of election, while the others need only be represented at intervals. It must also be remembered that although 15 nominated officials are provided for under head C, so as to guarantee in the last resort an ab-

solute official majority, it will scarcely ever be necessary to appoint more than about six, and it may sometimes be possible to nominate non-officials to some of the seats reserved for officials. When we give power we create responsibility, and a solid opposition of all non-official Members will not be so lightly undertaken in the larger Council of the future as in the smaller Council of the past, where such opposition made no possible difference to the result.

Provincial Legislative Councils.

33. In our letter of the 24th August, 1907, no specific scheme of a Provincial Council was put forward, but the general principle was laid down that the widest representation should be given to classes, races and interests, subject to the condition that an official majority must be maintained. These principles have been borne in mind by Local Governments in the proposals which they have made, except that the Bombay Government desire to have no majority even in a Council of the maximum strength.

34. *General remarks.*—In framing proposals for the constitution of the Provincial Legislative Councils we have proceeded on the lines followed in the case of the Imperial Legislative Council. We have endeavoured to reduce the official majority to the narrowest limits by making the number of officials and non-officials (excluding the head of the Government) equal, so that, in the event of the full Council being equally divided, the vote of the Governor or Lieutenant-Governor would turn the scale. We have also laid down that of the nominated Members not more than a certain number shall be officials, the non-officials being representatives of minorities or special interests, or experts. This will enable the Head of the Government to dispense with an official majority in the Council as ordinarily constituted, while at the same time retaining in his hands the power to appoint the entire number of officials requisite to secure a majority of one in the full Council. We trust, however, that the closer association of officials with non-officials in public business, which will result from our proposals, will render it unnecessary to have recourse to this expedient. It may reasonably be anticipated that in the newly-constituted Councils only as many officials need be appointed as will be sufficient, in conjunction with three or four non-officials, to enable the Government to carry their legislative measures. We have

made no attempt to frame regular constituencies, for the election of landholders, Mahomedans, and representatives of Indian commerce. The materials before us are insufficient for the purpose, and the conditions in different Provinces vary too much for any uniform plan to be feasible. Some Governments may be able to form electorates based upon payment of land-revenue or income-tax or upon the income derived from land; others may permit associations to recommend Members; and others again may have recourse to nomination. It must be understood, therefore, that in describing certain classes of Members as "elected" we use that term subject to the reservation that in some cases election in the ordinary sense may be found impossible or inexpedient. In any case the question to what extent election proper can be introduced will have to be considered further when the regulations are being drawn up, after the Act of 1892 has been amended.

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Resolutions, Questions, and Discussion of the Budget.

57. *Power to move Resolutions.*—By the Act of 1861, under which the present Legislative bodies were constituted, discussion was confined to legislative proposals actually before the Councils in the form of Bills. In 1892 this limitation was relaxed to the extent of allowing debate on the annual financial statement although no legislation was involved, and in this debate it is permissible for Members to draw attention to any matter they please, whether it arises directly out of the Budget proposals or not. But a general debate of this character can never be satisfactory. Members do not know beforehand the subjects which are to be brought forward by their colleagues; the discussion is necessarily of a desultory character; and the absence of notice not uncommonly prevents the official Members from giving full information in answer to questions that are raised. We are of opinion that the time has come when there should be further facilities for debate. We think that Members should have opportunities for placing their views on public questions before the Government, and we are impressed with the benefits which both the Government and the educated public would derive from the well-ordered discussion of administrative subjects in the Legislative Councils, either on a reference from the head of the Government, or at the instance of a private Member. Such

discussions would give the Government an opportunity of making their view of a question known, and of explaining the reasons which had led them to adopt a particular line of action. We therefore propose that power should be given by statute for Members to move resolutions on matters of general public importance, subject to the checks to which we shall presently refer. So far as the educated public are concerned, there can be little doubt that the right to move resolutions on such questions, and to argue these in a regular debate, will be welcomed as a very great concession; that it will be resorted to freely; and that it will tend to bring about more intimate relations between the official and non-official Members. We think that the resolutions should be in the form of recommendations to the Government, because this form expresses the constitutional position more precisely, and emphasises the fact that the decision must in any case rest with the Government and not with the Council. In the event of a resolution not being accepted by the Government an opportunity would be taken of explaining their reasons.

58. This subject was not included among those which Your Lordship authorised us to put before Local Governments, and our letter of 24th August, 1907 contained no reference to it. But it is a reform to which we attach great importance. In support of it we would point out that a similar proposal was put forward in 1888 by SIR GEORGE CHESNEY'S Committee in reference to Provincial Councils. They recommended that, in addition to legislation, it should be one of the functions of the Local Councils to originate advice and suggestions on any subject connected with internal administration, and that their views should be embodied in the form of a memorandum addressed to the Head of the Government. They advised, however, that it should not be permissible to propose resolutions relating to subjects removed from the cognizance of the Provincial Legislative Councils by section 43 of the Councils Act of 1861, which forbids them, except with the previous sanction of the Governor-General, "to make regulations or to take into consideration any law or regulation" relating to the public debt, customs, and Imperial taxes; coin, bills, and notes; post office and telegraph; altering the Penal Code; religion; army and navy; patents or copyright; foreign relations. That proposal was not adopted at the time, and it may have been premature in the conditions which then existed, but at least it had the high authority of the Members of that Committee.

59. The discussion of administrative questions can however only be permitted subject to certain rules and restrictions which must be clearly laid down. We do not feel ourselves in a position at the present stage to make an exhaustive enumeration of these, and we anticipate that, as has been the case in the House of Commons, actual experience will lead to the framing of standing orders designed to meet the exigencies of debate. It seems to us, however, that the following conditions must be imposed from the first—

(1) Resolutions must relate to matters of public and general importance, and not to isolated incidents of administration or personal questions.

(2) No resolution should have by itself any force or effect. It must rest with the Government to take action or not to take action as it thinks fit. This is the English principle, and it is obvious that the Council cannot claim for its resolutions a higher degree of authority than attaches to a resolution of the House of Commons.

(3) The order of business must be absolutely under the control of the President, and no discussion of his orders can be permitted.

(4) The President must have power to disallow any resolution without giving any other reason than that in his opinion it cannot be discussed consistently with the public interests. This will enable him to reject resolutions which are contrary to public policy, or which relate to matters which could not be discussed without anticipating, or seeming to anticipate the decision of the Secretary of State.

(5) In order to avoid the too frequent exercise of this general power of disallowing resolutions certain classes of subjects ought to be expressly excluded. In the case of the Provincial Councils the proposals of SIR GEORGE CHESNEY'S Committee referred to above seem to be suitable. In the Imperial Council the admissible range of discussion is necessarily larger, and it is less easy to define its limits precisely. For the present we think it sufficient to say that some subjects must be specially excluded, and that the question, which those should be, can be best settled later on when the rules of business are drawn up.

(6) It will also be necessary to place some limitation upon the time allotted to the discussion of resolutions.

60. *Power to ask questions.*—The right of asking questions in the Legislative Councils, subject to certain conditions and restrictions, was conceded by the Indian Councils Act of 1892. We recommend that it should be extended to the enlarged Councils which we propose for the Punjab and Burma. We do not suggest any alteration in the rules governing the subject.

61. *The discussion of the Budget.*—Under this head it was proposed in our published letter of 24th August, 1907 that the Budget should be explained by heads or groups of heads by the Members in charge of departments, and should be discussed in the same way by the other Members, and that this discussion should be followed by a general debate conducted on the same lines as at present. No method was suggested of enabling the non-official Members to exercise any influence on the actual settlement of the items. The opinions received do not throw much light on the question, how the Government can give the Councils an effective share in the financial administration of India, without surrendering any essential principle, or parting with the right of original initiative and ultimate control. The Governments of Madras, Bombay, Bengal, the United Provinces, and the Punjab put forward, in more or less detail, proposals for holding informal conferences with the non-official Members of the Legislative Council, when the first edition of the Provincial Budget has been prepared, and thus eliciting criticisms and suggestions which might be considered when the second edition comes to be settled. The Bombay Government claim a greater degree of financial independence, and they and other Governments argue that, so long as the Provincial Budget requires the previous sanction of the Government of India the discussions in the full Councils can deal only with settled facts, since no alterations can be introduced by the Local Government in consequence of anything that may be said in the public debate. All Governments approve of discussion by heads as proposed in the published letter. No Government suggests any plan for enabling the full Council to debate and vote upon specific assignments of funds. The non-official critics either demand the power of moving amendments to any items of the Budget, or express general approval of the Government of India's proposals.

62. We are clearly of opinion that it is advisable that the Councils should be afforded increased facilities for expressing their views upon the Budget, and that these facilities should be given at a sufficiently early stage to enable the Government to take advantage of any advice that may be tendered, and to adopt and give effect to such suggestions as may be found practicable. The ultimate control must, however, rest with the Government, and no useful purpose would be served by affecting to ignore this essential fact. It is the Government and not the Council, that decides any question arising on the

Budget, and the utmost concession that can be made is to give the Council ample opportunities of making recommendations to the Government in respect of particular items. But, without departing from this principle, we think that the Council may properly be empowered to record its opinion by vote on the greater part of the Budget proposals. The Indian public have long desired an opportunity of this kind, and we think that the time has come when it may properly be given in the manner and to the extent which we shall presently explain. In our letter to Local Governments we did not put forward any plan by which Members of Legislative Councils could vote on the Budget, but we are anxious to meet the public demand, and we trust that our proposals in the matter, both in regard to the Imperial and to the Provincial Councils, may obtain your Lordship's approval.

63. *The Imperial Budget.*—These being the general objects which we have in view, we believe that they may be attained in the case of the Imperial Budget by laying down that the financial statement shall be presented during the last five days in February; and that the final discussion of the Budget shall take place not more than four weeks later. There are very strong reasons for being particular about dates; and we need not enter here into the arrangements which will be necessary in order to admit of the Budget being opened three weeks in advance of the usual time. The figures will be less accurate than they are now, and a considerable part of the detailed explanations which are now appended to the financial statement will have to be dropped. The Finance Member's speech will necessarily be more general in its tone, and will not describe the figures of expenditure with the same precision. This advantage will, in our opinion, be amply counterbalanced by the fact that the earlier presentation of the Budget will enable the Government to obtain the views of the Council on their financial proposals at a stage when it will still be possible to act upon their advice. On the presentation of the financial statement, it will be convenient for the Council to resolve itself into Committee for the discussion of the Budget by blocks. It should be a Committee of the whole Council, with a Member of the Government in the chair; and the first meeting should take place not later than one week after the day on which the Budget is presented. The Committee should sit from day to day until its work is complete; and there should be a rule requiring it to finish its business on or before the 10th of March; since it is essential that the final corrections should all

be known in good time to get the Budget, with its supplementary tables and notes, into the shape in which it is to be finally presented.

64. For the purpose of discussion in Committee the major heads or groups of heads would be taken up in order, the discussion being opened with an explanatory speech by the Member of the Executive Council who controls the departments concerned, or, if so arranged, by another Member on his behalf. Each Member would then be at liberty to move a resolution, in the form of a recommendation to the Government, relating to the figures in any heads or group, two days' notice being given in each case. The Council would divide upon any resolutions which were pressed; and the result would be duly recorded. But the Government would not be bound to take action upon any resolution, either in whole or part. Power should be vested in the Chairman to close the discussion upon any head or group, when he thinks that it cannot be continued with advantage, and there should be a time limit for individual speeches. Here, as in paragraph 62 above, we desire to lay stress on the condition that the resolutions should be in the form of recommendations to the Government, as indicating that the power of passing the Budget is vested, not in the Council, but in the Executive Government. This is not a mere verbal refinement; it denotes a constitutional fact; and it has the further advantage of avoiding any objection that may be taken to the scheme on the basis of the English rule that all proposals for the increase of expenditure must be initiated by the Crown. If it is necessary for us to support our proposals by a reference to Parliamentary practice, the requisite analogy is to be found in the right of the House of Commons to submit an address to the Crown recommending certain expenditure.

65. When the Council sitting in Committee has completed its labours, it will be for the Government to decide what alterations, if any, should be made in the Budget as a result of the discussion. These would be carried out in the estimates at once. At the adjourned meeting of the Council, the Finance Member would submit the Budget in its final form, along with a formal report of the proceedings in Committee. This opportunity would be taken to explain briefly why Government had been unable to accept any resolutions that were carried in Committee. After the Finance Member's speech, a general discussion would follow; but at this stage no further resolutions would be admissible. The Finance Member would make a

general reply and the Viceroy would sum up the debate; whereupon the Budget would come into effect.

66. *The Provincial Budgets.*—In preparing its Provincial Budget, a Local Government has no anxieties about ways and means in the wider sense of that term. Its surplus or deficit is absorbed in the general balances of India. It is not affected by remissions of taxation, for the effects of which the Imperial Exchequer provides full compensation. Its sole concern is to keep the demands of its departments within its estimated revenue, without drawing unduly upon the provincial balance. In our opinion it is in this task that the Provincial Council may suitably assist the Local Government. Nor ought such assistance to be unwelcome. For a Local Government at Budget time is flooded with proposals for new expenditure, and purely departmental efficiency may sometimes push aside more genuine needs. It is not, of course, suggested that the intervention of the Provincial Council will ensure an infallible judgment between conflicting claims. But it will put the proposals on their defence; it will enlist some outside knowledge of local interests; and it will give the non-official Members a substantial share in the preparation of the Budget.

67. What we propose for adoption is a procedure in four stages. The first stage is the rough draft of the provincial estimates. In this the Local Government would include all projects for new expenditure in excess of Rs. 5,000 which are put forward by the different departments, provided that they are covered by administrative sanction, and that there is no *prima facie* objection to them. All such projects would be listed in a schedule, which would consist of two parts. In part I the Local Governments would place those items for which it considers that provision must be made in order to carry on a scheme already in hand, or in pursuance of orders from the Government of India or the Secretary of State, or to meet an urgent administrative need. All other items, not ear-marked above, would be put in part II of the schedule. The draft Budget, with this schedule of new expenditure, would then be submitted to the Government of India. Now it is manifest that an estimate of expenditure prepared on these lines is certain to exceed what the Province can afford. It would rest, therefore, with the Government of India, after correcting the estimate of revenue and the opening balance (which it always has to do at present), to determine, in consultation with the Local Government, the aggregate expenditure for which the Provincial Budget should provide; but the detailed correction of the expenditure estimates

which is now undertaken in the Finance Department would be dispensed with. The alterations in the revenue figures, and the figure of total expenditure, as fixed by the Government of India, would then be communicated to the Local Government. The Government of India would also reserve the power—we consider this essential—to alter or add to part I of the schedule.

68. The second stage would bring the Provincial Council upon the scene. We are inclined to think that the work would be better done by a select Committee than by the more unwieldy body of the whole Council. We accordingly recommend the appointment of a standing Finance Committee of the Council, numbering not more than 12: in the smaller Councils 8, or even 6, might suffice.

There would be an equal number of officials and non-officials. The latter might be elected by the non-official Members of the Council, once a year, by ballot or as directed by rules. The officials would be nominated by the Local Government, and would be selected mainly for their capacity to represent the bigger spending Departments. The Financial Secretary (or, in Madras and Bombay, the Member of Council who has charge of the Financial department) would be Chairman, with a casting vote. Most Local Governments have proposed a procedure substantially on these lines; and the recent action of the Government of Madras and Bengal in appointing Committees of their Councils to consider the Budget informally has been received with general approval.

69. On receipt of the Government of India's orders on its draft Budget, the Local Government would at once convene this Committee, place all the papers before it, and instruct it to revise part II of the schedule in such a manner as to bring the total estimates of expenditure down to the figure sanctioned by the Government of India. The proceedings of the Committee would be private and informal. Discussion would be free, and the decisions would go by the vote of the majority. Where items were disputed, the officer representing the department concerned would be heard in their support, their urgency would be compared with that of items supported by other departments, and the Committee would then vote upon them on their merits. On occasion, the Committee might decide to insert in the Budget a project which had not appeared in the original estimate; and to this there appears to be no objection, if the scheme were one for which administrative sanction existed, or which the Local Government were prepared to support. On the conclusion of its work, the Committee would report the

corrections in part II which it considered necessary, in order to bring the total Budget expenditure within the figure sanctioned by the Government of India. After considering the Committee's proposals the Local Government would revise its expenditure estimates, make any alteration in the revenue estimates, which the progress of actuals might suggest, and report the figures which it decided to accept under both heads to the Government of India for incorporation in the Imperial Budget.

70. The third stage would begin with the presentation of the estimates as a whole to the Provincial Council. On receiving the second edition of the estimates, as explained in the last paragraph, the Government of India would make no further changes on the expenditure side, unless, in the exercise of a power which they must always reserve, they found it necessary to direct a general reduction of expenditure in consequence of any exceptional strain on either the Imperial or the Provincial resources. But they would bring the revenue figures up to date, give effect to any taxation proposals affecting the Budget, and insert any special grants for the Province which the Secretary of State might have sanctioned out of the Imperial surplus. They would then, in accordance with the present practice, compile the figures and incorporate them in the Imperial financial statement. An abstract of the figures, as thus settled, would be communicated to the Local Government on the day when the Imperial Budget is opened. The Local Government would at once print up its Budget, and call a meeting of its Provincial Council, when the Budget would be formally presented by the official in charge, with a speech describing its general purport.

71. The best method of conducting the consideration of the Budget would be for the Council to sit as a Committee. This would allow of greater freedom of debate, and it would permit the head of the Province to leave the chair and to put one of the official Members in charge. In Committee,each head or group of heads would be taken up separately. The figures would be explained by the official Member who represents the administrative department concerned. Any Member would then be at liberty to move a resolution, in the form of a recommendation to the Local Government, regarding any entry in the head or group under discussion, and the resolution would be debated and put to the vote. The opportunity would be taken by the official Members to move any addition to the estimate of expenditure in consequence of an Imperial grant, or any reduc-

tion in consequence of a specific direction from the Government of India to curtail expenditure. All resolutions carried by a majority of votes would be reported to the Local Government; but it would be entirely at their discretion to accept any such resolution in whole or in part, or to reject it. In order to allow sufficient time to have the Provincial figures incorporated in the Imperial Budget before the latter is prepared in its final form, it would be necessary to close the discussion in Council by a certain date. Rules would have to be framed for this purpose.

72. The fourth stage would commence as soon as the Council sitting in Committee had finished with the Budget. The Local Government would then consider what alterations, if any, were to be made as the result of the discussion. Without the Government of India's sanction, it would not be competent to change the revenue figures or to increase the total figure of expenditure as formerly settled by that Government. But it might, if it so desired with reference to the Committee's recommendations, vary the distribution of the expenditure in detail. The figures as finally altered would be telegraphed to the Government of India, and the final edition of the Provincial Budget would then be compiled and printed. This would be presented by the Member in charge at an adjourned meeting of the Council along with a report of the Committee's proceedings. He would describe any changes that had been made in the figures, and explain why any resolutions of the Committee had not been accepted by the Local Government.

A debate would follow; but no resolution or voting would be permitted.

73. *Subjects for discussion.*—In regulating the new system of discussion, whether in the Imperial or Provincial Councils, one of the first points for consideration is the range of subjects on which resolutions and voting will be permitted. Since we propose taking our stand on the practice of the House of Commons, to lay down that no recommendation will be binding upon the Government, the limits within which resolutions may be proposed can be very materially enlarged without running any risk of causing embarrassment or misunderstanding. It is clearly imperative, however, on grounds of public policy, that certain items both of revenue and of expenditure should be excluded from debate; and we annex to this despatch a schedule showing what heads of the Imperial and Provincial Budgets we consider should be thus reserved. We desire to

draw attention to the large number of items which we have left open to discussion, and the comparatively small number which we propose to exclude. The grounds for exclusion are various. Some items both of revenue and expenditure are fixed by law, and the proper method of proposing any alteration of them is the introduction of a bill. Most of the political heads are governed by treaties or 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. In addition to these specific reservations, which we have endeavoured to make as few as possible, it will be necessary to impose some further restrictions upon resolutions with the object of preserving the business character of the debate and of restricting it, as far as possible, to the financial aspects of the Budget. The discussion of the Budget by heads is intended to deal with the settlement of the figures, and generalities having no direct bearing on this point should be ruled out as irrelevant at that stage, and relegated to the general debate. We apprehend that there will be no difficulty in framing a rule which will give to the Chairman of the Council when sitting as a Committee a general power to enforce this necessary distinction.

74. *Effect of Budget proposals.*—Our proposals under this head indicate a treatment of the Budgets which will maintain full power for the Government over ways and means, while giving the Councils a reasonable share in the settlement of expenditure. They will have a marked tendency to promote decentralisation, but they will in no way relax the control which is exercised by the Secretary of State in Council over the expenditure of the revenues of India. They will confer on Local Governments a larger measure of financial independence and will enable them in the exercise of these increased powers to avail themselves of the assistance of the Legislative Council to an extent which has hitherto been impossible. And, both in the Imperial and the Provincial Councils, they will place the representatives of all classes of the population in a position to take a more effective part in shaping the policy of

the Government, and to exert a real influence upon the actual work of administration.

General Conclusions.

75. In framing the proposals, which we now submit to your decision, we have given ample consideration to the great variety of opinion elicited by our letter of 24th August 1907. We readily acknowledge the value of many of the criticisms that have reached us, and we believe that no material point has escaped our observation. We have accepted in substance several important suggestions, and we have introduced into our scheme measures of a far more advanced character than have hitherto been proposed. We will now sum up the results of our deliberations. In accordance with the most authoritative opinion we have abandoned the idea of an Imperial Advisory Council as originally planned, and have substituted for it a Council of Chiefs to be appointed by the Viceroy, and utilized by him in the guardianship of Common and Imperial interests as the demands of the time may require. We have planned Provincial Advisory Councils on lines which will enable Local Governments to avail themselves of the advice and co-operation of the leading representatives of the best non-official opinion, and we trust that the proposal will commend itself to popular feeling, and will satisfy the demand for extended opportunities of consultation on matters of local interest. The enlargement of the Legislative Councils, and the extension of their functions to the discussion of administrative questions, are the widest, most deep reaching and most substantial features of the scheme which we now put forward. Taking first the Imperial Legislative Council, we propose to raise the total strength of the Council, excluding His Excellency the Viceroy, from 24 to 62, and to increase the number of non-official Members from 10 to 31, and of elected Members from 5 to 28. On all ordinary occasions we are ready to dispense with an official majority, and to rely upon the public spirit of the non-official Members to enable us to carry on the necessary work of Legislation, We have dealt with the Provincial Legislative Councils in an equally liberal manner. The total strength of the Council, and the numbers of non-official and elected Members have in every instance, except that of Burma, been more than doubled. In all these cases, while giving fuller play to the elective principle, we have also greatly enlarged its range, and have endeavoured to afford proportionate representation to all classes that have

reached a sufficiently high level of education, the land-holders, the Mahomedans, the professional middle class, and the commercial community both Indian and European. To all of them, again, we propose to concede the novel right of moving resolutions, and dividing the Council on administrative questions of public and general interest, and of taking part in settling the actual figures on the Budget, both by informal discussion and by bringing forward specific recommendations which will be put to the vote. Regarding the scheme as a whole, we consider ourselves justified in claiming for it that it will really and effectively associate the people of India with the Government in the work not only of occasional legislation but of actual everyday administration. It is an attempt to give India a constitution framed on sufficiently liberal lines to satisfy the legitimate aspirations of the most advanced Indians, whilst at the same time enlisting the support of the more conservative elements of Indian society. We are not without hope that it will be accepted by all classes in the spirit in which it has been planned, and that it will unite in the common service of India all those, whether officials or private individuals, who have her highest interests at heart.

76. In conclusion we have one more observation to make. We recognise that the effect of our proposals will be to throw a greater burden on the heads of Local Governments, not only by reason of the actual increase of work caused by the longer sittings of the Legislative Councils, but also because there will be considerable responsibility in dealing with the recommendations of those Councils. It may be that experience will show the desirability of strengthening the hands of Lieutenant-Governors in the larger Provinces by the creation of Executive Councils, as SIR CHARLES AITCHISON suggested in connexion with the proposals of 1888, and assisting the Governors of Madras and Bombay by enlarging the Councils which now exist in those Presidencies. But it would be premature to discuss these contingencies until experience has been gained of the working of the new legislative bodies. The creation of Councils with executive functions in Provinces in which they do not exist would be a large departure from the present system of administration, and is a change that could only be recommended after the fullest consideration, and after consultation with the heads of the Provinces concerned.

F.

DESPATCH FROM THE SECRETARY OF STATE (LORD MORLEY) TO THE GOVERNMENT OF INDIA, NO. 193 DATED LONDON, 27TH NOVEMBER, 1908.

I have to acknowledge the important Despatch of the 1st October 1908, in which I had submitted for approval and decision a group of constitutional reforms, framed by Your Excellency in Council in pursuance of a policy initiated more than two years ago. Your proposals, in their present shape, are the outcome of a tentative project placed in August last year in the hands of Local Governments in India, with instructions to consult important bodies and individuals representative of various classes of the community, before putting their own conclusions before the Government of India. Those instructions, as you are very evidently justified in assuring me, were carried out with great care and thoroughness. After examining, moreover, the enormous mass of material gathered together in a prolonged operation I gladly recognise the admirable industry, patience, thought, and candour, with which that material has been sifted by your Government, and worked out into practical proposals, liberal in their spirit and comprehensive in their scope. I have taken all the pains demanded by their importance to secure special consideration of them in Council. It is a sincere satisfaction to me to find myself able to accept the substantial part of Your Excellency's scheme, with such modifications as would naturally occur to different minds, in handling problems of remarkable difficulty in themselves, and reasonably open to a wide variety of solution.

2. The original proposal of an Imperial Advisory Council was based on the interesting and attractive idea of associating Ruling Chiefs and territorial magnates of British India, in the guardianship of common and Imperial interests, and as a means of promoting more intimate relations among component parts of the Indian Empire. The general opinion of those whose assent and co-operation would be indispensable has proved adverse, and Your Excellency in Council now considers that the project should for the present not be proceeded with.

3. You still favour an Imperial Council composed only of Ruling Chiefs. LORD LYTTON made an experiment in this

direction, but it remained without successful result. LORD CURZON afterwards proposed to create a Council composed exclusively of Princes contributing Imperial Service Troops, and deliberating on that subject exclusively. Opinion pronounced this also likely to be unfruitful and ineffectual in practice. Your Excellency's project is narrower than the first of these two expedients, and wider than the second. 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. It would obviously be a mistake to push the project, unless it commands the clear assent and approval of those whose presence in the Council would be essential to its success, and the opinions expressed in the replies with which you have furnished me, lead me to doubt whether that condition can be secured. But in case Your Excellency still favours this proposal, which is in itself attractive, I do not wish to express dissent at this stage, and if after consulation with the leading Chiefs, you are able to devise a scheme that is at once acceptable to them and workable in practice, I am not inclined to place any obstacle in the way of a full and fair trial. And in any event the doubt I have expressed must not be taken as discouraging consultation with individual Chiefs, according to existing practice ; for nobody with any part to play in Indian Government, can doubt the manifold advantages of still further developing not only amicable, but confidential relations of this kind, with the loyal Rulers in Indian States, possessed as they are of such peculiar authority and experience.

4. Next, I agree with Your Excellency in the judgment that the question of a Council of Notables for British India only should not be entertained. I am inclined furthermore, for my own part, to doubt whether the creation of Provincial Advisory Councils is likely to prove an experiment of any marked actual value. The origin of the demand for bodies of that character, whatever the strength of such a demand amounts to, is undoubtedly a desire for greater facilities in the discussion of public measures. Your Excellency indicates what strikes me as pointing in a more hopeful direction, in the proposition that this claim for increased facilities of discussion should be met "rather by extending the powers of the existing Legislative

Councils than by setting up large rival Councils which must to some extent conflict with them." Large or small, such rivalry would be almost certain to spring up, and, from the first, the new species of Council would be suspected as designed to be a check upon the old. As in the case of Ruling Chiefs, or of Notables in British India, so here too, informal consultation with the leading men of a locality would have most or all of the advantages of an Advisory Council, without the many obvious disadvantages of duplicating political machiney.

5. From these proposals I pass to what is, and what you declared to be, the pith and substance of the Despatch under reply. "The enlargement of the Legislative Councils," you say, "and the extension of their functions to the discussion of administrative questions, are the widest, most deep-reaching, and most substantial features of the scheme, which we now put forward." This perfectly correct description evokes and justifies the close scrutiny to which these features have been subjected in my Council, and I am glad to believe that the result reveals few elements of material difference.

6. Your Government have now felt bound to deal first with the Imperial Legislative Council and from that to work downwards to the Councils in the Provinces. I gather, however, from your Despatch of the 21st March 1907, that you would at that time have preferred, as LORD LANSDOWNE had done in 1892, to build up the higher fabric on the foundation of the Provincial Councils. In your circular letter of the 24th August, 1907, you observed that "the most logical and convenient mode of dealing with the question would have been first to discuss and settle the composition, the electorates, and the powers of the Provincial Legislative Councils, and then to build up, on the basis of these materials, a revised constitution for the Imperial Council." In the absence of proposals from Local Governments and Administrations, you were precluded from adopting this course ; and, therefore, you set tentatively before them the line on which, first, the Legislative Council of the Governor-General, and thereafter those of Governors and Lieutenant-Governors, might be constituted.

7. In your present letter you have followed the same order. But with the full materials before me such as are now supplied by local opinions, it appears to be both more convenient and, as you said, more logical to begin with the Provincial

Councils, and afterwards to consider the constitution of the Legislative Council of the Governor-General.

8. The first question that arises touches the principle of representation. This is fully discussed in paragraphs 18 to 20, 26 to 31, and 34 of your letter. Citing previous discussions of the subject, and referring to the precedent of the measures taken to give effect to the Statute of 1892, you adhere to the opinion that in the circumstances of India "representation by classes and interests is the only practicable method of embodying the elective principle in the constitution of the Indian Legislative Councils" (paragraph 18). You justly observe that "the principle to be borne in mind is that election by the wishes of the people is the ultimate object to be secured, whatever may the actual machinery adopted for giving effect to it", (paragraph 29). You consider that for certain limited interests (corporations of Presidency towns, Universities, Chambers of Commerce, Planting Communities and the like, limited electorates must exist as at present ; and you foresee no serious obstacle in carrying out arrangements for that purpose. Difficulties come into view, when you go beyond these limited electorates and have to deal with large and widespread interests or communities, such as the landholding and professional classes ; or with important minorities, such as Mahomedans in most Provinces in India, and Sikhs in the Punjab. You dwell upon the great variety of conditions in the various Provinces of the Indian Empire, and the impossibility of applying any uniform system throughout ; and your conclusion generally appears to be that class electorates should be framed where this is practicable and likely to lead to good results, and in their failure or defect, it will be necessary to have recourse to nomination.

9. With the general principles advanced by Your Excellency in this chapter of our discussion, I am in entire accord. I agree that, to some extent, class representation must be maintained in the limited electorates to which you refer ; and here, as you point out, no serious obstacle is to be anticipated. I agree, also, that the Legislative Council should reflect the leading elements of the population at large, and that no system of representation would be satisfactory, if it did not provide for the presence in the Councils of sufficient representatives of communities so important as are the Mahomedans and the landed classes. But in examining your plans for obtaining their representation, I am struck with the difficulty of securing

satisfactory electoral bodies under them, and, with the extent to which, as you expect, nomination will be demanded to supply the deficiencies of election. The same awkwardness and perplexity appear in obtaining satisfactory representation of the Indian commercial classes, where, as is found generally throughout India with very few exceptions, they have not established Associations or Chambers to represent their interests.

10. The case of landholders is discussed in paragraphs 27 to 29 of your letter, with immediate reference to the Imperial Legislative Council, and the situation is just the same—if separate representation is to be secured—for local Councils. You "find it impossible to make any definite proposal which would admit of general application" (Para. 27); you see difficulties in devising a constituency that should consist only of landholders deriving a certain income from land (Para. 28); and you point out with much force the objections to election by voluntary Associations. In these observations I agree, and especially in your remark that the recognition of Associations as electoral agencies should be regarded as a provisional arrangement to be maintained only until some regular electorate can be formed.

11. The same difficulties, as you observe in paragraph 30, encounter the proposal to have a special electorate for Mahomedans. In some Provinces, as in Bombay, the Mahomedans are so scattered, that common organisation for electoral purposes is thought impracticable. In other Provinces it is proposed to found a scheme partly on a property qualification and partly on a literary attainment; in others, again, it is suggested that recourse might be had to voluntary associations. One difficulty in regard to Mahomedans is not mentioned in your letter; for the provision in any Province of a special electorate giving them a definite proportion of the seats on the Councils might involve the refusal to them in that Province of a right to vote in the territorial electorates of which rural and Municipal Boards will afford the basis. If that were not done, they would evidently have a double vote, and this would probably be resented by other classes of the population.

12. Without rejecting the various expedients suggested by Your Excellency for adoption, in order to secure the adequate representation of these important classes on the Councils, I suggest for your consideration that the object in view might

be better secured, at any rate in the more advanced Provinces in India, by a modification of the system of a popular electorate, founded on the principle of Electoral Colleges. The use of this method is not in itself novel; it already exists in the groups of District Boards and of Municipalities which, in several Provinces, returns Members to the Provincial Councils. The election is not committed to the Boards or Municipalities directly; these bodies choose electors, who then proceed to elect the representative of the group. I will briefly describe the scheme that at present commends itself to me, and in order to make the method of working clear I will assume hypothetical figures for a given Province. Let it be supposed that the total population of the Province is 20 millions, of whom 15 millions are Hindus and 5 millions Mahomedans, and the number of Members to be elected 12. Then, since the Hindus are to Mahomedans as three to one, nine Hindus should be elected to three Mahomedans. In order to obtain these members, divide the Province into three electoral areas, in each of which three Hindus and one Mahomedan are to be returned. Then, in each of these areas, constitute an Electoral College, consisting of, let us say, a hundred members. In order to preserve the proportion between the two religions, 75 of these should be Hindus and 25 Mahomedans. This Electoral College should be obtained by calling upon the various electorates, which might be (*a*) substantial land-owners paying not less than a fixed amount of land-revenue; (*b*) the members of rural or subdivisional Boards; (*c*) the members of District Boards; and (*d*) the members of Municipal Corporations, to return to it such candidates as they desired, a definite number being allotted to each electorate. Out of those offering themselves and obtaining votes, the 75 Hindus who obtained the majority of votes should be declared members of the College, and the 25 Musalmans who obtained the majority should similarly be declared elected. If the Musalmans returned did not provide 25 members for the Electoral College, the deficiency would be made good by nomination. Having thus obtained an Electoral College containing 75 Hindus and 25 Musalmans, that body would be called upon to elect three representatives for the Hindus and one for the Mahomedans; each member of the College would have only one vote and could vote for only one candidate. In this way it is evident that it would be in the power of each section of the population to return a Member in the proportion corresponding to its own proportion to the total population.

In the same way the desired proportion could be obtained of any representatives of any particular interest, as, for instance, of landowners. All that is necessary would be to constitute the Electoral College in such a way that the number of electors representing the land-owning interest should bear to the total number the same proportion as the Members of Council representing that interest to be elected bear to the total number to be elected.

13. In this manner, minorities would be protected against exclusion by majorities, and all large and important sections of the population would have the opportunity of returning Members in proportion to their ratio to the total population. Their choice could in that event be exercised in the best possible way, that, namely, of popular election, instead of requiring Government to supply deficiencies by the dubious method of nomination.

14. I do not wish definitely to prescribe such a scheme for adoption, whether locally or universally, but I commend it to your consideration. It appears to offer an expedient by which the objections against a system of nomination may be avoided, and it would work through a choice freely exercised by the electorate at large, instead of by artificial electorates specially constituted for the purpose. No doubt it removes the primary voter by more than one stage from the ultimate choice; and it does not profess to be simple. I can only say that it is quite as simple as any scheme for representation of minorities can ever be. The system of a single vote, which is an essential part of it, is said to work satisfactorily in places where it is already in existence, and it is easy of apprehension by the electors. It would have several great advantages. It would bring the classes specially concerned within the popular electorate, and so meet the criticisms of the Hindus, to which you refer in paragraph 30; second. It establishes a principle that would be an answer to further claims for representation by special classes or associations; third. It would ensure the persons chosen being actually drawn from the locality that the Electoral College represents; fourth. It would provide a healthy stimulus to interest in local self-government by linking up local bodies (Rural and Municipal Boards) more closely with the Provincial Legislative Councils. To this end it might be provided that the candidate for election to the Provincial Council must himself have taken part in local administration.

15. The due representation of the Indian mercantile community, on which you touch in paragraph 31 of your letter, might be included in the scheme, if the commercial classes fail to organise themselves, as you suggest that they may arrange to do, in Associations similar to the European Chambers of Commerce.

16. To meet possible objections founded on the difficulty of bringing together Electoral Colleges to vote in one place, I may add that this is not contemplated in the scheme. You refer, at the close of paragraph 28, to the success of the Calcutta University in organising the election of Fellows by a large number of graduates scattered all over India. The votes of the electors in each College could, I imagine, be collected in the same manner without requiring them to assemble at a common centre.

17. From the electoral structure, I now turn to the official element in the constitution of Provincial Legislative Councils, dealt with in paragraphs 33 to 56 of your letter. I first observe that in all of them you provide for a bare official majority, but you contemplate that in ordinary circumstances, only the number of official members necessary for the transaction of business shall be summoned to attend. The first question, therefore, is the necessity of maintaining in these Councils the majority of officials.

18. We have before us, to begin with, the leading fact that in the important Province of Bombay there is in the Council, as at present composed, no official majority, and that the Bombay Government, even in the smaller of its alternative schemes presented to Your Excellency in Council, is willing to dispense with such a majority. Considering the character of the legislation ordinarily coming before a Provincial Council, is it not possible, with due representation given to the various classes and interests in the community, to do without a majority of officials? After careful consideration, I have come to the conclusion that in Provincial Councils such a majority may be dispensed with, provided that a substantial official majority is permanently maintained in the Imperial Legislative Council.

19. I do not conceal from myself the risks in such an arrangement. The non-official majority may press legislation of a character disapproved by the Executive Government. This should be met by the exercise of the power to withhold

assent possessed by the Head of the Government. Then, although the Local Legislature is vested with power to make laws for the peace and good government of the territories constituting the Province, still the range of subjects is considerably narrowed by the statutory exclusions now in force. Thus, for example, the Local Legislature may not, without the previous sanction of the Governor-General, make or take into consideration any law—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 regulating currency or postal or telegraph business; or altering in any way the Indian Penal Code; or affecting religion or religious rites or usages; or affecting the discipline or maintenance of Naval or Military forces; or dealing with patents or copyrights, or the relations of the Government with foreign Princes or States.

It is difficult to see how any measure of such urgency, that delay might work serious mischief, can come before a Provincial Council; for, mere opposition to a useful and beneficial project would not come within this description. On the other hand, and perhaps more often, there may be opposition on the part of the non-official Members to legislation that the Government desires. With a Council, however, representing divergent interests, and realising, together with its increased powers, its greater responsibility, a combination of all the non-official Members to resist a measure proposed by the Government would be unlikely, and some non-officials at least would probably cast their votes on the side of the Government. If, however, a combination of all the 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.

20. Your Excellency will recall, since you came into the authority of Governor-General, an Act proposed by a Local Government which a representative Legislative Council would almost certainly have rejected. Your Excellency's action in withholding assent from the Act shows that, in your judgment, it would have been an advantage if the Local Government had been induced by a hostile vote to reconsider their Bill. If, in spite of such hostile vote, the comparatively rare case should arise where immediate legislation were still thought

absolutely necessary, then the Constitution, as it at present stands, provides an adequate remedy. The Governor-General in Council to-day possesses a concurrent power to legislate for any Province, and though I strongly favour a policy that would leave to each Local Legislature the duty of providing for its own requirements, still I recognise in this power an ample safe-guard, should, under exceptional circumstances, a real demand for its exercise arise.

21. This decision will make it necessary to modify to some extent the constitution of the several Provincial Councils proposed by you, and will enable you to secure a wider representation. Subject to consideration of these details (which will not involve the postponement of the proposed Parliamentary legislation for the amendment of the Indian Councils Act, 1892, and for other purposes), I am ready to accept generally the proposals for numbers and the constitution of the Councils set forth in your letter.

22. Your proposals in relation to the Imperial Legislative Council are necessarily entitled to the greatest weight. I am glad to find myself able to accept them practically in their entirety. 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 it 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 this must outweigh the grave disadvantages that induce us to dispense with it in the Provincial Legislatures. It need not be in any sense an overwhelming majority, and this Your Excellency does not seek ; but it must be substan-

tial, as it is certainly desirable that the Governor-General should be removed from the conflict of the division list, and that the fate of any measure or resolution should not rest on his vote alone.

23. I have already dealt in the earlier paragraphs of this Despatch with the elective principle, and it will be for Your Excellency to consider how far the popular electorate can be utilised for the return to your Legislative Council of landholders and Mahomedans. Some modifications of the scheme suggested for the Provinces will no doubt be necessary and the Electoral Colleges would probably have to be on the basis of Provinces and not of Divisions, and the case of the Central Provinces would probably (in view of the disappearance of Advisory Councils) have to be met by nomination until a Local Legislature is provided.

24. I accept your proposals for securing the representation of commerce, both European and Indian.

25. I also agree to your proposals as to nomination but it will be a matter for your consideration whether, to meet the requirement of a substantial official majority, the number of nominated officials should not be raised.

26. Your plan for securing occasional representation for the interests of minorities such as the Sikhs, the Parsis, the Indian Christians, the Buddhists, and the Domiciled Community meets with my entire approval, and I am in complete sympathy with your intention sometimes to appoint one or two experts in connection with legislation pending before Council.

37. I turn to the proposals contained in paragraphs 57-59 of your Despatch affording further facilities for debate. This subject, as Your Excellency remarks, was not dealt with in the earlier correspondence out of which your present proposals arise ; but I am entirely in accord with Your Excellency's Government in regarding it as of cardinal importance.

28. The existing law, which confines discussion, except on the occasion of the Annual Financial Statement, to the Legislative proposals actually before the Council, imposes a restriction, that I am convinced, is no longer either desirable or necessary. The plan of Your Excellency's Government contemplates a wide relaxation of this restriction, and in sanctioning it generally, I am confident that these increased facilities, judiciously used, will be pronounced of the greatest advantage, not

only by Councils and those whom they represent, but also by Government who will gain additional opportunities both of becoming acquainted with the drift of public opinion and of explaining their own actions.

29. Taking the proposals in detail, I agree that the Resolutions to be moved should take the form of recommendations to Government, having only such force and effect as Government after consideration shall deem due to them. The introduction and discussion of Resolutions should not extend to subjects removed from the cognizance of Legislative Councils by Statute, and must obviously be subject to rules and restrictions. These, as Your Excellency observes, may best be laid down, in the first place, when the rules of business are drawn up, and developed thereafter as experience may show to be desirable. Meanwhile, I agree generally with the conditions suggested in paragraph 59 of your Despatch. I must, however, remark upon the first of the suggested conditions that isolated incidents of administration, or personal questions, may be, and often are, at the same time matters of public and general importance. It would, in my opinion, be sufficient to lay down that Resolutions must relate to matters of public and general importance, inasmuch as the President of the Council will have the power of deciding finally whether any proposed Resolution does, or does not, satisfy this condition.

30. In respect of rules on the asking of questions, I have come to the conclusion that, subject to such restriction as may be found requisite in practice, and to the existing general powers of the President, the asking of supplementary questions should be allowed. Without these, a system of formal questions met by formal replies must inevitably tend to become unreal and ineffective, and in an assembly in which, under proper safeguards, free discussion and debate is permitted and encouraged, there can be no sufficient reason for prohibiting that method of eliciting information and expressing indirectly the opinions and wishes of the questioners.

31. Special importance attaches to rules as to the discussion of the Imperial Budget and I recognise with much satisfaction the liberality of the proposals that you have placed before me. The changes under this head constitute a notable step in the direction of giving to the representatives of Indian opinion a part in the most important administrative operation of the political year. I approve the dates suggested for the

promulgation of the Financial Statement and for the beginning and ending of its discussion in Committee, and I anticipate valuable results from the knowledge which your Government will acquire in these debates of the views of those whom the proposed measures will chiefly and directly affect, and which it will be able to utilise in shaping its final financial proposals for the year. Generally, also, I approve the rules sketched in paragraph 64 for the regulation of discussions in Committee and of the moving of Resolutions ; and I concur in your opinion that the form of procedure should be such as to show clearly that the power of executive action resides exclusively in Government, who, while inviting the free expression of opinion in the form of Resolutions do not thereby forego any part of the power and responsibility which has been, and must continue to be, in their hands.

32. Your proposals for the discussion of the Provincial Budgets seem entirely sound. As in the case of the Imperial Budget, so with respect to the Provincial Finances, I observe with satisfaction that provision is made for full and free discussion and for the consideration by Government of the results of such discussion before the final proposals for the year are framed ; and I believe that under the system suggested by you the Local Governments will retain that ultimate control over the financial policy of their Provinces, without which not only the authority of the Government of India but also that of the Secretary of State in Council and of Parliament would inevitably disappear.

33. Your Excellency claims for your scheme as a whole, "that it will really and effectively associate the people of India in the work not only of occasional legislation, but of actual every-day administration." The claim is abundantly justified ; yet the scheme is not and hardly pretends to be, a complete representation of the entire body of changes and improvements in the existing system, that are evidently present to the minds of some of those whom your Government has consulted and that, to the best of my judgment, are now demanded by the situation described in the opening words of the Despatch. It is evidently desirable, Your Excellency will agree, to present our reformed constitutional system as a whole. From this point of view, it seems necessary to attempt without delay an effectual advance in the direction of local self-government.

The principles that should inspire and regulate measures

with this aim can hardly be laid down in sounder or clearer terms than in the Resolution published by the Government of India on the 18th May, 1882. I do not know where to look for a better expression of the views that should govern our policy under this important head, and I will venture to quote some passages in this memorable deliverance. Explaining the proposal for local self-government of that date the Government of India place themselves on ground which may well be our ground also. "It is not primarily," they say, "with a view to improvement in administration that this measure is put forward and supported. It is chiefly desirable as an instrument of political and popular education." And again, "there appears to be great force in the argument that, so long as the chief Executive officers are, as a matter of course, Chairmen of the Municipal and District Committees there is little chance of these Committees affording any effective training to their members in the management of local affairs, or of the non-official members taking any real interest in local business. The non-official members must be led to feel that real power is placed in their hands and that they have real responsibilities to discharge." This anticipation has been, to some extent, warranted by experience. Funds have not existed for an efficient executive staff. The official element within the local bodies has been in many places predominant. Non-official members have not been induced, to such an extent as was hoped, to take a real interest in local business, because, their powers and their responsibilities were not real. If local self-government has so far been no marked success as a training ground, it is mainly for the reason that the constitution of the local bodies departed from what was affirmed in the Resolution to be "the true principle," that "the control should be exercised from without rather than from within, the Government should revise and check the acts of local bodies, but not dictate them." I make no doubt that the Government of India to-day will affirm and actively shape their policy upon the principle authoritatively set forth by their predecessors in 1882 :—"It would be hopeless to expect any real development of self-government if the local bodies were subject to check and interference in matters of detail ; and the respective powers of Government and of the various local bodies should be clearly and distinctly defined by statute, so that there may be as little risk of friction and misunderstanding as possible. Within the limits to be laid down in each case, however, the Governor-General in Council is anxious that the fullest possible liberty of action should be given to Local bodies."

Your Excellency will recall that the Resolution from which I have quoted treats the sub-division, taluka, or the tahsil as the smallest administrative unit. It is a question whether it would not be wise policy to go further. The village in India (generally) has been the fundamental and indestructible unit of the social system, surviving the downfall of dynasty after dynasty. I desire Your Excellency in Council to consider the best way of carrying out a policy that would make the village a starting point of public life.

34. The encouragement of local self-government being an object of this high importance in the better organisation of our Indian system, it remains to be considered how far in each province it would be desirable to create a department for dealing exclusively with these local bodies, guiding and instructing them, and correcting abuses, in a form analogous to the operations of the Local Government Board in this country. That, however, is a detail, though a weighty one, in a question on which, as a whole, I confidently expect that Your Excellency will find much light in the forthcoming report of the Royal Commission on Decentralisation.

35. In the closing page of your letter, Your Excellency raises a question of a high order of importance. You recognise, as you inform me, that "the effect of our proposals will be to throw a greater burden on the heads of Local Governments, not only by reason of the actual increase of work caused by the long sittings of the Legislative Councils, but also because there will be considerable responsibility in dealing with the recommendations of those Councils." You then suggest the possibility that experience may show it to be desirable to strengthen the hands of the Lieutenant-Governors in the large Provinces by the creation of Executive Councils and of assisting the Governors of Madras and Bombay by enlarging the Executive Councils that now exist in these Presidencies.

36. I have to observe, with repect to Bombay and Madras that the original scheme under the Act of 1833 provided for the appointment of three members to each of the Executive Councils in those Presidencies. It seems conformable to the policy of this Despatch to take power to raise to four the number of Members of each of these Executive Councils, of whom one, at least, should be an Indian. I would not, however, propose to make this a provision of a statute, but would leave it to practice and usage growing into confirmed rule.

37. As to the creation of Executive Councils in the larger Provinces, I am much impressed by both of the considerations that weigh with Your Excellency in throwing out the suggestion and more especially by the second of them. All will depend for the wise and efficient despatch of public business, upon right relations between the supreme head of the executive power in the province and the Legislative Council. The question is whether these relations will be the more likely to adjust themselves effectively, if the judgment of the Lieutenant-Governor is fortified and enlarged by two or more competent advisers, with an official and responsible share in his deliberations.

38. Your Excellency anticipates longer sittings of the Legislative Council with increased activity of discussion, and the effectual representation of provincial opinion and feeling, as a guide to executive authority is the central object of the policy of Your Excellency's Despatch. The aim of that policy is two-fold ; at once to enable Government the better to realise the wants, interests and sentiment of the governed, and, on the other hand, to give the governed a better chance of understanding, as occasion arises, the case for the Government, against the misrepresentations of ignorance and malice. That double object, as Your Excellency fully appreciates, is the foundation of the whole system in India, and all over the world, of administration and legislation either through, or subject to, the criticism of deliberative bodies, whether great or small.

39. The suggestion for the establishment of Executive Councils for Lieutenant-Governors, as Your Excellency is aware, is not new. A really new problem or new solution is in truth surprisingly uncommon in the history of British rule in India, and of the political or administrative controversies connected with it. Indeed, without for an instant undervaluing the supreme necessity for caution and circumspection at every step and motion in Indian Government, it may be open to some to question whether in some of these controversies before now, even an erroneous conclusion would not have been better than no conclusion at all. The issue we are now considering was much discussed in obedience to the orders of the Secretary of State in 1868, by men of the highest authority on Indian questions, and I do not conceive that after all the consideration given to the subject then and since, further consultations could be expected to bring any new argument of weight and substance into view.

40. It has sometimes been argued that the creation of Executive Councils in the major Provinces would necessarily carry with it, as in Bombay and Madras, the appointment in each case of a Governor from home. This would indeed be a "large departure from the present system of administration," almost amounting to the confusion and overthrow of that system, reposing as it does upon the presence, at the head of the highest administrative posts, of officers trained and experienced in the complex requirements and diversified duties of the Indian Government. I take for granted, therefore, that the Head of the Province will be, as now, a Member of the Indian Civil Service appointed in such mode as the law prescribes.

41. I propose, therefore, to ask for power to create Executive Councils from time to time as may be found expedient. In this connection we cannot ignore the necessity of securing that a constitutional change, designed both to strengthen the authority and to lighten the labours of the head of the Province, shall not impair the prompt exercise of executive power. It will, therefore, be necessary to consider most carefully what degree of authority over the Members of his Council in case of dissent should be vested in the Head of a Province in which an Executive Council may be called into being. It was recognised by Parliament more than a century ago that the Governors of Madras and Bombay should be vested with a discretionary power of overruling these Councils "in cases of high importance, and essentially affecting the public interest and welfare." A power no less than this will obviously be required in the Provinces in which a Council may come to be associated with the Head of the Executive, and I shall be glad if you will favour me with your views upon its definition. Your Excellency will readily understand that the use of such a power, while not to be evaded in the special cases for which it is designed, is not intended for a part of the ordinary mechanism of Government. Rather, in the language of the historical Despatch of 1834, it is my belief that, "in a punctual, constant, and even fastidious adherence to your ordinary rules of practice, you will find the best security, not only for the efficiency, and also for the despatch of your legislative proceedings."

G.

EXTRACTS FROM LORD MORLEY'S SPEECH IN THE HOUSE OF LORDS ON DECEMBER 17, 1908.

In the course of a long speech on the proposed constitutional reforms LORD MORLEY said :—

I do not think I need go through all the contents of the despatch of the Governor-General and my reply, containing the plan of His Majesty's Government, which will be in your Lordship's hands very shortly. I think your Lordships will find in them a well-guarded expansion of principles that were recognised in 1861, and are still more directly and closely connected with us now by the action of LORD LANSDOWNE in 1892. I have his words, and they are really as true a key to the papers in our hands as they were to the policy of the noble Marquess at that date. He said—

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

Then you will find that another Governor-General in Council in India whom I greatly rejoice to see still among us, my noble friend the MARQUESS OF RIPON, said in 1882—

"It is not primarily with a view to the improvement of administration, that this measure is put forward ; it is chiefly desirable as an instrument of political and popular education."

The doctrines announced by the noble Marquess opposite and by my noble friend, are the standpoint from which we approached the situation and framed our proposals.

I will not trouble the House by going through the history of the course of the proceedings—that will be found in the Papers. I believe the House will be satisfied, just as I am satisfied, with the candour and patience that have been bestowed on the preparation of the scheme in India, and I hope I may add it has been treated with equal patience and candour here, and the end of it is that, though some points of difference arose, though the Government of India agreed to drop certain points of their scheme—the Advisory Councils, for example—on the whole

there was remarkable agreement between the Government of India and myself as to the best way of dealing with these proceedings as to Legislative Councils. I will enumerate the points very shortly, and though I am afraid it may be tedious, I hope your Lordships will not find the tedium unbearable, because, after all, what you are beginning to consider to-day, is the turning over of a fresh leaf in the history of British responsibility to India. There are only a handful of distinguished Members of this House who understand the details of Indian Administration, but I will explain them as shortly as I can.

This is a list of the powers which we shall have to acquire from Parliament when we bring in a Bill. This is the first power we shall come to Parliament for. At present the maximum and minimum numbers of Legislative Councils are fixed by statute. We shall come to Parliament to authorise an increase in the numbers of those Councils, both the Viceroy's Council and the Provincial Councils. Secondly the Members are now nominated by the head of the Government, either the Viceroy or the Lieutenant-Governor. No election takes place in the strict sense of the term. The nearest approach to it is the nomination by the Viceroy, upon the recommendation of a majority of voters of certain public bodies. We do not propose to ask Parliament to abolish nomination. We do propose to ask Parliament in a very definite way, to introduce election working alongside of nomination with a view to the aim admitted in all previous schemes, including that of the noble Marquess opposite—the due representation of the different classes of the community. Third. The Indian Councils Act of 1892 forbids—and this is no doubt a most important prohibition—either resolutions or divisions of the Council in financial discussions. We shall ask Parliament to repeal this prohibition. Fourth. We shall propose to invest Legislative Councils with power to discuss matters of public and general importance, and to pass recommendations or resolutions to the Indian Government. That Government will deal with them as carefully, or as carelessly, as they think fit—just as a Government does here. Fifth. To extend the power that at present exists, to appoint a Member of the Council to preside. Sixth. Bombay and Madras have now Executive Councils, numbering two. I propose to ask Parliament to double the number of ordinary Members. Seventh. The Lieutenant-Governors have no Executive Council. We shall ask Parliament to sanction the creation of such Councils, consisting of

not more than two ordinary Members and to define the power of the Lieutenant-Governor to overrule his Council. I am perfectly sure there may be differences of opinion as to these proposals. I only want your Lordships to believe that they have been well thought out, and that they are accepted by the Governor-General in Council.

There is one point of extreme importance which, no doubt, though it may not be over-diplomatic for me to say so at this stage, will create some controversy. I mean the matter of the official majority. The house knows what an official majority is. It is a device by which the Governor-General, or the Governor of Bombay or Madras, may secure a majority in his Legislative Council by means of officials and nominees. And the officials, of course, for very good reasons, just like a Cabinet Minister or an Under-Secretary, whatever the man's private opinion may be, would still vote, for the best of reasons, and I am bound to think with perfect wisdom, with the Government. But anybody can see how directly, how palpably, how injuriously, an arrangement of this kind tends to weaken, and I think I may say even to deaden, the sense both of trust and responsibility in the non-official Members of these Councils. Any body can see how the system tends to throw the non-official Member into an attitude of peevish, sulky, permanent opposition, and, therefore, has an injurious effect on the minds and characters of Members of these Legislative Councils.

I know it will be said—I will not weary the House by arguing it, but I only desire to meet at once the objection that will be taken—that these Councils will, if you take away the safeguard of the official majority, pass any number of wildcat Bills. The answer to that is that the head of the Government can veto the wildcat Bills. The Governor-General can withhold his assent, and the withholding of the assent of the Governor-General is no defunct power. Only the other day, since I have been at the India Office, the Governor-General disallowed a Bill passed by a Local Government which I need not name, with the most advantageous effect. I am quite convinced that if that Local Government had had an unofficial majority the Bill would never have been passed, and the Governor-General would not have had to refuse his assent. But so he did, and so he would if these gentlemen, whose numbers we propose to increase and whose powers we propose to widen, chose to pass wildcat Bills. And it must be re-

membered that the range of subjects within the sphere of Provincial Legislative Councils is rigorously limited by statutory exclusions. I will not labour the point now. Anybody who cares, in a short compass, can grasp the argument, of which we shall hear a great deal, in paragraphs 17 to 20 of my reply to the Government of India, in the papers that will speedily be in your Lordship's hands.

There is one proviso in this matter of the official majority, in which your Lordships may, perhaps, find a surprise. We are not prepared to divest the Governor-General in his Council of an official majority. In the Provincial Councils we propose to dispense with it, but in the Viceroy's Legislative Council we propose to adhere to it. Only let me say that here we may seem to lag a stage behind the Government of India themselves —so little violent are we—because that Government say, in their despatch—

"On all ordinary occasions we are ready to dispense with an official majority in the Imperial Legislative Council, and to rely on the public spirit of non-official Members to enable us to carry on the ordinary work of legislation."

My Lords, that is what we propose to do in the Provincial Councils. But in the Imperial Council we consider an official majority essential. It may be said that this is a most flagrant logical inconsistency. So it would be, on one condition. If I were attempting to set up a Parliamentary system in India, or if it could be said that this chapter of reforms led directly or necessarily up to the establishment of a Parliamentary system in India, I, for one, would have nothing at all to do with it. I do not believe—it is not of very great consequence what I believe, because the fulfilment of my vaticinations could not come off very soon—in spite of the attempts in Oriental countries at this moment, interesting attempts to which we all wish well, to set up some sort of Parliamentary system—it is no ambition of mine, at all events, to have any share in beginning that operation in India. If my existence, either officially or corporeally, were prolonged twenty times longer than either of them is likely to be, a Parliamentary system in India is not at all the goal to which I would for one moment aspire.

One point more. It is the question of an Indian Member on the Viceroy's Executive Council. The absence of an Indian Member from the Viceroy's Executive Council can no longer, I think, be defended. There is no legal obstacle or statutory

exclusion. The Secretary of State can, to-morrow, if he likes, if there be a vacancy on the Viceroy's Council, recommend His Majesty to appoint an Indian Member. All I want to say is that, if, during my tenure of office, there should be a vacancy on the Viceroy's Executive Council, I should feel it a duty to tender my advice to the King that an Indian Member should be appointed. If it were on my own authority only, I might hesitate to take that step, because I am not very fond of innovations in dark and obscure ground, but here I have the absolute and the zealous approval and concurrence of LORD MINTO himself. It was at LORD MINTO's special instigation that I began to think seriously of this step. Anyhow, this is how it stands, that you have at this moment a Secretary of State and a Viceroy who both concur in such a recommendation. I suppose—if I may be allowed to give a personal turn to these matters—that LORD MINTO and I have had as different experience of life and the world as possible, and we belong, I daresay, to different schools of national politics, because LORD MINTO was appointed by the party opposite. It is a rather remarkable thing that two men, differing in this way in political antecedents, should agree in this proposal. We need not discuss what particular portfolio should be assigned to an Indian Member. That will be settled by the Viceroy on the merits of the individual. The great object, the main object, is that the merits of individuals are to be considered and to be decisive, irrespective and independent of race and colour.

We are not altogether without experience, because a year ago, or somewhat more, it was my good fortune to be able to appoint two Indian gentlemen to the Council of India sitting at the India Office. Many apprehensions reached me as to what might happen. So far, at all events, those apprehensions have been utterly dissipated. The concord between the two Indian Members of the Council and their colleagues has been unbroken, their work has been excellent, and you will readily believe me when I say that the advantage to me of being able to ask one of these two gentlemen to come and tell me something about an Indian question from an Indian point of view, is enormous. I find in it a chance of getting the Indian angle of vision, and I feel sometimes as if I were actually in the streets of Calcutta.

I do not say there are not some arguments on the other side. But this, at all events, must be common-sense—for the Governor-General and the European Members of his Council to have at their side a man who knows the country well, who

belongs to the country and who can give them the point of view of an Indian. Surely, my Lords, that cannot but prove an enormous advantage.

Let me say further, on the Judicial Bench in India everybody recognises the enormous service that it is to have Indian Members of abundant learning, and who add to that abundant learning a complete knowledge of the conditions and life of the country. I propose at once, if Parliament agrees, to acquire powers to double the Executive Council in Bombay and Madras, and to appoint at least one Indian Member in each of those cases, as well as in the Governor-General's Council. Nor, as the Papers will show, shall I be backward in advancing towards a similar step, as occasion may require, in respect of at least four of the major Provinces.

I wish that this chapter had been opened at a more fortunate moment ; but as I said when I rose, I repeat—do not let us for a moment take too gloomy a view. There is not the slightest occasion. None of those who are responsible take gloomy views. They know the difficulties, they are prepared to grapple with them. They will do their best to keep down mutinous opposition. They hope to attract that good will which must, after all, be the real foundation of our prosperity and strength in India. We believe that this admission of the Indians to a larger and more direct share in the Government of their country and in all the affairs of their country without for a moment taking from the central power its authority, will fortify the foundations of our position. It will require great steadiness, constant pursuit of the same objects, and the maintenance of our authority, which will be all the more effective if we have, along with our authority, the aid and assistance, in responsible circumstances, of the Indians themselves.

Military strength, material strength, we have in abundance. What we still want to acquire is moral strength—moral strength in guiding and controlling the people of India in the course on which time is launching them. I should like to read a few lines from a great orator about India. It was a speech delivered by MR. BRIGHT in 1858, when the Government of India Bill was in another place. MR. BRIGHT said—

"We do not know how to leave India, and therefore let us see if we know how to govern it. Let us abandon all that system of calumny against Natives of India which has lately prevailed. Had that people not been docile, the most governable race in the world, how could you have main-

tained your power there for 100 years? Are they not industrious, are they not intelligent, are they not, upon the evidence of the most distinguished men the Indian service ever produced, endowed with many qualities which make them respected by all Englishmen who mix with them? * * * I would not permit any man in my presence without rebuke to indulge in the calumnies and expressions of contempt which I have recently heard poured forth without measure upon the whole population of India. * * * The people of India do not like us, but they would scarcely know where to turn if we left them. They are sheep, literally without a shepherd."

However, that may be, we at least at Westminster here have no choice and no option. As an illustrious Member of this House wrote—

"We found a society in a state of decomposition, and we have undertaken the serious and stupendous process of reconstructing it."

MACAULAY, for it was he, said—

"India now is like Europe in the fifth century."

Yes, a stupendous process indeed. The process has gone on with marvellous success, and if we all, according to our various lights, are true to our colours, that process will go on. Whatever is said I for one—though I am not what is commonly called an Imperialist—so far from denying, I most emphatically affirm, that for us to preside over this transition from the fifth European century in some parts, in slow, uneven stages, up to the twentieth—so that you have before you all the centuries at once as it were—for us to preside over that, and to be the guide of peoples in that condition, is, if conducted with humanity and sympathy, with wisdom, with political courage, not only a human duty, but what has been often and most truly called one of the most glorious tasks ever confided to any powerful State in the history of civilised mankind.

H

EXTRACTS FROM LORD MORLEY'S SPEECH IN THE HOUSE OF LORDS ON THE 4TH OF MARCH, 1909.

In moving the Second Reading of the Indian Councils Bill LORD MORLEY, in the course of a long speech, said—

The Bill is a short one, and will speak for itself; I shall be brief in referring to it, for in December last I made what was practically a Second-Reading speech. I may point out that there are two rival schools, and that the noble Lord opposite (*Lord Curzon*) may be said to represent one of them.

There are two rival schools, one of which believes that better government of India depends on efficiency, and that efficiency is in fact the end of our rule in India. The other school, while not neglecting efficiency, looks also to what is called political concessions. I think I am doing the noble Lord no injustice in saying that during his eminent Viceroyalty he did not accept the necessity for political concessions, but trusted to efficiency. I hope it will not be bad taste to say in the noble Lord's presence that you will never send to India, and you have never sent to India a Viceroy his superior, if, indeed, his equal, in force of mind, in unsparing remorseless industry, in passionate and devoted interest in all that concerns the well-being of India, with an imagination fired by the grandeur of the political problem India presents—you never sent a man with more of all these attributes than when you sent LORD CURZON. But splendidly successful as his work was from the point of view of efficiency, he still did leave in India a state of things when we look back—not in consequence of his policy—not completely satisfactory such as would have been the crowning of a brilliant career.

I am as much for efficiency as the noble Lord, but I do not believe—and this is the difference between him and myself—that you can have true, solid, endurable efficiency without what are called political concessions. I know risks are pointed out. The late LORD SALISBURY, speaking on the last Indian Councils Bill, spoke of the risk of applying occidental machinery in India. Well, we ought to have thought of that before we applied occidental education; we applied that, and occidental machinery must follow. These Legislative Councils once called into existence, it was inevitable that you would have gradually, in LORD SALISBURY'S own phrase, to popularise them so as to bring them into harmony with the dominant sentiments of the people in India. The Bill of 1892 admittedly contained the elective principle, and now this Bill extends that principle. The noble Lord (VISCOUNT CROSS) will remember the Bill of 1892, of which he had charge in the House of Commons. I want the House to be good enough to follow the line taken by MR. GLADSTONE because, I base myself on that. There was an amendment moved and there was going to be a division, and MR. GLADSTONE begged his friends not to divide, because he said it was very important that we should present a substantial unity to India. This is upon the question of either House considering a Bill like the

Bill that is now on the Table—a mere skeleton of a Bill if you like. I see it has been called vague and sketchy. It cannot be anything else on the principle explained by MR. GLADSTONE :—

"It is the intention of the Government (that is, the Conservative Government) that a serious effort shall be made to consider carefully those elements which India in its present condition may furnish for the introduction into the Councils of India of the elective principle. If that effort is seriously to be made, by whom is it to be made? I do not think it can be made by this House, except through the medium of empowering provisions. The best course we could take would be to commend to the authorities of India what is a clear indication of the principles on which we desire them to proceed. It is not our business to devise machinery for the purpose of Indian Government. It is our business to give to those who represent Her Majesty in India ample information as to what we believe to be sound principles of Government: and it is, of course, the function of this House to comment upon any case in which we may think they have failed to give due effect to those principles."

I only allude to MR. GLADSTONE'S words in order to let the House know that I am taking no unusual course in leaving the bulk of the work, the details of the work, to the Government of India, and discussion, therefore, in this House and in Parliament will necessarily be not upon details. But no doubt it is desirable that some of the heads of the regulations, rules, and proclamations to be made by the Government of India under sanction of the India Office should be more or less placed within the reach and knowledge of the House so far as they are complete. The principles of the Bill are in the Bill and will be affirmed, if your Lordships are pleased to read it a second time, and the Committee points, important as they are, can well be dealt with in Committee. The view of MR. GLADSTONE was cheerfully accepted by the House then, and I hope it will be accepted by your Lordships to-day.

There is one very important chapter in these regulations which I think now on the Second Reading of the Bill, without waiting for Committee, I ought to say a few words to your Lordships about—I mean the Mahomedans. That is a part of the Bill and scheme which has no doubt attracted a great deal of criticism and excited a great deal of feeling in that very important community. We suggested to the Government of India a certain plan. We did not prescribe it, we did not order it, but we suggested and recommended this plan for their consideration—no more than that. It was the plan of a mixed or composite electoral college, in which Mahomedans and Hindus should pool their votes, so to say. The wording of the recom-

mendation in my Despatch was, as I soon discovered, ambiguous—a grievous defect, of which I make bold to hope I am not very often in public business guilty. But, to the best of my belief, under any construction the plan of Hindus and Mahomedans voting together in a mixed and composite electorate would have secured to the Mahomedan electors, wherever they were so minded, the chance of returning their own representatives in their due proportion. The political idea at the bottom of that recommendation which has found so little favour was that such composite action would bring the two great communities more closely together and this idea of promoting harmony was held by men of very high Indian authority and experience who were among my advisers at the India Office. But the Mahomedans protested that the Hindus would elect a pro-Hindu upon it, just as I suppose in a mixed college of say seventy-five Catholics and twenty-five Protestants voting together the Protestants might suspect that the Catholics voting for the Protestant would choose what is called a Romanising Protestant and as little of a Protestant as they could find. Suppose the other way. In Ireland there is an expression, a "shoneen" Catholic—that is to say, a Catholic who, though a Catholic is too friendly with English Conservatism and other influences which the Nationalists dislike. And it might be said, if there were seventy-five Protestants against twenty-five Catholics, that the Protestants when giving a vote in the way of Catholic representation would return "shoneens." I am not going to take your Lordship's time up by arguing this to-day. With regard to schemes of proportional representation, as Calvin said of another study, "excessive study either finds a man mad or makes him so." At any rate, the Government of India doubted whether our plan would work, and we have abandoned it. I do not think it was a bad plan, but it is no use, if you are making an earnest attempt in good faith at a general pacification, out of parental fondness for a clause interrupting that good process by sitting too tight.

The Mahomedans demand three things. I had the pleasure of receiving a deputation from them and I know very well what is in their minds. They demand the election of their own representatives to these councils in all the stages, just as in Cyprus, where, I think, the Mahomedans vote by themselves. They have nine votes and the non-Mahomedans have three, or the other way about. So in Bohemia, where

the Germans vote alone and have their own register. Therefore we are not without a precedent and a parallel for the idea of a separate register. Secondly, they want a number of seats in excess of their numerical strength. Those two demands we are quite ready and intend to meet in full. There is a third demand that, if there is a Hindu on the Viceroy's Executive Council—a subject on which I will venture to say a little to your Lordships before I sit down—there should be two Indian Members on the Viceroy's Council and that one should be a Mahomedan. Well, as I told them and as I now tell your Lordships, I see no chance whatever of meeting their views in that way to any extent at all.

To go back to the point of the registers, some may be shocked at the idea of a religious register at all, of a register framed on the principle of religious belief. We may wish,—we do wish—certainly I do—that it were otherwise. We hope that time, with careful and impartial statesmanship, will make things otherwise. Only let us not forget that the difference between Mahomedanism and Hinduism is not a mere difference of articles of religious faith. It is a difference in life, in tradition, in history, in all the social things as well as articles of belief that constitute a community. Do not let us forget what makes it interesting and even exciting. Do not let us forget that, in talking of Hindus and Mahomedans, we are dealing with and brought face to face with vast historic issues, dealing with some of the very mightiest forces that through all the centuries and ages have moulded the fortunes of great States and the destinies of countless millions of mankind. Thoughts of that kind are what give to Indian politics and to Indian work extraordinary fascination, and at the same time impose the weight of no ordinary burden.

Now I will come to the question which, I think, has excited, certainly in this country, more interest than anything else in the scheme before you—I mean the question of an Indian Member on the Viceroy's Executive Council. The noble Marquess said here the other day that he hoped an opportunity would be given for discussing it. Whether it is in order or not—I am too little versed in your Lordships' procedure to be quite sure—but I am told that the rules of order in this House are of an elastic description and that I shall not be trespassing beyond what is right, if I introduce the point to-night. I thoroughly understand the noble Marquess's anxiety for a chance of discussion. It is quite true, and the

House should not forget that it is quite true, that this question is in no way whatever touched by the Bill. If this Bill were rejected by Parliament it would be a great and grievous disaster to peace and contentment in India, but it would not prevent the Secretary of State the next morning from advising His Majesty to appoint an Indian Member. The Members of the Viceroy's Executive Council are appointed by the Crown.

The noble Marquess the other day fell into a slight error, if he will forgive me for saying so. He said that the Government of India had used cautious and tentative words indicating that it would be premature to decide at once this question of the Indian Member until after further experience had been gained. I think the noble Marquess must have lost his way in the mazes of that enormous Blue-book which, as he told us, caused him so much inconvenience and added so much to his excessive luggage during the Christmas holidays. The Despatch, as far as I can discover, is silent altogether on the topic of the Indian Member of the Viceroy's Council, and deals only with the Councils of Bombay and Madras and the proposed Councils for the Lieutenant-Governorships.

Perhaps I might be allowed to remind your Lordships of the Act of 1833—certainly the most extensive measure of Indian government between Mr. Pitt's famous Act of 1784 and Queen Victoria's assumption of the government of India. There is nothing so important as that Act. It lays down in the broadest way possible the desire of Parliament of that day that there was to be no difference in appointing to offices in India between one race and another, and the covering Despatch wound up by saying that—

"For the future, fitness is to be the criterion of eligibility."

I need not quote the famous paragraph in the Queen's Proclamation of 1858, for every Member of the House who takes an interest in India knows that by heart. Now, the noble Marquess says that his anxiety is that nothing shall be done to impair the efficiency of the Viceroy's Council. I share that anxiety with all my heart. I hope the noble Marquess will do me the justice to remember that in these plans I have gone beyond the Government of India in resolving that a permanent official majority shall remain in the Viceroy's Council. LORD MACDONELL said the other day :—

"I believe you cannot find any individual Native gentleman who is enjoying general confidence who would be able to give advice and assistance to the Governor-General in Council."

It has been my lot to be twice Chief Secretary for Ireland and I do not believe I can truly say I ever met in Ireland a single individual native gentleman who "enjoyed general confidence." And yet I received at Dublin Castle most excellent and competent advice. Therefore I will accept that statement from the Noble Lord. The question is whether there is no one of the 300 millions of the population of India who is competent to be the officially-constituted adviser of the Governor-General in Council in the administration of Indian affairs. You make an Indian a Judge of the High Court, and Indians have even been acting Chief Justices. As to capacity who can deny that they have distinguished themselves as administrators of Native States, where far more demand is made on their resources, intellectual and moral? It is said that the presence of an Indian Member would cause restraint in the language of discussion. For a year and a half I have had two Indians at the Council of India, and I have never found the slightest restraint whatever.

Then there is the question, what are you going to do about the Hindu and the Mahomedan? When Indians were first admitted to the High Courts, for a long time the Hindus were more fit and competent than the Mahomedans; but now I am told the Mahomedans have their full share. The same sort of operation would go on in quinquennial periods between Hindus and Mahomedans. Opinion among the great Anglo-Indian officers now at home is divided, but I know at least one, not, I think, behind even Lord Macdonell in experience or mental grasp, who is strongly in favour of this proposal. One circumstance which cannot but strike your Lordships as remarkable is the comparative absence of hostile criticism of this idea by the Anglo-Indian Press, and, as I am told, in Calcutta society. I was apprehensive at one time that it might be otherwise, I should like to give a concrete illustration. The noble Marquess opposite said the other day that there was going to be a vacancy in one of the posts on the Viceroy's Executive Council—namely, the legal member's time would soon be up. Now, suppose there were in Calcutta an Indian lawyer of large practice and great experience in his profession—a man of unstained professional and personal repute, in close touch with European society and much respected, and the actual holder of important legal office. Am I to say to that man—in spite of all these excellent circumstances to your credit, in spite of your undisputed fitness, in spite of the emphatic declaration of 1833 that

fitness is to be the criterion of eligibility, in spite of that noble promise in Queen Victoria's Proclamation of 1858—a promise of which every Englishman ought to be for ever proud if he tries to adhere to it and rather ashamed if he tries to betray or mock it—in spite of all this, usage and prejudice are so strong that I dare not appoint you, but must appoint instead some stranger to India from Lincoln's Inn or the Temple? Is there one of your Lordships who would envy the Secretary of State who had to hold language of that kind to a meritorious candidate, one of the King's equal subjects? I put it to your Lordships in that concrete way. These abstract general arguments are slippery, I do not say there is no force in them, but there are deeper questions at issue to which LORD MINTO and myself attach the greatest importance. My Lords, I thank you for listening to me, and I beg to move the Second Reading.

I

EXTRACTS FROM RT. HON. MR. ASQUITH'S (THE PRIME MINISTER'S) SPEECH ON THE ORDER FOR THE SECOND READING OF THE INDIAN COUNCILS BILL (APRIL 1ST, 1909) :—

The Prime Minister said :—The changes by this Bill are in no sense to be understood as reflecting on the ability, the patriotism or the flexibility of that great hierarchy which for more than two generations has given us the present state of things. But the fact remains that there are in India things which are inevitable, but which were not foreseen—such, for instance, as the spread of education, the great inter-communion between the East and the West, and the infiltration among the educated classes of the Indian people of ideas which 50 or 60 years ago were perfectly alien to them and which nobody ever imagined would exist. These have brought about a different state of things. Owing to a number of causes of this kind you cannot rest where you are, and if your Indian administration is to be efficiently conducted and founded on a stable basis, it must be done cautiously. I agree that it must be done prudently. I agree that it must be done more and more and step by step by associating the people of the country with the Government that exists for them. That is a trust which this country exercises on their behalf. That is a state of things which must inevitably have led, whatever Government was in power, to the gradual transformation and reconstruction of the existing machinery of Indian administra-

tion. I should like to quote some words used the other night in this connection by a great authority, certainly as great an authority in our time as lives. I mean LORD CROMER. What does LORD CROMER say? He said :—

"The position of India at the present time is almost unique. It is, so far as I know, the only important country in the world where education has considerably advanced, which is governed in all essential particulars by non-resident foreigners. It is also the only country where the Civil service in all its higher administrative branches is in the hands of aliens appointed by a foreign country under stringent educational tests."

And at the same time what do you find?

"I do not think it is possible to blind ourselves to the fact that there is throughout Asia now a movement going on having for its object the association to a greater degree than formerly of the natives of those countries, not merely in the framing of their laws, but also in the direction of the appointment of natives of considerable capacity to high administrative posts. I do not think it would be politic to oppose an absolute *non possumus* to this movement in respect of the largest and most important of these Asiatic countries. Not only that, if we consider our own democratic institutions the sympathy which is felt with native aspirations by very large and influential bodies in this country, and also the effects of the educational system which, whether wisely or unwisely, we have adopted for the last fifty years in India, I do not think it would be possible to resist this movement for any very considerable length of time."

Those are the words of a man who, everybody will agree, has earned the title of being one of the most honourable personages in the service of this country. That is his diagnosis of the condition of things.

If that be so, I will come now to consider the criticism on the actual scheme which the Government proposes. The Noble Lord has said that Indian reformers will not be satisfied with the proposals in the Bill. It is not unimportant to point out the language of Indian reformers. As late as Monday last MR. GOKHALE considered the nature of Indian reform. The language which was used by MR. GOKHALE fairly represents the opinions of Indian reformers. He said he had a perfectly impartial mind in dealing with the question. He eulogised LORD MINTO and LORD MINTO'S attitude with regard to this particular proposal, and he declared that LORD MORLEY has saved India from being driven into chaos. I do not say that the aspirations of MR. GOKHALE are met by this Bill, or those of his friends, but it is a step which will avert the serious danger which has been confronting us for the last few years. The Noble Earl agrees, as I understand, entirely with that part of the Bill which proposes to increase the number of Members of

the Legislative Council, and to give them a larger right of discussion and criticism than they at present possess.

EARL PERCY : Perhaps the number is rather greater than it need be.

The PRIME MINISTER : That is a matter of detail. The Noble Lord, I understand, thinks they ought to be increased ?

EARL PERCY : Yes.

The PRIME MINISTER : Then, so far, the Noble Lord has no complaint. His main criticism on that part of the Bill which deals with the change in the constitution and composition of the Legislative Council was, that outside the Viceregal Council the non-official element would be in a majority. In regard to that the Viceregal and official majority is preserved. With regard to the nature of the regulations the Noble Lord has quite treated them as though they were the subject-matter of consideration in this debate. The practice of creating a non-official majority is, I must point out to the House, not at all the same thing as creating an elective majority. They are not representative at all. The non-official element is largely composed of nominated Members. Therefore it is not at all the same thing as if you were giving the elective representatives of particular classes or communities a voting majority on the council to which they belong. That distinction must be carefully observed. The non-official majority already exists in the Council of Bombay—under the Presidency of Bombay—and, as has been pointed out by my Right Hon. Friend when making the Motion for the second reading, whatever dangers may be apprehended—I think they are very shadowy—from the recognition of this non-official majority, they are amply safe-guarded against by the security which I think the Noble Lord rates a little too low—namely, the initiative of the power of the veto by the Viceroy, or, in the case of the other Councils, by the Lieutenant-Governors, which I think may be regarded as very adequate safeguards against any thing in the nature of violent or revolutionary legislation.

EARL PERCY : My criticism was if you exercise these safe-guards you create a sense of irresponsibility on the part of future majorities.

The PRIME MINISTER : That is always said in regard to any power, whether in this country or anywhere else, in regard to the veto. We have here in this country the power in regard to the veto, which resides not in the Sovereign, but elsewhere,

and it sometimes creates a great deal of irritation, but still we go on. I do not know how long it is going to last, nor whether it will bring the community in India to anything like the state of irritation which the Noble Lord has indicated, and which the long-suffering people of this country have endured. I do not think we need be very much alarmed about that. On the other hand, it is most desirable in the circumstances to give to the people of India the feeling that these Legislative Councils are not mere automatons, the wires of which are pulled by the official hierarchy. It is of very great importance from that point of view that the non-official element should be in the ascendant, subject to proper safeguards. In that way you obtain some kind of security that the legislation which finally passes through the mill of the council reflects the opinion of the community.

The Noble Lord spoke of the position of the Mahomedans. Speaking generally with regard to that, the Noble Lord has stated that my Noble Friend dropped his original proposal in regard to the electoral college—dropped them in deference to objections made to a large extent by the Mahomedans themselves—and that when the Bill comes into law it will be a matter prescribed by regulation in each of the particular Provinces as to how they shall elect their representatives. Undoubtedly there will be a separate register for Mahomedans. To us here in this country at first sight it looks an objectionable thing, because it discriminates between people, segregating them into classes, on the basis of religious creed. I am sure the Noble Lord will not regard that as a formidable objection, because the distinction between Mahomedan and Hindu is not merely religious, but it cuts deep down not only into the traditious and historic past, but into the habits and social customs of the people. Provided that, as we may assume, the regulations adequately safeguard the separate registration of the Mahomedan electorate, I do not think any practical suggestion has yet been made for more completely giving that kind of representation which undoubtedly as a minority they are entitled to demand. The number of Mahomedans on the Viceroy's Council are only five; but, on the other hand, as the Noble Lord knows, on the Viceroy's Council there will be 20 nominated Members, of whom 17 are to be officials, and there is no reason why the Mahomedans should not come into that category. In addition, there are to be Mahomedans elected by other communities—chambers of com-

merce, and so forth—and it is not improbable that, among this category, Mahomedan representatives might be found. I do not think there is any serious danger, or any danger at all, of the Mahomedans not being adequately represented on the Viceroy's Council.

I now come to what the Noble Lord regarded as a more serious matter, though it is one not directly dealt with by this Bill, that is, the nomination of the native Members of the Executive Council of the Viceroy. The Noble Lord said that his objection to such an appointment was not one of principle. He admitted that the King's Proclamation announced absolute equality as far as race and religion are concerned, but that his objection was one, not of principle, but of expediency. He took the point so often taken in the course of these discussions, that if you put a native Member on the Executive Council of the Viceroy, you admit him to a knowledge not merely of what I may call local administrative matters, but you give him access, at any rate, to what may be described as the Arcana of Government. The Noble Lord thinks this is a dangerous step to take. Why? In the first place he says, because the gentleman so appointed, whoever he may be, cannot have any previous experience in these high matters. But that is an argument you might carry to very great lengths not only in India, but elsewhere. A gentleman is admitted for the first time to the Cabinet in this country; he has had no previous experience on official matters of this kind. But he becomes familiar with high secrets of State, and he acquires experience and justifies the confidence reposed in him after he has got there and upon such presumption as his previous training and reputation may create. And unless you are going to lay down as a proposition that no native, Mahomedan or Hindu, whatever be his intellectual eminence, whatever be his practical training, like that of MR. SINHA in a great profession like the profession of the law, however high he may have attained in that profession in competition not only with men of his own race, but with Europeans and Englishmen—unless you are going to lay down the fact that he is an Indian, born in India, and that in itself, for all time, permanently and irredeemably disables him from being put into this great position of responsibility, I fail to see how it is possible to justify the exclusion of Indians from positions of this kind. Let me point out also that if you talk about previous experience, who are the people whom we

appointed, the men of eminence and distinction who thoroughly justified their selection, whom we have sent to India in days gone by? As a rule, in the vast majority of cases the Legal Member of the Council and the Financial Member of the Council have come from England, and, as a rule, they have been men without any previous experience of India before they landed there. LORD MACAULAY, one of the most distinguished Englishmen, had never been in India before his appointment, and had never paid any special attention to it. On his way out he studied the works of ST. CHRYSOSTOM. It is quite true when he came back he wrote most brilliant essays on the heroes of Anglo-Indian history, but he landed in India with as small an amount of expert knowledge of Indian affairs as any man who ever sailed across the Indian Ocean. So it has been constantly with the Financial Member. As a rule, he goes from here to India without previous expert acquaintance with the problems of Indian finance. How is it possible for us to say then that we are in the habit of filling these posts in that way? Be it observed I am not in the least disparaging the men who have gone there. How is it possible for us to say, when you get men like MR. SINHA, a distinguished gentleman, actually at the head of the legal profession, a man born and bred in India, who has studied the Indian law, common law, customary and statute law—how is it possible to say that he is not fitted for such a post as that of Legal Member of the Viceroy's Council? I undertake to say with the greatest confidence you could not find a man so qualified to discharge the duties of that particular position as the distinguished Hindu LORD MORLEY has got. The question really is: Are you going to say it is to be one of the inflexible rules of the Empire that, in spite of the terms of the King's proclamation, a man so eminently qualified, so pre-eminently qualified, as Mr. Sinha is for this place, is to be disqualified because he was born in India and is not a member of our own race? The proposition is not an arguable one; and I believe that my Noble Friend's action in that appointment will carry with it the assent of the vast majority of the people of this country. Let me say at once that I disclaim on the part on my Noble friend, that because MR. SINHA has been appointed to this position he is to be a see-saw between Mahomedans and Hindus in this particular position, and that a new rule of succession is to be established. Nothing of the kind. My Noble Friend plainly indicated when the Mahomedans waited upon him that he

did not regard himself in any sense pledged to anything of the kind. The appointment of Mr. Sinha must be taken as an act which has nothing to do with this Bill, but an appointment made under the powers of the old Act, and not under the new power which would be set up under this Bill. The point is whether a man so eminently qualified for one of these posts on the Viceroy's Council is to be disqualified because he is an Indian and not an Englishman.

I come to the criticism which the Noble Lord passed on that which is not now in the Bill, but which used to be in the Bill, and which we hope will be in the Bill again, *viz.*, the for the moment defunct clause 3, or the clause which I prefer to say is for the moment in a state of suspended animation. He said that he objected and his friends objected to the empowering—that is all clause 3 did—to giving power to the Government of India from time to time, if it should think fit, to create these Executive Councils. First of all, let me say on the point of precedent that we are wisely following the example of the Act of 1861, which gave power from time to time—a power which has been more than once exercised—to create new Lieutenant-Governorships and Executive Councils.

EARL PERCY : Governorships in Council.

The PRIME MINISTER : Oh, yes ; and I think it has been exercised in the case of Burma and the Punjab, and in the recent creation of the new Province of Eastern Bengal. If I am not mistaken at all that was done under the powers conferred by the Act of 1861. So that it is no new thing to confer upon the Government of India power of this kind to be exercised from time to time, and it has the obvious convenience that you have not got to come to Parliament each time that the situation arises for the creation of one of these new Executive bodies. So much for the precedent. Then as to the reasons. They cannot be better stated than they are stated in the passage which my Noble Friend has already read elsewhere in the Despatch of the Viceroy of March 9th. [The Right Hon. Gentleman, having read a lengthy extract, proceeded.] That is the expression of opinion of the Government of India. They say that after many months' deliberation—there is no question here that the matter has been rushed—they say they desire after full consideration that this power should be placed in their hands ; that they shall exercise it first probably in the case of Bengal, and that they shall in the light of experience cautiously

It is a power they say we wish to have, and through the Secretary of State we ask that Parliament should grant it. What possible objection can there be to that course? I could not quite gather from the speech of the Noble Lord whether he would be opposed to this clause if it is applied only to Bengal.

EARL PERCY: NO.

THE PRIME MINISTER: If it had been limited to Bengal, if it had been confined to establishing an Executive Council for Bengal, he would have agreed to the clause. Is it making an undue draft on the part of the Government of India and the Secretary of State, on the confidence of Parliament, to say that that which you admit at the present moment to be good, to be not only expedient, but necessary, for administrative purposes in Bengal, may and probably will become expedient and necessary in other parts of India from time to time. "We ask you therefore," the Government of India say, "to give us the power if and when the occasion may arise to establish these Executive Councils elsewhere, and we hope that in the interests of India you will not refuse us that power." I do not see how any more reasonable or moderate proposal could be made than this appeal to the wisdom and the confidence of Parliament. I think I have dealt with all the main points which the Noble Lord raised in his speech. I submit, with some confidence, first of all that this Bill is no breach of the great traditions of our Indian Administration. It is, on the contrary, the natural and legitimate development of the principles upon which, for the last 50 or 60 years at any rate, the Government has been avowedly and explicitly founded. I submit, further, that in regard to its practical effect—the enlargement of the Legislative Councils, the introduction into them of the elected element, the predominance, except in the Viceroy's Council, of the non-official element, and as regards the power which it gives the Government of India first in Bengal, and then from time to time, as occasion arises, in other Provinces, to assist Lieutenant-Governors by the aid of Executive Councils—all these are provisions carefully thought out, moderate in their scope, calculated to associate gradually but safely more and more the people of India with the administration of their own affairs, and consistent in every respect with the maintenance of our Imperial supremacy.

J.

REGULATIONS FOR THE CONSTITUTION AND FUNCTIONS OF THE LEGISLATIVE COUNCIL OF THE GOVERNOR-GENERAL (ISSUED ON NOVEMBER, 15, 1909 AND SUBSEQUENTLY AMENDED, 1912-1918.

I. Regulations for the nomination and election of Additional Members of the Legislative Council of the Governor-General.

Number of Members.

1. The Additional Member of the Legislative Council of the Governor-General shall ordinarily be sixty in number, and shall consist of—

(A) Members elected by the classes specified in Regulation II, who shall ordinarily be twenty-seven in number ; and

(B) Members nominated by the Governor-General, who shall not exceed thirty-three in number, and of whom—

(*a*) not more than twenty-eight may be officials, and

(*b*) three shall be non-official persons to be selected—

(*i*) one from the Indian commercial community,

(*ii*) one from the Mahomedan community in the Punjab, and

(*iii*) one from the landholders in the Punjab :

Provided that it shall not be lawful for the Governor-General to nominate so many non-official persons under these Regulations that the majority of all the Members of the Council shall be non-officials.

Elected members.

II. The twenty-seven elected Members specified in Regulation I shall be elected as follows, namely :—

(i)	By the non-official Additional Members of the Council of the Governor of Fort St. George	2 Members.
(ii)	By the non-official Additional Members of the Council of the Governor of Bombay	2 „

(iii)	By the non-official Additional Members of the Council of the Governor of Fort William in Bengal	2 Members.
(iv)	By the non-official Members of the Council of the Lieutenant-Governor of the United Provinces of Agra and Oudh	2 „
(v)	By the non-official Members of the Council of the Lieutenant-Governor of the Punjab	1 „
(vi)	By the non official Members of the Council of the Lieutenant Governor of Burma	1 „
(vii)	By the non-official Additional Members of the Council of the Lieutenant-Governor of Bihar and Orissa ...	1 „
(viii)	By the non-official Members of the Council of the Chief Commissioner of Assam	1 „
(ix)	[1][By the non-official Members of the Council of the Chief Commissioner of the Central Provinces]	1 „
(x)	By landholders in the Presidency of Fort St. George	1 „
(xi)	By landholders in the Presidency of Bombay	1 „
(xii)	By landholders in the Presidency of Bengal	1 „
(xiii)	By landholders in the United Provinces of Agra and Oudh	1 „
(xiv)	By landholders in Bihar and Orissa ...	1 „
(xv)	By landholders in the Central Provinces	1 ,
(xvi)	By the Mahomedan community in the Presidency of Fort St. George	1 „

1 The words enclosed is square brackets were substituted for item (ix) by Notification No. 32, dated the 14th August, 1914, published in the *Gazette of India*, dated the 15th August, 1914, Pt. I, p. 1327.

The original item ran thus :—

'(ix) By the District Councils and Municipal Committees in the Central Provinces ... ... 1 Member.'

(xvii)	By the Mahomedan community in the Presidency of Bombay ...	1	Member
(xviii)	By the Mahomedan community in the Presidency of Bengal ...	1	„
(xix)	By the Mahomedan community in the United Provinces of Agra and Oudh	1	„
(xx)	By the Mahomedan community in Bihar and Orissa	1	„
(xxi)	By the Bengal Chamber of Commerce	1	„
(xxii)	By the Bombay Chamber of Commerce	1	„

In addition to the Members specified in the foregoing part of this Regulation, a second Member shall be elected at the first, third and succeeding alternate elections by the Mahomedan Members of the class specified in sub-head (xiii), and at the second, fourth and succeeding alternate elections by the class specified in sub-head (xviii).

Explanation.—The expression "alternate elections" shall not be deemed to include elections to fill casual vacancies[1] [or vacancies occurring by reason of elections or nominations being declared void or seats being declared vacant].

Electorates and electoral procedures.

III. The election of the Members specified in Regulation II shall be effected by the electorates and in accordance with the procedures respectively prescribed in the Schedules to these Regulations.

Ineligible candidates.

IV. No person shall be eligible for election as a Member of the Council if such person—

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

(*b*) is an official, or

(*c*) is a female, or

(*d*) has been adjudged by a competent Court to be of unsound mind, or

(*e*) is under twenty-five years of age, or

(*f*) is an uncertificated bankrupt or an undischarged insolvent, or

[1] The words enclosed in square brackets were inserted by Notification No, 46, dated the 20th August, 1915, published in the *Calcutta Gazette*, dated the 25th August, 1915, Pt. IA, p. 510.

(*g*) has been dismissed from the Government service, or

(*h*) has been sentenced by a Criminal Court to imprisonment for an offence punishable with imprisonment for a term exceeding six months or to transportation, or has been ordered to find security for good behaviour under the Code of Criminal Procedure, such sentence or order not having subsequently been reversed or remitted, or the offender pardoned, or

(*i*) has been debarred from practising as a legal practitioner by order of any competent authority, or

(*k*) has been declared by the Governor-General in Council to be of such reputation and antecedents that his election would, in the opinion of the Governor-General in Council, be contrary to the public interest :

Provided that, in cases[1] [*(a), (g), (h), (i)* and *(k)*] the disqualification may be removed by an order of the Governor-General in Council in this behalf.

Qualifications of candidates.

V. No person shall be eligible for election under any sub-head of Regulation II unless he possesses the qualifications prescribed for candidates in the Schedule regulating elections under that sub-head.

Disqualification of voters.

VI. No person shall be qualified to vote at any election held under these Regutions if such person—

(*a*) is a female, or

(*b*) is a minor, or

(*c*) has been adjudged by a competent Court to be of unsound mind.

Oath of office.

VII. Every person who is elected or nominated under these Regulations to be a Member of Council shall, before taking his seat, make,

[1] The letters, brackets and words enclosed in square brackets were substituted for the letters, brackets and words "(*g*), (*h*), (*i*) and (*k*)" by Notification No. 32, dated the 14th August, 1914, published in the *Gazette of India*, dated the 15th August, 1914, Pt. I, p. 132.

at a meeting of the Council, an oath or affirmation of his allegiance to the Crown in the following form, namely :—

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

Power to declare seats vacant.

VIII. (1) If any person,—

(*a*) not being eligible for election, is elected under these Regulations, or,

(*b*) having been elected or nominated, subsequently becomes subject to any of the disabilities stated in clause (*d*), (*f*), (*g*), (*h*) or (*i*) of Regulation IV, or fails to make the oath or affirmation prescribed by Regulation VII within such time as the Governor-General in Council considers reasonable.

[1] [or (*c*) is elected or nominated, who is or subsequently becomes a Member of the Legislative Council of any Province and fails to resign his office as Member of such Provincial Council within seven days of the date on which he is Member of both Councils],

the Governor-General shall, by notification in the *Gazette of India*, declare his election or nomination to be void or his seat to be vacant :

[2] [Provided that nothing in clause (*c*) shall apply to any election or nomination already made of any Additional Member of the Legislative Council of the Governor-General, who is, on the 24th day of January, 1914, also a Member of the Legislative Council of any Province.]

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[1] Sub-clause (*c*) enclosed in square brackets was inserted by Notification No. 3, dated the 24th January, 1914, published in the *Gazette of India*, dated the 24th January, 1914, Pt. I, p. 85.

[2] The proviso enclosed in square brackets was inserted by Notification No. 3, dated the 24th January, 1914, published in the *Gazette of India*, dated the 24th January, 1914, Pt. I, p. 85.

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

(3) If any person elected at such fresh election is not eligible for election, the Governor-General may nominate any person who is eligible for election by the electorate concerned.

Candidates elected by several electorates.

IX. (1) If any person is elected by more than one electorate, he shall, by notice in writing signed by him and delivered to the Secretary to the Government of India in the Legislative Department, within seven days from the date of the publication of the result of such elections in the *Gazette of India*, choose, or in his default the Governor-General shall declare, for which of these electorates he shall serve, and the choice or declaration shall be conclusive.

(2) When any such choice or declaration has been made, the votes recorded for such person in any electorate for which he is not to serve shall be deemed not to have been given, and the candidate, if any, who, except for the said votes, would have been declared elected for such electorate, shall be deemed to have been duly elected for the same.

Term of office.

X. (1) Save as otherwise provided in these Regulations, the term of office of an Additional Member shall be three years, commencing from—

[1] [the date of the publication in the *Gazette of India* of the result of the election or of the notification nominating him, as the case may be, or when such

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[1] The words enclosed in square brackets were substituted for sub-clauses (*a*) and (*b*) by Notification No. 46, dated the 20th August, 1915, published in the *Calcutta Gazette*, dated the 25th August, 1914.

The original sub-clauses (*a*) and (*b*) ran thus :—

(*a*) "in the case of a nominated Member, the date of the publication in the *Gazette of India* of the notification by which he is nominated,

(*b*) in the case of an elected Member, the date of the publication in the *Gazette of India* of the result of the election, or, where the result of such election has been so published before the vacancy has occurred, from the date on which such vacancy occurs :"

publication has been made before the vacancy has occurred, from the date on which such vacancy occurs :]

Provided that official Members and Members nominated as being persons who have expert knowledge of subjects connected with proposed or pending legislation shall hold office for three years, or such shorter period as the Governor-General may at the time of nomination determine :

[1] [Provided further that the Governor-General may, by notification as aforesaid, extend for a period of not more than six months the term of office of Additional Members or any Additional Member elected or nominated under these Regulations.]

[2] [* * * * * *]

(2) A Member elected or nominated [3] [upon an election or nomination being declared void or a seat being declared vacant, or] to fill a casual vacancy occurring by reason of absence from India, inability to attend to duty, death, acceptance of office or resignation duly accepted, or otherwise, or a Member nominated on failure of an electorate to elect an eligible person, shall hold office so long as the Member whose place he fills would have been entitled to hold office [4] [if the election or nomination had not been declared void or the vacancy had not occurred, as the case may be].

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[1] The proviso enclosed in square brackets was inserted by Notification No. 46, dated the 20th August, 1915, published in the *Calcutta Gazette*, dated the 25th August, 1915.

[2] The second proviso to clause (1) was repealed by Notification No. 32, dated the 14th August, 1914, published in the *Gazette of India*, dated the 15th August, 1914.

[3] The words enclosed in square brackets were inserted by Notification No. 46, dated the 20th August, 1915, published in the *Calcutta Gazette*, dated the 25th August, 1914.

[4] The words enclosed in square brackets were substituted for "if the vacancy had not occurred" by Notification No. 46, dated the 20th August, 1915, published in the *Calcutta Gazette*, dated the 25th August, 1914.

XI. [1] [When a vacancy occurs in the case of a nominated or elected Member, or at any time within three months of the date when such a vacancy will occur in the ordinary course of events, the Governor-General, by notification as aforesaid,—

Vacancies.

(*a*) may, in the case of a nominated Member, nominate a person to the vacancy ; or

(*b*) shall, in the case of a Member who represents any interest specified in Regulation II, call upon the electorate concerned to elect a person for the purpose of filling the vacancy within such time as may be prescribed by such notification :

Provided that—

(*a*) in the case of an elected Member, the election shall, subject to the provisions of Regulation II, relating to alternate elections by Members of the classes specified in sub-heads (*xiii*) and (*xviii*) of that Regulation, always be made by the same electorate as that which elected the Member whose place is to be filled, and shall be subject to the same conditions in respect of eligibility of candidates for nomination as those which governed the election of such Member, and

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[1] This Regulation was substituted for the original Regulation by Notification No. 46, dated the 20th August, 1915, published in the *Calcutta Gazette*, dated the 25th August, 1915.

The original Regulation ran as follows :—

XI. (1) When a vacancy occurs in the case of a Member who represents any interest specified in Regulation II, or at any time within three months of the date when such a vacancy will occur in the ordinary course of events, the Governor General shall, by notification as aforesaid, call upon the electorate concerned to elect a person for the purpose of filling the vacancy within such time as may be prescribed by such notification.

(2) When a vacancy occurs in the case of a nominated Member, the Governor General may nominate any person to the vacancy :

Provided that when a casual vacancy occurs—

(*a*) in the case of an elected Member, the election shall always be made by the same electorate as that which elected the Member whose place is to be filled, and shall be subject to the same conditions in respect of eligibility of candidates for nomination as those which governed the election of such Member, and

(*b*) in the case of a Member nominated as representing any class specified in Regulation I, sub-head B, clause (*b*), the person nominated shall be selected from the same class.

(*b*) in the case of a Member nominated as representing any class specified in Regulation I, sub-head B, clause (*b*), the person nominated shall be selected from the same class.]

Failure to elect.

XII. If within the time prescribed by a notification issued under Regulation VIII, clause (2), or Regulation XI, [* *][1] the electorate concerned fails to elect, the Governor-General may nominate at his discretion any person who is eligible for election by such electorate.

Quorum.

XIII. The power of making laws and regulations, and of transacting other business vested in the Legislative Council of the Governor-General, shall be exercised only when fifteen or more Additional Members of the Council are present.

Corrupt practice.

XIV. (1) No election shall be valid if any corrupt practice is committed in connection therewith by the candidate elected.

(2) A person shall be deemed to commit a corrupt practice within the meaning of these Regulations—

(*i*) who, with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury, to any person, or

(*ii*) who gives, procures or abets the giving of a vote in the name of a voter who is not the person giving such vote,

(*iii*)[2] [who makes any payment or promise of payment on account of the conveyance of any voter, other than himself, to or from any place for the purpose of recording a vote at any election held under these Regulations, or

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[1] The word, figure and brackets "Clause (1)" were repealed by Notification No. 46, dated the 20th August, 1915, published in the *Calcutta Gazette*, dated the 25th August, 1915.

[2] Sub-clauses (*iii*) and (*iv*) enclosed in square brackets were inserted by Notification No. 46, dated the 20th August, 1915, published in the *Calcutta Gazette*, dated the 25th August, 1915.

(*iv*) who lets, lends, employs, hires, borrows or uses, for the purpose of conveying any voter to or from any place for the purpose of recording any such vote, any vehicle, horse or other animal which is kept or used by any person for the purpose of letting out on hire or conveying passengers by hire:

Provided that nothing in this clause shall apply to—

(*a*) any such letting to or hiring by a voter at his own cost, or by several voters at their joint cost, for his or their own use; or

(*b*) any such use by a voter of his own vehicle to convey himself.]

And a corrupt practice shall be deemed to be committed by a candidate if it is committed with his knowledge and consent, or by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation.—A "promise of individual profit" includes a promise for the benefit of the person himself, or of any one in whom he is interested.

Non-compliance with rules.

XV. No election shall be invalid by reason of a non-compliance with the rules contained in the Schedules to these Regulations, or any mistake in the use of forms annexed thereto, if it appears that the election was conducted in accordance with the principles laid down in such rules, and that such non-compliance or mistake did not affect the result of the election.

Disputes as to validity of elections.

XVI. (1) If the validity of any election is brought in question by any person qualified either to be elected or to vote at such election on the ground of the improper rejection or reception of a nomination or of a vote, or of any corrupt practice in connection with such election, or for any other cause, such person may, at any time within fifteen days from the date of the publication of the result of such election in the *Gazette of India*, apply to the Governor-General in Council to set aside such election.

(2) The Governor-General in Council shall, after such inquiry (if any) as he may consider necessary, declare, by notification as aforesaid, whether the candidate whose election

is questioned or any or what other person was duly elected, or whether the election was void.

(3) If the election is declared void, the Governor-General shall, by notification as aforesaid, call upon the electorate concerned to elect another person within such time as may be prescribed by such notification.

(4) If within the time so prescribed the electorate fails to elect, the Governor-General may nominate any person who is eligible for election by such electorate.

Finality of decisions.

XVII. The decision of the Governor-General in Council on any question that may arise as to the intention, construction or application of these Regulations shall be final.

First elections.

XVIII. (1) As soon as conveniently may be after these Regulations come into force, a Council shall be constituted in accordance with their provisions.

(2) For this purpose the Governor-General shall, by notification as aforesaid, call upon the electorates referred to in Regulation III to proceed to elect Members in accordance with these Regulations within such time as may be prescribed by such notification.

(3) If within the time so prescribed any such class fails to elect, the Governor-General may nominate at his discretion for a period not exceeding six months any person who is eligible for election by such class.

II. Regulations for the Discussion of the Annual Financial Statement in the Legislative Council of the Governor-General.

Definitions.

1. In these rules—

(1) "President" means—

(*a*) the Governor-General, or

(*b*) the President nominated by the Governor-General in Council under section 6 of the Indian Councils Act, 1861, or

(*c*) the Vice-President appointed by the Governor-General under section 4 of the Indian Councils Act, 1909, or

(*d*) the Member appointed to preside under rule 27 ;

(2) "Member in charge" means the Member of the Council of the Governor-General to whom is allotted the business of the Department of the Government of India to which the subject under discussion belongs, and includes any Member to whom such Member in charge may delegate any function assigned to him under these rules ;

(3) "Finance Member" means the Member in charge of the Finance Department of the Government of India ;

(4) "Secretary" means the Secretary to the Government of India in the Legislative Department, and includes the Deputy Secretary and every person for the time being exercising the functions of the Secretary ;

(5) "Financial statement" means the preliminary financial estimates of the Governor-General in Council for the financial year next following ; and

(6) "Budget" means the Financial Statement as finally settled by the Governor-General in Council.

A.—THE FINANCIAL STATEMENT.

General Order of Discussion.

II. (1) On such day as may be appointed in this behalf by the Governor-General, the Financial Statement with an explanatory memorandum shall be presented to the Council every year by the Finance Member, and a printed copy shall be given to every Member.

(2) No discussion of the Financial Statement shall be permitted on such day.

III. (1) On such later day as may be appointed in this behalf by the Governor-General, the first stage of the discussion of the Financial Statement in Council shall commence.

(2) [1] [On this day, after the Finance Member has stated any changes in the figures of the Financial Statement which circumstances may since have rendered necessary, and has made any explanations of that Statement which he may think fit, a general discussion of the Financial Statement shall take place.

(3) At such discussion any Member shall be at liberty to offer any observations he may wish to make on the Statement

[1] For Sub-rule (2) of rule 3 of the Regulations of 1909 the following were substituted by Notification No. 14 dated Delhi, the 7th February, 1918.

as a whole, or on any question of principle involved, but no Member shall be permitted to move any resolution nor shall the statement be submitted to the vote of the Council.

(4) The Finance Member shall have a general right of reply at the end of the discussion.

(5) It shall be open to the President, if he thinks fit, to prescribe a time limit for speeches.]

[1][III A. (1) On such day after the general discussion of the Financial Statement, as may be appointed in this behalf by the Governor-General, the second stage of the discussion of the Financial Statement shall commence.

(2) On this day any Member shall be at liberty to move any resolution entered in his name in the list of business relating to any alteration in taxation, any new loan, or any additional grant to Local Governments, proposed or mentioned in such Statement or explanatory memorandum ; and the Council shall thereupon proceed to discuss each such resolution in the manner hereinafter prescribed.]

IV. (1) The [2][third] stage of the discussion of the Financial Statement shall commence as soon as may be after all the resolutions which may be moved as aforesaid have been disposed of.

(2) In this stage each head or group of heads specified in the Statement contained in the Schedule appended to these rules as being open to discussion, shall be considered separately according to such grouping as the Member in charge may determine.

(3) The consideration of a particular head or group of heads shall be introduced by the Member in charge with such explanations, supplementing the information contained in the Financial Statement, as may appear to him to be necessary.

(4) Any Member shall then be at liberty to move any resolution relating to any question covered by any such head or group of heads which may be entered in his name in the list of business, and the Council shall thereupon proceed to discuss every such resolution in the manner hereinafter prescribed.

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[1] This new rule was added by Notification No. 14 dated Delhi, the 7th February, 1918.

[2] The word "third" was substituted for the word "Second" by Notification No. 14 dated Delhi, the 7th February, 1918.

Subjects excluded from discussion.

V. No discussion shall be permitted in regard to any of the following subjects, namely :—

(*a*) any subject removed from the cognizance of the Legislative Council of the Governor-General by section 22 of the Indian Councils Act, 1861 ; or

(*b*) any matter affecting the relations of His Majesty's Government or of the Governor-General in Council with any foreign State or any native State in India ; or

(*c*) any matter under adjudication by a Court of law having jurisdiction in any part of His Majesty's Dominions.

Resolutions.

VI. No resolution shall be moved which does not comply with the following conditions, namely :

(*a*) it shall be in the form of a specific recommendation addressed to the Governor-General in Council ;

(*b*) it shall be clearly and precisely expressed and shall raise a definite issue ;

(*c*) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of persons except in their official or public capacity ;

(*d*) it shall not challenge the accuracy of the figures of the Financial Statement ; and

(*e*) it shall be directly relevant to some entry in the Financial Statement [1][or explanatory memorandum.]

VII. A Member, who wishes to move a resolution, shall give notice in writing to the Secretary at least two clear days before the commencement of the stage of the discussion to which the resolution relates, and shall together with the notice submit a copy of the resolution which he wishes to move.

VIII. The President may disallow any resolution or part of a resolution without giving any reason therefor other than that in his opinion it cannot be moved consistently with the public interests or that it should be moved in the Legislative Council of a Local Government.

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[1] The words in square brackets were added by Notification No. 14 dated Delhi, the 7th February, 1918.

IX. (1) No discussion in Council shall be permitted in respect of any order of the President under rule VIII.

(2) A resolution that has been disallowed shall not be entered in the proceedings of the Council.

X. Resolutions admitted by the President shall be entered in the list of business in such order as he may direct.

Discussion of Resolutions.

XA. (1) [1][A Member in whose name a resolution appears on the list of business shall, when called on, either—

(*a*) withdraw the resolution, in which case he shall confine himself to a mere statement to that effect ; or

(*b*) move the resolution, in which case he shall commence his speech by a formal motion in the terms appearing on the list of business.

(2) If the Member when called on is absent, the resolution standing in his name shall be considered to have been withdrawn.]

XI. (1) After the mover of a resolution has spoken, other Members may speak to the motion in such order as the President may direct, and thereafter the mover may speak once by way of reply.

(2) [2][No Member shall speak more than once to any motion except with the permission of the President for the purpose of making an explanation :

Provided that the mover may speak in reply and the Member in charge may submit any final observations which he may wish to make.]

XII. No speech [3][* *] shall exceed fifteen minutes in duration.

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[1] The whole of this new rule was added by Notification No. 14 dated Delhi, the 7th February, 1918.

[2] This sub-rule was substituted by Notification No. 14 dated Delhi, the 7th February, 1918.

[3] The words "except with the permission of the President" have been omitted by notification No. 14 dated Delhi, the 7th February, 1918.

[1][Provided that the mover of a resolution, when moving the same, the Member in charge, when speaking for the first time, and, with the permission of the President, any other Member may speak for thirty minutes.]

XIII. The discussion of a resolution shall be limited to the subject of the resolution, and shall not extend to any matter as to which a resolution may not be moved.

XIV. [2][(1) A Member who has moved a resolution shall not withdraw the same except by leave of the Council.

(2) No discussion shall be permitted on a motion for leave to withdraw except with the permission of the President.]

XV. When, in the opinion of the President, a resolution has been sufficiently discussed, 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 ;

Provided that the President may in all cases address the Council before putting the question to the vote.

XVI. [3][When any resolution involving several points has been discussed, it shall be in the discretion of the President to divide the resolution and put each or any point separately to the vote as he may think fit.]

XVII. (1) Every question shall be resolved in the affirmative or in the negative according to the majority of votes.

(2) Votes may be taken by voices or by division and shall be taken by division if any Member so desires.

(3) The President shall determine the method of taking votes by division.

XVIII. (1) The President may assign such time as with due regard to the public interests he may consider reasonable for the discussion of resolutions or of any particular resolution.

(2) Every resolution which shall not have been put to the vote within the time so assigned shall be considered to have been withdrawn.

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[1] This new proviso was substituted by Notification No. 14 dated Delhi, the 7th February, 1918.

[2] This new rule was substituted by Notification No. 14, dated Delhi, the 7th February, 1918.

[3] This new rule was substituted by Notification No. 14, dated Delhi, the 7th February, 1918.

XIX. Every resolution, if carried, shall have effect only as a recommendation to the Governor-General in Council.

XX. (1) When a question has been discussed at a meeting of the Council, or when a resolution has been[1] [* * *] withdrawn under rule XIV no resolution raising substantially the question shall be moved within one year.

(2) [2][When a resolution has been disallowed under rule VIII, no resolution raising substantially the same question shall be moved during the same session.]

B.—THE BUDGET.

XXI. (1) On or before the 24th day of March in every year the Budget shall be presented to the Council by the Finance Member, who shall describe the changes that have been made in the figures of the Financial Statement, and shall explain why any resolutions passed in Council have not been accepted.

(2) A printed copy of the Budget shall be given to each Member.

(3) [3][No discussion of the Budget shall be permitted nor shall it be submitted to the vote of the Council, but the President may make such observations in regard thereto as he may consider necessary.]

XXII.[4] * * * *

XXIII[5]. * * * *

C.—GENERAL.

XXIV. (1) Every Member shall speak from his place, shall rise when he speaks and shall address the Chair.

(2) At any time, if the President rises, any Member speaking shall immediately resume his seat.

XXV. (1) Any Member may send his speech in print to the Secretary not less than two clear days before the day fixed for

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[1] The words "disallowed under rule viii or" have been omitted by Notification No. 14, dated Delhi, the 7th February, 1918.

[2] This sub-rule was added by Notification No. 14, dated Delhi, the 7th February, 1918.

[3] This sub-rule was added by Notification No. 14, dated Delhi, the 7th February, 1918.

[4] Both these rules were omitted by Notification No. 14, dated Delhi, the 7th February, 1918.

the discussion of a resolution, with as many copies as there are Members and the Secretary shall cause one of such copies to be supplied to every Member.

(2) Any such speech may at the direction of the President be taken as read.

XXVI. (1) The President shall preserve order, and all points of order shall be decided by him.

(2) No discussion on any point of order shall be allowed unless the President thinks fit to take the opinion of the Council thereon.

(3) Any Member may at any time submit a point of order to the decision of the President.

(4) The President shall have all powers necessary for the purpose of enforcing his decisions.

XXVII. The Governor-General may appoint a Member of the Council to preside in his place, or in that of the Vice-President, on any occasion on which the Financial Statement[1] [* * *] or any portion thereof is discussed in the Council.

XXVIII. The President, for sufficient reason, may suspend any of the foregoing rules.

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[1] The words "or the Budget" have been omitted by Notification No. 14, dated Delhi, 7th February, 1918.

THE SCHEDULE.

Heads Open to or excluded from discussion under Rule IV.

A. REVENUE.		B. EXPENDITURE.	
Heads open to discussion.	*Heads not open to discussion.*	Heads open to discussion.	*Heads not open to discussion.*
I.—Land Revenue	*IV.—Stamps*	1.—Refunds and Drawbacks	*2.—Assignments and Compensations*
II.—Opium	*VII.—Customs*	3—Land Revenue	*13.—Interest on debt*
III.—Salt	*VIII. Assessed Taxes*	4.—Opium	*23—Ecclesiastical*
V.—Excise	*XI.—Tributes from Native States*	5.—Salt	*25.—Political*
VI. Provincial Rates	*XVI-A.—Courts* *	6.—Stamps	*27.—Territorial and Political Pensions*
IX.—Forest	*XXXII.—Army*	7.—Excise	*38.—State Railways.*‡
X.—Registration	*XXXIII.—Marine*	8. Provincial Rates	*42.—Major Works: Interest on Debt*
XII.—Interest	*XXXIV—Military Works*	9.—Customs	*46—Army*
XIII.—Post Office	*All purely Provincial revenue and revenue accruing from divided heads in Provinces possessing Legislative Councils.*	10.—Assessed Taxes	*46-A.—Marine*
XIV.—Telegraph		11.—Forests	*47.—Military Works*
XV.—Mint		12.—Registration	*47-A—Special Defences*
XVI-B.—Jails		14. Interest on other obligations	*All statutory Charges*
XVII.—Police		15.—Post Office	*All purely Provincial expenditure and expenditure accruing under divided heads in Provinces possessing Legislative Councils*
XIX.—Education		16. Telegraphs	
XX.—Medical		17. Mint	
XXI.—Scientific and other Minor Departments		18—General Administration†	
XXII.—Receipts in aid of Superannuation, etc.		19-A—Courts of Law†	
XXIII.—Stationery and Printing		19-B—Jails	
XXIV.—Exchange		20.—Police	
XXV.—Miscellaneous		22.—Education	
XXVI.—State Railways		24.—Medical	
XXVIII—Subsidised Companies		26—Scientific and other Minor Departments	
		28—Civil Furlough and Absentee Allowances	

XXIX.—Irrigation, Major Works	29.—Superannuation, Allowances and Pensions
XXX.—Minor Works and Navigation	30.—Stationery and Printing
XXXI.—Civil Works.	31.—Exchange
	32.—Miscellaneous
	33.—Famine Relief
	34.—Construction of Protective Railways
	35.—Construction of Protective Irrigation Works
	36.—Reduction or avoidance of Debt
	40.—Subsidised Companies ; Land, etc.
	41.—Miscellaneous Railway Expenditure
	42.—Irrigation : Major Works—Working expenses
	43 —Minor Works and Navigations
	45.—Civil Works
	48.—State Railways; Capital Expenditure not charged to Revenue.
	49.—Irrigation Works ; Capital Expenditure not charged to Revenue

* Mainly Court-fees and fines

† These heads include certain statutory charges, which will be excluded from debate.

‡ This head deals purely with interest, sinking funds and annuities.

III. Regulations for the Discussion of Matters of General Public Interest in the Legislative Council of the Governor-General.

Definitions.

I. In these rules—

(1) "President" means—

(*a*) the Governor-General, or

(*b*) the President nominated by the Governor-General in Council under section 6 of the Indian Councils Act, 1861, or

(*c*) the Vice-President appointed by the Governor-General under section 4 of the Indian Councils Act, 1909, or

(*d*) the Member appointed to preside under rule XXVII.

(2) "Member in charge" means the Member of the Council of the Governor-General to whom is allotted the business of the Department of the Government of India to which the subject under discussion belongs, and includes any Member to whom such Member in charge may delegate any function assigned to him under these rules ; and

(3) "Secretary" means Secretary to the Government of India in the Legislative Department, and includes the Deputy Secretary and every person for the time being exercising the functions of the Secretary.

Matters open to discussion.

II. Any matter of general public interest may be discussed in the Council subject to the following conditions and restrictions.

III. No such discussion shall be permitted in regard to any of the following subjects, namely :—

(*a*) any subject removed from the cognizance of the Legislative Council of the Governor-General by section 22 of the Indian Councils Act, 1861 ; or

(*b*) any matter affecting the relations of His Majesty's Government or of the Governor-General in Council with any Foreign State or any Native State in India ; or

(*c*) any matter under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

Resolutions.

IV. Subject to the restrictions contained in rule III, any Member may move a resolution relating to a matter of general public interest :

Provided that no resolution shall be moved which does not comply with the following conditions, namely :—

(*a*) it shall be in the form of a specific recommendation addressed to the Governor-General in Council ;

(*b*) it shall be clearly and precisely expressed and shall raise a definite issue ; and

(*c*) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of persons except in their official or public capacity.

V. A Member, who wishes to move a resolution, shall give notice in writing to the Secretary, at least fifteen clear days before the meeting of the Council at which he desires to move the same, and shall, together with the notice, submit a copy of the resolution which he wishes to move :

Provided that the President may allow a resolution to be moved with shorter notice than fifteen days, and may, in any case, require longer notice or may extend the time for moving the resolution.

VI. (1) The Secretary shall submit every resolution of which notice has been given to him in accordance with rule V to the President, who may either admit it or, when any resolution is not framed in accordance with rule IV, cause it to be returned to the Member concerned for the purpose of amendment.

(2) If the Member does not, within such time as the President may fix in this behalf, re-submit the resolution duly amended, the resolution shall be deemed to have been withdrawn.

VII. The President may disallow any resolution or part of a resolution without giving any reason therefor other than that in his opinion it cannot be moved consistently with the public interests or that it should be moved in the Legislative Council of a Local Government.

VIII. (1) No discussion in Council shall be permitted in respect of any order of the President under rule VI or rule VII.

(2) A resolution which has been disallowed shall not be entered in the proceedings of the Council.

IX. Resolutions admitted by the President shall be entered in the list of business for the day in the order in which they are received by the Secretary :

Provided that the President may give priority to any resolution which he may consider to be of urgent public interest, or postpone the moving of any resolution.

Discussion of Resolutions.

X. The discussion of resolutions shall take place after all the other business of the day has been concluded.

[1][X*A*. (1) A Member in whose name a resolution appears on the list of business shall, when called on, either—

(*a*) withdraw the resolution, in which case he shall confine himself to a mere statement to that effect ; or

(*b*) move the resolution, in which case he shall commence his speech by a formal motion in the terms appearing on the list of business.

(2) If the Member when called on is absent, the resolution standing in his name shall be considered to have been withdrawn.]

XI. (1) After the Mover of a resolution has spoken, other Members may speak to the motion in such order as the President may direct, and thereafter the Mover may speak once by way of reply.

[2][(2) No Member shall speak more than once to any motion except with the permission of the President for the purpose of making an explanation :

Provided that the Mover may speak in reply and the Member in charge may submit any final observations which he may wish to make.]

XII. No speech, except with the permission of the President, shall exceed fifteen minutes in duration :

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[1] The whole of this new rule was added by Notification No. 15, dated Delhi, the 7th February, 1918.

[2] This sub-rule was substituted by Notification No. 15, dated Delhi, the 7th February, 1918.

Provided that the Mover of a resolution, when moving the same, and the Member in charge [1][when speaking for the first time] may speak for thirty minutes.

XIII. (1) Every Member shall speak from his place, shall rise when he speaks and shall address the Chair.

(2) At any time, if the President rises, any Member speaking shall immediately resume his seat.

XIV. (1) Any Member may send his speech in print to the Secretary not less than two clear days before the day fixed for the discussion of a resolution, with as many copies as there are Members and the Secretary shall cause one of such copies to be supplied to each Member.

(2) Any such speech may at the discretion of the President be taken as read.

XV. The discussion of a resolution shall be limited to the subject of the resolution, and shall not extend to any matter as to which a resolution may not be moved.

XVI. When a resolution is under discussion any Member may, subject to all the restrictions and conditions relating to resolutions specified in rules III and IV, move an amendment to such resolution :

Provided that an amendment may not be moved which has merely the effect of a negative vote.

XVII. (1) If a copy of such amendment has not been sent to the Secretary at least three clear days before the day fixed for the discussion of the resolution, any Member may object to the moving of the amendment ; and such objection shall prevail unless the President in exercise of his power to suspend any of these rules allows the amendment to be moved.

(2) The Secretary shall, if time permits, cause every amendment to be printed and send a copy for the information of each Member.

XVIII. [2][(1) A Member who has moved a resolution or an amendment of a resolution shall not withdraw the same except by leave of the Council.

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[1] The words in square brackets were inserted by Notification No. 15, dated Delhi, the 7th February, 1918.

[2] This rule was substituted by Notification No. 15, dated Delhi, the 7th February, 1918.

(2) No discussion shall be permitted on a motion for leave to withdraw except with the permission of the President.]

XIX. When, in the opinion of the President, a resolution and any amendment thereto have been sufficiently discussed, 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 :

Provided that the President may in all cases address the Council before putting the question to the vote.

XX. (1) When an amendment to any resolution is moved, or when two or more such amendments are moved, the President shall, before taking the sense of the Council thereon, state or read to the Council the terms of the original motion and of the amendment or amendments proposed.

(2) It shall be in the discretion of the President to put first to the vote either the original motion or any of the amendments which may have been brought forward.

XXI. [1][When any resolution involving several points has been discussed, it shall be in the discretion of the President to divide the Resolution and put each or any point separately to the vote as he may think fit.]

XXII. (1) Every question shall be resolved in the affirmative or in the negative according to the majority of votes.

(2) Votes may be taken by voices or by division and shall be taken by division if any Member so desires.

(3) The President shall determine the method of taking votes by division.

General.

XXIII. (1) The President may assign such time as, with due regard to the public interests, he may consider reasonable for the discussion of resolutions or of any particular resolution.

(2) Every resolution which shall not have been put to the vote within the time so assigned shall be considered to have been withdrawn.

XXIV. Every resolution, if carried, shall have effect only as a recommendation to the Governor-General in Council.

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1 This new rule was substituted by Notification No. 15, dated Delhi, the 7th February, 1918.

XXV. [1][(1) When a question has been discussed at a meeting of the Council, or when a resolution has been [2] [* *] withdrawn under rule XVIII, no resolution or amendment raising substantially the same question shall be moved within one year.

[3][(2) When a resolution has been disallowed under rule VII, no resolution raising substantially the same question shall be moved during the same session.]

XXVI. (1) The President shall preserve order, and all points of order shall be decided by him.

(2) No discussion on any point of order shall be allowed unless the President thinks fit to take the opinion of the Council thereon.

(3) Any Member may at any time submit a point of order to the decision of the President.

(4) The President shall have all powers necessary for the purpose of enforcing his decisions.

XXVII. The Governor-General may appoint a Member of the Council to preside in his place, or in that of the Vice-President, on any occasion on which a matter of general public interest is discussed in the Council.

XXVIII. The President, for sufficient reason, may suspend any of the foregoing rules.

IV. Regulations for the Asking of Questions in the Legislative Council of the Governor-General.

I. In these rules—

(1) "President" means—

(*a*) the Governor-General, or

(*b*) the President nominated by the Governor-General in Council under Section 6 of the Indian Councils Act, 1861, or,

(*c*) the Vice-President appointed by the Governor-General under section 4 of the Indian Councils Act, 1909.

(2) "Member in charge" means the Member of the Council of the Governor-General to whom is allotted the business of the

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[1] The number 25 has been re-numbered 25 (1) by Notification No. 15, dated Delhi, the 7th February, 1918.

[2] The words "disallowed under rule 7 or" have been omitted by Notification No. 15, dated Delhi, the 7th February, 1918.

[3] Sub-rule (2) was added by Notification No. 15, dated Delhi, the 7th February, 1918.

Department of the Government of India to which the subject of the question belongs, and includes any Member to whom such Member in charge may delegate any function assigned to him under these rules ; and

(3) "Secretary" means the Secretary to the Government of India in the Legislative Department, and includes the Deputy Secretary and every person for the time being exercising the functions of the Secretary.

II. Any question may be asked by any Member subject to the following conditions and restrictions.

III. No question shall be permitted in regard to any of the following subjects, namely :—

(*a*) any matter affecting the relations of His Majesty's Government or of the Governor-General in Council with any Foreign State or with any Native State in India, or

(*b*) any matter under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

IV. No question shall be asked unless it complies with the following conditions, namely :—

(*a*) it shall be so framed as to be merely a request for information,

(*b*) it shall not be of excessive length,

(*c*) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of persons except in their official or public capacity, and

(*d*) it shall not ask for an expression of an opinion or the solution of a hypothetical proposition.

V. In matters which are or have been the subject of controversy between the Governor-General in Council and the Secretary of State or a Local Government no question shall be asked except as to matters of fact, and the answer shall be confined to a statement of facts.

VI. A Member who wishes to ask a question shall give notice in writing to the Secretary at least ten clear days before the meeting of the Council at which he desires to put the question and shall, together with the notice, submit a copy of the question which he wishes to ask :

Provided that the President may allow a question to be put with shorter notice than ten days and may in any case require longer notice or may extend the time for answering a question.

VII. (1) The Secretary shall submit every question of which notice has been given to him in accordance with rule VI to the President, who may either allow it or, when any question is not framed in accordance with rules IV and V, cause it to be returned to the Member concerned for the purpose of amendment.

(2) If the Member does not, within such time as the President may fix in this behalf, re-submit the question duly amended, the question shall be deemed to have been withdrawn.

VIII. The President may disallow any question, or any part of a question, without giving any reason therefor other than that in his opinion it cannot be answered consistently with the public interests or that it should be put in the Legislative Council of a Local Government.

IX. No discussion in Council shall be permitted in respect of any order of the President under rule VII or rule VIII.

X. Questions which have been allowed shall be entered in the list of business for the day and shall be put in the order in which they stand in the list before any other business is entered upon at the meeting.

XI. Questions shall be put and answers given in such manner as the President may in his discretion determine.

XII. Any Member who has asked a question may put a supplementary question for the purpose of further elucidating any matter of fact regarding which a request for information has been made in his original question.

XIII. The Member in charge may decline to answer a supplementary question without notice, in which case the supplementary question may be put in the form of a fresh question at a subsequent meeting of the Council.

XIV. These rules, except rules VI and VII, apply also to supplementary questions :

Provided that the President may disallow any supplementary question without giving any reason therefor.

XV. The President may rule that an answer to a question in the list of business for the day shall be given on the ground of public interests even though the question may have been withdrawn.

XVI. No discussion shall be permitted in respect of any question or of any answer given to a question.

XVII. All questions asked and the answers given shall be entered in the proceedings of the Council :

Provided that no question which has been disallowed by the President shall be so entered.

XVIII. The President may assign such time as, with due regard to the public interests, he may consider reasonable for the putting and answering of questions.

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THE RESOLUTION OF THE GOVERNOR-GENERAL IN COUNCIL No. 4213, DATED THE 15TH OF NOVEMBER, 1909.

With the approval of the Secretary of State in Council, the Governor-General in Council has to-day brought into operation the Indian Councils Act, 1909, and has published the rules and regulations relating to the nomination and election of the Members of the enlarged Legislative Councils. This act marks the completion of the earnest and prolonged deliberations that were initiated by the Viceroy more than three years ago, when he appointed a Committee of his Executive Council to consider and report on the general question of giving to the peoples of India a larger measure of political representation and wider opportunities of expressing their views on administrative matters.

2. The various stages of inquiry and discussion which followed need not be reviewed at length. In the Home Department letter of the 24th August, 1907, the Government of India put forward certain provisional and tentative proposals, and invited the Local Governments to submit their matured conclusions, after consulting important bodies and individuals representing the various classes of the community. The voluminous opinions elicited by that letter were fully dealt with in the Despatch which the Government of India addressed to the Secretary of State on the 1st October, 1908, and in LORD MORLEY'S Despatch of the 27th November following. Since those papers were published, the Government of India have been engaged, in communication with the Secretary of State, in working out the principles accepted by him, and the scheme finally adopted for the future constitution of the Legislative Councils is embodied in the Indian Councils Act and in the Regulations which are published to-day. The Governor-General in Council will now proceed to state briefly the extent and nature of the changes introduced and to indi-

cate in what respects they differ from the proposals contained in the papers already published.

3. The maximum strength of each Council is fixed by the first Schedule of the Act. Excluding the Head of the Government and the Members of the Executive Councils, it varies from 60 for the Council of the Governor-General, to 30 for the Councils of the Punjab and Burma, the number for each of the other five Provincial Councils being 50. The actual strength of each Council is determined by the Regulations: the statutory maximum will at present be worked up to only in the Imperial and Bengal Councils, but as will be seen from the annexed statements the numbers are in every case slightly larger than those shown in the Despatch of the 1st October, 1908.

4. For the reasons given by the Secretary of State in his Despatch of 27th November, 1908, there will continue to be a majority of officials in the Governor General's Council, but the Regulations provide not only that there may be, but that there must be, a majority of non-official Members in every Provincial Council. The following statement, from which the Head of the Government is in each case excluded, shows the effect of this great constitutional change on the composition of each Council. It will be within the power of a Local Government to increase the non-official majority by nominating less than the maximum number of officials and substituting non-officials, but that majority can not be reduced except to the limited extent indicated below and then only for a specified period or in connection with a particular measure :—

Legislative Council of	Officials.	Non-officials.	Majority.
			Official.
India	35	32	3
			Non-official.
Madras	19	26	7
Bombay	17	28	11
Bengal	17	31	14
United Provinces ...	20	26	6
Eastern Bengal and Assam	17	23	6
Punjab	10	14	4
Burma	6	6	3

These figures relate to the ordinary constitution of the Councils and leave out of account the two experts who may

be appointed Members of each Provincial Council when the legislation in hand is of a nature to demand expert advice. If these Members are non-officials the majority will be strengthened, and even if both are officials it will not be entirely neutralised. The strength of the non-official majority varies with local conditions.

5. Special provision has been made for the representation of the professional classes, the landholders, the Mahomedans, European commerce, and Indian commerce. The first of these interests will be represented on the Governor-General's Council by the Members elected by the Provincial Legislative Councils and by the District Councils and Municipal Committees in the Central Provinces; and on the Provincial Councils by the representatives of the District Boards, the Municipalities, the Corporations of the Presidency Towns and the Universities. The others will be represented upon all the Councils by Members elected by special electorates or nominated under an express provision of the Regulations. The representative of the Bombay landholders on the Governor-General's Council will be elected at the first, third and subsequent alternate elections by the landholders of Sind, a great majority of whom are Mahomedans, while at other elections he will be elected by the Sardars of Gujerat or the Sardars of the Deccan, a majority of whom are Hindus. Again the landholders of the Punjab consist of about equal numbers of Mahomedans and non-Mahomedans and it may be assumed that their representative will be alternately a Mahomedan and non-Mahomedan. It has accordingly been decided that at the second, fourth, and succeeding alternate election when these two seats will pesumably not be held by Mahomedans, there shall be two special electorates consisting of the Mahomedan landholders who are entitled to vote for the Member who represents in the Governor-General's Council the landholders of the United Provinces and Eastern Bengal and Assam respectively. In some Provinces there are special interests such as the tea and jute industries in Eastern Bengal and Assam and the planting communities in Madras and Bengal, for which special provision has been made. The representation of minor interests and smaller classes will be provided for by nominations made from time to time as the particular needs of the moment and the claims of each community may require.

6. In the Despatch of the 1st October, 1908 it was explained that some of the seats there shown as elective might at first have to be filled by nomination, pending the formation of suit-

able electorates. Further inquiry has shown their course to be unavoidable at present in respect of (1) the representative of Indian Commerce in all Councils except that of the Governor of Bombay; (2) the representatives of the landholders and the Mahomedan community of the Punjab on the Governor-General's Council; and (3) the representative of the planting community on the Bengal Council. The Regulations, however, provide that a Member must be nominated to represent each of these interests; and it is the intention of the Governor-General in Council to substitute election for nomination wherever a workable electorate can be formed.

7. It will be seen that the Regulations have been divided into two parts, first, the substantive Regulations, which deal with all matters of general application, and, secondly, a series of separate Schedules defining the constitution of each electorate and prescribing the electoral procedure to be adopted in each case.

8. The qualifications required for both candidates and voters are specified in the Schedules, but the disqualifications, which apply generally, are given in the Regulations. The only voters disqualified are females, minors, and persons of unsound mind, but for candidates wider restrictions are obviously necessary and these are set forth under nine heads in Regulation IV. The last of these provides that no person shall be eligible for election if he has been declared by the Government of India or the Local Government to be of such reputation and antecedents that his election would, in the opinion of the Government, be contrary to the public interests. The Act of 1892 laid down that an elected candidate must be nominated by the Head of the Government before he could take his seat on the Council. It thus gave power to exclude a candidate whose presence would bring discredit upon the Council, and although this power was never exercised, yet it served a useful purpose in deterring such persons from coming forward for election. If the dignity and representative character of the Legislative Councils are to be maintained, there must be some means of excluding unworthy candidatures, though recourse to it would be of rare occurrence, and the disqualification imposed would not necessarily be permanent.

9. In accordance with the practice of the House of Commons and of other British Legislatures, Members of the enlarged

Councils must, before taking their seats, make an oath or affirmation of allegiance to the Crown.

10. If a candidate is elected for more than one electorate he is required by Regulation IX to choose for which electorate he will sit. The votes recorded for him in any electorate for which he decides not to sit will be deemed not to have been given, and the seat will go to the candidate who would have been elected but for such votes. This is in accordance with the procedure prescribed for ward elections in the city of Bombay, and it has the advantages of rendering a fresh election unnecessary.

11. The normal term of office has been extended from two to three years, but a Member elected to fill a casual vacancy will sit only for the unexpired portion of the outgoing Member's term. This provision is necessary to meet the case of electorates which elect by rotation. To deprive such a constituency of its representation for what might be a considerable portion of the term allotted to it would be unfair; while to allow the constituency of the out-going Member (who might have sat for nearly the full term) to elect another Member for a further period of three years would be open to still greater objections. The provision is also required to secure the retention of the advantages of cumulative voting in two-member constituencies.

12. It has been expressly laid down that corrupt practices shall render an election invalid. There is no such provision in the existing Regulations but the great extension of the principle of election and the probability of keen contests render it desirable to provide safe-guards against the employment of improper practices. The definition of "corrupt practices" is taken from the Bombay District Municipalities Act. It covers false personation on the part of a voter and the use of threats of injury, as well as the actual purchase of votes by the candidate or his agent.

13. Any person who is qualified as a voter or a candidate may question the validity of an election and apply to the Government of India or the Local Government, as the case may be, to set it aside. After such inquiry as may be necessary, the Government may declare whether the candidate whose election is questioned was duly elected; or whether any, and if so, what other person was duly elected; or whether the election was void (Regulation XVI). An election will not, how-

ever, be set aside on the ground of minor irregularities which do not affect the result (Regulation XV).

14. In most cases the electorates are sufficiently defined in the Regulations ; where more detailed information is necessary, this has been given in the Schedules prescribing the electoral procedure. Where the electorates are scattered, as is the case with the landholders and the Mahomedans, provision has been made for the preparation and publication of an electoral roll containing the names of all persons qualified to vote. After the first election this roll will be brought under revision from time to time, when claims and objections will be decided ; but the roll actually in force at the time of any election will be conclusive evidence on the question whether any person has the right to vote. The Governor-General in Council regrets that it has not been possible to allow claims to be made or objections to be taken in respect of the first roll. The qualifications upon which each roll is based could not be announced until the Regulations had received the approval of the Secretary of State, and no revision of the roll could be undertaken until the new Act had been brought into operation. At least two months would have to be devoted to the disposal of claims and objections, and it is probable that even at the end of that period some cases would still be pending. It would thus be impossible to constitute the Provincial Councils before March 1910, and the Governor-General's Council could not assemble before the end of that month or the beginning of April. The consequent loss of the whole of the legislative season would cause so much inconvenience that it would be necessary to defer putting the Act into operation and to postpone the assembling of the new Councils until the session of 1910-11. The Governor-General in Council is sensible of the objections to holding an election on a register which has not been subjected to the test of revision, but he is convinced that those objections are greatly out-weighed by the keen disappointment that would be caused by further delay in introducing the constitutional changes which have now been under discussion for more than three years. Moreover, the danger of improper omission or inclusion is comparatively small. The two principal qualifications are payment of land revenue and income tax, the records of which are detailed and complete and steps were taken before-hand to ensure, as far as possible, that doubtful cases and claims based on other qualifications should be brought to notice. The Governor-General in Council believes that the great majority of those interested in

the question will recognise the difficulties of the situation, and will acquiesce in the dicision to prefer the possibility of some small degree of error affecting only a few individuals to the certainty of further prolonged delay in the assembling of the new Councils.

15. The qualifications prescribed for electors in the cases of the landholders and the Mahomedans vary greatly from Province to Province. They are in accordance, for the most part, with the specific recommendations of the Local Governments, and these recommendations again were based upon inquiries made by a special officer appointed in each Province to ascertain by personal consultation the wishes of the Members of the two communities. The Governor-General in Council would have preferred some nearer approach to uniformity; but the principle he has borne in mind is that election by the wishes of the people is the ultimate object to be secured and he has felt that he must be guided by the advice of the Local authorities as to what those wishes are. The status and circumstances both of the landholders and of the Mahomedan community differ widely from Province to Province, and qualifications which would produce a satisfactory constituency in one case would in another give an electorate insignificant in numbers and deficient in representative character.

16. The qualifications for candidates are, as a rule, the same as those prescribed for voters, but in some cases, such as that of candidates for election to the Governor-General's Council by the non-official Members of a Provincial Council, any such restriction would be inappropriate. In other instances, there has been some difference of treatment in different Provinces, but the object in all cases has been to secure that the Member shall really represent the electorate.

17. The different kinds of electoral machinery may be broadly classified under two main heads,—one under which the electors vote direct for the Members and the other under which they select delegates by whom the Members are elected. A subsidiary distinction in each case is that the electors or delegates either 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. A further distinction in the case of delegates is that in Bengal each delegate has 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 Mahomedan community upon the strength and importance of the Mahomedan population of a district or group of districts. Elsewhere the same object has been attained by varying the number of delegates on like grounds, each delegate then having only one vote. In the Central Provinces, however, the number of delegates to be elected by each District Council and Municipal Committee has been fixed, not with sole reference to income or population, but with regard to a number of factors, of which those two are perhaps the most important.

18. A special case of voting by delegates is that of the election of a Member of the Governor-General's Council to represent 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. This exceptional method has been admitted on the assurance of the Governor in Council that the Mahomedan community of the Presidency as a whole would be better represented by the Mahomedan Members of the Provincial Council than by any form of direct electorate that could be devised.

19. The procedure for voting is generally similar to that prescribed by the English Ballot Act. In some cases, however, such as the elections by the Corporations of the Presidency Towns, the Chambers of Commerce and the Trades Associations, the voting will, as at present, be regulated by the procedure usually adopted by those bodies for the transaction of their ordinary business.

20. The rules authorising the moving and discussion of resolutions, the discussion of the Budget, and the asking of questions have been framed in accordance with the decisions on these matters which have already been announced. In the rules relating to the discussion in the Governor-General's Council of matters of general public interest it is provided that no discussion shall be allowed in regard to subjects removed from the cognisance of the Council by the Indian Councils Act of 1861, or matters affecting the foreign relations of His Majesty's Government or the Government of India, or matters which are *sub-judice*. The President may also disallow any resolution on the ground that its introduction is opposed to the public interest, or that it should be moved in the Legislative Council of a Local Government. Subject to these necessary restrictions, a resolution may be moved regarding any matter of general

public interest and all such resolutions may be fully discussed and put to the vote. The President may assign such time as he may consider reasonable for the discussion of resolutions or of any particular resolution.

The examination of the annual financial proposals in the Governor-General's Council will be divided into three parts. There will first be an opportunity for discussing any alteration in taxation, any new loan, or any grant to Local Governments proposed or mentioned in the financial statement or the explanatory memorandum accompanying it. In the second stage, each head or group of heads of revenue or expenditure not excluded from discussion will be explained by the Member in charge of the administrative department concerned and any Member may then move a resolution relating to these subjects. The final stage consists of the presentation of the Budget by the Finance Member, who will explain why any resolutions passed by the Council have not been accepted. A general discussion of the Budget will follow, but at this stage no resolution may be moved.

The rules for the asking of questions are substantially the same as those hitherto in force, with the important exception that they permit a Member who has asked a question to put a supplementary question.

In respect of these matters each Provincial Council is governed by rules of its own, which in essentials differ but little from those of the Governor-General's Council. One distinguishing feature, however, is that the local financial statement is first examined by a Committee of the Council consisting of twelve Members, of whom six will be nominated by the Head of the Government and six elected by the non-official Members of the Council.

21. The Governor-General in Council is conscious that many of the details of the scheme which is being introduced may be found on trial to be unsatisfactory or capable of improvement. Experience alone can show how far methods which are new to India give to the different classes and interests a measure of representation proportionate to their importance and influence, and to what extent an untried electoral machinery is suitable to the varying circumstances of the different Provinces and the numerous electorates. Defects will no doubt be discovered when the rules are put into operation, but, if this proves to be the case, the law admits of the Regulations being amended without difficulty.

22. Under the arrangements that have been made, the new Provincial Councils will assemble at the beginning of January 1910, and the Council of the Governor-General in the course of that month. It is a source of great satisfaction, both to the Viceroy personally and to the Members of his Council, that the deliberations which have extended over the greater part of LORD MINTO'S Viceroyalty should have achieved their purpose before he lays down the office of Governor-General. The constitutional changes that have been effected are of no small magnitude. The Councils have been greatly enlarged ; their maximum strength was 126 : it is now 370. All classes and interests of major importance will in future have their own representatives. In the place of 39 elected Members there will now be 135 ; and while the electorates of the old Council had only the right to recommend the candidate of their choice for appointment by the Head of the Government, and elected Member of the new Councils will sit as of right and, will need no official confirmation. Under the Regulations of 1892 officials were everywhere in a majority ; the Regulations just issued establish a non-official majority in every Provincial Council. Nor has reform been confined to the constitution of the Councils : their functions also have been greatly enlarged. A Member can now demand that the formal answer to a question shall be supplemented by further information. Discussion will no longer be confined to legislative business and a discursive and ineffectual debate on the Budget, but will be allowed in respect of all matters of general public interest. Members will in future take real and active part in shaping the financial proposals for the year ; and as regards not only financial matters but all questions of administration they will have liberal opportunities of criticism and discussion and of initiating advice and suggestions in the form of definite resolutions. The Governor-General in Council feels that these momentous changes constitute a generous fulfilment of the gracious intention, foreshadowed in the King-Emperor's Message, to entrust to the leaders of the Indian peoples a greater share in legislation and government, and he looks forward with confidence to these extensive powers being loyally and wisely used by them, in association with the holders of executive authority, to promote the prosperity and contentment of all classes of the inhabitants of this great country.

PART V.

DOCUMENTS RELATING TO THE CONSTITUTION OF THE INDIAN JUDICIARY.

(1833-1916)

I. THE ACT ESTABLISHING THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

AN ACT FOR THE BETTER ADMINISTRATION OF JUSTICE IN HIS MAJESTY'S PRIVY COUNCIL.

(3, & 4 William IV. C. 41).

14th August, 1833.

* * * *

And whereas, from the decisions of various Courts of Judicature in the East Indies, and in the plantations, colonies, and other Dominions of His Majesty Abroad, an appeal lies to His Majesty in Council : and whereas matters of Appeal or Petition to His Majesty in Council have usually been heard before a Committee of the whole of His Majesty's Privy Council, who have made a Report to His Majesty in Council, whereupon the final Judgment or determination hath been given by His Majesty : And whereas it is expedient to make certain Provisions for the more effectual hearing and reporting on Appeals to His Majesty in Council and on other matters, and to give such powers and jurisdiction to His Majesty in Council as hereinafter mentioned :—

Be it enacted etc. * * * That the President for the time being of His Majesty's Privy Council, the Lord High Chancellor of Great Britain for the time being, and such of the members of His Majesty's Privy Council as shall from time to time hold any of the offices following, that is to say, the office of Lord Keeper or First Lord Commissioner of the

Great Seal of Great Britain, Lord Chief Justice or Judge of the Court of King's Bench, Master of the Rolls, Vice-Chancellor of England, Lord Chief Justice or Judge of the Court of Common Pleas, Lord Chief Baron or Baron of the Court of Exchequer, Judge of the Prerogative Court of the Lord Archbishop of Canterbury, Judge of the High Court of Admiralty, and Chief Judge of the Court in Bankruptcy, and also all persons, Members of His Majesty's Privy Council, who shall have been President thereof or held the office of Lord Chancellor of Great Britain, or shall have held any of the other offices here-in-before mentioned, shall form a Committee of His Majesty's said Privy Council and shall be styled "The Judicial Committee of the Privy Council": Provided nevertheless, that it shall be lawful for His Majesty from time to time, as and when He shall think fit, by His Sign Manual, to appoint any two other persons, being Privy Councillors, to be members of the said Committee.

Certain persons to form a Committee, to be styled "The Judicial Committee of the Privy Council."

3. And be it further enacted, That all Appeals or complaints in the nature of Appeals whatever, which, either by virtue of this Act, or of any Law, Statute, or Custom, may be brought before His Majesty or His Majesty in Council from or in respect of the Determination, Sentence, Rule, or Order of any Court, Judge, or Judicial Officer, and all such appeals as are now pending and unheard, shall from and after the passing of this Act be referred by His Majesty to the said Judicial Committee of His Privy Council, and that such Appeals, Causes, and Matters shall be heard by the said Judicial Committee, and a Report or Recommendation thereon shall be made to His Majesty in Council for his decision thereon as heretofore, in the same manner and form as has been heretofore the Custom with respect to matters referred by His Majesty to the whole of His Privy Council or a Committee thereof (the Nature of such Report or Recommendation being always stated in open Court.)

All Appeals from sentence of any Judge, etc., to be referred by His Majesty to the Committee, to report thereon.

21. And be it further enacted, That the Order or Decree of His Majesty in Council on any Appeal from the Order, Sentence, or Decree of any Court of Justice in the East Indies, or of any Colony, Plantation, or other His

Decrees for Courts abroad to be carried into effect as the king in Council shall direct.

Majesty's Dominions abroad, shall be carried into effect in such manner, and subject to such limitations and conditions, as His Majesty in Council shall, on the recommendation of the said Judicial Committee, direct; and it shall be lawful for His Majesty in Council, on such recommendation, by order, to direct that such Court of Justice shall carry the same into effect accordingly, and thereupon such Court of Justice shall have the same powers of carrying into effect and enforcing such order or Decree as are possessed by or are hereby given to His Majesty in Council: Provided always that nothing in this Act contained shall impeach or abridge the powers, jurisdiction, or authority of His Majesty's Privy Council as heretofore exercised by such Council, or in anywise alter the constitution or duties of the said Privy Council, except so far as the same are expressly altered by this Act, and for the purposes aforesaid.

Act not to abridge Powers of Privy Council.

22. And whereas various appeals to His Majesty in Council from the Courts of Sudder Dewanny Adawlut at the several Presidencies of Calcutta, Madras, and Bombay in the East Indies, have been admitted by the said Courts and the transcripts of the proceedings in appeal have been from time to time transmitted under the seal of the said Courts, through the United Company of Merchants in England trading to the East Indies, to the office of His Majesty's said Privy Council, but the suitors in the causes so appealed have not taken the necessary measures to bring on the same to Hearing; be it therefore further enacted by the authority aforesaid that it shall be lawful for His Majesty in Council to give such directions to the said United Company and other persons for the purpose of bringing to a hearing before the said Committee the several cases appealed or hereafter to be appealed to His Majesty in Council from the several Courts of Sudder Dewanny Adawlut in the East Indies and for appointing Agents and Counsel for the different parties in such appeals, and to make such orders for security and payment of the cost thereupon, as His said Majesty in Council shall think fit; and thereupon such Appeals shall be heard and reported on to His Majesty in Council, and shall be by His Majesty in Council determined in the same manner, and the Judgments, Orders, and Decrees of His Majesty in Council thereon shall be of the same force and effect, as if the same had

His Majesty may direct the East India Company to bring on Appeals from the Sudder Dewanny Adawlut courts to a hearing.

been brought to a hearing by the direction of the parties appealing in the usual course of proceeding: Provided always, that such last mentioned Powers shall not extend to any Appeals from the said Courts of Sudder Dewanny Adawlut other than Appeals in which no proceedings have been or shall hereafter be taken in England on either side for a period of two years subsequent to the admission of the Appeal by such Court of Sudder Dewanny Adawlut.

His Majesty empowered to make orders for regulating the mode etc., of such Appeals.

24. And be it further enacted, That it shall be lawful for His Majesty in Council from time to time to make any such rules and orders as may be thought fit for regulating the mode, form, and time of Appeal to be made from the Decisions of the said Courts of Sudder Dewany Adawlut, or any other Courts of Judicature in India or elsewhere to the Eastward of the Cape of Good Hope (from the decisions of which an Appeal lies to His Majesty in Council), and in like manner from time to time to make such other Regulations for the preventing Delays in the making or hearing such Appeals, and as to Expenses attending the said Appeals, and as to the Amount or Value of the Property in respect of which any such Appeal may be made.

Retired Judges attending the Judicial Committee to receive an Allowance.

30. And be it enacted, That two Members of His Majesty's Privy Council who shall have held the office of Judge in the East Indies or any of His Majesty's Dominions beyond the Seas, and who, being appointed for that purpose by His Majesty, shall attend the sittings of the Judicial Committee of the Privy Council, shall severally be entitled to receive, over and above any Annuity granted to them in respect of having held such office as aforesaid, the sum of Four Hundred Pounds for every year during which they shall so attend as aforesaid, as an Indemnity for the Expense which they may thereby incur; and such sum of Four Hundred Pounds shall be chargeable upon and paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland.

II. THE INDIAN HIGH COURTS ACT, 1861.

(24 & 25 Vict. C. 104.)

AN ACT FOR ESTABLISHING HIGH COURTS OF JUDICATURE IN INDIA. (6th Aug. 1861).

Be it enacted by the Queen's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

High Courts may be established in the several Presidencies of India.

1. It shall be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at *Fort William* in *Bengal* for the *Bengal* Division of the Presidency of Fort William aforesaid, and by like Letters Patent to erect and establish like High Courts at *Madras* and *Bombay* for those Presidencies respectively, such High Courts to be established in the said several Presidencies at such time or respective times as to Her Majesty may seem fit, and the High Court to be established under any such Letters Patent in any of the said Presidencies shall be deemed to be established from and after the publication of such Letters Patent in the same Presidency, or such other Time as in such Letters Patent may be appointed in this behalf.

Constitution of High Courts.

2. The High Court of Judicature at *Fort William* in *Bengal* and at the Presidencies of *Madras* and *Bombay* respectively shall consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty may from Time to Time think fit and appoint, who shall be selected from—

1st. Barristers of not less than Five Years' standing ; or,

2nd. Members of the Covenanted Civil Service of not less than Ten Years' standing, and who shall have served as Zillah Judges, or shall have exercised the like Powers as those of a Zillah Judge for at least Three Years of that Period ; or,

3rd. Persons who have held Judicial office not inferior to that of Principal Sudder Ameen or Judge of a Small Causes Court for a Period of not less than Five Years ; or,

4th. Persons who have been Pleaders of a Sudder Court or High Court for a Period of not less than Ten Years, if such

Pleaders of a Sudder Court shall have been admitted as Pleaders of a High Court:

Provided that not less than One Third of the Judges of such High Courts respectively, including the Chief Justice, shall be Barristers, and not less than One Third shall be Members of the Covenanted Civil Service.

Certain existing Judges to be first Judges of High Court.

3. Provided always, That the Persons who at the Time of the Establishment of such High Court in any of the said Presidencies are Judges of the Supreme Court of Judicature and Permanent Judges of the Court of Sudder Dewanny Adawlut or Sudder Adawlut of the same Presidency shall be and become Judges of such High Court without further Appointment for that Purpose; and the Chief Justice of such Supreme Court shall become the Chief Justice of such High Court.

Tenure of office of Judges of High Court.

4. All the Judges of the High Courts established under this Act shall hold their offices during Her Majesty's Pleasure: Provided that it shall be lawful for any Judge of a High Court to resign such office of Judge to the Governor-General of *India* in Council or Governor in Council of the Presidency, in which such High Court is established.

Precedence of Judges of High Courts.

5. The Chief Justice of any such High Court shall have Rank and Precedence before the other Judges of the same Court, and such of the other Judges of such Court as on its Establishment shall have been transferred thereto from the Supreme Court shall have Rank and Precedence before the Judges of the High Court not transferred from the Supreme Court, and, except as aforesaid, all the Judges of each High Court shall have Rank and Precedence according to the Seniority of their Appointments, unless otherwise provided in their Patents.

Salaries, &c., of Judges of the High Courts.

6. Any Chief Justice or Judge transferred to any High Court from the Supreme Court shall receive the like Salary and be entitled to the like Retiring Pension and Advantage as he would have been entitled to, for, and in respect of Service in the Supreme Court, if such Court had been continued, his Service in the High Court being reckoned as Service in the Supreme Court; and, except as aforesaid, it

shall be lawful for the Secretary of State in Council of *India* to fix the Salaries, Allowances, Furloughs, Retiring Pensions, and (where necessary) Expenses for Equipment and Voyage of the Chief Justices and Judges of the several High Courts under this Act, and from Time to Time to alter the same: Provided always, that such Alteration shall not affect the Salary of any Judge appointed prior to the Date thereof.

Provision for vacancy of the office of Chief-Justice or other Judge.

7. Upon the happening of a vacancy in the office of the Chief Justice, and during any absence of a Chief Justice, the Governor-General in Council or Governor in Council, as the case may be, shall appoint one of the Judges of the same High Court to perform the duties of Chief Justice of the said Court until some Person has been appointed by Her Majesty to the office of Chief Justice of the same Court, and has entered on the discharge of the duties of such Office, or until the Chief Justice has returned from such Absence; and upon the happening of a vacancy in the office of any other Judge of any such High Court, and during any Absence of any such Judge, or on the Appointment of any such Judge to act as Chief Justice, it shall be lawful for the Governor-General in Council or Governor in Council, as the case may be, to appoint a Person, with such Qualifications, as are required in Persons to be appointed to the High Court, to act as a Judge of the said High Court and the Person so appointed shall be authorized to sit and to perform the Duties of a Judge of the said Court until some Person has been appointed by Her Majesty to the Office of Judge of the same Court, and has entered on the Discharge of the Duties of such Office, or until the absent Judge has returned from such Absence, or until the Governor-General in Council or Governor in Council as aforesaid shall see Cause to cancel the Appointment of such acting Judge.

Abolition of Supreme Courts & Sudder Courts.

8. Upon the Establishment of such High Court as aforesaid in the Presidency of Fort William in Bengal the Supreme Court and the Court of Sudder Dewanny Adawlut and Sudder Nizamut Adawlut at Calcutta in the same Presidency shall be abolished:

And upon the Establishment of such High Court in the Presidency of Madras the Supreme Court and the Court of Sudder Adawlut and Foujdary Adawlut in the same Presidency shall be abolished:

And upon the Establishment of such High Court in the

Presidency of Bombay the Supreme Court and the Court of Sudder Dewanny Adawlut and Sudder Foujdary Adawlut in the same Presidency shall be abolished :

And the Records and Documents of the several Courts so abolished in each Presidency shall become and be Records and Documents of the High Court established in the same Presidency.

Jurisdiction and Powers of High Courts.

9. Each of the High Courts to be established under this Act shall have and exercise all such Civil, Criminal, Admiralty, and Vice-Admiralty, Testamentary, Intestate, and Matrimonial Jurisdiction, original and appellate, and all such Powers and Authority for and in relation to the Administration of Justice in the Presidency for which it is established, as Her Majesty may by such Letters Patent as aforesaid grant and direct, subject, however, to such Directions and Limitations as to the Exercise of original Civil and Criminal Jurisdiction beyond the Limits of the Presidency Towns as may be prescribed thereby ; and, save as by such Letters Patent may be otherwise directed, and subject and without Prejudice to the Legislative Powers in relation to the Matters aforesaid of the Governor-General of India in Council, the High Court to be established in each Presidency shall have and exercise all Jurisdiction and every Power and Authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under this Act at the time of the Abolition of such last-mentioned Courts.

High Courts to exercise same jurisdiction as Supreme Courts.

10. Until the Crown shall otherwise provide under the Powers of this Act, all Jurisdiction now exercised by the Supreme Courts of Calcutta, Madras, and Bombay respectively over inhabitants of such parts of India as may not be comprised within the local Limits of the Letters Patent to be issued under this Act establishing High Courts at Fort William, Madras, and Bombay, shall be exercised by such High Courts respectively.

11. Upon the establishment of the said High Courts in the said Presidencies respectively all Provisions then in force in India of Acts of Parliament, or of any Orders of Her Majesty in Council, or Charters, or of any Acts of the Legislature of India, which at the time or respective times of the establishment of such High Courts are respectively ap-

plicable to the Supreme Courts at Fort William in Bengal, Madras, and Bombay respectively, or to the Judges of those Courts, shall be taken to be applicable to the said High Courts, and to the Judges thereof respectively, so far as may be consistent with the Provisions of this Act, and the Letters Patent to be issued in pursuance thereof, and subject to the Legislative Powers in relation to the Matters aforesaid of the Governor-General of India in Council.

Existing provisions applicable to Supreme Courts to apply to High Courts.

12. From and after the Abolition of the Courts abolished as aforesaid in any of the said Presidencies, the High Court of the same Presidency shall have Jurisdiction over all proceedings pending in such abolished Courts at the time of the Abolition thereof, and such Proceedings, and all previous Proceedings in the said last-mentioned Courts, shall be dealt with as if the same had been had in the said High Court, save that any such Proceedings may be continued, as nearly as Circumstances permit, under and according to the Practice of the abolished Courts respectively.

Provisions as to pending proceedings in abolished Courts.

13. Subject to any Laws or Regulations which may be made by the Governor-General in Council the High Court established in any Presidency under this Act may by its own Rules provide for the Exercise, by one or more Judges, or by Division Courts constituted by two or more Judges of the said High Court, of the Original and Appellate Jurisdiction vested in such Court, in such manner as may appear to such Court to be convenient for the due Administration of Justice.

High Courts may provide for exercise of jurisdiction by single Judges etc.

14. The Chief Justice of each High Court shall from Time to Time determine what Judge in each Case shall sit alone, and what Judges of the Court, whether with or without the Chief Justice, shall constitute the several Division Courts as aforesaid.

Chief Justice to determine what Judges shall sit alone, etc.

15. Each of the High Courts established under this Act shall have superintendence over all Courts which may be subject to its Appellate Jurisdiction, and shall have Power to call for Returns, and to direct the Transfer of any Suit or Appeal for any such Court to any other Court of equal or superior Jurisdiction, and shall have Power to make and issue

General Rules for regulating the Practice and Proceedings of such Courts, and also to prescribe Forms for every Proceeding in the said Courts for which it shall think necessary that a form be provided, and also for keeping all Books, Entries, and Accounts to be kept by the officers, and also to settle Tables of Fees to be allowed to the Sheriff, Attorneys, and all Clerks and Officers of Courts, and from Time to Time to alter any such Rule or Form or Table; and the Rules so made, and the Forms so framed, and the Tables so settled, shall be used and observed in the said Courts, provided that such General Rules and Forms and Tables be not inconsistent with the Provisions of any law in force, and shall before they are issued have received the Sanction, in the Presidency of Fort William of the Governor-General in Council, and in Madras or Bombay of the Governor in Council of the respective Presidencies.

High Court to superintend and to frame rules of practice for Subordinate Courts.

16. It shall be lawful for Her Majesty, if at any Time hereafter Her Majesty see fit so to do, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature in and for any Portion of the Territories within Her Majesty's Dominions in India, not included within the Limits of the local Jurisdiction of another High Court, to consist of a Chief Justice and of such Number of other Judges, with such Qualifications as are required in Persons to be appointed to the High Courts established at the Presidencies here-in-before mentioned, as Her Majesty from Time to Time may think fit and appoint; and it shall be lawful for Her Majesty by such Letters Patent to confer on such Court any such Jurisdiction, Powers, and Authority, as under this Act is authorised to be conferred on or will become vested in the High Court to be established in any Presidency here-in-before mentioned; and, subject to the Directions of such Letters Patent, all the Provisions of this Act having reference to the High Court established in any such Presidency, and to the Chief Justice and other Judges of such Court, and to the Governor-General or Governor of the Presidency in which such High Court is established, shall, as far as Circumstances may permit, be applicable to the High Court established in the said Territories, and to the Chief Justice and other Judges thereof, and to the person administering the Government of the said Territories.

Her Majesty may establish a High Court in the North Western Provinces.

17. It shall be lawful for Her Majesty, if Her Majesty shall so think fit, at any Time within Three Years after the Establishment of any High Court under this Act, by Her Letters Patent to revoke all or such Parts or Provisions as Her Majesty may think fit of the Letters Patent by which such Court was established, and to grant and make such other Powers and Provisions as Her Majesty may think fit, and as might have been granted or made by such First Letters Patent, or without any such Revocation as aforesaid, by like Letters Patent to grant and make any additional or supplementary Powers and Provisions which might have been granted or made in the first instance.

Other or supplemental Charters may be granted within three years after establishment of Court.

18. It shall be lawful for Her Majesty, from Time to Time by her Order in Council, to transfer any Territories or Place from the Jurisdiction of One to the Jurisdiction of Any Other of the High Courts established under this Act, and generally to alter and determine the territorial Limits of the Jurisdiction of the said several Courts as to Her Majesty, with the advice of Her Privy Council, may seem meet.

Territorial limits may be altered by Order in Council.

19. The Word "Barrister" in this Act shall be deemed to include Barristers of England or Ireland or Members of the Faculty of Advocates in Scotland; and the Words "Governor-General and Governor" shall comprehend the Officer administering the Government.

Interpretation of terms.

III. LETTERS PATENT* FOR THE HIGH COURT IN BENGAL, 1865.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, To all to whom these presents shall come, greeting: Whereas by an Act of Parliament passed in the Twenty-fourth and Twenty-fifth Years of Our Reign, entituled "An Act for establishing High Courts of Judicature in India," it was, amongst other things, enacted that it should be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal, for the Bengal Division of the Presidency of Fort William aforesaid, and that such High Court should consist

* The Letters Patent for the High Courts of Madras and Bombay are *mutatis mutandis* in exactly the same terms.

of a Chief Justice, and as many Judges, not exceeding fifteen, as Her Majesty might, from time to time, think fit to appoint, who should be selected from among persons qualified as in the said Act is declared : Provided always, that the persons who at the time of the establishment of such High Court were Judges of the Supreme Court of Judicature, and permanent Judges of the Court of Sudder Dewanny Adawlut or Sudder Adawlut of the same Presidency, should be and become Judges of such High Court without further appointment for that purpose, and the Chief Justice of such Supreme Court should become the Chief Justice of such High Court, and that upon the establishment of such High Court as aforesaid, the Supreme Court and the Court of Sudder Dewanny Adawlut and Sudder Nizamut Adawlut at Calcutta in the said Presidency, should be abolished :—

And that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the said Presidency, as Her Majesty might, by such Letters Patent as aforesaid, grant and direct, subject, however, to such directions and limitations, as to the exercise of original, civil, and criminal jurisdiction beyond the limits of the Presidency town, as might be prescribed thereby : and save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever, in any manner vested in any of the Courts in the same Presidency abolished under the said Act, at the time of the abolition of such last-mentioned Courts :—

And whereas We did, upon full consideration of the premises, think fit to erect and establish, and by our Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the Fourteenth day of May, in the Twenty-fifth Year of our Reign, in the Year of our Lord One thousand eight hundred and sixty-two, did, accordingly, for Us, Our heirs and successors, erect and establish, at Fort William in Bengal, for the Bengal Division of the Presidency of Fort William aforesaid, a High Court of Judicature, which should be called the High Coutt of Judica-

ture at Fort William in Bengal, and did thereby constitute the said Court to be a Court of Record; and whereas We did thereby appoint and ordain that the said High Court of Judicature at Fort William in Bengal should until further or other provision should be made by Us or Our heirs and successors in that behalf, in accordance with the recited Act, consist of a Chief Justice and thirteen Judges, and did thereby, in addition to the persons who at the time of the establishment of the said High Court were Judges of the Supreme Court of Judicature, and permanent Judges of the Court of Sudder Dewanny Adawlut, in the said Presidency respectively, constitute and appoint certain other persons, being respectively qualified as in the said Act is declared, to be Judges of the said High Court:—

And whereas on the thirtieth day of January One thousand eight hundred and sixty-three, We did, in the manner in the said recited Act provided, direct and ordain that the said High Court should consist of a Chief Justice and fourteen Judges:—

And whereas by the said recited Act it is declared lawful for Her Majesty, at any time within three years after the establishment of the said High Court, by her Letters Patent, to revoke all or such parts or provisions as Her Majesty might think fit of the Letters Patent by which such Court was established, and to grant and make such other powers and provisions as Her Majesty might think fit, and as might have been granted or made by such first Letters Patent:—

And whereas by the Act of the twenty-eighth Year of Our Reign, chapter fifteen, entitled "an Act to extend the term for granting fresh Letters Patent for the High Courts in India, and to make further provision respecting the territorial jurisdiction of the said Courts," the time for issuing fresh Letters Patent has been extended to the First of January, One thousand eight hundred and sixty-six:—

And whereas, in order to make further provision respecting the constitution of the said High Court, and the administration of justice thereby, it is expedient that the said Letters Patent, dated the Fourteenth of May, One thousand eight hundred and sixty-two, should be revoked, and that some of the powers and provisions thereby granted and made should be granted and made with amendments and additional powers and provisions by fresh Letters Patent:—

1. Now know ye that We, upon full consideration of the premises, and of Our special grace, certain knowledge, and mere motion, have thought fit to revoke, and do by these presents (from and after the date of the publication thereof as hereinafter provided, and subject to the provisions thereof) revoke Our said Letters Patent of the Fourteenth of May, One thousand eight hundred and sixty-two, except so far as the Letters Patent of the Fourteenth Year of His Majesty King George the Third, dated the twentysixth of March, One thousand seven hundred and seventy-four, establishing a Supreme Court of Judicature at Fort William in Bengal, were revoked or determined thereby.

2. And We do by these presents grant, direct, and ordain, that notwithstanding the revocation of the said Letters Patent of the Fourteenth of May, One thousand eight hundred and sixty-two the High Court of Judicature, called the High Court of Judicature at Fort William in Bengal, shall be and continue, as from the time of the original erection and establishment thereof, the High Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid; and that the said Court shall be and continue a Court of Record, and that all proceedings commenced in the said High Court prior to the date of the publication of these Letters Patent shall be continued and depend in the said High Court as if they had commenced in the said High Court after the date of such publication, and that all rules and orders in force in the said High Court immediately before the date of the publication of these Letters Patent shall continue in force, except so far as the same are altered hereby, until the same are altered by competent authority.

3. And We do hereby appoint and ordain, that the person and persons who shall immediately before the date of the publication of these Letters Patent be the Chief Justice and Judges, or acting Chief Justice or Judges, if any, of the said High Court of Judicature at Fort William in Bengal, shall continue to be the Chief Justice and Judges, or acting Chief Justice or Judges, of the said High Court, until further or other provisions shall be made by Us or Our heirs and successors in that behalf, in accordance with the said recited Act for establishing High Courts of Judicature in India.

4. And We do hereby appoint and ordain, that every clerk and ministerial officer of the said High Court of Judicature at Fort William in Bengal appointed by virtue of the said Letters Patent of the Fourteenth of May, One thousand eight

hundred and sixty-two, shall continue to hold and enjoy his office and employment, with the salary thereunto annexed, until he be removed from such office and employment; and he shall be subject to the like power of removal, regulations, and provisions as if he were appointed by virtue of these Letters Patent.

5. And We do hereby ordain, that the Chief Justice and every Judge *who shall be from time to time appointed to* the said High Court of Judicature at Fort William in Bengal, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Governor-General in Council may commission to receive it :—

"I, A. B., appointed Chief Justice (or a Judge) of the High Court of Judicature at Fort William in Bengal, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge, and judgment."

6. And We do hereby grant, ordain, and appoint, that the said High Court of Judicature at Fort William in Bengal shall have and use, as occasion may require, a seal bearing a device and impression of Our Royal Arms, with an exergue or label surrounding the same, with this inscription : "The Seal of the High Court at Fort William in Bengal." And We do further grant, ordain, and appoint, that the said seal shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice, under the provisions of section 7 of the said recited Act ; and We do further grant, ordain, and appoint, that whensoever it shall happen that the office of Chief Justice, or of the Judge to whom the custody of the said seal be committed, shall be vacant, the said High Court shall be and is hereby authorized and empowered to demand, seize, and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her, or their possession.

7. And We do hereby further grant, ordain, and appoint, that all writs, summons, precepts, rules, orders, and other mandatory process to be used, issued, or awarded by the said High Court of Judicature at Fort William in Bengal, shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the seal of the said High Court.

8. And We do hereby authorize and empower the Chief Justice of the said High Court of Judicature at Fort William in Bengal from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor-General in Council, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice, and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And We do hereby ordain that every such appointment shall be forthwith submitted to the approval of the Governor-General in Council, and shall be either confirmed or disallowed by the Governor-General in Council, and it is Our further will and pleasure, and We do hereby, for Us, Our Heirs and Successors, give, grant, direct, and appoint, that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall, from time to time, appoint for each office and place respectively, and as the Governor-General in Council shall approve of: Provided always, and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they shall hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed by the Governor-General in Council, and to absent himself from the said limits during the term of such leave, in accordance with the said rules.

Admission of Advocates, Vakeels, and Attorneys.

9. And We do hereby authorize and empower the said High Court of Judicature at Fort William in Bengal to approve, admit, and enrol such and so many Advocates, Vakeels, and Attorneys as to the said High Court shall seem meet; and such Advocates, Vakeels, and Attorneys shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions.

10. And We do hereby ordain, that the said High Court of Judicature at Fort William in Bengal shall have power to make rules for the qualifications and admission of proper persons to be Advocates, Vakeels, and Attorneys-at-Law of the said High Court, and shall be empowered to remove *or to suspend*

from practice, on reasonable cause, the said Advocates, Vakeels, or Attorneys-at-Law ; and no person whatsoever but such Advocates, Vakeels, or Attorneys shall be allowed to act *or to plead* for, *or on behalf* of any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf, or on behalf of a co-suitor.

Civil Jurisdiction of the High Court.

11. And We do hereby ordain, that the said High Court of Judicature at Fort William in Bengal shall have and exercise ordinary original civil jurisdiction within such local limits as may from time to time be declared and prescribed by any law *made by competent legislative authority for India*, and, until some local limit shall be so declared and prescribed, within the limits declared and prescribed by the proclamation fixing the limits of Calcutta, issued by the Governor-General in Council, on the Tenth day of September in the Year of Our Lord, One thousand seven hundred and ninety-four, and the ordinary original civil jurisdiction of the said High Court shall not extend beyond the limits for the time being declared and prescribed as the local limits of such jurisdiction.

12. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immoveable property, such land or property shall be situated, or, in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell, or carry on business, or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Calcutta, in which the debt or damage, or value of the property sued for, does not exceed one hundred rupees.

13. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court, whether within or without the Bengal

Division of the Presidency of Fort William, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.

14. And We do further ordain, that where a plaintiff has several causes of action against a defendant, such causes of action not being for land or other immoveable property, and the said High Court shall have original jurisdiction in respect of one of such causes of action, it shall be lawful for the said High Court to call on the defendant to show cause why the several causes of action should not be joined together in one suit, and to make such order for trial of the same as to the said High Court shall seem fit.

15. And We do further ordain, that an appeal shall lie to the said High Court of Judicature at Fort William in Bengal from the judgment (not being a sentence or order passed or made in any criminal trial) of one Judge of the said High Court, or of one Judge of any Division Court, pursuant to section 13 of the said recited Act; and that an appeal shall also lie to the said High Court from the judgment (not being a sentence or order as aforesaid) of two or more Judges of the said High Court, or of such Division Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being; but that the right of appeal from other judgments of Judges of the said High Court, or of such Division Court, shall be to Us, Our Heirs or Successors, in Our or their Privy Council, as hereinafter provided.

16. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall be a Court of Appeal from the Civil Courts of the Bengal Division of the Presidency of Fort William, and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force.

17. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have the like power and authority with respect to the persons and estates of infants, idiots, and lunatics, within the Bengal Division of the Presidency of Fort William, as that which was vested in the said High Court immediately before the publication of these Presents.

18. And We do further ordain, that the Court for relief of insolvent Debtors at Calcutta shall be held before one of the Judges of the said High Court of Judicature at Fort William in Bengal, and the said High Court, and any such Judge thereof, shall have and exercise, *within* the Bengal Division of the Presidency of Fort William, such powers and authorities with respect to original and appellate jurisdiction, and otherwise, as are constituted by the laws relating to insolvent debtors in India

Law to be administered by the High Court of Judicature at Fort William in Bengal.

19. And We do further ordain that, with respect to the law or equity to be applied to each case coming before the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original civil jurisdiction, such law or equity shall be the law or equity which would have been applied by the said High Court to such case if these Letters Patent had not issued.

20. And We do further ordain that, with respect to the law or equity and the rule of good conscience to be applied to each case coming before the said High Court of Judicature at Fort William in Bengal, in the exercise of its extraordinary original civil jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which would have been applied to such case by any local court having jurisdiction therein.

21. And We do further ordain that, with respect to the law or equity and the rule of good conscience to be applied by the said High Court of Judicature at Fort William in Bengal, to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

Criminal Jurisdiction.

22. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction, and also in respect of all such persons, both within the limits of the Bengal Division of the Presidency

of Fort William, and beyond such limits and not within the limits of the criminal jurisdiction of any other High Court or Court established by competent legislative authority for India as the said High Court of Judicature at Fort William in Bengal shall have criminal jurisdiction over at the date of the publication of these Presents.

23. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

24. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the said High Court, and shall have authority to try at its discretion any such persons brought before it on charges preferred by the Advocate-General, or by any Magistrate or other officer specially empowered by the Government in that behalf.

25. And We do further ordain, that there shall be no appeal to the said High Court of Judicature at Fort William in Bengal from any sentence or order passed or made in any criminal trial before the Courts of original criminal jurisdiction, which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

26. And We do further ordain, that on such point or points of law being so reserved as aforesaid, or on its being certified by the said Advocate-General that, in his judgment, there is an error in the decision of a point or points of law decided by the Court of original criminal jurisdiction, or that a point or points of law which has or have been decided by the said Court should be further considered, the said High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right.

27. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall be a Court of

Appeal from the Criminal Courts of the Bengal Division of the Presidency of Fort William, and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any law now in force.

28. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall be a Court of Reference and Revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges, or by any other officers now authorized to refer cases to the said High Court, and to revise all such cases tried by any officer or Court possessing criminal jurisdiction, as are now subject to reference to, or revision by, the said High Court.

29. And We do further ordain, the said High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course, to the jurisdiction of some other officer or Court.

Criminal Law.

30. And We do further ordain, that all persons brought for trial before the said High Court of Judicature at Fort William in Bengal, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of Appeal, Reference, or Revision, charged with any offence for which provision is made by Act No. XLV of 1860, called the "Indian Penal Code," or by any Act amending or excluding the said Act, which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

Exercise of Jurisdiction elsewhere than at the ordinary place of sitting of the High Court.

31. And We do further ordain, that whenever it shall appear to the Governor-General in Council convenient that the jurisdiction and power by these Our Letters Patent, or by the recited Act, vested in the said High Court of Judicature at Fort William in Bengal, should be exercised in any place

within the jurisdiction of any Court now subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, the proceedings in cases before the said High Court at such place or places shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

Admiralty and Vice-Admiralty Jurisdiction.

32. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have and exercise all such civil and maritime jurisdiction as may now be exercised by the said High Court as a Court of Admiralty, or of Vice-Admiralty, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions arising in India as may now be exercised by the said High Court.

33. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have and exercise all such criminal jurisdiction as may now be exercised by the said High Court as a Court of Admiralty, or of Vice-Admiralty, or otherwise in connection with maritime matters or matters of prize.

Testamentary and Intestate Jurisdiction.

34. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have the like power and authority as that which may now be lawfully exercised by the said High Court, except within the limits of the jurisdiction for that purpose of any other High Court established by Her Majesty's Letters Patent, in relation to the granting of probates of last wills and testaments, and letters of administration, of the goods, chattels, credits, and all other effects whatsoever of persons, dying intestate, whether within or without the said Bengal Division, subject to the orders of the Governor-General in Council, as to the period when the said High Court shall cease to exercise testamentary and intestate jurisdiction in any place or places beyond the limits of the provinces or places for which it was established : Provided always, that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been

made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration.

Matrimonial Jurisdiction.

35. And We do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have jurisdiction, within the Bengal Division of the Presidency of Fort William, in matters matrimonial between Our subjects professing the Christian religion : Provided always, that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Royal Charter within the said Presidency lawfully possessed thereof.

Powers of Single Judges and Division Courts.

36. And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Fort William in Bengal, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose under the provisions of the thirteenth section of the aforesaid Act of the Twenty-fourth and Twenty-fifth Years of Our Reign ; and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority ; but if the Judges should be equally divided, then the opinion of the senior Judge shall prevail.

Civil Procedure.

37. And We do further ordain, that it shall be lawful for the said High Court of Judicature at Fort William in Bengal from time to time to make rules and orders for the purpose of regulating all proceedings in civil cases which may be brought before the said High Court, including proceedings in its Admiralty, Vice-Admiralty, Testamentary, Intestate, and Matrimonial jurisdictions respectively : Provided always, that the said High Court shall be guided in making such rules and orders, as far as possible, by the provisions of the Code of Civil Procedure, being an Act passed by the Governor-General in

Council, and being Act No. VIII of 1859, and the provisions of any law which has been made, amending or altering the same, by competent legislative authority for India.

Criminal Procedure.

38. And We do further ordain, that the proceedings in all criminal cases which shall be brought before the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original criminal jurisdiction, and also in all other criminal cases over which the said High Court had jurisdiction immediately before the publication of these Presents, shall be regulated by the procedure and practice which was in use in the said High Court immediately before such publication, subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure prescribed by an Act passed by the Governor-General in Council, and being Act No. XXV of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

Appeals to Privy Council.

39. And We do further ordain, that any person or persons may appeal to Us, Our Heirs and Successors, in Our or their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree, or order of the said High Court of Judicature at Fort William in Bengal, made on appeal, and from any final judgment, decree, or order made in the exercise of original jurisdiction by a majority of the full number of Judges of the said High Court, or of any Division Court, from which an appeal shall not lie to the said High Court under the provision contained in the 15th clause of these Presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000, rupees, or that such judgment, decree, or order shall involve, directly or indirectly, some claim, demand, or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree, or order made either on appeal or otherwise as aforeasid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our Heirs or Successors, in Our or their Privy Council. Subject always to

such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the said Presidency ; except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

40. And We do further ordain, that it shall be lawful for the said High Court of Judicature at Fort William in Bengal, at its discretion, on the motion, or if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order, or sentence of the said High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our Heirs or Successors, in Our or their Privy Council, subject to the same rules, regulations, and limitations as are herein expressed, respecting appeals from final judgments, decrees, orders, and sentences.

41. And We do further ordain, that from any judgment, order, or sentence of the said High Court of Judicature at Fort William in Bengal, made in the exercise of original criminal jurisdiction, or in any criminal case, where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order, or sentence to appeal to Us, Our Heirs or Successors, in Council ; provided the said High Court shall declare that the case is a fit one for such appeal, and under such conditions as the said High Court may establish or require, subject always to such rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

42. And We do further ordain, that in all cases of appeal made from any judgment, order, sentence, or decree of the said High Court of Judicature at Fort William in Bengal to Us, Our Heirs or Successors, in Our or their Privy Council, such High Court shall certify and transmit to Us, Our Heirs and Successors, in Our or their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees, and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal ; such copies to be certified under the seal of the said High Court. And that the said High Court shall also certify and transmit to Us, Our Heirs and Successors, in Our or their Privy Council, a copy of the reasons

given by the Judges of such Court, or by any of such Judges, for or against the judgment or determination appealed against.

And We do further ordain, that the said High Court shall, in all cases of appeal to Us, Our Heirs or Successors, conform to and execute or cause to be executed, such judgments and orders as We, Our Heirs or Successors, in Our or their Privy Council, shall think fit to make in the premises in such manner as any original judgment, decree or decretal orders, or other order or rule of the said High Court, should or might have been executed.

Calls for Records, etc., by the Government.

43. And it is Our further will and pleasure that the said High Court of Judicature at Fort William in Bengal shall comply with such requisitions as may be made by the Government for records, returns, and statements, in such form and manner as such Government may deem proper.

44. And We do further ordain and declare, that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor-General in Council, exercised at meetings for the purpose of making laws and regulations, and also of the Governor-General in cases of emergency under the provisions of an Act of the Twenty-fourth and Twenty-fifth Years of Our Reign, Chapter sixty-seven, and may be in all respects amended and altered thereby.

45. And it is Our further will and pleasure that these Letters Patent shall be published by the Governor-General in Council, and shall come into operation from and after the date of such publication ; and that from and after the date on which effect shall have been given to them, so much of the aforesaid Letters Patent, granted by His Majesty King George the Third, as was not revoked or determined by the said Letters Patent of the Fourteenth of May, One thousand eight hundred and sixty-two, and is inconsistent with these Letters Patent, shall cease, determine, and be utterly void, to all intents and purposes whatsoever.

In Witness whereof We have caused these Our Letters to be made Patent. Witness Ourself at Westminster, the Twenty-eighth day of December, in the Twenty-ninth Year of Our Reign.

(Sd.) C. ROMILLY.

IV. THE INDIAN HIGH COURTS ACT, 1865.

(28 & 29 Vict., Ch. 15.)

AN ACT TO EXTEND THE TERM FOR GRANTING FRESH LETTERS PATENT FOR THE HIGH COURTS IN INDIA, AND TO MAKE FURTHER PROVISIONS RESPECTING THE TERRITORIAL JURISDICTION OF THE SAID COURTS. (7TH APRIL, 1865.)

"Whereas it is expedient to extend the time fixed for granting fresh Letters Patent for the High Courts in India under the provisions of an Act passed in the Twenty-fourth and Twenty-fifth Years of the Reign of Her present Majesty, intituled *An Act for establishing High Courts of Judicature in India*, and to make further provision than is in the said Act contained for empowering the alteration from time to time of the local limits of the said High Courts, and for the exercise, in places beyond the limits of the Presidencies, or places within and for which such High Courts are established, of the jurisdiction and powers conferred by Her Majesty's Letters Patent on the said High Courts." Be it enacted etc * * * as follows :

Time for granting fresh Letters Patent.

1. The time fixed for granting fresh Letters Patent for the High Courts in India by Section seventeen of the said recited Act is hereby extended to the first day of January One thousand eight hundred and sixty six.

24 & 25 Vict. C. 104, Ss. 10 & 18 repealed.

2. Sections ten and eighteen of the said Act of the Twenty-fourth and Twenty-fifth Years of Her present Majesty are hereby repealed.

Power to the Governor-General in Council to alter local limits of jurisdiction of High Courts.

3. It shall be lawful for the Governor-General of India in Council, by order, from time to time, to transfer any territory or place, from the jurisdiction of one to the jurisdiction of any other of the High Courts established or to be established under the said Act, and to authorise and empower any High Court to exercise all or any portion of the jurisdiction and powers conferred or to be conferred on it by Her Majesty's Letters Patent establishing the same, or any other Letters Patent issued by Her Majesty under the provisions of the above-recited Act of the Twenty-fourth and Twenty-fifth Years of Her Majesty, within any such portions of Her Majesty's Dominions in India not included within the limits

of the Presidency or place or places for which such High Court was established, as the said Governor-General in Council may from time to time determine, and also to exercise any such jurisdiction in respect of Christian subjects of Her Majesty resident within the Dominions of such of the Princes and States of India in alliance with Her Majesty as the said Governor-General in Council may, in manner aforesaid, from time to time determine, anything in the said recited Act of the Twenty-fourth and Twenty-fifth Years of Her present Majesty notwithstanding.

Power of Crown to disallow any order of the Governor-General for that purpose.

4. Whenever any such order has been passed by the Governor-General in Council, he shall transmit to the Secretary of State for India an authentic copy thereof; and it shall be lawful for Her Majesty to signify through the Secretary of State for India in Council, Her disallowance of such order; and such disallowance shall make void and annul such order from and after the day on which the Governor-General shall make known by Proclamation, or by signification to his Council, that he has received the notification of such disallowance by Her Majesty: Provided always, that all Acts, Proceedings, and Judgments done, taken, or given by such High Courts, and not set aside by any competent authority before the Promulgation or signification as aforesaid of such disallowance by Her Majesty, shall be deemed to be and to have been valid and effectual for all purposes whatever, such disallowance notwithstanding.

Commencement of the Act.

5. So much of this Act as relates to the jurisdiction of the High Court shall commence and come into operation as soon as the same shall have been published by the Governor-General in Council.

Powers of Governor-General not affected.

6. Nothing in this Act contained shall interfere with the powers of the Governor-General in Council at meetings for the purpose of making Laws and Regulations.

V. THE INDIAN HIGH COURTS ACT, 1911.

(1 & 2 Geo. V., Ch. 18.)

AN ACT TO AMEND THE INDIAN HIGH COURTS ACT, 1861. (18th AUGUST, 1911.)

Be it enacted by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :—

1. The maximum number of Judges of a High Court of Judicature in India, including the Chief Justice, shall be twenty, and Section 2 of the Indian High Courts Act, 1861, shall have effect accordingly.

2. The Power of His Majesty under Section 16 of the Indian High Courts Act, 1861, may be exercised from time to time, and a High Court may be established under that section in any portion of the territories within His Majesty's Dominions in India, whether or not included within the limits of the local jurisdiction of another High Court ; and where such a High Court is established in any part of such territories included within the limits of the local jurisdiction of another High Court, it shall be lawful for his Majesty by Letters Patent to alter the local jurisdiction of that other High Court and to make such incidental, consequential, and supplemental provisions as may appear to be necessary by reason of the alteration of those limits.

3. Subject to the provisions of Section 2 of the Indian High Courts Act, 1861, as amended by this Act, regulating the number and qualifications of Judges, it shall be lawful for the Governor-General in Council to appoint from time to time persons to act as additional Judges of any High Court for such period not exceeding two years as may be required, and the Judges so appointed shall, while so acting, have all the powers of a Judge of the High Court appointed by His Majesty under Section 2 of the said Act : Provided that such additional Judges shall not be taken into account in determining the proportions specified in the proviso to that section.

4. The salaries of any Judges or temporary Judges appointed under this Act shall be paid out of the Revenues of India.

5. This Act may be cited as the Indian High Courts Act, 1911, and shall be constructed as one with the Indian High Courts Act, 1861, and that Act, and the Indian High Courts Act, 1865, and this Act, may be cited together as the Indian High Courts Acts 1861 to 1911.

VI. LETTERS PATENT CONSTITUTING THE HIGH COURT OF JUDICATURE AT PATNA, DATED THE 9th FEBRUARY, 1916.

George the Fifth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, To all to whom these Presents shall come, greeting: Whereas by an Act of Parliament passed in the Twenty-fourth and Twenty-fifth Years of the Reign of Her late Majesty Queen Victoria, and called the Indian High Courts Act, 1861, it was, amongst other things, enacted by section one, that it should be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal, for the Bengal Division of the Presidency of Fort William;

and, by section two, that such High Court should consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty might, from time to time, think fit to appoint, who should be selected from among persons qualified as in the said Act was declared;

and, by section eight, that upon the establishment of such High Court as aforesaid the Supreme Court and the Court of Sadar Diwani Adalat and Sadar Nizamat Adalat at Calcutta, in the said Presidency, should be abolished;

and, by section nine, that the High Court of Judicature so to be established should have and exercise all such Civil, Criminal, Admiralty, and Vice-admiralty, Testamentary, Intestate and Matrimonial Jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of Justice in the said Presidency, as Her Majesty might by such Letters Patent as aforesaid grant and direct, subject, however, to such directions and limitations, as to the exercise of original civil and criminal jurisdiction beyond the limits of the Presidency town, as might be prescribed thereby; and that, save as by such Letters Patent might be otherwise direc-

ted, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever, in any manner vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last-mentioned Courts :

And whereas it was further declared by section sixteen of the said recited Act that it should be lawful for Us by Letters Patent to erect and establish a High Court of Judicature in and for any portion of territories within Our Dominions in India, not included within the limits of the local jurisdiction of another High Court, to consist of a Chief Justice and such number of other Judges, with such qualifications as were by the same Act required in persons to be appointed to the High Courts established at the Presidencies of Fort William in Bengal, of Madras, and of Bombay, as We from time to time might think fit and appoint; and that it should be lawful for Us, by such Letters Patent, to confer on any new High Court which might be so established any such jurisdiction, powers and authority, as under the same Act was authorised to be conferred on or would become vested in the High Court established in any of the said Presidencies ; and that, subject to the directions of the Letters Patent, all the provisions of the said recited Act relative to High Courts and to the Chief Justice and other Judges of such Courts, and to the Governor-General or Governor of the Presidency in which such High Courts were established, should, as far as circumstances might permit, be applicable to any new High Court which might be established in the said territories, and to the Chief Justice and other Judges thereof, and to the Persons administering the Government of the said territories ;

And whereas, upon full consideration of the premises, Her late Majesty Queen Victoria, by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the Fourteenth day of May, in the Twenty-fifth Year of Her Reign, in the Year of Our Lord One thousand eight hundred and sixty-two, did erect and establish a High Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid, and did constitute that Court to be a Court of Record :

And whereas Her late Majesty Queen Victoria, by Letters Patent under the Great Seal of the United Kingdom of Great

Britain and Ireland, bearing date at Westminster the Twenty-eighth day of December, in the Twenty-ninth Year of Her Reign, in the Year of Our Lord One thousand eight hundred and sixty-five, did revoke the said Letters Patent bearing date the Fourteenth day of May in the Year of Our Lord One thousand eight hundred and sixty-two, but notwithstanding that revocation did continue the said High Court of Judicature at Fort William in Bengal and declared that the Court should continue to be a Court of Record :

And whereas, upon full consideration of the premises, Her late Majesty Queen Victoria, by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the Seventeenth day of March, in the Twenty-ninth Year of Her Reign, in the Year of Our Lord One thousand eight hundred and sixty-six, did erect and establish a High Court of Judicature for the North-Western Provinces, which said Court is situated at Allahabad in the Province of Agra and is now called the High Court of Judicature at Allahabad, and did constitute that Court to be a Court of Record :

And whereas by an Act of Parliament passed in the First and Second Years of Our Reign, and called the Indian High Courts Act, 1911, it was enacted, amongst other things, by section one, that the maximum number of Judges of a High Court of Judicature in India, including the Chief Justice, should be twenty ; and by section two, that Our power under section sixteen of the Indian High Courts Act, 1861, might be exercised from time to time, and that a High Court might be established under the said section sixteen in any portion of the territories within Our Dominions in India, whether or not included within the limits of the local jurisdiction of another High Court ; and that, where such a High Court was established in any part of such territories included within the limits of the local jurisdiction of another High Court, it should be lawful for Us by Letters Patent to alter the local jurisdiction of that other High Court, and to make such incidental, consequential, and supplemental provisions as might appear to be necessary by reason of the alteration of those limits :

And whereas the said Indian High Courts Acts, 1861 and 1911, have been repealed and re-enacted by an Act of Parliament passed in the Fifth and Sixth Years of Our Reign, and called the Government of India Act, 1915 :

And whereas certain territories formerly subject to and included within the limits of the Presidency of Fort William in

Bengal were, by Proclamation made by the Governor-General of India on the Twenty-second day of March in the Year of Our Lord One thousand nine hundred and twelve, constituted a separate Province, called the Province of Bihar and Orissa, and are now governed by a Lieutenant-Governor in Council:

1. Now know ye that We, upon full consideration of the premises, and of Our special Grace, certain Knowledge, and mere Motion, have thought fit to erect and establish, and by these Presents We do accordingly for Us, Our Heirs and Successors, erect and establish, for the Province of Bihar and Orissa aforesaid, with effect from the date of the publication of these Presents in the Bihar and Orissa Gazette, a High Court of Judicature, which shall be called the High Court of Judicature at Patna, and We do hereby constitute the said Court to be a Court of Record.

2. And We do hereby appoint and ordain that the High Court of Judicature at Patna shall, until further or other provision be made by Us, or our Heirs and Successors, in that behalf in accordance with section one hundred and one of the said recited Government of India Act, 1915, consist of a Chief Justice and six other Judges, the first Chief Justice being Sir Edward Maynard Des Champs Chamier, Knight, and the six other Judges being Saiyid Shurf-ud-din, Esquire, Edmund Pelly Chapman, Esquire, Basanta Kumar Mullick, Esquire, Francis Reginald Roe, Esquire, the Hon'ble Cecil Atkinson, and Jowala Persad, Esquire, being respectively qualified as in the said Act is declared.

3. And We do hereby ordain that the Chief Justice and every other Judge of the High Court of Judicature at Patna, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Lieutenant-Governor in Council may commission to receive it:—

"I, A. B., appointed Chief Justice (or a Judge) of the High Court of Judicature at Patna, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."

4. And We do hereby grant, ordain and appoint that the High Court of Judicature at Patna shall have and use, as occasion may require, a Seal bearing a device and impression of Our Royal Arms, with an exergue or label surrounding the same, with this inscription, "The Seal of the High Court

at Patna." And We do further grant, ordain and appoint that the said Seal shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice under the provisions of section one hundred and five of the Government of India Act, 1915; and We do further grant, ordain and appoint that, whensoever the office of Chief Justice or of the Judge to whom the custody of the said Seal be committed is vacant, the said High Court shall be, and is hereby, authorized and empowered to demand, seize and take the said Seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her or their possession.

5. And We do hereby further grant, ordain and appoint that all Writs, Summonses, Precepts, Rules, Orders and other mandatory process to be used, issued or awarded by the High Court of Judicature at Patna shall run and be in the name and style of Us, or of Our Heirs and Successors, and shall be sealed with the Seal of the said High Court.

6. And We do hereby authorize and empower the Chief Justice of the High Court of Judicature at Patna from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed from time to time by the Lieutenant-Governor in Council, to appoint so many and such clerks and other ministerial officers as may be found necessary for the administration of justice, and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And We do hereby ordain that every such appointment shall be forthwith submitted to the approval of the Lieutenant-Governor in Council, and shall be either confirmed or disallowed by the Lieutenant-Governor in Council. And it is Our further will and pleasure, and We do hereby, for Us, Our Heirs and Successors, give, grant, direct and appoint, that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice may, from time to time, appoint for each office and place respectively, and as the Lieutenant-Governor in Council, subject to the control of the Governor-General in Council, may approve of: Provided always, and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they

hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed from time to time by the Governor-General in Council, and to absent himself from the said limits during the term of such leave in accordance with the said rules.

Admission of Advocates, Vakils and Attorneys.

7. And We do hereby authorize and empower the High Court of Judicature at Patna to approve, admit, and enrol such and so many Advocates, Vakils and Attorneys as to the said High Court may seem meet; and such Advocates, Vakils and Attorneys shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions.

8. And We do hereby ordain that the High Court of Judicature at Patna shall have power to make rules from time to time for the qualifications and admission of proper persons to be Advocates, Vakils and Attorneys-at-law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause, the said Advocates, Vakils or Attorneys-at-law; and no person whatsoever but such Advocates, Vakils or Attorneys shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear, plead or act on his own behalf, or on behalf of a co-suitor.

Civil Jurisdiction of the High Court.

9. And We do further ordain that the High Court of Judicature at Patna shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court subject to its superintendence, when the said High Court may think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.

10. And We do further ordain that an appeal shall lie to the High Court of Judicature at Patna from the judgment (not being an order made in the exercise of revisional jurisdiction

in a case which has been called for by the said Court, and not being a sentence or order passed or made in the exercise of criminal jurisdiction) of one Judge of the said High Court, or of one Judge of any Division Court constituted in pursuance of section one hundred and eight of the Government of India Act, 1915, and that an appeal shall also lie to the said High Court from the judgment (not being an order or sentence as aforesaid) of two or more Judges of the said High Court, or of any such Division Court, wherever such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being ; but that the right of appeal from other judgments of Judges of the said High Court, or of any such Division Court, in such case shall be to Us, Our Heirs or Successors, in Our or their Privy Council, as hereinafter provided.

11. And We do further ordain that the High Court of Judicature at Patna shall be a Court of Appeal from the Civil Courts of the Province of Bihar and Orissa and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these Presents, subject to appeal to the High Court of Judicature at Fort William in Bengal by virtue of any law then in force, or as may after that date be declared, subject to appeal to the High Court of Judicature at Patna by any law made by competent legislative authority for India.

12. And We do further ordain that the High Court of Judicature at Patna shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the Province of Bihar and Orissa as that which was vested in the High Court of Judicature at Fort William in Bengal immediately before the publication of these Presents.

Law to be administered by the High Court.

13. And We do further ordain that, with respect to the law or equity to be applied to each case coming before the High Court of Judicature at Patna in the exercise of its extraordinary original civil jurisdiction, such law or equity shall, until otherwise provided, be the law or equity which would have been applied to such case by any local Court having jurisdiction therein.

14. And We do further ordain that, with respect to the law or equity and the rule of good conscience to be applied by the High Court of Judicature at Patna to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

Criminal Jurisdiction.

15. And We do further ordain that the High Court of Judicature at Patna shall have ordinary original criminal jurisdiction in respect of all such persons within the Province of Bihar and Orissa as the High Court of Judicature at Fort William in Bengal had such criminal jurisdiction over immediately before the publication of these Presents.

16. And We do further ordain that the High Court of Judicature at Patna, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

17. And We do further ordain that the High Court of Judicature at Patna shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any magistrate or other officer specially empowered by the Government in that behalf.

18. And We do further ordain that there shall be no appeal to the High Court of Judicature at Patna from any sentence or order passed or made by the the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

19. And We do further ordain that, on such point or points of law being so reserved as aforesaid, the High Court of Judicature at Patna shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdic-

tion, and to pass such judgment and sentence as to the said High Court may seem right.

20. And We do further ordain that the High Court of Judicature at Patna shall be a Court of Appeal from the Criminal Courts of the Province of Bihar and Orissa, and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these Presents, subject to appeal to the High Court of Judicature at Fort William in Bengal by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Patna by any law made by competent legislative authority for India.

21. And We do further ordain that the High Court of Judicature at Patna shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges, or by any other officers in the Province of Bihar and Orissa, who were, immediately before the publication of these Presents, authorized to refer cases to the High Court of Judicature at fort William in Bengal, and to revise all such cases tried by any officer or Court possessing criminal jurisdiction in the Province of Bihar and Orissa, as were, immediately before the publication of these Presents, subject to reference to or revision by the High Court of Judicature at Fort William in Bengal.

22. And We do further ordain that the High Court of Judicature at Patna shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

Criminal Law.

23. And We do further ordain that all persons brought for trial before the High Court of Judicature at Patna, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of Appeal, reference or revision, charged with any offence for which provision is made by Act No. XLV of 1860, called the "Indian Penal Code," or by any

Act amending or excluding the said Act which may have been passed prior to the publication of these Presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

Admiralty Jurisdiction.

24. And We do further ordain that the High Court of Judicature at Patna shall have and exercise in the Province of Bihar and Orissa all such civil and maritime jurisdiction as was exerciseable therein immediately before the publication of these Presents by the High Court of Judicature at Fort William in Bengal as a Court of Admiralty, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions as was so exerciseable by the High Court of Judicature at Fort William in Bengal.

25. And We do further ordain that the High Court of Judicature at Patna shall have and exercise in the Province of Bihar and Orissa all such criminal jurisdiction as was exerciseable therein immediately before the publication of these Presents by the High Court of Judicature at Fort William in Bengal as a Court of Admiralty, or otherwise in connection with maritime matters or matters of prize.

Testamentary and Intestate Jurisdiction.

26. And We do further ordain that the High Court of Judicature at Patna shall have the like power and authority as that which was immediately before the publication of these Presents lawfully exercised within the Province of Bihar and Orissa by the High Court of Judicature at Fort William in Bengal, in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits and all other effects whatsoever of persons dying intestate ; Provided always that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration.

Matrimonial Jurisdiction.

27. And We do further ordain that the High Court of Judicature at Patna shall have jurisdiction, within the Province of Bihar and Orissa, in matters matrimonial between

Our subjects professing the Christian religion: Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court, not established by Letters Patent within the said Province, which is lawfully possessed of that jurisdiction.

Powers of Single Judges and Division Courts.

28. And We do hereby declare that any function which is hereby directed to be performed by the High Court of Judicature at Patna, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court, thereof, appointed or constituted for such purpose in pursuance of section one hundred and eight of the Government of India Act, 1915; and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there be a majority, but, if the Judges be equally divided, then the opinion of the senior Judge shall prevail.

Civil Procedure.

29. And We do further ordain that it shall be lawful for the High Court of Judicature at Patna from time to time to make rules and orders for regulating the practice of the Court and for the purpose of adapting as far as possible the provisions of the Code of Civil Procedure, being an Act, No. V. of 1908, passed by the Governor-General in Council, and the provisions of any law which has been or may be made, amending or altering the same, by competent legislative authority for India, to all proceedings in its testamentary, intestate and matrimonial jurisdiction, respectively.

Criminal Procedure.

30. And We do further ordain that the proceedings in all criminal cases brought before the High Court of Judicature at Patna, in the exercise of its ordinary original criminal jurisdiction, shall be regulated by the procedure and practice which was in use in the High Court of Judicature at Fort William in Bengal immediately before the publication of these Presents, subject to any law which has been or may be made in relation thereto by competent legislative

authority for India ; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure, being an Act, No. V. of 1898, passed by the Governor-General in Council, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

Appeals to Privy Council.

31. And We do further ordain that any person or persons may appeal to Us, Our Heirs and Successors, in Our or their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree, or order of the High Court of Judicature at Patna made on appeal, and from any final judgment, decree, or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal does not lie to the said High Court under the provisions contained in the 10th clause of these Presents ; provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree, or order involves, directly or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees ; or from any other final judgment, decree, or order made either on appeal or otherwise as aforesaid, when the said High Court declares that the case is a fit one for appeal to Us, Our Heirs or Successors, in Our or their Privy Council ; but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Province of Bihar and Orissa, except so far as the said existing rules and orders respectively are hereby varied ; and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

32. And We do further ordain that it shall be lawful for the High Court of Judicature at Patna, at its discretion, on the motion, or, if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition, of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, or order of the said High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our Heirs and Successors, in Our or their Privy Council, subject to the same rules, regulations

and limitations as are herein expressed respecting appeals from final judgments, decrees and orders.

33. And We do further ordain that from any judgment, order or sentence of the High Court of Judicature at Patna, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court, in manner provided by the 18th clause of these Presents, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order or sentence to appeal to Us, Our Heirs or Successors, in Council, provided the said High Court declares that the case is a fit one for such appeal, and that the appeal be made under such conditions as the said High Court may establish or require, but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Province of Bihar and Orissa.

34. And We do further ordain that, in all cases of appeal made from any judgment, decree, order or sentence of the High Court of Judicature at Patna to Us, Our Heirs or Successors, in Our or their Privy Council, such High Court shall certify and transmit to Us, Our Heirs and Successors, in Our or their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees and orders had or made, in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the Seal of the said High Court. And that the said High Court shall also certify and transmit to Us, Our Heirs and Successors, in Our or their Privy Council, a copy of the reasons given by the Judges of such Court, or by any of such Judges, for or against the judgment or determination appealed against. And We do further ordain that the said High Court shall, in all cases of appeal to Us, Our Heirs or Successors, conform to and execute, or cause to be executed, such judgments and orders as We, Our Heirs or Successors, in Our or their Privy Council, may think fit to make in the premises, in such manner as any original judgment, decree or decretal orders, or other order or rule of the said High Court should or might have been executed.

Exercise of Jurisdiction elsewhere than at the usual place of sitting of the High Court.

35. And We do further ordain that, unless the Governor-General in Council otherwise directs, one or more Judges of the

High Court of Judicature at Patna shall visit the Division of Orissa, by way of circuit, whenever the Chief Justice from time to time appoints, in order to exercise in respect of cases arising in that Division, the jurisdiction and power by these Our Letters Patent, or by or under the Government of India Act, 1915, vested in the said High Court: Provided always that such visits shall be made not less than four times in every year, unless the Chief Justice, with the approval of the Lieutenant-Governor in Council, otherwise directs: Provided also that the said High Court shall have power from time to time to make rules, with the previous sanction of the Lieutenant-Governor in Council, for declaring what cases or classes of cases arising in the Division of Orissa shall be heard at Patna and not in that Division, and that the Chief Justice may, in his discretion, order that any particular case arising in the Division of Orissa shall be heard at Patna or in that Division.

36. And We do further ordain that whenever it appears to the Lieutenant-Governor in Council, subject to the control of the Governor-General in Council, convenient that the jurisdiction and power by these Our Letters Patent, or by or under the Government of India Act, 1915, vested in the High Court of Judicature at Patna should be exercised in any place within the jurisdiction of any Court subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, one or more Judges of the Court shall visit such place or places accordingly.

37. And We do further ordain that whenever any Judge or Judges of the High Court of Judicature at Patna visit any place under the 35th or the 36th clause of these Presents, the proceedings in cases before him or them at such place shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

Delegation of Duties to Officers.

38. The High Court of Judicature at Patna may from time to time make rules for delegating to any Registrar, Prothonotary or Master or other official of the Court any judicial, quasi-judicial and non-judicial duties.

Cessation of Jurisdiction of the High Court of Judicature at Fort William in Bengal.

39. And We do further ordain that the jurisdiction of the High Court of Judicature at Fort William in Bengal in any matter in which jurisdiction is by these Presents given to the High Court of Judicature at Patna shall cease from the date of the publication of these Presents, and that all proceedings pending in the former Court on that date in reference to any such matters shall be transferred to the latter Court :

Provided, first, that the High Court of Judicature at Fort William in Bengal shall continue to exercise jurisdiction—

(*a*) in all proceedings pending in that Court on the date of the publication of these Presents in which any decree or order, other than an order of an interlocutory nature, has been passed or made by that Court, or in which the validity of any such decree or order is directly in question ; and

(*b*) in all proceedings (not being proceedings referred to in paragraph (*a*) of this clause) pending in that Court, on the date of the publication of these Presents, under the 13th, 15th, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 32nd, 33rd, 34th, or 35th clause of the Letters Patent bearing date at Westminster the Twenty-eighth day of December, in the Year of Our Lord One thousand eight hundred and sixty-five, relating to that Court ; and

(*c*) in all proceedings instituted in that Court, on or after the date of the publication of these Presents, with reference to any decree or order passed or made by that Court :

Provided, secondly, that, if any question arises as to whether any case is covered by the first proviso to this clause, the matter shall be referred to the Chief-Justice of the High Court of Judicature at Fort William in Bengal, and his decision shall be final.

Calls for Records, etc., by the Government.

40. And it is our further Will and Pleasure that the High Court of Judicature at Patna shall comply with such requisitions as may be made by the Lieutenant-Governor in Council for records, returns and statements, in such form and manner as he may deem proper.

Powers of Indian Legislatures.

41. And We do further ordain and declare that all the provisions of these our Letters Patent are subject to the legislative powers of the Governor-General in Legislative Council, and also of the Governor-General in Council under section seventy-one of the Government of India Act, 1915, and also of the Governor-General in cases of emergency under section seventy-two of that Act, and may be in all respects amended and altered thereby. In Witness whereof We have caused these Our Letters to be made Patent. Witness Ourself at Westminster the Ninth day of February, in the Year of Our Lord One thousand nine hundred and sixteen and in the sixth Year of Our Reign.

By Warrant under the King's Sign Manual,

(Sd.) SCHUSTER.

PART VI.

ROYAL PROCLAMATIONS AND ANNOUNCEMENTS, AND DOCUMENTS CONNECTED THEREWITH.

I

A. QUEEN VICTORIA'S PROCLAMATION.*

(November 1st, 1858).

VICTORIA, BY THE GRACE OF GOD OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND, AND OF THE COLONIES AND DEPENDENCIES THEREOF IN EUROPE, ASIA, AFRICA, AMERICA, AND AUSTRALASIA, QUEEN, DEFENDER OF THE FAITH.

Whereas, for divers weighty reasons, we have resolved, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, to take upon Ourselves the Government of the Territories in India heretofore administered in trust for Us by the Honorable East India Company :

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* "This memorable instrument, justly called the Magna Charta of India, was framed in August, 1858, by the Earl of Derby, then the head of the Government. His son, Lord Stanley, the first Secretary of State for India, had drafted a Proclamation, and it was circulated to the Cabinet. It reached the Queen in Germany. She went through the draft with the Prince Consort, who made copious notes on the margin. The Queen did not like it, and wrote to Lord Derby that she 'would be glad if he would write himself in his excellent language.' Lord Derby thereupon consulted Stanley ; saw the remarks of some of the Cabinet, as well as of Lord Ellenborough, upon Stanley's draft, and then wrote and rewrote a draft of his own, and sent it to the Queen. It was wholly different in scope and conception from the first draft. The Prince Consort enters in his journal that it was now *'recht gut'*, one or two further suggested amendments were accepted by Lord Derby and the Secretary of State ; experts assured them that it contained nothing difficult to render in the native languages ; and the Proclamation was launched in the form in which it now stands. One question gave trouble—the retention of the Queen's title of Defender of the Faith. Its omission might provoke remark, but on the other hand Lord Derby regarded it as a doubtful title 'considering its origin' (conferred by the Pope on Henry VIII) and as applied to a Proclamation to India. He was in hopes that in the Indian translation it would appear as 'Protectress of Religion' generally, but he was told by experts in vernacular that it was just the title to convey to the Indian mind the idea of the special Head and Champion of a creed antagonistic to the creeds of the country. Lord Derby was inclined to omit, but he sought the Queen's own opinion. This went the other way. The last sentence of the Proclamation was the Queen's. The three drafts are all in the records at Windsor".

[From an Appendix to Lord Morley's "Indian Speeches."]

Now, therefore, We do by these Presents notify and declare that, by the Advice and Consent aforesaid, We have taken upon Ourselves the said Government; and We hereby call upon all Our Subjects within the said Territories to be faithful, and to bear true Allegiance to Us, Our Heirs, and Successors, and to submit themselves to the authority of those whom We may hereafter, from time to time, see fit to appoint to administer the Government of Our said Territories, in Our name and on Our behalf:

And We, reposing especial trust and confidence in the loyalty, ability, and judgment of Our right trusty and well beloved Cousin and Councillor, Charles John Viscount Canning, do hereby constitute and appoint him, the said Viscount Canning, to be Our first Viceroy and Governor-General in and over Our said Territories, and to administer the Government thereof in Our name, and generally to act in Our name and on Our behalf, subject to such Orders and Regulations as he shall, from time to time, receive from Us through one of Our Principal Secretaries of State:

And We do hereby confirm in their several Offices, Civil and Military, all Persons now employed in the Service of the Honorable East India Company, subject to Our future pleasure, and to such Laws and Regulations as may hereafter be enacted.

We hereby announce to the Native Princes of India that all Treaties and Engagements made with them by or under the authority of the Honorable East India Company are by Us accepted, and will be scrupulously maintained; and We look for the like observance on their part.

We desire no extension of Our present territorial Possessions; and while We will permit no aggression upon Our Dominions or Our Rights, to be attempted with impunity, We shall sanction no encroachment on those of others. We shall respect the Rights, Dignity, and Honour of Native Princes as Our own; and We desire that they, as well as Our own Subjects, should enjoy that Prosperity and that social Advancement which can only be secured by internal Peace and good Government.

We hold Ourselves bound to the Natives of Our Indian Territories by the same obligations of duty which bind Us to all Our other Subjects; and those Obligations, by the Blessing of Almighty God, We shall faithfully and conscientiously fulfil.

Firmly relying Ourselves on the truth of Christianity, and acknowledging with gratitude the solace of Religion, We disclaim alike the Right and the desire to impose our Convictions on any of Our Subjects. We declare it to be Our Royal Will and Pleasure that none be in any wise favoured, none molested or disquieted by reason of their Religious Faith or Observances; but that all shall alike enjoy the equal and impartial protection of the Law: and We do strictly charge and enjoin all those who may be in authority under Us, that they abstain from all interference with the Religious Belief or Worship of any of Our Subjects, on pain of Our highest Displeasure.

And it is Our further Will that, so far as may be, Our Subjects, of whatever Race or Creed, be freely and impartially admitted to Offices in Our Service, the Duties of which they may be qualified, by their education, ability, and integrity, duly to discharge.

We know, and respect, the feelings of attachment with which the Natives of India regard the Lands inherited by them from their Ancestors; and We desire to protect them in all Rights connected therewith, subject to the equitable demands of the State; and We will that generally, in framing and administering the Law, due regard be paid to the ancient Rights, Usages, and Customs of India.

We deeply lament the evils and misery which have been brought upon India by the acts of ambitious Men, who have deceived their Countrymen, by false reports, and led them into open Rebellion. Our Power has been shewn by the Suppression of that Rebellion in the field; We desire to shew Our Mercy, by pardoning the Offences of those who have been thus misled, but who desire to return to the path of Duty.

Already in one Province, with a view to stop the further effusion of blood, and to hasten the Pacification of Our Indian Dominions, Our Viceroy and Governor-General has held out the expectation of Pardon, on certain terms, to the great majority of those who, in the late unhappy Disturbances, have been guilty of Offences against Our Government, and has declared the Punishment which will be inflicted on those whose Crimes place them beyond the reach of forgiveness. We approve and confirm the said act of Our Viceroy and Governor-General, and do further announce and proclaim as follows:—

Our Clemency will be extended to all Offenders, save and except those who have been, or shall be, convicted of having

directly taken part in the Murder of British Subjects. With regard to such, the Demands of Justice forbid the exercise of Mercy.

To those who have willingly given asylum to Murderers, knowing them to be such, or who may have acted as leaders or instigators in Revolt, their lives alone can be guaranteed; but in apportioning the penalty due to such Persons, full consideration will be given to the circumstances under which they have been induced to throw off their Allegiance; and large indulgence will be shown to those whose crimes may appear to have originated in too credulous acceptance of the false reports circulated by designing Men.

To all others in Arms against the Government, We hereby promise unconditional Pardon, Amnesty, and Oblivion of all Offence against Ourselves, Our Crown and Dignity, on their return to their homes and peaceful pursuits.

It is Our Royal Pleasure that these Terms of Grace and Amnesty should be extended to all those who comply with their Conditions before the First Day of January next.

When, by the Blessing of Providence, internal Tranquillity shall be restored, it is Our earnest Desire to stimulate the peaceful Industry of India, to promote Works of Public Utility and Improvement, and to administer its Government for the benefit of all Our Subjects resident therein. In their Prosperity will be Our Strength; in their Contentment Our Security; and in their Gratitude Our best Reward. And may the God of all Power grant to Us, and to those in authority under Us, Strength to carry out these Our Wishes for the good of Our People.

B. Queen Victoria's Letter to the Earl of Derby.

(15th August, 1858).

The Queen has asked Lord Malmesbury to explain in detail to Lord Derby her objection to the draft of Proclamation for India. The Queen would be glad if Lord Derby would write it himself in his excellent language, bearing in mind that it is a female Sovereign who speaks to more than 100,000,000 of Eastern people on assuming the direct Government over them after a bloody civil war, giving them pledges which her future reign is to redeem, and explaining the principles of her Government. Such a document should breathe

feelings of generosity, benevolence, and religious feeling, pointing out the privileges which the Indians will receive in being placed on an equality with the Subjects of the British Crown, and the prosperity following in the train of civilisation.

II

A. QUEEN VICTORIA'S PROCLAMATION, 1876.

Whereas an Act has been passed in the present Sessions of Parliament, intituled 'An Act to enable Her Most Gracious Majesty to make an addition to the Royal Style and Titles appertaining to the Imperial Crown of the United Kingdom and its Dependencies', which Act recites that, by the Act for the Union of Great Britain and Ireland, it was provided that after such Union the Royal Style and Titles appertaining to the Imperial Crown of the United Kingdom and its Dependencies should be such as His Majesty by His Royal Proclamation under the Great Seal of the United Kingdom should be pleased to appoint : and which Act also recites that, by virtue of the said Act, and of a Royal Proclamation under the Great Seal, dated the 1st day of January 1801, Our present Style and Titles are 'Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith' : and which Act also recites that, by the Act for the better government of India it was enacted that the Government of India, theretofore vested in the East India Company in trust for Us, should become vested in Us, and that India should thenceforth be governed by Us and in Our name, and that it is expedient that there should be a recognition of the transfer of government so made by means of an addition to be made to Our Style and Titles : and which Act, after the said recitals, enacts that it shall be lawful for Us, with a view to such recognition as aforesaid of the transfer of the Government of India, by Our Proclamation under the Great Seal of the United Kingdom, to make such addition to the Style and Titles at present appertaining to the Imperial Crown of the United Kingdom and its Dependencies as to Us may seem meet ; We have thought fit, by and with the advice of Our Privy Council, to appoint and declare, and We do hereby, by and with the said advice, appoint and declare that henceforth, so far as conveniently may be, on all occasions and in all instruments wherein Our

Style and Titles are used, save and except all Charters, Commissions, Letters Patent, Grants, Writs, Appointments, and other like instruments, not extending in their operation beyond the United Kingdom, the following addition shall be made to the Style and Titles at present appertaining to the Imperial Crown of the United Kingdom and its Dependencies ; that is to say in the Latin tongue in these words : 'INDIÆ IMPERATRIX'. And in the English tongue in these words : 'EMPRESS OF INDIA'.

And Our Will and Pleasure further is, that the said addition shall not be made in the Commissions, Charters, Letters Patent, Grants, Writs, Appointments, and other like instruments, herein-before specially excepted.

And Our Will and Pleasure further is, that all gold, silver and copper moneys, now current and lawful moneys of the United Kingdom, and all gold, silver, and copper moneys which shall on or after this day be coined by Our authority with the like impressions, shall, notwithstanding such addition to Our Style and Titles, be deemed and taken to be current and lawful moneys of the said United Kingdom ; and further, that all moneys coined for and issued in any of the Dependencies of the said United Kingdom, and declared by Our Proclamation to be current and lawful moneys of such Dependencies respectively bearing our Style, or Titles, or any part or parts thereof, and all moneys which shall hereafter be coined and issued according to such Proclamation, shall, notwithstanding such addition, continue to be lawful and current moneys of such Dependencies respectively, until Our Pleasure shall be further declared thereupon.

Given at Our Court at Windsor the Twenty-eighth day of April One thousand eight hundred and seventy-six in the thirty-ninth Year of Our Reign.

God Save The Queen.

B.

Despatch from Lord Salisbury (Secretary of State for India) to the Government of India, No. 70, dated India Office, 13th July, 1876.

I forward herewith, for the information of Your Excellency's Government, a copy of the Queen's Proclamation notifying the assumption by Her Majesty of the title of "Empress of India."

2. This act on the part of Her Majesty is a formal and emphatic expression, for which it seemed to the Queen that the opportunity was eminently suitable, of the favourable sentiments which She has always entertained towards the Princes and People of India. I request that Your Excellency will proclaim throughout Her Majesty's Indian Dominions, in a manner suitable to Her gracious intentions, the addition which has been made to the Royal Style and Titles.

C.

The Royal Titles Act, 1876.

(39 Vict., Ch. 10.)

An act to enable Her Most Gracious Majesty to make an addition to the Royal Style and Titles appertaining to the Imperial Crown of the United Kingdom and its Dependencies. (27th April, 1876.)

Whereas by the Act for the Union of Great Britain and Ireland passed in the Fortieth Year of the Reign of His late Majesty King George the Third, Chapter sixty-seven, it was provided that after such Union as aforesaid the Royal Style and Titles appertaining to the Imperial Crown of the United Kingdom and its Dependencies should be such as His Majesty by his Royal Proclamation under the Great Seal of the United Kingdom should be pleased to appoint:

And whereas by virtue of the said Act and of a Royal Proclamation under the Great Seal, dated the first day of January, One thousand eight hundred and one, the present Style

and Titles of Her Majesty are "Victoria by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith:

And whereas by the Act for the better Government of India passed in the Session of the Twenty-first and Twenty-second Years of the Reign of Her present Majesty, Chapter one hundred and six, it was enacted that the Government of India, theretofore vested in the East India Company in trust for Her Majesty, should become vested in Her Majesty, and that India should thenceforth be governed by and in the name of Her Majesty, and it is expedient that there should be a recognition of the transfer of Government so made by means of an addition to be made to the Style and Titles of Her Majesty:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Power to Her Majesty to make addition to style and titles of Crown.

It shall be lawful for Her Most Gracious Majesty with a view to such recognition as aforesaid of the transfer of the Government of India by Her Royal Proclamation under the Great Seal of the United Kingdom, to make such addition to the Style and Titles at present appertaining to the Imperial Crown of the United Kingdom and its Dependencies as to Her Majesty may seem meet.

D.

Extracts from Mr. Disraeli's Speech in the House of Commons on March 9, 1876.

In the course of a speech on the Second Reading of the Royal Titles Bill, Mr. Disraeli said:—

It has been objected that the title of Emperor or Empress denotes military dominion; that it has never or rarely been adopted but by those who have obtained dominion by the sword, retained it by the sword, and governed it by the sword; and, to use the words of a Right Hon'ble Gentleman (MR. LOWE) who took part in the recent debate—"Sentiment clothes the title of Emperor with bad associations." Now, the House must at once feel what vague and shadowy arguments—if they can be

called arguments—are these—"Sentiment clothes the title of Emperor with bad associations." I very much doubt whether sentiment does clothe the title of Emperor with bad associations. I can remember, and many Hon'ble Gentlemen can remember, the immortal passage of the greatest of modern historians, where he gives his opinion that the happiness of mankind was never so completely assured, or for so long a time maintained, as in the age of the ANTONINES—and the ANTONINES were Emperors. The Right Hon'ble Gentleman may be of opinion that an Imperial title is a modern invention, and its associations to him may be derived from a limited experience of which he may be proud. But when so large a principle is laid down by one distinguished for his historical knowledge, that "Sentiment clothes the title of Emperor with bad associations," I may be allowed to vindicate what I believe to be the truth upon this matter. Then a second objection was urged. It was said—"This is a clumsy periphrasis in which you are involving the country if you have not only Royal but Imperial Majesties." Now, the Right Hon. Gentleman who made the remark ought to have recollected that there would be no clumsy periphrasis of the kind. The Majesty of England requires for its support no such epithet. The Queen is not "Her Royal Majesty." The Queen is described properly as "Her Majesty." Therefore, the "clumsy periphrasis" of "Royal and Imperial Majesty" could never occur.

There is, however, a stronger and more important objection which has been brought to the title of Empress, which has hitherto been merely assumed in argument. This greater objection I will place briefly before the House. It has been said that we diminish the supremacy of the Queenly title by investing Her Majesty, though only locally, with an Imperial dignity. Now, Sir, there appears to me to be a great fallacy in that position. I deny at once that you diminish the supremacy of the Queenly title, by investing Her Majesty, though only locally, with an Imperial dignity. I deny that any Imperial dignity is superior to the Queenly title, and I defy any one to prove the reverse. I hear and read every day of an intention to invest Her Majesty with a title superior to that which She has inherited from an illustrious line of ancestors. It is necessary, therefore, to notice this statement. In times which will guide us in any way upon such a subject I doubt whether there is any precedent of an Emperor ranking superior to a Crowned Head, unless that Crowned Head was his avowed feudatory. I will

take the most remarkable instance of Imperial sway in modern history. When the Holy Roman Empire existed, and the German Emperor was crowned at Rome and called Cæsar, no doubt the Princes of Germany, who were his feudatories, acknowledged his supremacy, whatever might be His title. But in those days there were great Kings—there were Kings of France, Kings of Spain, and Kings of England—they never acknowledged the supremacy of the Head of the Holy Roman Empire ; and the origin, I have no doubt, of the expression of the Act of HENRY VIII., where the Crown of England is described as an Imperial Crown, was the determination of that eminent Monarch, that at least there should be no mistake upon the subject between himself and the EMPEROR CHARLES V.

These may be considered antiquarian illustrations and I will not dwell upon them, but will take more recent cases at a time when the intercourse of nations and of courts was regulated by the same system of diplomacy which now prevails. Upon this question, then, I say there can be no mistake, for it has been settled by the assent, and the solemn assent, of Europe. In the middle of the last century a remarkable instance occurred which brought to a crisis this controversy, if it were a point of controversy. When PETER THE GREAT emerged from his anomalous condition as a powerful Sovereign—hardly recognised by his brother Sovereigns—he changed the Style and Title of his office from that of Czar to Emperor. That addition was acknowledged by England, and by England alone. The rulers of Russia as Emperors remained unrecognised by the great comity of nations ; and after PETER THE GREAT they still continued to bear the Titles of Czar and Czarina, for more than one female Sovereign flourished in Russia about the middle of the century. In 1745, ELIZABETH CZARINA of Russia, having by her armies and her councils interfered considerably in the affairs of Europe—probably (though I am not sure of this) influenced by the circumstance that the first congress of Aix-la-Chapelle, in the middle of the last century, was about to meet, announced to her allies and to her brother Sovereigns that she intended in future to take the title of Empress, instead of Czarina. Considerable excitement and commotion were caused at all the Courts and in all the Governments of Europe in consequence of this announcement, but the new title was recognised on condition that Her Majesty should at the same time write a letter—called in diplomatic language a Reversal acknowledging, that she

thereby made no difference in the etiquette and precedence of the European Courts and would only rank upon terms of equality with the other Crowned Heads of Europe. Upon these terms, France, Spain, Austria and Hungary admitted the Empress of Russia into their equal society. For the next twenty years under PETER III, there were discussions on the subject; but He also gave a Reversal disclaiming superiority to other Crowned Heads in taking the title of Emperor. When CATHERINE II came to the throne, She objected to write this Reversal as being inconsistent with the dignity of a Crowned Sovereign, and She herself issued an edict to Her own subjects, announcing, on Her accession, Her Rank, Style, and Title, and distinctly in forming her Subjects that, though She took that Style and Title, She only wished to rank with the other Sovereigns of Europe. I should say that the whole of the diplomatic proceedings of the world from that time have acknowledged that result, and there can be no question upon the subject. There was an attempt at the Congress of Vienna to introduce the subject of the classification of Sovereigns, but the difficulties of the subject were acknowledged by PRINCE METTERNICH, by LORD CASTLEREAGH, and by all the eminent statesmen of the time; the subject was dropped, the equality of Crowned Heads was again acknowledged, and the mode of precedence of their Representatives at the different Courts was settled by an alphabetical arrangement, or by the date of their arrival and letters of credit to that Court at once and for ever. The question of equality between those Sovereigns who styled themselves Emperors and those who were Crowned Heads of ancient Kingdoms, without reference to population, revenue, or extent of territory, was established, and permanently adopted.

Now, Sir, the Hon. Gentleman, the Member for Glasgow (MR. ANDERSON) said the other day—"If Empress means nothing more than Queen, why should you have Empress? If it means something else, then I am against adopting it." Well, I have proved to you that it does not mean anything else. Then, why should you adopt it? Well, that is one of those questions which, if pursued in the same spirit, and applied to all the elements of society, might resolve it into its original elements. The amplification of titles is no new system—no new idea; it has marked all ages, and has been in accordance with the manners and customs of all countries. The amplification of titles is founded upon a great respect for local influences, for the memory of distinguished

deeds, and passages of interest in the history of countries. It is only by the amplification of titles that you can often touch and satisfy the imagination of nations ; and that is an element which Governments must not despise. Well, then it is said that if this title of Empress is adopted, it would be un-English. But why un-English ? I have sometimes heard the Ballot called un-English, and indignant orators on the other side have protested against the use of an epithet of that character which no body could define, and which no body ought to employ. I should like to know why the title is un-English. A gentleman, the other day, referring to this question now exciting Parliament and the country, recalled to the recollection of the public the dedication of one of the most beautiful productions of the English Muse to the Sovereign of this country ; and, speaking of the age distinguished by an ELIZABETH, by a SHAKESPEARE, and by a BACON, he asked whether the use of the word "Empress," applied by one who was second in his power of expression and in his poetic resources only to SHAKESPEARE himself in the dedication of an immortal work to QUEEN ELIZABETH was not, at least, an act which proved that the word and the feeling were not un-English ? Then, of course, it was immediately answered by those who criticized the illustration that this was merely the fancy of a poet. But I do not think it was the fancy of a poet. The fancy of the most fanciful of poets was exhausted in the exuberant imagination which idealized his illustrious Sovereign as "The Faery Queen." He did not call Her Empress then—he called Her "The Faery Queen." But when his theme excited the admiration of Royalty—when he had the privilege of reciting some of his cantos to QUEEN ELIZABETH, and She expressed a wish that the work should be dedicated to Her—then SPENSER had, no doubt, to consult the friends in whom he could confide as to the style in which he should approach so solemn an occasion, and win to himself still more the interest of his illustrious Sovereign. He was a man who lived among courtiers and statesmen. He had as friends SIDNEY and RALEIGH, and I have little doubt that it was by the advice of SIDNEY and RALEIGH that he addressed his Sovereign as Empress, "The Queen of England, of Ireland, and of Virginia"—the hand of Sir Walter Raleigh being probably shown in the title of the Queen of Virginia, and it is not at all improbable that ELIZABETH Herself who possessed so much literary taste, and who prided Herself on improving the phrases of the greatest poet, revised the dedication. That example clearly shows that the objection to this

assumed adoption by Her Majesty of the title of Empress as un-English could hardly exist in an age when the word was used with so much honour—in an age of "Words which wise BACON and brave RALEIGH spake". I think it is obvious from these remarks, made upon the assumption that the title which Her Majesty would be pleased to adopt by Her Proclamation would be Empress, that the title would be one to which there could be no objection. I am empowered, therefore, to say that the title would be "Empress", and that Her Majesty would be "Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith and Empress of India."

Now, I know it may be said—it was said at a recent debate and urged strongly by the Right Hon. Gentleman, the Member for Bradford (Mr. W. E. FORSTER)—that in this addition to Her Majesty's Style, and in this addition alone, we are treating without consideration the Colonies. I cannot in any way concur in that opinion. No one honours more than myself the Colonial Empire of England; no one is more anxious to maintain it. No one regrets more than I do that favourable opportunities have been lost of identifying the Colonies with the Royal race of England. But we have to deal now with another subject, and one essentially different from the colonial condition. The condition of India and the condition of the Colonies have no similarity. In the Colonies you have, first of all, a fluctuating population—a man is a Member of Parliament, it may be, for Melbourne this year, and next year he is a Member of Parliament for Westminster. A Colonist finds a nugget, or he fleeces a thousand flocks. He makes a fortune, he returns to England, he buys an estate, he becomes a magistrate, he represents Majesty, he becomes a High Sheriff; he has a magnificent house near Hyde Park; he goes to Court, to levees, to drawing rooms; he has an opportunity of plighting his troth personally to his Sovereign, he is in frequent and direct communication with Her. But that is not the case with the inhabitant of India.

The condition of Colonial society is of a fluctuating character. Its political and social elements change. I remember twenty years ago a distinguished statesman who willingly would have seen a Dukedom of Canada. But Canada has now no separate existence. It is called the "Dominion", and includes several other Provinces. There is no similarity between the circumstances of our Colonial fellow-subjects and those of our

fellow-subjects in India. Our Colonists are English; they come, they go, they are careful to make fortunes, to invest their money in England; their interests in this country are immense, ramified, complicated, and they have constant opportunities of improving and enjoying the relations which exist between themselves and their countrymen in the metropolis. Their relations to the Sovereign are ample; they satisfy them, the Colonists are proud of those relations, they are interested in the titles of the Queen, they look forward to return when they leave England, they do return—in short, they are Englishmen.

Now let me say one word before I move the Second Reading of this Bill upon the effect which it may have on India. It is not without consideration, it is not without the utmost care, it is not until after the deepest thought that we have felt it our duty to introduce this Bill into Parliament. It is desired in India. It is anxiously expected. The Princes and nations of India—unless we are deceived, and we have omitted no means by which we could obtain information and form opinions—look to it with the utmost interest. They know exactly what it means, though there may be some Hon. Members in this House who do not. They know in India what this Bill means, and they know that what it means is what they wish. I do myself most earnestly impress upon the House to remove prejudice from their minds and to pass the Second Reading of this Bill, without a division. Let not our divisions be misconstrued. Let the people of India feel that there is a sympathetic chord between us and them; and do not let Europe suppose for a moment that there are any in this House who are not deeply conscious of the importance of our Indian Empire. I trust, therefore, that the House will give to this Bill a Second Reading without a division. By the permission of the Queen I have communicated, on the part of my Colleagues, the intention of Her Majesty, which She will express in Her Proclamation, if you sanction the passing of this Bill. It will be an act, to my mind, that will add splendour even to Her Throne. and security even to Her Empire.

III.

KING-EMPEROR EDWARD VII'S PROCLAMATION, 2ND NOVEMBER, 1908.

It is now 50 years since Queen Victoria, My beloved Mother, and My August Predecessor on the Throne of these Realms, for divers weighty reasons, with the Advice and Consent of Parliament, took upon herself the Government of the territories theretofore administered by the East India Company. I deem this a fitting anniversary on which to greet the Princes and Peoples of India, in commemoration of the exalted task then solemnly undertaken. Half a century is but a brief span in your long annals, yet this half a century that ends to-day will stand amid the floods of your historic ages, a far-shining landmark. The Proclamation of the direct supremacy of the Crown sealed the unity of Indian Government and opened a new era. The journey was arduous, and the advance may have sometimes seemed slow ; but the incorporation of many strangely diversified communities, and of some three hundred millions of the human race, under British guidance and control has proceeded steadfastly and without pause. We survey Our labours of the past half a century with clear gaze and good conscience.

Difficulties such as attend all human rule in every age and place, have risen up from day to day. They have been faced by the servants of the British Crown with toil and courage and patience, with deep counsel and a resolution that has never faltered nor shaken. If errors have occurred, the agents of My Government have spared no pains and no self-sacrifice to correct them ; if abuses have been proved, vigorous hands have laboured to apply a remedy.

No secret of empire can avert the scourge of drought and plague, but experienced administrators have done all that skill and devotion are capable of doing to mitigate those dire calamities of Nature. For a longer period than was ever known in your land before, you have escaped the dire calamities of War within your borders. Internal peace has been unbroken.

In the great Charter of 1858 Queen Victoria gave you noble assurance of Her earnest desire to stimulate the peaceful industry of India, to promote works of public utility and improvement, and to administer the Government for the benefit of all resident therein. The schemes that have been diligently

framed and executed for promoting your material convenience and advance—schemes unsurpassed in their magnitude and their boldness—bear witness before the world to the zeal with which that benignant promise has been fulfilled.

The rights and privileges of the Feudatory Princes and Ruling Chiefs have been respected, preserved, and guarded; and the loyalty of their allegiance has been unswerving. No man among My Subjects has been favoured, molested, or disquieted, by reason of his religious belief or worship. All men have enjoyed protection of the law. The law itself has been administered without disrespect to creed or caste or to usages and ideas rooted in your civilisation; it has been simplified in form, and its machinery adjusted to the requirements of ancient communities slowly entering a new world.

The charge confided to My Government concerns the destinies of countless multitudes of men now and for ages to come, and it is a paramount duty to repress with a stern arm guilty conspiracies that have no just cause and no serious aim. These conspiracies I know to be abhorrent to the loyal and faithful character of the vast hosts of My Indian Subjects, and I will not suffer them to turn Me aside from my task of building up the fabric of security and order.

Unwilling that this historic anniversary should pass without some signal mark of Royal Clemency and Grace, I have directed that, as was ordered on the memorable occasion of the Coronation Durbar in 1903, the sentences of persons whom Our Courts have duly punished for offences against the law, should be remitted, or in various degrees reduced; and it is My wish that such wrong-doers may remain mindful of this act of Mercy, and may conduct themselves without offence henceforth.

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

From the first, the principle of representative institutions began to be gradually introduced, and the time has come when, in the judgment of My Viceroy and Governor-General and

others of My Counsellors, that principle may be prudently extended. Important classes among you, representing ideas that have been fostered and encouraged by British rule, claim equality of citizenship, and a greater share in legislation and Government. The politic satisfaction of such a claim will strengthen, not impair, existing authority and power. Administration will be all the more efficient, if the officers who conduct it have greater opportunities of regular contact with those whom it affects, and with those who influence and reflect common opinion about it. I will not speak of the measures that are now being diligently framed for these objects. They will speedily be made known to you, and will, I am very confident, mark a notable stage in the beneficent progress of your affairs.

I recognise the valour and fidelity of My Indian troops, and at the new year I have ordered that opportunity should be taken to show in substantial form this, My high appreciation, of their martial instincts, their splendid discipline, and their faithful readiness of service.

The welfare of India was one of the objects dearest to the heart of Queen Victoria. By Me, ever since My visit in 1875, the interests of India, its Princes and peoples, have been watched with an affectionate solicitude that time cannot weaken. My dear Son, the Prince of Wales, and the Princess of Wales, returned from their sojourn among you with warm attachment to your land, and true and earnest interest in its well-being and content. These sincere feelings of active sympathy and hope for India on the part of My Royal House and Line, only represent, and they do most truly represent, the deep and united will and purpose of the people of this Kingdom.

May Divine protection and favour strengthen the wisdom and mutual good will that are needed for the achievement of a task as glorious as was ever committed to Rulers and Subjects in any State or empire of recorded time.

IV.

H. I. M. KING-EMPEROR GEORGE V.'S. LETTER TO THE PRINCES AND PEOPLE OF INDIA, 24TH MAY, 1910.

The lamented and unlooked for death of My dearly loved Father calls me to ascend the Throne that comes to Me as the Heir of a great and ancient Line. As King and Emperor, I greet the Princes, the Ruling Chiefs, and all the other dwellers in My Indian Dominions. I offer you my heartfelt thanks for the touching and abundant manifestation that this event has called forth from all the diverse races, classes, and faiths in India, of loyalty to the Sovereign Crown, and personal attachment to its wearers.

Queen Victoria, of revered memory, addressed Her Indian Subjects and the Heads of Feudatory States when she assumed the direct Government in 1858, and Her August Son, My Father, of honoured and beloved name, commemorated the same most notable event in His Address to you some fifty years later. These are the Charters of the noble and benignant spirit of Imperial Rule, and by that spirit in all My time to come I will faithfully abide.

By the wish of His late Majesty, and following His own example, I visited India five years ago, accompanied by My Royal Consort. We became personally acquainted with great Kingdoms known to history, with monuments of a civilisation older than Our own, with ancient customs and ways of life, with Native Rulers, with the peoples, the cities, towns, villages, throughout those vast territories. Never can either the vivid impressions or the affectionate associations of that wonderful journey vanish or grow dim.

Finally I confide in your dutiful and active co-operation in the high and arduous tasks that lie before Me ; and I count upon your ready response to the earnest sympathy with the well-being of India that must ever be the inspiration of My rule.

V

A. ANNOUNCEMENTS OF H. I. M. KING-EMPEROR GEORGE V. AT THE CORONATION DURBAR, DECEMBER 12, 1911.

I.

It is with genuine feelings of thankfulness and satisfaction that I stand here to-day among you. This year has been to the Queen-Empress and Myself one of many great ceremonies and of an unusual though happy burden of toil. But in spite of time and distance, the grateful recollections of Our last visit to India have drawn Us again to the land which We then learned to love, and We started with bright hopes on Our long journey to revist the country in which We had already met the kindness of a home.

In doing so I have fulfilled the wish expressed in My message of last July, to announce to you in person My Coronation, celebrated on the 22nd of June in Westminster Abbey, when by the Grace of God, the Crown of My Forefathers was placed on My head with solemn form and ancient ceremony.

By My Presence with the Queen-Empress I am also anxious to show Our Affection for the loyal Princes and faithful Peoples of India, and how dear to Our hearts is the welfare and happiness of the Indian Empire.

It was, moreover, My desire that those who could not be present at the solemnity of the Coronation, should have the opportunity of taking part in its commemoration at Delhi.

It is a sincere pleasure and gratification to Myself and the Queen-Empress to behold this vast assemblage and in it My Governors and trusty Officials, My great Princes, the representatives of the Peoples, and deputations from the Military Forces of My Indian Dominions.

I shall receive in person with heartfelt satisfaction the homage and allegiance which they loyally desire to render.

I am deeply impressed with the thought that a spirit of sympathy and affectionate goodwill unites Princes and People with me on this historic occasion.

In token of these sentiments I have decided to commemorate the event of My Coronation by certain marks of My

especial favour and consideration, and these I will later on cause to be announced by My Governor-General to this Assembly.

Finally, I rejoice to have this opportunity of renewing in My Own person those assurances which have been given you by My prédecessors of the maintenance of your rights and privileges and of My earnest concern for your welfare, peace, and contentment.

May the Divine favour of Providence watch over my People and assist Me in My utmost endeavour to promote their happiness and prosperity.

To all present, Feudatories and Subjects, I tender Our loving greeting.

2.

We are pleased to announce to Our People that on the Advice of Our Ministers tendered after consultation with Our Governor-General in Council We have decided upon the transfer of the seat of the Government of India from Calcutta to the ancient Capital Delhi, and, simultaneously and as a consequence of that transfer, the creation at as early a date as possible of the Governorship for the Presidency of Bengal, of a new Lieutenant-Governorship in Council administering the areas of Bihar, Chota Nagpur, and Orissa, and of a Chief Commissionership of Assam, with such administrative changes and redistribution of boundaries as Our Governor-General in Council with the approval of Our Secretary of State for India in Council may in due course determine. It is Our earnest desire that these changes may conduce to the better administration of India and the greater prosperity and happiness of Our beloved People.

B. Announcements by the Governor-General of India on behalf of His Majesty the King-Emperor (December 12, 1911).

To all to whom these Presents may come.

By the command of His Most Excellent Majesty George the Fifth, by the Grace of God, King of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, Defender of the Faith, Emperor of India, I, His Governor-General, do hereby declare and notify the grants, concessions, reliefs, and benefactions which His Imperial Majesty has been graciously pleased to bestow upon this glorious and memorable occasion.

Humbly and dutifully submissive to His Most Gracious Majesty's Will and Pleasure, the Government of India have resolved, with the approval of His Imperial Majesty's Secretary of State, to acknowledge the predominant claims of educational advancement on the resources of the Indian Empire, and have decided in recognition of a very commendable demand to set themselves to making education in India as accessible and wide as possible. With this purpose they propose to devote at once 50 lakhs to the promotion of truly popular education, and it is the firm intention of Government to add to the grant now announced further grants in future years on a generous scale.

Graciously recognising the signal and faithful services of His forces by land and sea, the King Emperor has charged me to announce the award of half a month's pay of rank to all non-commissioned officers and men and reservists both of His British Army in India and His Indian Army, to the equivalent ranks of the Royal Indian Marine, and to all permanent employees of departmental or non-combatant establishments paid from the military estimates whose pay may not exceed the sum of Rs. 50 monthly.

Furthermore His Imperial Majesty has been graciously pleased to ordain that from henceforth the loyal Native officers, men, and reservists of His Indian Army shall be eligible for the grant of the Victoria Cross for valour; that membership of the Order of British India shall be increased during the decade following this His Imperial Majesty's Coronation Durbar by 52 appointments in the First Class, and by 100 appointments in the Second Class, and that in mark of these historic ceremonies 15 new appointments in the First Class and 19 new appointments in the Second Class shall forthwith be made; that from henceforth Indian Officers of the Frontier Militia Corps and the Military Police shall be deemed eligible for admission to the aforesaid Order; that special grants of land or assignments or remissions of land revenue, as the case may be, shall now be conferred on certain Native Officers of His Imperial Majesty's Indian Army who may be distinguished for long and honourable service; and that the special allowances now assigned for three years only to the widows of the deceased members of the Indian Order of Merit shall, with effect from the date of this Durbar, hereafter be continued to all such widows until death or re-marriage.

Graciously appreciating the devoted and successful labours

of His Civil Services His Imperial Majesty has commanded me to declare the grant of half a month's pay to all permanent servants in the civil employ of Government whose pay may not exceed the sum of Rs. 50 monthly.

Further, it is His Imperial Majesty's gracious behest that all persons to whom may have been or hereafter may be granted the titles of Dewan Bahadur, Sirdar Bahadur, Khan Bahadur, Rai Bahadur, Rao Bahadur, Khan Sahib, Rai Saheb, or Rao Sahib, shall receive distinctive badges as a symbol of respect and honour ; and that on all holders present or to come of the venerable titles of Mahamahopadhyaya and Shamsululama shall be conferred some annual pension for the good report of the ancient learning of India.

Moreover, in commemoration of this Durbar, and as a reward for conspicuous public service, certain grants of land, free of revenue, tenable for the life of the grantee, or in the discretion of the local administration for one further life, shall be bestowed or restored in the North-Western Frontier Province and in Baluchistan.

In His gracious solicitude for the welfare of His loyal Indian Princes His Imperial Majesty has commanded me to proclaim that from henceforth no Nazarana payment shall be made upon succession to their States. And sundry debts owing to the Government by the non-jurisdictional estates in Kathiawar and Gujrat, and also by the Bhumia Chiefs of Mewar, will be cancelled and remitted in whole or in part under the orders of the Government of India.

In token of His appreciation of the Imperial Service Troops certain supernumerary appointments in the Order of British India will be made.

In the exercise of His Royal and Imperial Clemency and Compassion His Most Excellent Majesty has been graciously pleased to ordain that certain prisoners now suffering the penalty of the law for crimes and misdemeanours shall be released from imprisonment, and that all those civil debtors now in prison whose debts may be small, and due not to fraud, but to real poverty, shall be discharged and that their debts shall be paid.

The persons by whom and the terms and conditions on which these grants, concessions, reliefs, and benefactions shall be enjoyed will be hereafter declared.

God Save the King !

C. The Coronation Durbar Despatch from the Government of India to the Secretary of State for India (the Rt. Hon. the Marquess of Crewe K. G.), Dated Simla, 25th August, 1911.

We venture in this Despatch to address Your Lordship on a most important and urgent subject embracing two questions of great political moment which are in our opinion indissolubly linked together. This subject has engaged our attention for some time past, and the proposals which we are about to submit for Your Lordship's consideration are the result of our mature deliberation. We shall in the first place attempt to set forth the circumstances which have induced us to frame these proposals at this particular juncture, and then proceed to lay before Your Lordship the broad general features of our scheme.

2. That the Government of India should have its seat in the same city as one of the chief Provincial Governments, and moreover in a city geographically so ill-adapted as Calcutta to be the capital of the Indian Empire, has long been recognised to be a serious anomaly. We need not stop to recall the circumstances in which Calcutta rose to its present position. The considerations which explain its original selection as the principal seat of Government have long since passed away with the consolidation of British Rule throughout the Peninsula and the development of a great inland system of railway communication. But it is only in the light of recent developments, constitutional and political, that the drawbacks of the existing arrangement and the urgency of a change have been fully realised. On the one hand, the almost incalculable importance of the part which can already safely be predicted for the Imperial Legislative Council in the shape it has assumed under the Indian Councils Act of 1909, renders the removal of the capital to a more central and easily accessible position practically imperative. On the other hand, the peculiar political situation which has arisen in Bengal since the Partition makes it eminently desirable to withdraw the Government of India from its present Provincial environment, while its removal from Bengal is an essential feature of the scheme we have in view for allaying the ill-feeling aroused by the Partition amongst the Bengali population. Once the necessity of removing the seat of the Supreme Government from Bengal established, as we trust it may be by the considerations we propose to lay before

Your Lordship, there can be, in our opinion, no manner or doubt as to the choice of the new capital or as to the occasion on which that choice should be announced. On geographical, historical, and political grounds, the Capital of the Indian Empire should be at Delhi, and the announcement that the transfer of the seat of Government to Delhi has been sanctioned should be made by His Majesty the King-Emperor at the forthcoming Imperial Durbar in Delhi itself.

3. The maintenance of British Rule in India depends on the ultimate supremacy of the Governor-General in Council, and the Indian Councils Act of 1909 itself bears testimony to the impossibility of allowing matters of vital concern to be decided by a majority of non-official votes in the Imperial Legislative Council. Nevertheless it is certain that, in the course of time, the just demands of Indians for a larger share in the government of the country will have to be satisfied, and the question will be how this devolution of power can be conceded without impairing the supreme authority of the Governor-General in Council. The only possible solution of the difficulty would appear to be gradually to give the Provinces a larger measure of Self-government, until at last India would consist of a number of administrations, autonomous in all provincial affairs, with the Government of India above them all, and possessing power to interfere in cases of misgovernment, but ordinarily restricting their functions to matters of Imperial concern. In order that this consummation may be attained, it is essential that the Supreme Government should not be associated with any particular Provincial Government. The removal of the Government of India from Calcutta, is, therefore, a measure which will, in our opinion, materially facilitate the growth of Local Self-government on sound and safe lines. It is generally recognised that the Capital of a great central Government should be separate and independent, and effect has been given to this principle in the United States, Canada, and Australia.

4. The administrative advantages of the transfer would be scarcely less valuable than the political. In the first place, the development of the Legislative Councils has made the withdrawal of the Supreme Council and the Government of India from the influence of local opinion a matter of ever-increasing urgency. Secondly, events in Bengal are apt to react on the Viceroy and the Government of India, to whom the responsibility for them is often wrongly attributed. The connection is bad for the Government of India, bad for the Bengal Government, and

unfair to the other Provinces, whose representatives view with great and increasing jealousy the predominance of Bengal. Further, public opinion in Calcutta is by no means always the same as that which obtains elsewhere in India, and it is undesirable that the Government of India should be subject exclusively to its influence.

5. The question of providing a separate Capital for the Government of India has often been debated, but generally with the object of finding a site where that Government could spend all seasons of the year. Such a solution would of course be ideal, but it is impracticable. The various sites suggested are either difficult of access or are devoid of historical associations. Delhi is the only possible place. It has splendid communications, its climate is good for seven months in the year, and its salubrity could be ensured at a reasonable cost. The Government of India would, therefore, be able to stay in Delhi from the 1st of October to the 1st of May, whilst owing to the much greater proximity, the annual migration to and from Simla could be reduced in volume, would take up much less time and be far less costly. Some branches of the Administration, such as Railways and Posts and Telegraphs, would obviously derive special benefit from the change to such a central position, and the only Department which, as far as we can see, might be thought to suffer some inconvenience, would be that of Commerce and Industry, which would be less closely in touch at Delhi with the commercial and industrial interests centred in Calcutta. On the other hand that Department would be closer to the other commercial centres of Bombay and Karachi, whose interests are sometimes opposed to those of Calcutta, and would thus be in a better position to deal impartially with the railway and commercial interests of the whole of India.

6. The political advantages of the transfer are impossible to over-estimate. Delhi is still a name to conjure with. It is intimately associated in the minds of the Hindus with sacred legends which go back even beyond the dawn of history. It is in the plain of Delhi that the Pandava princes fought out with the Kaurava the epic struggle recorded in the Mahabharata, and celebrated on the banks of the Jumna the famous sacrifice which consecrated their title to Empire. The Purana Killa still marks the site of the city which they founded and called Indraprastha, barely three miles from the south gate of the modern city of Delhi. To the Mahomedans it would be a source of unbounded gratification to see the ancient capital of the Moguls restored

to its proud position as the seat of Empire. Throughout India, as far south as the Mahomedan conquest extended, every walled town has its 'Delhi gate', and among the masses of the people it is still revered as the seat of the former Empire. The change would strike the imagination of the people of India as nothing else could do, would send a wave of enthusiasm throughout the country, and would be accepted by all as the assertion of an unfaltering determination to maintain British Rule in India. It would be hailed with joy by the Ruling Chiefs and the races of Northern India, and would be warmly welcomed by the vast majority of Indians throughout the continent.

7. The only serious opposition to the transfer which may be anticipated, may, we think, come from the European commercial community of Calcutta, who might, we fear, not regard the creation of a Governorship of Bengal as altogether adequate compensation for the withdrawal of the Government of India. The opposition will be quite intelligible, but we can no doubt count upon their patriotism to reconcile them to a measure which would greatly contribute to the welfare of the Indian Empire. The Bengalis might not, of course, be favourably disposed to the proposal if it stood alone, for it will entail the loss of some of the influence which they now exercise owing to the fact that Calcutta is the headquarters of the Government of India. But, as we hope presently to show, they should be reconciled to the change by other features of our scheme which are specially designed to give satisfaction to Bengali sentiment. In these circumstances we do not think that they would be so manifestly unreasonable as to oppose it, and if they did we might confidently expect that their opposition would raise no echo in the rest of India.

8. Absolutely conclusive as these general considerations in favour of the transfer of the capital from Calcutta to Delhi in themselves appear to us to be, there are further special considerations arising out of the present political situation in Bengal and Eastern Bengal which, in our opinion, render such a measure peculiarly opportune at such a moment, and to these we would now draw Your Lordship's earnest attention.

9. Various circumstances have forced upon us the conviction that the bitterness of feeling engendered by the Partition of Bengal is very widespread and unyielding, and that we are by no means at an end of the troubles which have followed upon that measure. Eastern Bengal and Assam has, no doubt, benefited greatly by the Partition, and the Mahomedans of that

Province, who form a large majority of the population, are loyal and contended; but the resentment amongst the Bengalis in both Provinces of Bengal, who hold most of the land, fill the professions, and exercise a preponderating influence in public affairs, is as strong as ever, though somewhat less vocal.

10. The opposition to the Partition of Bengal was at first based mainly on sentimental grounds, but, as we shall show later in discussing the proposed modification of the Partition, since the enlargement of the Legislative Councils and especially of the representative element in them, the grievance of the Bengali has become much more real and tangible, and is likely to increase instead of to diminish. Every one with any true desire for the peace and prosperity of this country must wish to find some manner of appeasement, if it is in any way possible to do so. The simple rescission of the Partition, and a reversion to the *status quo ante* are manifestly impossible both on political and on administrative grounds. The old Province of Bengal was unmanageable under any form of Government; and we could not defraud the legitimate expectations of the Mahomedans of Eastern Bengal, who form the bulk of the population of that Province, and who have been loyal to the British Government throughout the troubles, without exposing ourselves to the charge of bad faith. A settlement to be satisfactory and conclusive must—

(1) provide convenient administrative units;
(2) satisfy the legitimate aspirations of the Bengalis;
(3) duly safeguard the interests of the Mahomedans of Eastern Bengal, and generally conciliate Mahomedan sentiment; and
(4) be so clearly based upon broad grounds of political and administrative expediency as to negative any presumption that it has been exacted by clamour or agitation.

11. If the headquarters of the Government of India be transferred from Calcutta to Delhi and if Delhi be thereby made the Imperial Capital, placing the city of Delhi and part of the surrounding country under the direct administration of the Government of India, the following scheme, which embraces three interdependent proposals, would appear to satisfy all these conditions:

I. To re-unite the five Bengali-speaking divisions, viz., the Presidency, Burdwan, Dacca, Rajshahi and

Chittagong divisions, forming them into a Presidency to be administered by a Governor-in-Council. The area of the Province will be approximately 70,000 square miles, and the population about 42,000,000.

II. To create a Lieutenant-Governorship-in-Council to consist of Behar, Chota Nagpur, and Orissa, with a Legislative Council and capital at Patna. The area of the Province would be approximately 113,000 square miles, and the population about 35,000,000.

III. To restore the Chief Commissionership of Assam. The area of that Province would be about 56,000 square miles, and the population about 5,000,000.

12. We elaborated at the outset our proposal to make Delhi the future Capital of India, because we consider this the key-stone of the whole project, and hold that according as it is accepted or not, our scheme must stand or fall. But we have still to discuss in greater detail the leading features of the other parts of our scheme.

13. Chief amongst them is the proposal to constitute a Governorship-in-Council for Bengal. The history of the Partition dates from 1902. Various schemes of territorial redistribution were at that time under consideration, and that which was ultimately adopted had at any rate the merit of fulfilling two of the chief purposes which its authors had in view. It relieved the overburdened administration of Bengal, and it gave the Mahomedan population of Eastern Bengal advantages and opportunities of which they had perhaps hitherto not had their fair share. On the other hand, as we have already pointed out, it was deeply resented by the Bengalis. No doubt sentiment has played a considerable part in the opposition offered by the Bengalis, and, in saying this, we by no means wish to underrate the importance which should be attached to sentiment even if it be exaggerated. It is, however, no longer a matter of mere sentiment, but rather, since the enlargement of the Legislative Councils, one of undeniable reality. In pre-reform scheme days the non-official element in these Councils was small. The representation of the people has now been carried a long step forward, and in the Legislative Councils of both the Provinces of Bengal and Eastern Bengal the Bengalis find themselves in a minority, being outnumbered in the one by Beharis and Ooriyas, and in the other by the Mahomedans of Eastern Bengal and the inhabitants of Assam. As

matters now stand, the Bengalis can never exercise in either Province that influence to which they consider themselves entitled by reason of their numbers, wealth, and culture. This is a substantial grievance which will be all the more keenly felt in the course of time, as the representative character of the Legislative Councils increases and with it the influence which these assemblies exercise upon the conduct of public affairs. There is, therefore, only too much reason to fear that, instead of dying down, the bitterness of feeling will become more and more acute.

14. It has frequently been alleged in the Press that the Partition is the root cause of all recent troubles in India. The growth of political unrest in other parts of the country and notably in the Deccan before the Partition of Bengal took place disproves that assertion, and we need not ascribe to the Partition evils which have not obviously flowed from it. It is certain, however, that it is, in part, at any rate, responsible for the growing estrangement which has now unfortunately assumed a very serious character in many parts of the country between Mahomedans and Hindus. We are not without hope that a modification of the Partition, which we now propose, will, in some degree at any rate, alleviate this most regrettable antagonism.

15. To sum up, the results anticipated from the Partition have not been altogether realized, and the scheme as designed and executed, could only be justified by success. Although much good work has been done in Eastern Bengal and Assam, and the Mahomedans of that Province have reaped the benefit of a sympathetic administration closely in touch with them, those advantages have been in a great measure counterbalanced by the violent hostility which the Partition has aroused amongst the Bengalis. For the reasons we have already indicated, we feel bound to admit that the Bengalis are labouring under a sense of real injustice, which we believe it would be sound policy to remove without further delay. The Durbar of December next affords a unique occasion for rectifying what is regarded by Bengalis as a grievous wrong.

16. Anxious as we are to take Bengali feeling into account, we cannot overrate the importance of consulting at the same time the interests and sentiments of the Mahomedans of Eastern Bengal. It must be remembered that the Mahomedans of Eastern Bengal have at present an overwhelming majority in point of population, and that if the Bengali-speaking

divisions were amalgamated on the lines suggested in our scheme, the Mahomedans would still be in a position of approximate numerical equality with or possibly of small superiority over, the Hindus. The future Province of Bengal, moreover, will be a compact territory of quite moderate extent. The Governor-in-Council will have ample time and opportunity to study the needs of the various communities committed to his charge. Unlike his predecessors, he will have a great advantage in that he will find ready to hand at Dacca a second capital, with all the conveniences of ordinary provincial headquarters. He will reside there from time to time, just as the Lieutenant-Governor of the United Provinces frequently resides in Lucknow, and he will in this way be enabled to keep in close touch with Mahomedan sentiments and interests. It must also be borne in mind that the interests of the Mahomedans will be safeguarded by the special representation they enjoy in the Legislative Councils ; while as regards representation on Local bodies they will be in the same position as at present. We need not, therefore, trouble your Lordship with the reasons why we have discarded the suggestion that a Chief Commissionership, or a semi-independent Commissionership within the new Province, might be created at Dacca.

17. We regard the creation of a Governorship-in-Council of Bengal as a very important feature of our scheme. It is by no means a new one. The question of the creation of the Governorship was fully discussed in 1867 to 1868 by the Secretary of State and the Government of India, and a Committee was formed, on the initiative of SIR STAFFORD NORTHCOTE, to consider it and that of the transfer of the capital elsewhere. In the somewhat voluminous correspondence of the past the most salient points that emerge are :

(i) That a Governorship of Bengal would not be compatible with the presence in Calcutta of the Viceroy and the Government of India ;

(ii) That, had it been decided to create a Governorship of Bengal, the question of the transfer of the Capital from Calcutta would have been taken into consideration ;

(iii) That although a majority of the Governor-General's Council and the Lieutenant-Governor of Bengal (SIR WILLIAM GREY) were in favour of the creation of the Governorship, SIR JOHN

LAWRENCE, the Gevernor-General, was opposed to the proposal but for purposes of better administration contemplated the institution of a Lieutenant-Governorship of Behar and the separation of Assam from Bengal under a Chief Commissioner.

Since the discussions of 1867-1868 considerable and very important changes have taken place in the constitutional development of Bengal. That Province has already an Executive Council, and the only change that would, therefore, be necessary for the realization of this part of our scheme is that the Lieutenant-Governorship should be converted into a Governorship. Particular arguments have from time to time been urged against the appointment of a Governor from England. These were that Bengal, more than any other Province, requires the Head of the Government to possess an intimate knowledge of India and of the Indian people, and that a statesman or politician appointed from England without previous knowledge of India would in no part of the country find his ignorance a greater drawback or be less able to cope with the intricacies of an exceedingly complex position.

18. We have no wish to underrate the great advantage to an Indian administrator of an intimate knowledge of the country and of the people he is to govern. At the same time actual experience has shown that a Governor, carefully selected and appointed from England and aided by a Council, can successfully administer a large Indian Province, and that a Province so administered requires less supervision on the part of the Government of India. In this connexion we may again refer to the correspondence of 1867-68 and cite two of the arguments employed by the late SIR HENRY MAINE, when discussing the question of a Council form of Government for Bengal. They are :

(i) That the system in Madras and Bombay has enabled a series of men of no conspicuous ability to carry on a difficult Government for a century with success.

(ii) That the concession of a full Governorship to Bengal would have a good effect on English public opinion, which would accordingly cease to impose on the Government of India a responsibility which it is absolutely impossible to discharge.

In view of the great difficulties connected with the administration of Bengal, we attach the highest importance to these arguments. We are also convinced that nothing short of a full Governorship would satisfy the aspirations of the Bengalis and of the Mahomedans in Eastern Bengal. We may add that, as in the case of the Governorships of Madras and Bombay, the appointment would be open to members of the Indian Civil Service, although no doubt in practice the Governor will usually be recruited from England.

19. On the other hand one very grave and obvious objection has been raised in the past to the creation of a Governorship for Bengal, which we should fully share, were it not disposed of by the proposal which constitutes the keystone of our scheme. Unquestionably a most undesirable situation might and would quite possibly arise if a Governor-General of India and a Governor of Bengal, both selected from the ranks of English public men, were to reside in the same Capital and be liable to be brought in various ways into regrettable antagonism or rivalry. This indeed constitutes yet another, and in our opinion very cogent, reason why the headquarters of the Government of India should be transferred from Calcutta to Delhi.

20. We now turn to the proposal to create a Lieutenant-Governorship-in-Council for Behar, Chota Nagpur, and Orissa. We are convinced that if the Governor of Bengal is to do justice to the territories which we propose to assign to him, and to safeguard the interests of the Mahomedans of his Province, Behar and Chota Nagpur must be dissociated from Bengal. Quite apart, however, from that consideration, we are satisfied that it is in the highest degree desirable to give the Hindi-speaking people, now included within the Province of Bengal, a separate administration. These people have hitherto been unequally yoked with the Bengalis, and have never, therefore, had a fair opportunity for development. The cry of Behar for the Beharis has frequently been raised in connexion with the conferment of appointments, an excessive number of offices in Behar having been held by Bengalis. The Beharis are a sturdy, loyal people, and it is a matter of common knowledge that, although they have long desired separation from Bengal, they refrained at the time of the Partition from asking for it, because they did not wish to join the Bengalis in opposition to Government. There has, moreover, been a very marked awakening in Behar in recent years, and a strong belief has grown up

among Beharis that Behar will never develop until it is dissociated from Bengal. That belief will, unless a remedy be found, give rise to agitation in the near future, and the present is an admirable opportunity to carry out on our own initiative a thoroughly sound and much desired change. The Ooriyas, like the Beharis, have little in common with the Bengalis, and we propose to leave Orissa (and the Sambalpur district) with Behar and Chota Nagpur. We believe that this arrangement will well accord with popular sentiment in Orissa, and will be welcome to Behar as presenting a seaboard to that Province. We need hardly add that we have considered various alternatives such as the making over of Chota Nagpur or of Orissa to the Central Provinces, and the creation of a Chief Commissionership instead of a Lieutenant-Governorship for Behar, Chota Nagpur, and Orissa, but none of them seem to deserve more than passing consideration, and we have, therefore, refrained from troubling Your Lordship with the overwhelming arguments against them. We have also purposely refrained from discussing in this Despatch questions of subsidiary importance which must demand detailed consideration when the main features of the scheme are sanctioned, and we are in a position to consult the Local Governments concerned.

21. We now pass on to the last proposal, viz., to restore the Chief Commissionership of Assam. This would be merely a reversion to the policy advocated by SIR JOHN LAWRENCE in 1867. This part of India is still in a backward condition and more fit for administration by a Chief Commissioner than a more highly developed form of Government, and we may notice that this was the view which prevailed in 1896-97, when the question of transferring the Chittagong Division and the Dacca and Mymensingh districts to Assam were first discussed. Events of the past twelve months on the frontiers of Assam and Burma have clearly shown the necessity of having the North-East frontier, like the North-West frontier, more directly under the control of the Government of India and removed from that of the Local Government. We may add that we do not anticipate that any opposition will be raised to this proposal, which, moreover, forms an essential part of our scheme.

22. We will now give a rough indication of the cost of the scheme. No attempt at accuracy is possible, because we have purposely avoided making inquiries, as they would be likely to result in the premature disclosure of our proposals. The cost of the transfer to Delhi would be considerable. We

cannot conceive, however, that a larger sum than four millions sterling would be necessary, and within that figure probably could be found the three years' interest on capital which would have to be paid till the necessary works and buildings were completed. We might find it necessary to issue a 'City of Delhi' Gold Loan at 3½ per cent. guaranteed by the Government of India, the interest, or the larger part of the interest, on this loan being eventually obtainable from rents and taxes. In connexion with a general enhancement of land values, which would ensue at Delhi as a result of the transfer, we should endeavour to secure some part of the increment value, which at Calcutta has gone into the pockets of the landlords. Other assets which would form a set-off to the expenditure would be the great rise of Government land at Delhi and its neighbourhood, and a considerable amount which would be realized on the sale of Government land and buildings no longer required at Calcutta. The proximity of Delhi to Simla would also have the effect of reducing the current expenditure involved in the annual move to and from Simla. The actual railway journey from Calcutta to Simla takes 42 hours, while Delhi can be reached from Simla in 14 hours. Further, inasmuch as the Government of India would be able to stay longer in Delhi than in Calcutta, the cost on account of hill allowances would be reduced. We should also add that many of the works now in progress at Delhi in connexion with the construction of roads and railways and the provision of electricity and water for the Durbar, and upon which considerable expenditure has been incurred, will be of appreciable value to the Government of India as permanent works when the transfer is made.

23. As regards the remaining proposals, the recurring expenditure will be that involved in the creation of a Governorship for Bengal and a Chief Commissionership for Assam. The pay and allowances, taken together, of the Lieutenant-Governor of Bengal already exceed the pay of a Governor of Madras or Bombay, and the increase in expenditure when a Governor is appointed would not, we think, be much beyond that required for the support of a bodyguard and a band. Considerable intial expenditure would be required in connexion with the acquisition of land and the construction of buildings for the new capital of Behar, and, judging from the experience gained in connexion with Dacca, we may assume that this will amount to about 50 or 60 lakhs. Some further initial expendi-

ture would be necessary in connexion with the summer headquarters, wherever these may be fixed.

24. Before concluding this Despatch We venture to say a few words as regards the need for a very early decision on the proposals we have put forward for Your Lordship's consideration. It is manifest that, if the transfer of the capital is to be given effect to, the question becomes more difficult the longer it remains unsolved. The experience of the last two sessions has shown that the present Council Chamber in Government House, Calcutta, fails totally to meet the needs of the enlarged Imperial Legislative Council, and the proposal to acquire a site and to construct a Council Chamber is already under discussion. Once a new Council Chamber is built, the position of Calcutta as the Capital of India will be further strengthened and consolidated; and, though we are convinced that a transfer will in any case eventually have to be made, it will then be attended by much greater difficulty and still further expense. Similarly, if some modification of the Partition is, as we believe, desirable, the sooner it is effected the better, but we do not see how it can be safely effected with due regard for the dignity of Government as well as for the public opinion of the rest of India and more especially for Mahomedan sentiment, except as part of the larger scheme we have outlined. In the event of these far-reaching proposals being sanctioned by His Majesty's Government, as we trust may be the case, we are of opinion that the presence of His Majesty the King-Emperor at Delhi would offer a unique opportunity for a pronouncement of one of the most weighty decisions ever taken since the establishment of British Rule in India. The other two proposals embodied in our scheme are not of such great urgency but are consequentially essential and in themselves of great importance. Half measures will be of no avail, and whatever is to be done should be done so as to make a final settlement and to satisfy the claims of all concerned. The scheme which we have ventured to commend to Your Lordship's favourable consideration is not put forward with any spirit of opportunism, but in the belief that action on the lines proposed will be a bold stroke of statesmanship which would give unprecedented satisfaction and will for ever associate so unique an event as the visit of the reigning Sovereign to His Indian Dominions with a new era in the history of India.

25. Should the above scheme meet with the approval of Your Lordship and His Majesty's Government, we would pro-

pose that the King-Emperor should announce at the Durbar the transfer of the capital from Calcutta to Delhi and simultaneously, and as a consequence of that transfer, the creation at an early date of a Governorship-in-Council for Bengal and of a new Lieutenant-Governorship-in-Council for Behar, Chota Nagpur, and Orissa, with such administrative changes and redistribution of boundaries as the Governor-General in Council would in due course determine with a view to removing any legitimate causes for dissatisfaction arising out of the Partition of 1905. The formula of such a pronouncement could be defined after general sanction had been given to the scheme. This sanction we now have the honour to solicit from Your Lordship.

26. We should thus be able after the Durbar to discuss in detail with local and other authorities the best method of carrying out a modification of Bengal on such broad and comprehensive lines as to form a settlement that shall be final and satisfactory to all.

D. Reply to the above Despatch from the Secretary of State for India (the Right Honourable the Marquess of Crewe, K.G.), dated London, 1st November, 1911.

I have received Your Excellency's Despatch, dated the 25th August last and issued in the Home Department, and I have considered it in Council with the attention due to the importance of its subject.

2. In the first place you propose to transfer from Calcutta to Delhi the seat of the Government of India, a momentous change which in your opinion can be advocated on its intrinsic merits, and apart from the considerations which are discussed in the latter passages of your Despatch. You point out with truth that many of the circumstances which explain the selection of Fort William in the second half of the eighteenth century as the head-quarters of the East India Company cannot now be adduced as arguments for the permanent retention of Calcutta as the Capital of British India; while certain new conditions and developments seem to point positively towards the removal of the Central Government to another position. Such a suggestion is not entirely novel, since it has often been asked whether the inconvenience and cost of an annual migration to the Hills could not be avoided by founding a new official capital at some place in which Europeans could reside healthfully and work efficiently throughout the whole year. You regard any such

solution as impracticable, in my judgment rightly; and you proceed to describe in favourable terms the purely material claims of Delhi for approval as the new centre of Government. There would be undoubted advantage both in a longer sojourn at the capital than is at present advisable, and in the shorter journey to and from Simla when the yearly transfer has to be made; while weight may properly be attached to the central situation of Delhi and to its fortunate position as a great railway junction. As you point out, these facts of themselves ensure not a few administrative advantages, and I am not disposed to attach serious importance to the removal of the Department of Commerce and Industry from a busy centre like Calcutta; for any official disadvantage due to this cause should be counterbalanced by the gain of a wider outlook upon the commercial activities of India as a whole.

3. From the historical standpoint, to which you justly draw attention, impressive reasons in support of the transfer can not less easily be advanced. Not only do the ancient walls of Delhi enshrine an Imperial tradition comparable with that of Constantinople, or with that of Rome itself, but the near neighbourhood of the existing City formed the theatre for some most notable scenes in the old-time drama of Hindu history, celebrated in the vast treasure-house of national epic verse. To the races of India, for whom the legends and records of the past are charged with so intense a meaning, this resumption by the Paramount Power of the seat of venerable Empire should at once enforce the continuity and promise the permanency of British Sovereign Rule over the length and breadth of the country. Historical reasons will thus prove to be political reasons of deep importance and of real value in favour of the proposed change. I share, too, your belief that the Ruling Chiefs as a body will favour the policy and give to it their hearty adhesion.

4. But, however solid may be the material advantages which you enumerate, and however warm the anticipated response from Indian sentiment, it may be questioned whether we should venture to contemplate so abrupt a departure from the traditions of British government, and so complete a dislocation of settled official habits, if we were able to regard with absolute satisfaction the position as it exists at Calcutta.

5. Your Excellency is not unaware that for some time past I have appreciated the special difficulties arising from the collocation of the Government of India and the Government of Bengal in the same head-quarters. The arrangement, as you

frankly describe it, is a bad one for both Governments, and the Viceroy for the time being is inevitably faced by this dilemma, that either he must become Governor-in-chief of Bengal in a unique sense, or he must consent to be saddled by public opinion both in India and at home with direct liability for acts of administration or policy over which he only exercises in fact the general control of a Supreme Government. The Local Government, on the other hand, necessarily suffers from losing some part of the sense of responsibility rightly attaching to it as to other similar administrations. It involves no imputation either upon Your Excellency's Government, or upon the distinguished public servants who have carried on the Government of Bengal, to pronounce the system radically an unsound one.

6. It might, indeed, have been thought possible to correct this anomaly with less disturbance of present conditons, by retaining Calcutta as the central seat of Government, under the immediate control of the Viceroy, and transferring the Government of Bengal elsewhere. But two considerations appear to forbid the adoption of such a course. In the first place it is doubtful whether the arbitrary creation of an artificial boundary could in practice cause Calcutta, so long the capital of Western Bengal, to cease altogether to be a Bengali city in the fullest sense. Again, the experiment of turning the second city of the British Empire into an Imperial *enclave* would be certain to cast a new and altogether undue burden upon the shoulders of the Governor-General, however freely the actual work of administration might be delegated to subordinate officials. It is true that Washington, during the century since it became the capital of the United States, has grown into a large and wealthy city, with industries on a considerable scale ; but even now it possesses less than a third of the population of Calcutta ; while Ottawa and the new Australian foundation of Yass-Canberra are likely to continue mainly as political capitals. Such a solution may, therefore, be dismissed, while no parallel difficulties need be dreaded if Delhi and its surroundings are placed directly under the Government of India.

7. I am glad to observe that you have not underrated the objections to the transfer which are likely to be entertained in some quarters. The compensation which will be offered to Bengali sentiment by other of your inter-dependent proposals is in my opinion fully adequate, and I do not think it necessary to dwell further on this aspect of the change. But it cannot be sup-

posed that the European community of Calcutta, particularly the commercial section, can regard it without some feelings of chagrin and disappointment in their capacity as citizens. But you may rely, I am certain, upon their wider patriotism, and upon their willingness to subordinate local and personal considerations to those which concern the general good of India. Nor, on full reflection, need they fear any seriously untoward consequences. The city will remain the seat of a most prominent and influential Government. I see no reason why it should suffer in material prosperity, retaining as it will not merely an almost universal commerce, but the practical monopoly in more than one branch of trade. And from the standpoint of sentiment, nothing can ever deprive Calcutta of her association with a century and a half of British Government, signalised by many great events, and adorned by the famous roll of those who have preceded Your Excellency in the office of Governor-General. Such a history is a perpetual possession, and it will guide the steps of all travellers to Calcutta not less certainly than has the presence of the Supreme Government in the past.

8. In view of this change it is your desire that a Governorship-in-Council should be constituted for Bengal. You remind me that the possibility of such a creation was fully discussed in the years 1867 and 1868, although divergent opinions were expressed by the different authorities of that day, and no steps were in fact taken. One of the principal objections felt then, as now, to the proposition taken by itself, hinged on the difficulty of planting such an administration in Calcutta side by side with that of the Government of India. The criticism is valid, but it would be silenced by the transfer of the capital to Delhi. I note with general agreement your observations upon the probable appointment in ordinary circumstances of a statesman or administrator from the United Kingdom to the Governorship of Bengal, while concurring that the appointment, like other great Governorships would be open to members of the Indian Civil Service whenever it might be desirable to seek for an occupant among their ranks. I also share your conviction that no lower grade of administration would be held in the altered conditions to satisfy the reasonable aspirations either of Hindus or of Mahomedans for the reputation and status of Bengal among the great divisions of India.

9. In considering the area which the Governor of a new Bengal should be called upon to administer, it is not necessary to recall at length the steps which led up to the partition of

the former Presidency, or to engage in detailed examination of its results. It is universally admitted that up to the year 1905 the task which the Lieutenant-Governor of Bengal and his subordinates had to perform, having regard to the extent of the Presidency, to its population, and the difficulties of communication in many districts, was one with which no energy or capacity could completely cope. It is equally certain that the provincial centre of gravity was unduly diverted to the western portion of the area, and to Calcutta itself; with the result that the Mahomedan community of Eastern Bengal were unintentionally deprived of an adequate share of consideration and attention. Such a state of affairs was not likely to agitate public opinion on this side of the water; the name of Dacca, once so familiar to British ears, had become almost unknown to them. A re-arrangement of administration at the instance of the Government of India was, therefore, almost imperative; but the plan that was ultimately adopted, while effecting some beneficial changes in Eastern Bengal, and offering relief to the overladen Government, produced consequences in relation to the Bengali population which you depict with accuracy and fairness. History teaches us that it has sometimes been found necessary to ignore local sentiment, or to override racial prejudice, in the interest of sound administration, or in order to establish an ethical or political principle. But even where indisputable justification can be claimed, such an exercise of authority is almost always regrettable in itself; and it will often be wise to grasp an opportunity of assuaging the resentment which has been aroused, where this can be done without practical detriment to order and good government. You point out, moreover, that in this case the grievance is not only one of sentiment, but that in connexion with the Legislative Councils the Bengali population is subjected to practical disabilities which demand and merit some redress. In Your Excellency's opinion the desired objects can properly be achieved by reuniting the five Bengali-speaking divisions of the Presidency, Burdwan, Dacca, Rajshahi, and Chittagong into the new Presidency to be for the future administered by the Governor of Bengal in Council.

10. At the same time you lay deserved stress on the importance of giving no ground for apprehension to the Mahomedans of Eastern Bengal lest their interest should be injuriously affected by the intended alteration. In common with others of their faith, they would presumably regard with

satisfaction the re-erection of Delhi as the Capital of India; but they would be primarily concerned with the local aspect of the proposals. It is evident that in delimiting the new Presidency care is needed to see that the balance of the different populations, though it could not remain throughout the entire area as it stands at present in Eastern Bengal and Assam, is not unduly disturbed; and, as you point out, the special representation on the Legislative Councils which is enjoyed by the Mahomedans supplies them with a distinct safeguard in this respect. I attach, however, no little importance to the proposal that the Governor of Bengal should regard Dacca as his second capital, with full claims on his regular attention, and his residence for an appreciable part of the year. The arrangements which have been made there for the administration of the existing Lieutenant-Governor will thus not merely be utilised, but will serve a valuable purpose which it would have been difficult to secure had proposals similar to those which you now make been put forward when the old Bengal was undivided. In these circumstances, I consider that you are right not to make any suggestion for a Commissionership at Dacca analogous to that existing in Sind in the Presidency of Bombay.

11. Your next proposition involves the creation of a Lieutenant-Governorship-in-Council for Behar, Chota Nagpur, and Orissa. I observe that you have considered and dismissed a number of alternative suggestions for dealing with these three important and interesting divisions. Some of these schemes, as Your Excellency is aware, have at different times been the subjects of discussion when a re-arrangement of boundaries has been contemplated; and I refrain from commenting on any of them at this moment, holding, as I do, that you have offered the plainest and most reasonable solution, if any substantial change is to be made at all. The three sub-provinces above named, while differing *inter se* in some marked features, are alike loosely connected with Bengal proper, and their complete administrative severance would involve no hardship to the Presidency. You describe the desire of the hardy and law-abiding inhabitants of Behar for a clearer expression of their local individuality, differing from the Bengalis as they largely do in origin, in language, in proclivities, and in the nature of the soil they cultivate. Orissa, again, with its variety of races and physical conditions, with its considerable seaboard, invested with a peculiar sanctity of religious tradition, prefers a code of land legislation founded on a system of tenure differing in the main

from those both of Bengal and of the Central Provinces, and has long felt uneasiness at a possible loss of identity as a distinct community. The highlands of Chota Nagpur, far less densely populated than Bengal, and containing a large aboriginal element, also possess ancestral and historical claims for separate treatment in various respects. These three sub-provinces, with their combined population of some thirty-five millions, would form a charge well within the compass of a Lieutenant-Governorship; and it may be assumed that the controlling officer would be able to bestow continuous care and attention upon each of the divisions within his area.

12. The concluding suggestion which you put forward is that the Chief Commissionership of Assam should be revived. I attach weight to your argument that the political conditions on the North-eastern frontier of India render it desirable that like the North-West it should be the immediate concern of Your Excellency's Government, rather than of a local administration; and I note your belief, which I trust may prove to be well founded, that the inhabitants of this Province, of first rate importance in industry and commerce, are not likely to offer any opposition to the change. On the contrary, they may be disposed to welcome it, since I am confident that the Supreme Government would assiduously preserve all local interests, either material or of sentiment, from any possible detriment attributable to the altered system.

13. I make no complaint of the fact that Your Excellency is unable at this stage to present for sanction a close estimate of the cost which is likely to be incurred in respect of the various proposals included in your Despatch, either by way of initial or of recurring expenditure. You have only found it possible to name the round sum of four millions sterling, which you regard as the outside figure of cost which could be incurred by the transfer to Delhi, and you indicate your opinion that this amount might be raised by a special Gold Loan. I agree that it was not possible for you, in the special circumstances of the case, to undertake the investigations which would have been necessary before you could submit even a general estimate of expenditure either at Delhi or in relation to the Governorship of Bengal, to the Lieutenant-Governorship of the new United Provinces, or to the Chief Commissionership of Assam. This being so, I refrain for the present from making any observations on this part of the subject, merely stating my general conviction that Your Excellency is fully alive to the magnitude of the proposed

operations, and to the necessity for thoughtful preparation and continuous vigilance in order that the expenditure, which must necessarily be so large, may be conducted with no tinge of wastefulness; and as regards the particular case of Delhi, assuring you that my full sympathy will be extended to any efforts you may make to prevent holding-up against Government of land which you may find it necessary to secure for public purposes.

14. I find myself in general agreement with Your Excellency when you state that if this policy is to be approved, it is imperative to avoid delay in carrying it into effect. You give substantial reasons for this opinion, both on administrative and economical grounds, and though a number of details remain for settlement, many of which must demand careful examination and consultation, while some may awaken differences of opinion, it is possible now to pronounce a definite opinion upon the broad features of the scheme. Regarding it as a whole, and appreciating the balance sought to be maintained between the different races, classes, and interests likely to be affected, I cannot recall in history, nor can I picture in any portion of the civilised world as it now exists, a series of administrative changes of so wide a scope culminating in the transfer of the main seat of Government, carried out, as I believe the future will prove, with so little detriment to any class of the community, while satisfying the historic sense of millions, aiding the general work of Government, and removing the deeply-felt grievance of many. I therefore give my general sanction to your proposals, and I share in your belief that the transfer of the Capital, and the concomitant features of the scheme form a subject worthy of announcement by the King-Emperor in person on the unique and eagerly-anticipated occasion at Delhi. I am commanded to inform you that at the Durbar on the 12th of December His Imperial Majesty will be pleased to declare that Delhi will become the capital city of India, that a Governor in Council will be appointed for Bengal, a Lieutenant-Governor in Council for Behar, Chota Nagpur, and Orissa, and a Chief Commissioner for the Province of Assam.

VI.

A. Rt. HON. Mr. MONTAGU'S ANNOUNCEMENT OF AUGUST 20, 1917.

On August 20, 1917, the Secretary of State for India made the following announcement in the House of Commons :—

"The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible, and that it is of the highest importance as a preliminary to considering what these steps should be, that there should be a free and informal exchange of opinion between those in authority at Home and in India. His Majesty's Government have accordingly decided, with His Majesty's approval, that I should accept the Viceroy's invitation to proceed to India to discuss these matters with the Viceroy and the Government of India, to consider with the Viceroy the views of local Governments, and to receive with him the suggestions of representative bodies and others.

"I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the time and measure of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility.

"Ample opportunity will be afforded for public discussion of the proposals which will be submitted in due course to Parliament."

B. Extracts from Lord Chelmsford's speech in the Indian Legislative Council, September 5th, 1917.

"I now turn to the third task, viz :—Constitutional Reforms. At the very first Executive Council which I held as Viceroy and Governor-General, I propounded two questions to my council.—

(1) What is the goal of British Rule in India?

(2) What are the steps on the road to that goal?

"We came to the conclusion, which, I trust most Hon'ble Members will agree, was inevitable—that the endowment of British India as an integral part of the British Empire with self-government was the goal of British Rule, and His Majesty's Government have now put forward in precise terms their policy in respect of this matter, a policy which I may say that we as the Government of India regard in substance as practically indistinguishable from that which we put forward. With regard to the second question, after a careful and detailed examination of the ground, we arrived at the decision that there were three roads along which an advance should be made towards the goal. The first road was in the domain of local self-government, the village, the rural board, and the town or municipal council. The domain of urban and rural self-government is the great training ground from which political progress and a sense of responsibility have taken their start, and we felt that the time had come to quicken the advance, to accelerate the rate of progress, and thus to stimulate the sense of responsibility in the average citizen, and to enlarge his experience.

"The second road, in our opinion, lay in the domain of the more responsible employment of Indians under Government. We felt that it was essential to progress towards the goal that Indians should be admitted in steadily increasing proportion to the higher grades of the various services and departments and to more responsible posts in the administration generally. It is, I think, obvious that this is a most important line of advance. If we are to get real progress, it is vital that India should have an increasing number of men versed not only in the details of everyday administration, but in the whole art of government.

"I doubt whether there is likely to be anyone who will cavil at the general conclusions at which we arrived as to these two roads of advance; but agreement must not blind us to their importance. There is no better source of instruction than the liberty to make mistakes. The first and foremost principle which was enunciated in Lord Ripon's Self-government Resolution of May 1882, and was subsequently emphasised by Lord Morley and Lord Crewe in their Despatches of 7th November, 1908 and 11th July, 1913, respectively, was that "the object of local Self-Government is to train the people in the management of their own local affairs, and that political education of this

sort must take precedence of mere considerations of departmental efficiency." We are in complete accord with that principle, hence our advocacy of an advance along the first road.

"Equally we realise the paramount importance of training in administration, which would be derived from an advance along the second road. There is nothing like administrative experience to sober the judgment and bring about an appreciation of the practical difficulties which exist in the realm of administration and it is from this source that we may look forward in the future to an element of experienced and tried material for the legislative assemblies.

"We come now to our third road, which lay in the domain of the Legislative Councils. As Hon'ble Members will readily appreciate, there is no subject on which so much difference of opinion exists and with regard to which greater need is required for careful investigation and sober decision. I may say frankly that we as the Government of India recognise fully that an advance must be made on this road simultaneously with the advances on the other two, and His Majesty's Government, in connection with the goal which they have outlined in their announcement, have decided that substantial steps in the direction of the goal they define should be taken as soon as possible." Some criticism has been directed against the Government of India on the score that we have not disclosed the policy outlined in our despatch. I must remind Hon'ble Members that the decision on such a question rests, not with the Government of India, but with the authorities at home. Moreover, on the larger question of a declaration of policy, in view of its unique importance, I have steadfastly refused, in the face of much adverse criticism, to anticipate by any statement of my own the decision of His Majesty's Government, who alone could make a final and authoritative statement, and I was careful to warn Hon'ble Members in my opening speech to them last February of the likelihood of delay, owing to the grave preoccupations of the Cabinet at home. Well, this however is, I hope, now immaterial, for His Majesty's Government have announced their policy and have authorised the Secretary of State, with His Majesty's approval, to accept my invitation to visit India and to examine the issues on the spot. I had invited Mr. Chamberlain to visit India some time back. He was on the point of accepting when his resignation took place. Immediately on Mr. Montagu's assumption of office, I expressed the hope that he would see his way to accept the invitation

which I had extended to his predecessor, and I am delighted that the Cabinet have decided that he should accept. Some apprehension has been expressed lest the Government of India is about to be superseded temporarily by the Secretary of State. There need be no anxiety on that score. As I have told you, Mr. Montagu is coming on my invitation to consult informally with myself, the Government of India and others. He will make no public pronouncements of policy, and business between the Government of India and the Home Government will be conducted through the regular channels and the Council of India. There is no question of supersession, but the outstanding advantage of Mr. Montagu's visit is that he will now have the opportunity of making at first hand an examination of the questions in issue, and for my part I shall leave nothing undone to enable him to receive all the suggestions of representative bodies and others which he may desire. In these circumstances and in view of Mr. Montagu's assurance that there will be ample opportunity for public discussion of the proposals which will be submitted in due course to Parliament, I would suggest to Hon'ble Members that the intervening time before his arrival might be spent in the quiet examination of the arguments to be placed before Mr. Montagu. For myself I am anxious that, when Mr. Montagu arrives, we—and in that pronoun I include all those representative bodies and others mentioned in the announcement—should have ready to place before him all the materials which will enable him to form a reasoned judgment.

C. Proposals for Indian Constitutional Reforms by Rt. Hon. Mr. Montagu and H. E. Lord Chelmsford (Being extracts from their Report dated Simla, April 22, 1918).

Reasons for a new policy.

178. We began our report with a reference to the announcement of August 20, but inasmuch as that announcement was made on behalf of His Majesty's Ministers at our own request, we propose before setting out our own proposals to gather together very briefly the reasons why we hold that the decision was a wise and necessary one. If our account of the past development and working of the present constitution is an accurate one, it will be apparent that we have now gone as far as is possible upon the old lines. No further development is possible unless we are going to give the people of India some responsibility for their own government. But no one can imagine that no further development is necessary. It is evident that the present

machinery of government no longer meets the needs of the time; it works slowly, and it produces irritation; there is a widespread demand on the part of educated Indian opinion for its alteration; and the need for advance is recognized by official opinion also. One hundred and twenty years ago Sir Thomas Munro wrote:—

"What is to be the final result of our arrangements on the character of the people? Is it to be raised, or is it to be lowered? Are we to be satisfied with merely securing our power and protecting the inhabitants, or are we to endeavour to raise their character, to render them worthy of filling higher stations in the management of their country, and devising plans for its improvement?.....We should look on India not as a temporary possession, but as one which is to be maintained permanently, until the natives shall in some future age have abandoned most of their superstitions and prejudices, and become sufficiently enlightened to frame a regular government for themselves, and to conduct and preserve it."

The logical outcome of the past.

179. Thus the vision of a persistent endeavour to train the people of India for the task of governing themselves was present to the minds of some advanced Englishmen four generations ago; and we since have pursued it more constantly than our critics always admit, more constantly perhaps than we have always perceived ourselves. The inevitable result of education in the history and thought of Europe is the desire for self-determination; and the demand that now meets us from the educated classes of India is no more than the right and natural outcome of the work of a hundred years. There can be no question of going back, or of withholding the education and enlightenment in which we ourselves believe; and yet, the more we pursue our present course without at the same time providing the opportunities for the satisfaction of the desires which it creates, the more unpopular and difficult must our present government become and the worse must be the effect upon the mind of India. On the other hand, if we make it plain that, when we start on the new lines, education, capacity and good-will will have their reward in power, then we shall set the seal upon the work of past years. Unless we are right, in going forward now the whole of our past policy in India has been a mistake. We believe, however, that no other policy was either right or possible, and therefore we must now face its logical consequences. Indians must be enabled, in so far as they attain responsibility, to determine for themselves what they want done. The process will begin in local affairs which we have long since intended and promised to make over to them; the time has come for advance also in some subjects of provincial concern; and it will

proceed to the complete control of provincial matters and thence, in the course of time, and subject to the proper discharge of Imperial responsibilities, to the control of matters concerning all India. We make it plain that such limitations on powers as we are now proposing are due only to the obvious fact that time is necessary in order to train both representatives and electorates for the work which we desire them to undertake ; and that we offer Indians opportunities at short intervals to prove the progress they are making and to make good their claim not by the method of agitation, but by positive demonstration, to the further stages in self-government which we have just indicated.

Hopes for the future.

180. Further, we have every reason to hope that as the result of this process, India's connexion with the Empire will be confirmed by the wishes of her people. The experience of a century of experiments within the Empire goes all in one direction. As power is given to the people of a province or of a dominion to manage their own local affairs their attachment becomes the stronger to the Empire which comprehends them all in a common bond of union. The existence of national feeling, or the love of, and pride in, a national culture need not conflict with, and may indeed strengthen, the sense of membership in a wider commonwealth. The obstacles to a growth in India of this sense of patnership in the Empire are obvious enough. Differences of race, religion, past history, and civilization have to be overcome. But the Empire, which includes the French of Canada and the Dutch of South Africa—to go no further—cannot in any case be based on ties of race alone. It must depend on a common realization of the ends for which the Empire exists, the maintenance of peace and order over wide spaces of territory, the maintenance of freedom, and the development of the culture of each national unity of which the Empire is composed. These are aims which appeal to the imagination of India and, in portion as self-government develops patriotism in India, we may hope to see the growth of a conscious feeling of organic unity with the Empire as a whole.

The education problem.

181. There is, however, one aspect of the general problem of political advance which is so important as to require notice in some detail. We have observed already that one of the greatest obstacles to India's political development lies not only in the lack of education among its peoples taken as a whole, but also in the uneven distribution of educational advance. The

educational policy of Government has incurred much criticism from different points of view. Government is charged with neglect, because after sixty years of educational effort only 6 per cent of the population is literate, while under 4 per cent of the total population is undergoing instruction. It is charged, on the other hand, with having fostered education on wrong lines, and having given to those classes which welcomed instruction a system which is divorced from their needs in being too purely literary, in admitting methods of unintelligent memorizing and of cramming, and in producing far in excess of the actual demands of Indian conditions, a body of educated young men whose training has prepared them only for Government service or the practice of the law. The system of university education on Western lines is represented as cutting off the students from the normal life of the country, and the want of connexion between primary education in the vernaculars and higher education in English is regarded as another radical defect.

Retrospect of education.

182. It is sometimes forgotten that the system of English education was not forced upon India by the Government, but established in response to a real and insistent demand, though a demand that proceeded from a limited class. The higher castes of Hindus—Brahmans, Kayasths, and a few others—have for generations supplied the administrative body of India, whatever the nationality of the rulers; and the introduction and development of British Rule inspired these classes to qualify themselves for a continuance, under the new conditions, of their hereditary careers. It was somewhat easily assumed in the time of Macaulay that Western education once imparted to the higher classes of India would gradually but steadily permeate the whole population. In the event it has been distributed unevenly among the higher classes themselves, the Muhammadan community as a whole having until very recently been backward in taking advantage of educational facilities. Indeed some of the most difficult factors of the present situation would have been avoided if in good time steps had been taken to prevent the wide divorce which has occurred between the educated minority and the illiterate majority. From the economic point of view India has been handicapped by the want of professional and technical instruction; her colleges turn out numbers of young men qualified for Government clerkships while the real interests of the country require, for example, doctors and engineers in excess of the existing supply. The

charge that Government has produced a large *intelligentsia* which cannot find employment has much substance in it; it is one of the facts that lie at the root of recent political difficulties. But it is only of late years and as part of the remarkable awakening of national self-consciousness, that the complaint has been heard that the system has failed to train Indians for practical work in manufactures, commerce, and the application of science to industrial life. The changing economic conditions of the country have brought this lesson home, and in its acceptance lies much of our hope for the future. But it must be remembered that many of the particular classes which eagerly sought higher education demanded also that it should be of a literary character, and were hereditarily averse from, if not disdainful of, anything that savoured of manual toil; and also that when the universities of India were founded the idea of scientific and technological instruction had not dawned upon universities in England.

Defects of the system.

183. The failure of the Indian educational system to train the character has often been criticized, and with justice. In our desire, while imparting actual instruction, not to force the mind of India into an alien mould or to interfere with religious convictions, we have undoubtedly made education too purely a matter of the intellect, and, at any rate in the beginning, we failed to foresee how substantially the mental training that our schools and colleges afforded must come in time to modify the pupils' conceptions of life. Attempts towards direct moral training were always impeded by the desirability of avoiding the difficult and delicate domain of religious belief. But one of the most pressing needs of India, is to foster more widely in the schools and colleges those ideas of duty and discipline, of common responsibilities and civic obligation, on which a healthy political life depends. Much effort is already being made in this direction, and there are notable and welcome signs of the growth among educated Indians of the conviction that the possession of education does not merely offer the individual opportunities of advancement, but should confer on him also the ability and the obligation to serve his country.

Social factors.

184. As regards the limited diffusion of education we also take into account the conservative prejudices of the country. It is not very long

since the advocates of the higher education of women in Europe were regarded as unpractical and subversive theorists; and in India social customs have greatly multiplied the difficulties in the way of female education. Upon this question opinion is slowly, but surely, changing, and educated young men of the middle classes are beginning to look for literate wives. But so long as education is practically confined to one sex the social complexion of the country must react upon and retard political progress; and for this reason we regard the great gulf between men and women in respect of education as one of the most serious problems which has to be faced in India.

Attitude of the ryot.

185. The spread of education among the lower classes is also attended by peculiar difficulties. India is a predominantly agricultural country, and an agricultural population is always and everywhere suspicious of the effect of education upon rural children. Here again is the need—a need realized equally in Europe and America—of making rural education more practical, and ensuring that the school shall make the average boy who does not aspire to university education a more practical farmer instead of transforming him into an indifferent clerk. In India primary education has been entrusted mainly to the district boards and municipalities, and it has, we are glad to say, made fairly steady, if slow, progress under their administration. The first effect of English education upon the classes which adopted it was to widen the gulf between them and the conservative masses. But one of the most marked features of recent political development is the concern shown by the spokesmen of the educated classes for the diffusion of primary education among the people as a whole. The history of other countries shows that the growth of a desire for education among the peasantry and working classes is generally slow, while political and economic conditions remain static, and that the quickening influences come mainly from the better educated sections of the community which are more sensitive to political and economic changes. Political thought in India is coming to recognize that advance must be influenced by the general educational level of the country, and that political leaders, if they are to escape the charge of representing only the interests of the classes to which they themselves belong, must be able to appeal to, and be understood by, the masses of their fellow-countrymen. This conviction involves steady effort to raise the status of the depressed classes.

186. Primary education, as we have seen, is already practically in the hands of local bodies, but secondary education was deliberately left at the outset almost entirely to private agencies. The universities, despite their connexion with Government, are largely non-official bodies with extensive powers. The main defect of the system is probably the want of co-ordination between primary and higher education, which in turn reacts upon the efficiency of secondary institutions and to a great extent confines university colleges to the unsatisfactory function of mere finishing schools. The universities have suffered from having been allowed to drift into the position of institutions that are expected not so much to educate in the true sense, as to provide the student with the means of entering an official or a professional career. Thus a high percentage of failures seems to a large body of Indian opinion not so much a proof of the faultiness of the methods of teaching, as an example of an almost capricious refusal of the means of obtaining a living wage to boys who have worked for years, often at the cost of real hardship, to secure an independent livelihood. The educational wastage is everywhere excessive ; and analysis shows that it is largely due to under-payment and want of proper training in the case of teachers. The actual recruits for normal schools are too often ill-prepared, and the teaching career, which in India used formerly to command respect, does not now offer adequate inducements to men of ability and force of character. The first need, therefore, is the improvement of teaching. Until that is attained it is vain to expect that the continuation of studies from the primary stage can be made attractive. But while the improvement of primary and middle schools is the first step to be taken, very much remains to be done in reorganizing the secondary teachers and ensuring for the schoolmaster a career that will satisfy an intelligent man. The improvement of ordinary secondary education is obviously a necessary condition for the development of technical instruction and the reform of the university system. It is clear that there is much scope for an efficient and highly trained inspectorate in stimulating the work of the secondary schools, and in helping the inspectorate of the primary schools maintained by the local bodies. We believe that the best minds in India, while they feel that the educational service has not in the past been widely enough opened to Indians trained at British universities, value the maintenance of a close connexion with educationists from the United Kingdom.

Chief needs at present.

187. This survey of educational problems will show how much room there is for advance and improvement, and also how real the difficulties are. The defects of the present system have often been discussed in the legislative councils but, as was inevitable so long as the councils had no responsibility, without due appreciation of financial difficulties, or serious consideration of the question how far fresh taxation for educational improvement would be acceptable. As we shall show, it is part of the political advance that we contemplate that the direction of Indian education should be increasingly transferred to Indian hands. Only so, we believe, can the stimulus be forthcoming which will enable the necessary money to be found. The weak points are recognized. A real desire for improvement exists. Educational extension and reform must inevitably play an important part in the political progress of the country. We have already made clear our conviction that political capacity can come only through the exercise of political responsibility ; and that mere education without opportunities must result in serious mischiefs. But there is another important element. Progress must depend on the growth of electorates and the intelligent exercise of their powers ; and men will be immensely helped to become competent electors by acquiring such education as will enable them to judge of candidates for their votes, and of the business done in the councils. No one would propose to prescribe an educational qualification for the vote ; but no one can deny the practical difficulties which make a very general extension of the franchise impossible until literacy is far more widely spread than is the case at present. The Government of India has for some time past been maturing plans for a great extension of primary education. Progress was temporarily interrupted by uncertainty as to the distribution of financial resources which would result from the constitutional changes ; but the imminence of these has given a new importance to the question and its consideration has been resumed. We trust that impetus will thus be given to a widespread movement which will be taken up and carried forward boldly by the reformed councils.

Political importance of education.

188. Let us now consider the principles on which our proposals are based. We have surveyed the existing position ; we have discussed the conditions of the problem ; and the goal to which we wish to move is clear. What course are we to set across the intervening space ?

Extent of the advance proposed in local bodies.

It follows from our premises, and it is also recognized in the announcement of August 20, that the steps are to be gradual and the advance tested at each stage. Consistently with these requirements a substantial step is to be taken at once. If our reasoning is sound this can be done only by giving from the outset some measure of responsibility to representatives chosen by an electorate. There are obviously three levels at which it is possible to give it—in the sphere of local bodies, in the provinces, and in the Government of India. Of certain other levels which have been suggested, intermediate between the first and second of these, we shall speak in due course. Also, since no man can serve two masters, in proportion as control by an electorate is admitted at each level, control by superior authority must be simultaneously relaxed. If our plans are to be soundly laid, they must take account of actual conditions. It follows that the process cannot go on at one and the same pace on all levels. The Secretary of State's relaxation of control over the Government of India will be retarded, if for no other reason, by the paramount need for securing Imperial interests; the Government of India have the fundamental duty to discharge of maintaining India's defence; the basic obligation of provincial Governments is to secure law and order. As we go upwards the importance of the retarding factors increases; and it follows that popular growth must be more rapid and extensive in the lower levels than in the higher. Let us state the proposition in another way. The functions of Government can be arranged in an ascending scale of urgency, ranging from those which concern the comfort and well-being of the individual to those which secure the existence of the State. The individual understands best the matters which concern him, and of which he has experience; and he is likely to handle best the things which he best understands. Our predecessors perceived this before us, and placed such matters to some extent under popular control. Our aim should be to bring them entirely under such control. This brings us to our first formula:—

"*There should be, as far as possible, complete popular control in local bodies and the largest possible independence for them of outside control*" (*1*).

In provincial Governments.

189. When we come to the provincial Governments the position is different. Our objective is the realization of responsible Government. We understand this to mean first, that the members of the executive Government should be responsible to,

because capable of being changed by, their constituents ; and, secondly, that these constituents should exercise their power through the agency of their representatives in the assembly. These two conditions imply in their completeness that there exist constituencies based on a franchise broad enough to represent the interests of the general population, and capable of exercising an intelligent choice in the selection of their representatives ; and, secondarily, that it is recognized as the constitutional practice that the executive Government retains office only so long as it commands the support of a majority in the assembly. But in India these conditions are as yet wanting. The provincial areas and interests involved are immense, indeed are on what would elsewhere be regarded as a national scale. The amount of administrative experience available is small ; electoral experience is almost entirely lacking. There must be a period of political education, which can only be achieved through the gradual, but expanding, exercise of responsibility. The considerations of which we took account in chapter VI forbid us immediately to hand over complete responsibility. We must proceed, therefore, by transferring responsibility for certain functions of Government while reserving control over others. From this starting point we look for a steady approach to the transfer of complete responsibility. We may put our second formula thus :—

"*The provinces are the domain in which the earlier steps towards the progressive realization of responsible Government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit. This involves at once giving the provinces the largest measure of independence, legislative, administrative and financial, of the Government of India which is compatible with the due discharge by the latter of its own responsibilities*" (*2*).

In the Government of India.

190. But, as we shall see, any attempt to establish equilibrium between the official and popular forces in Government inevitably introduces additional complexity into the administration. For such hybrid arrangements precedents are wanting ; their working must be experimental, and will depend on factors that are yet largely unknown. We are not prepared, without experience of their results, to effect like changes in the Government of India. Nevertheless, it is desirable to make the Indian Legislative Council more truly representative of Indian opinion, and to give that opinion greater opportunities of acting on the

Government. While, therefore, we cannot commend to Parliament a similar and simultaneous advance, both in the provinces and in the Government of India, we are led to the following proposition ;—

"*The Government of India must remain wholly responsible to Parliament, and saving such responsibility, its authority in essential matters must remain indisputable, pending experience of the effect of the changes now to be introduced in the provinces. In the meantime the Indian Legislative Council should be enlarged and made more representative and its opportunities of influencing Government increased*" *(3).*

In England.

191. Further, the partial control of the executive in the provinces by the legislature, and the increasing influence of the legislature upon the executive in the Government of India, will make it necessary that the superior control over all Governments in India which is now exercised by the authorities at Home must be in corresponding measure abated ; for otherwise the executive Governments in India will be subjected to pressure from different sources which will wholly paralyse their liberty of action, and also the different pressures may be exercised in opposite directions. We may put this proposition briefly as follows :—

"*In proportion as the foregoing changes take effect, the control of Parliament and the Secretary of State over the Government of India and provincial Governments must be relaxed*" *(4).*

Local Self-Government.

192. We have been told that, inasmuch as local self-government has not yet been made a reality in most parts of India, we should content ourselves with such reforms as will give it reality, and should await their result before attempting anything more ambitious, on the principle that children learn to walk by learning first to crawl. We regard this solution as outside the range of practical politics ; for it is in the councils that the Morley-Minto reforms have already brought matters to an issue ; and Indian hopes and aspirations have been aroused to such a pitch that it is idle to imagine that they will now be appeased by merely making over to them the management of urban and rural boards. Moreover, the development of the country has reached a stage at which the conditions justify an advance in the wider sphere of government, and at which indeed government without the co-operation of the

people will become increasingly difficult. On the other hand, few of the political associations that addressed us seemed adequately to appreciate the importance of local affairs, or the magnitude of the advance which our recommendation involves. But the point has been made time and time again by their own most prominent leaders. It is by taking part in the management of local affairs that aptitude for handling the problems of government will most readily be acquired. This applies to those who administer, but even more to those who judge of the administration. Among the clever men who come to the front in provincial politics, there will be some who will address themselves without more difficulty, and indeed with more interest and zeal, to the problems of government than to those of municipal or district board administration. But the unskilled elector, who has hitherto concerned himself neither with one nor the other, can learn to judge of things afar off only by accustoming himself to judge first of things near at hand. This is why it is of the utmost importance to the constitutional progress of the country that every effort should be made in local bodies to extend the franchise, to arouse interest in elections, and to develop local committees, so that education in citizenship may, as far as possible be extended, and everywhere begin in a practical manner. If our proposals for changes on the higher levels are to be a success, there must be no hesitation or paltering about changes in local bodies. Responsible institutions will not be stably-rooted until they become broad-based; and far-sighted Indian politicians will find no field into which their energies can be more profitably thrown than in developing the boroughs and communes of their country.

The Government of India's proposals.

193. These reasons led Lord Chelmsford's Government in May, 1916 to consider what further progress along the road of local self-government was immediately possible. Their conclusions would have been published some time ago if it had been possible to separate the consideration of this subject from that of constitutional reforms in general. We have the proposals before us, and will summarize the general purport of them.

Constitution of local boards.

194. At present rather more than half the members of municipal, and rather less than half of those of rural boards, including in this term sub-district boards, are elected. The in-

tention is that substantial elected majorities should be conceded in boards of both kinds and that the system of nomination should be retained only in order to secure the necessary representation of minorities, and the presence of a few officials as expert advisers without a vote. Generally the suggestion is that the proportion of nominated members should not exceed one-fourth. The enlargement of the elected element must necessarily be accompanied by the adoption of a sufficiently low franchise to obtain constituencies which will be really representative of the general body of rate-payers. It should also be followed by an extension of the system of elected chairmen. The Decentralization Commission thought that municipal chairmen should ordinarily be elected non-officials, and that if a nominated chairman was required an official should be selected. It is hoped, however, that the election of chairmen will be the general rule in future. If there are special reasons against the election of a non-official chairman an official might be elected, provided he is elected by a majority of the non-official votes. In some provinces this is already the ordinary practice for municipalities. For the administration of large cities it is proposed to approve of the system in which the every-day executive work is carried out by a special nominated commissioner; but not to require that he should be an official, provided that he is protected by a provision that he should only be removable with the sanction of Government or by the vote of a substantial majority of the board. In the case of rural boards local Governments will be urged to appoint non-official and preferably elected chairmen wherever possible, but where there is a non-official chairman there may be need also for a special executive officer, whose appointment and removal would require the Government's sanction, to do the ordinary official work. If any board desired to elect an official chairman his election should be by a majority of non-official votes and should be approved by the Commissioner or some higher authority.

Powers of local boards.

195. The Decentralization Commission recommended that municipalities should have full liberty to impose and alter taxation within the limits laid down by law, but that where the law prescribes no maximum rate the sanction of an outside authority should be required to any increase. It is hoped that nearly all boards will contain substantial elected majorities, and in their case it is proposed to accept the Commission's recommendation, though indebted boards should still obtain the sanc-

tion of higher authority before altering a tax. It is clearly important that municipal boards should have such power to vary taxation, and the intention is to give it to rural boards as well by allowing them to levy rates and fees within the limits of the existing Acts. It is thought that wherever a board pays for a service, it should control such service; and that where it is expedient that control should be largley centred in the hands of the Government the service should be a provincial one. If, for example, a board provides for civil works or medical relief, it ought, subject to such general principles as the Government may prescribe, to have real control over the funds which it provides and not be subject to the constant dictation, in matters of detail, of Government departments. Similarly as regards the control over the budgets of local bodies. It is hoped that provincial Governments will make every effort to give boards a free hand with their budgets, subject to the maintenance of a minimum standing balance, with the necessary reservations in the case of indebtedness or against gross default. The Government of India would discard the system of requiring local bodies to devote fixed portions of their revenues to particular objects of expenditure and would rely on retaining powers of intervention from outside in cases of grave neglect or disregard. Municipalities have already been given enlarged powers in respect of new works; and a similar advance is hoped for in the case of rural boards. As regards the control by Government over the establishment of local bodies the Commission proposed that the appointment of certain special officers should require the sanction of higher authority, while other appointments would be regulated by general rules laid down by the provincial Government. It is hoped that provincial Governments will now take steps to carry these recommendations into practice, but it is suggested that Government should in the case of the special officers also retain a right to require their dismissal in cases of proved incompetency. Such material relaxation of Government control in respect of taxation, budgets, public works, and local establishments might suggest that the exceptional powers of Government officers in respect of external intervention should, if altered at all, be altered in the direction of greater stringency. But the accepted policy must be to allow the boards to profit by their own mistakes, and to interfere only in cases of grave mismanagement; and, therefore, with certain possible exceptions, which we need not here specify, it is not proposed to extend the power of intervention.

Panchayats.

196. Finally, the Government of India propose to direct attention to the development of the *panchayat* system in villages. This question was examined by the Decentralization Commission and has since been the subject of further inquiry in the United Provinces and Assam. It is recognized that the prospect of successfully developing *panchayats* must depend very largely on local conditions, and that the functions and powers to be allotted to them must vary accordingly ; but where the system proves a success it is contemplated that they might be endowed with civil and criminal jurisdiction in petty cases, some administrative powers as regards sanitation and education, and permissive powers of imposing a local rate. It is hoped that, wherever possible, an effective beginning will be made.

Comments on this programme.

197. The programme which we have thus summarized is still under consideration and, obviously, it would not be suitable for us to comment upon it. It is clear that it cannot be regarded as constituting a complete scheme of local self-government, and for two reasons. It is impossible to ignore the past and at once to create a perfect scheme out of the present uneven materials ; and, secondly, if we are sincere in our advocacy of a policy of provincial autonomy, we must leave the work mainly to local Governments. It would be highly inconsistent to insist on provincial autonomy, and simultaneously to leave no latitude of action to provincial Governments in a field which is so peculiarly a matter for local development. But the proposals will constitute a basis on which those entrusted with the responsibility for such matters in future can build ; and we expect the reformed legislative councils to carry forward the work thus begun. We may add that the reformed and representative district boards of the future could, and should, be utilized by the district officer for purposes of advice and consultation.

Scope of following proposals.

198. Because we believe that our main advance must be on the provincial stage, we shall leave the subject of local self-government at this point, and turn to the provinces. But here we must pause for a moment to define the scope of all the proposals that follow in chapter VIII. It is a truism that no general proposals can be equally applicable to all portions of India at one and the same time. If, however, we had not contented ourselves with the sufficiently weighty task of working out in broad outlines the plan of one of the greatest political

experiments ever undertaken in the world's history, but had set ourselves also to adjust its details to the varying requirements of the different provinces, our labours would have been immensely prolonged and there would have been a danger that the details of our report might obscure its main intentions. Because we have written in general terms we would not have it supposed that we have been unmindful of inequalities in the development of the provinces. For these we have, as we shall show, provided a mechanism of adjustment. But over and above that we must offer one word of explanation at the outset. Our recommendations as to the provinces are confined to eight out of the nine provinces of British India which are furnished with legislative councils. These are Madras, Bombay, Bengal, the United Provinces, Bihar and Orissa, the Punjab, the Central Provinces, and Assam. We have not included Burma in our survey except in so far as, while that province remains part of the Indian polity, as for military reasons it must, it is necessary to provide for its representation in the central Government. Our reasons are that Burma is not India. Its people belong to another race in another stage of political development, and its problems are altogether different. For instance, the application to Burma of the general principles of throwing open the public service more widely to Indians would only mean the replacement of one alien bureaucracy by another. The desire for elective institutions has not developed in Burma; the provincial legislative council, as constituted under the Morley-Minto schemes, has no Burma-elected element; and the way is open for a different line of development. There was also a practical reason for not proceeding to investigate the particular conditions of Burma in the fact that one Lieutenant-Governor had very recently laid down, and a new Lieutenant-Governor assumed office. When our proposals are published there will be an opportunity for the Government and people of Burma to say how far they regard them as applicable to their case. We therefore set aside the problem of Burma's political evolution for separate and future consideration. There remain the frontier areas of the North-West Frontier Province and Baluchistan, and the smaller tracts of British India, like Delhi, Coorg, and Ajmer-Merwara. For reasons of strategy the two frontier provinces must remain entirely in the hands of the Government of India. But, inasmuch as our guiding principle, where the principle of responsibility cannot yet be applied, is that of government by consultation with the representatives of the people, we think that in some, if not all, of these areas it would

be well to associate with the personal administration of the Chief Commissioner some form of advisory council, adjusted in composition and function to local conditions in each case. This question we would leave to the further consideration of the Government of India.

Treatment of backward tracts.

199. But even in the eight provinces which we have named are included certain backward areas where the people are primitive, and there is as yet no material on which to found political institutions. We do not think there will be any difficulty in demarcating them. They are generally the tracts mentioned in the schedules and appendices to the Scheduled Districts Act, 1874, with certain exceptions, and possibly certain additions, which the Government of India must be invited to specify. Both the definition of these areas and the arrangements to be made for them will be matters for further consideration; but the typically backward tracts should be excluded from the jurisdiction of the reformed provincial Governments and administered by the head of the province.

Devolution to Provincial Governments.

Financial devolution.

200. We saw in chapter V that there was not a little spade-work to be done before the way lay open for reconstruction to begin. Above all we saw that the existing financial relations between the central and provincial Governments must be changed if the popular principle in Government is to have fair play in the provinces. The present settlements by which the Indian and provincial Governments share the proceeds of certain heads of revenues are based primarily on the estimated needs of the provinces, and the Government of India disposes of the surplus. This system necessarily involves control and interference by the Indian Government in provincial matters. An arrangement which has on the whole worked successfully between two official Governments would be quite impossible between a popular and an official Government. Our first aim has therefore been to find some means of entirely separating the resources of the central and provincial Governments.

A new basis.

201. We start with a change of standpoint. If provincial autonomy is to mean anything real clearly the provinces must not be dependent on the Indian Government for the means of provincial development.

Existing settlements do indeed provide for ordinary growth of expenditure, but for any large and costly innovations provincial Governments depend on doles out of the Indian surplus. Our idea is that an estimate should first be made of the scale of expenditure required for the upkeep and development of the services which clearly appertain to the Indian sphere; that resources with which to meet this expenditure should be secured to the Indian Government; and that all other revenues should then be handed over to the provincial Governments, which will thenceforth be held wholly responsible for the development of all provincial services. This, however, merely means that the existing resources will be distributed on a different basis, and does not get over the difficulty of giving to the central and provincial Governments entirely separate resources. Let us see how this is to be done.

Complete separation of revenues.

202. Almost everyone is agreed that a complete separation is in theory desirable. Such differences of opinion as we have met with have mostly been confined to the possibility of effecting it in practice. It has been argued for instance that it would be unwise to narrow the basis on which both the central and provincial fiscal systems are based. Some of the revenues in India, and in particular land revenue and excise, have an element of precariousness; and the system of divided heads, with all its drawbacks, has the undeniable advantage that it spreads the risks. This objection will however, be met if, as we claim, our proposed distribution gives both the Indian and provincial Governments a sufficient measure of security. Again we have been told that the complete segregation of the Government of India in financial matters will lower its authority. This argument applies to the whole subject of decentralization and provincial autonomy. It is not necessary for us to meet it further. Our whole scheme must be even and well-balanced, and it would be ridiculous to introduce wide measures of administrative and legislative devolution and at the same time to retain a centralized system of finance.

Abolition of divided heads.

203. There are two main difficulties about complete separation. How are we to dispose of the two most important heads which are at present divided—land-revenue and income-tax—and how are we to supplement the yield of the Indian heads of revenue in order to make good the needs of the central Government? At present the heads which are divided in all

or some of the provinces are:—land revenue, stamps, excise, income-tax and irrigation. About stamps and excise there is no trouble. We intend that the revenue from stamp duty should be discriminated under the already well-marked sub-heads *General* and *Judicial*; and that the former should be made an Indian and the latter a provincial receipt. This arrangement will preserve uniformity in the case of commercial stamps where it is obviously desirable to avoid discrepancies of rates; and it will also give the provinces a free hand in dealing with Court-fee stamps, and thus provide them with an additional means of augmenting their resources. Excise is at present entirely a provincial head in Bombay, Bengal, and Assam, and we see no valid reason why it should not now be made provincial throughout India. At this stage the difficulties begin. Land revenue, which is by far the biggest head of all, is at present equally shared between the Indian and all the provincial Governments, except that Burma gets rather more than one-half and the United Provinces get rather less. Now land revenue assessment and collection is so intimately concerned with the whole administration in rural areas that the advantages of making it a provincial receipt are obvious. But other considerations have to be taken into account. One substantial difficulty is that, if land revenue is made entirely provincial, the Government of India will be faced with a deficit and its resources must be supplemented by the provinces in some form or other. Moreover, famine expenditure and expenditure on major irrigation works are for obvious reasons closely connected with land revenue, and if the receipts from that head are made provincial it logically follows that the provinces should take over the very heavy liability for famine relief and protective works. An argument of quite another character was also put forward. We were told that in the days of dawning popular government in the provinces it would be well that the provincial Government should be able to fall back on the support of the Government of India (as, if the head were still divided, it would be able to do) when its land-revenue policy was attacked. But it is just because divided heads are not regarded as merely a financial expedient but are, and so long as they survive will be, viewed as a means of going behind the provincial Government to the Government of India, that we feel sure that they should be abolished. We propose, therefore, to make land revenue, together with irrigation, wholly provincial receipts. It follows that the provinces will become entirely liable for expenditure on famine relief and protective irrigation works.

We shall explain shortly what arrangements we propose for financing famine expenditure. The one remaining head is income-tax. We see too very strong reasons for making this an Indian receipt. First, there is the necessity of maintaining a uniform rate throughout the country. The inconveniences, particularly to the commercial world, of having different rates in different provinces are manifest. Secondly in the case of ramifying enterprises with their business centre in some big city, the province in which the tax is paid is not necessarily the province in which the income was earned. We have indeed been told that income tax is merely the industrial or professional complement of the land revenue; and that to provincialize the latter, while Indianizing the former, means giving those provinces whose wealth is more predominantly agricultural, such as the United Provinces and Madras, an initial advantage over a province like Bombay, which has very large commercial and industrial interests. Another very practical argument is that the tax is collected by provincial agency, and that if provincial Governments are given no inducement, such as a share of the receipts or a commission on the collections which is only such a share in disguise, there will be a tendency to slackness in collection and a consequent falling off in receipts. We admit that these arguments have force; but we are not prepared to let them stand in the way of a complete separation of resources. Equality of treatment as between one province and another must be reached so far as it is possible in the settlements as a whole, and it is not possible to extend the principle of equality to individual heads of revenue. If it should be found that receipts fall off it may be necessary to create an all-Indian agency for the collection of the tax, but this we should clearly prefer to retaining it as a divided head. To sum up: we propose to retain the Indian and provincial heads as at present, but to add to the former income-tax and general stamps, and to the latter land revenue, irrigation, excise, and judicial stamps. No heads will then remain divided.

Famine expenditure.

204. For the purposes of famine relief we propose that the provincial settlements should make allowances based on each province's average liability to this calamity in the past; and it will be the duty of provincial Governments liable to famine not to dissipate this special provision, but to hold a sufficient portion of their resources in reserve against the lean years. In years when there is no scarcity a province should not spend its famine

assignment on ordinary purposes, but should either add it to its balances or spend it on some defensive purpose directed to diminishing the cost of famine when it comes. We recognize that difficulties may arise because provincial Governments may fail to make sufficient provision, or because a severe famine may come upon them before they have had time to accumulate a sufficient provision with which to meet it. In such cases the Indian Government could never renounce responsibility. But we are glad to believe that the liabilities arising out of famine relief will tend to be smaller in the future than in the past, owing to the improvement of protective measures and also to the increasing recuperative power of the people to which all experience of recent famines points. Provincial Governments have at present large balances on which they could draw in the first instance if heavy famine expenditure became necessary. If it were still necessary for the Government of India to intervene its assistance should, we think, take the form of a loan, which the provincial Government would be liable to repay; or if the amount so advanced were so large that it could not be repaid within a reasonable time without grave embarrassment, the whole, or a portion, of it should be regarded as a permanent loan on which the provincial Government would pay interest.

Need for meeting the resultant deficit in the Indian budget.

205. When all sources of revenue have been completely distributed as we propose there will be a large deficit in the Government of India's budget. One way of meeting it would be to maintain the basis of the present settlements, but to allot to the Government of India a certain proportion of growing revenue instead of its share of the divided heads. But this device would stereotype all the existing inequalities between the provinces which by reason of the permanent settlement in some of them are considerable; while it would also introduce an element of great uncertainty into the Indian Government's finance. A second suggestion was that we should take an all-round contribution on a *per capita* basis. But this expedient also would not obviate very undesirable variations between provinces in the rate of levy owing to the inequality of provincial resources and of provincial needs. A third plan was to take an all-round percentage contribution based on gross provincial revenue. This is open, *inter alia*, to the objection that it would leave several of the provinces with large deficits. Fourthly, we considered, but rejected, the proposal that provinces which had a surplus should temporarily help others as being cumbrous and impracticable.

The means of so doing.

206. From our examination of these proposals we came to certain broad conclusions. We agreed that in fixing contributions it was undesirable and unnecessary to pay regard to the growing revenues of the provinces. We agreed also that the contributions should be of fixed amounts. We saw that equality of contribution was impracticable, because we have not a clean slate. In spite of the variations in income which result from the permanent settlement in some areas, stereotyped scales of expenditure have grown up, which makes it useless to attempt any theoretic calculation on which a uniform contribution from the provinces could be based, such as an equal percentage of revenues or a contribution fixed on a population basis. This led us to look for some plan which would fit more closely into the existing facts.

Starting with an estimate (based on the budget figures for 1917-18, subject to some adjustments) of the gross revenue of all provinces when all divided heads have been abolished, and deducting therefrom an estimate of the normal expenditure of all provinces, including provision for expenditure on famine relief and protective irrigation, we arrived at ₹1,564 lakhs as the gross provincial surplus. The deficit in the Government of India's budget was ₹1,363 lakhs. This left ₹201 lakhs, or about 13 per cent. of the total gross surplus as the net surplus available to the provinces. We would propose to assess the contribution from each province to the Government of India as a percentage of the difference between the gross provincial revenue and the gross provincial expenditure. On the basis of the figures which we have taken this percentage would be 87. The contributions to the Government of India would form the first charge upon the provincial revenues. The way in which our plan would work out in practice can be gathered from the following figures :—

[In lakhs of rupees]

Province.	Gross provincial revenue.	Gross provincial expenditure.	Gross provincial surplus.	Contribution (87 per cent of col. 4).	Net provincial surplus.
1	2	3	4	5	6
Madras	13,31	8,40	4,91	4,28	63
Bombay	10,01	9,00	1,01	88	13
Bengal	7,54	6,75	79	69	10
United Provinces ...	11,22	7,47	3,75	3,27	48
Carried over ...	42,08	31,62	10,46	9,12	1,34

Province.	Gross provincial revenue.	Gross provincial expenditure.	Gross provincial surplus.	Contribution (87 per cent of col. 4).	Net provincial surplus.
1	2	3	4	5	6
Brought forward ...	42,08	31,62	10,46	9,12	1,34
Punjab	8,64	6,14	2,50	2,18	32
Burma	7,69	6,08	1,61	1,40	21
Bihar and Orissa ...	4,04	3,59	45	39	6
Central Provinces ...	4,12	3,71	41	36	5
Assam	1,71	1,50	21	18	3
TOTAL ...	68,28	52,64	15,64	13,63	2,01

N. B.—The Punjab figures in column 5 should be reduced and those in column 6 raised by 3½ lakhs in each case to allow for the continued compensation which the province is entitled to receive for the cession of a crore of its balances to the Government of India in 1914.

We recognize, of course, that the objection will be taken that some provinces even under this plan will bear a very much heavier proportion of the cost of the Indian Government than others. Madras and the United Provinces will be paying 47·4 per cent and 41·1 per cent of their remaining revenues to the Government of India, while Bengal and Bombay are paying only 10·1 per cent and 9·6 per cent, respectively. Our answer is that the objection is one that applies to existing inequalities which we admit that our scheme fails for the present to remove. It merely continues the disparity which is at present masked by the system of divided heads. But the immediate settlement proposed improves the position of the provinces as a whole by upwards of one million sterling. It is not intended to be of a final nature; and when revenues develop and a revision takes place under normal conditions an opportunity will arise for smoothing out inequalities. We have already mentioned at the beginning of this part of our report that our proposals generally do not relate to the minor administrations. Their financial transactions are classified as all-Indian; and with them separate arrangements must continue.

The possible need for revision.

207. The Government of India have already put matters in train by consulting provincial Governments on these proposals. It may be added that when details come to be worked out we may find it convenient to take some later figures as the

basis of the settlement, and that the replies of local Governments will also necessitate some revision ; but we hope that the general scheme which we have outlined may be accepted. Our intention is that the new arrangements should take effect from whatever date is fixed in the statute for the installation of the new constitutional machinery. One caveat we are bound to make. Emergencies may arise which cannot be provided for by immediately raising Government of India taxation ; and in that case it must be open to the central Government to make a special supplementary levy upon the provinces. We must add that inasmuch as our proposals are based on war figures they should be open to revision hereafter, but not subject to change for a period of say six years ; and to avoid intermediate discussions the scheme should in the meantime be regarded as part of the constitutional arrangement with the provinces. It should also be one of the duties of the periodic commission which we propose should be appointed to examine the development of constitutional changes after ten years' experience of their working or of some similar body at that time, to reinvestigate the question of the provincial contributions to the Government of India. We have, for the present, accepted the inequality of burden which history imposes on the provinces, because we cannot break violently with traditional standards of expenditure, or subject the permanently settled provinces to financial pressure which would have the practical result of forcing them to reconsider the permanent settlement. But it is reasonable to expect that with the growth of provincial autonomy any inequality of burdens will be resented more strongly by the provinces on whom it falls ; and it will be for the first periodic commission and for its successors after review of the situation then existing to determine whether some period should not be set by which the more lightly burdened provinces should be expected to find means of bringing up their financial resources to the common level of strength. We attach great weight to the proposition that if the provinces are to be really self-governing they ought to adjust their expenditure—including therein their obligations to the common interests of India—according to their resources and not to draw indefinitely on more enterprising neighbours.

Provincial budgets and balances.

208. It follows from our proposed separation of revenues that there will in future be also a complete separation of the central and provincial budgets ; and that the former will hence-

forward include only the direct transactions of the Government of India, and not as at present those of the provinces also. It likewise follows that there will be no more earmarking of any portion of provincial balances ; and that portions previously earmarked will be available for general purposes.

Code restrictions.

209. Generally speaking provincial Governments enjoy the same detailed financial powers in divided heads as in those which are wholly provincial. The mere provincialization of heads of revenue and expenditure will therefore not of itself suffice to free the provinces from the restrictions on their spending powers which the provisions of the codes and other standing orders impose upon them. Nor can the Government of India, except to a relatively minor extent, enlarge their powers, since they themselves have to conform to the restrictions on expenditure imposed by the Secretary State in Council. If provinces are to have a relatively freer hand in expenditure in future it will be necessary to relax the India Office control. Proposals for its relaxation are already under the consideration of the Government of India and will be further considered at the India Office.

Provincial taxation.

210. We saw also in chapter V that some means of enlarging the taxing powers of local Governments must, if possible, be found. We think that the best means of freeing the provincial Governments in this respect will be to schedule certain subjects of taxation as reserved for the provinces, and to retain the residuary powers in the hands of the Government of India, with whom rests the ultimate responsibility for the security of the country. We have not attempted to frame a schedule, as this can only be done in consultation with the provincial Governments. We think that where a tax falls within the schedule the Government of India's previous sanction to the legislation required for its imposition should not be necessary ; but that the Bill should be forwarded to the Government of India in sufficient time to enable that Government to satisfy itself that the proposal is not open to objection as trenching on its own field of taxation. The Governor-General's power of veto will ensure that the wishes of the Government of India are not disregarded. In cases not covered by the schedule the Government of India's sanction should be sought before the necessary legislation is introduced ; but this sanction would be withheld only if the proposal trespassed on Indian heads of revenue to an undue extent ; or

if the tax was a new one and the central Government itself contemplated imposing it as an all-India tax ; or if the proposals were, in the opinion of the Government of India, likely to lead to undesirable consequences which would affect its own responsibilities. Where sanction is required it should be conveyed by executive orders ; it is clearly undesirable to undertake double legislation. The right now enjoyed by private members of introducing taxation Bills will be continued, provided that the sanction of the head of the province is obtained to the introduction of the Bill, and that such Bills are, in relation to the Government of India, dealt with exactly as Government finance Bills.

Provincial borrowing.

211. We come now to the question of the borrowing powers of provincial Governments. In this respect provincial Governments are almost unanimous in desiring greater freedom. They recognize the difficulties which we have already discussed, and the impossibility of allowing them to compete with the Government of India in the open market. But they suggest that the central Government should regard an application for a loan solely from the stand point of finance and not from that of administration, and that, if it has the money and is satisfied with the arrangements for financing the loan, it should not withhold sanction. It has also been represented to us that there exist local sources which could be tapped by provincial Governments but are not touched by Indian loans. A new argument for further liberty of action is afforded by our proposal to provincialize irrigation works on which a large capital expenditure is necessary. We think that in order to avoid harmful competition provincial Governments must continue to do their borrowing through the Government of India. Also it may often happen that the Government of India will not be able to raise sufficient money to meet all provincial requirements. In that case it may find it necessary to limit its total borrowing on behalf of provincial Governments in particular years; and when that happens, it will be difficult for it entirely to avoid a reference to the relative merits of the schemes for which the loans are wanted. We think, however, in such cases there ought to be no insuperable difficulty in making a reasonably fair and equitable distribution between the provinces. It may be found expedient in some cases to appoint a small committee on which the central and the provincial Governments are represented to settle the distribution ; and it should be open to a province to

renounce its claims in one year in return for the first claim on the money available in the next year. But we are prepared to go further. If the Government of India finds itself unable to raise the money in any one year which a province requires, or if there is good reason to believe that a provincial project may attract money which would not be elicited by a Government of India loan, we would allow the provincial Government to have recourse to the Indian market. But in that case we think that they should secure the approval of the Government of India to the method of borrowing, including the rate of interest, so as not to affect investments in the post office, and the time of borrowing, so as not to conflict with Indian loans. So far as the limited market permits we should like to see the municipal practice of borrowing for unproductive public purposes with a sinking fund extended to provincial Governments.

Legislative devolution.

212. These measures will give provincial Governments the liberty of financial action which is indispensable; but the provinces must also be secured against any unnecessary interference by the Government of India in the spheres of legislative and administrative business. It is our intention to reserve to the Government of India a general overriding power of legislation for the discharge of all functions which it will have to perform. It should be enabled under this power to intervene in any province for the protection and enforcement of the interests for which it is responsible; to legislate on any provincial matter in respect of which uniformity of legislation is desirable either for the whole of India or for any two or more provinces; and to pass legislation which may be adopted either *simpliciter* or with modifications by any province which may wish to make use of it. We think that the Government of India must be the sole judge of the propriety of any legislation which it may undertake under any one of these catagories, and that its competence so to legislate should not be open to challenge in the courts. Subject to these reservations we intend that within the field which may be marked off for provincial legislative control the sole legislative power shall rest with the provincial legislatures. The precise method by which this should be effected is a matter to be considered when the necessary statute is drafted, and we reserve our final opinion upon it. There are advantages in statutory demarcation of powers such as is found in some federal constitutions, but we feel that if this is to leave the validity of acts to be challenged in the

courts on the ground of their being in excess of the powers of the particular legislature by which they are passed, we should be subjecting every Government in the country to an almost intolerable harassment. Moreover, in India where the central Government must retain large responsibilities, as for defence and law and order, a statutory limitation upon its legislative functions may be inexpedient. We have already referred to the fact that there has been growing up in India for some time a convention which by now has acquired no little strength to the effect that the central Government shall not without strong reason legislate in the internal affairs of provinces. We think therefore that it may be better, instead of attempting to bar the legislative power of the Government of India in certain spheres of provincial business, to leave it to be settled as a matter of constitutional practice that the central Government will not interfere in provincial matters unless the interests for which it is itself responsible are directly affected.

Administrative devolution.

213. The question of restraining the central Government from administrative interference in the provinces is more difficult. We recognize that, in so far as the provincial Governments of the future will still remain partly bureaucratic in character, there can be no logical reason for relaxing the control of superior official authority over them nor indeed would any general relaxation be approved by Indian opinion; and that in this respect the utmost that can be justified is such modification of present methods of control as aims at getting rid of interference in minor matters, which might very well be left to the decision of the authority which is most closely acquainted with the facts. It is, however, in relation to provincial Governments in their popular aspect that serious difficulties present themselves. So long as the Government of India itself is predominantly official in character and, therefore, remains amenable to the Secretary of State, its interference in any matters normally falling within the range of popular bodies in the provinces involves a clash of principle which cannot fail to engender some heat, and the scope of which it is on all grounds desirable to keep within very closely defined bounds. At the same time we perceive that there are many matters which, taken in bulk, may reasonably be regarded as fitted for administration by popular bodies, but which have aspects that cannot fail to be of intimate concern to the Government which is responsible for the security or good administration of the

whole country. We shall have occasion to return to this point when we have stated our proposals for the demarcation of responsibility for the administration.

Provincial Executives.

Council Government.

214. Let us now explain how we contemplate in future that the executive Governments of the provinces shall be constituted. As we have seen, three provinces are now governed by a Governor and an Executive Council of three members, of whom one is in practice an Indian and two are usually appointed from the Indian Civil Service, although the law says only that they must be qualified by twelve years' service under the Crown in India. One province, Bihar and Orissa, is administered by a lieutenant-governor with a council of three constituted in the same way. The remaining five provinces, that is to say, the three lieutenant-governorships of the United Provinces, the Punjab, and Burma, and the two chief commissionerships of the Central Provinces and Assam are under the administration of a single official head. We find throughout India a very general desire for the extension of council government. There is a belief that when the administration centres in a single man the pressure of work inevitably results in some matters of importance being disposed of in his name, but without personal reference to him, by secretaries to Government. There is also a feeling that collective decisions, which are the result of bringing together different points of view, are more likely to be judicious and well-weighed than those of a single mind. But, above all, council government is valued by Indians, because of the opportunity it affords for taking an Indian element into the administration itself. To our minds, however, there is an overriding reason of greater importance than any of these. The retention of the administration of a province in the hands of a single man precludes the possibility of giving it a responsible character. Our first proposition, therefore, is that in all these provinces single-headed administration must cease and be replaced by collective administration.

The structure of the executive.

215. In determining the structure of the executive we have to bear in mind the duties with which it will be charged. We start with the two postulates that complete responsibility for the Government cannot be given immediately without inviting

a breakdown, and that some responsibility must be given at once if our scheme is to have any value. We have defined responsibility as consisting primarily in amenability to constituents and, in the second place, in amenability to an assembly. We do not believe that there is any way of satisfying these governing conditions other than by making a division of the functions of the provincial Government between those which may be made over to popular control and those which for the present must remain in official hands. The principles and methods of such division, and also the difficulties which it presents, we shall discuss hereafter. For the moment let us assume that such division has been made, and that certain heads of business are retained under official, and certain others made over to popular, control. We may call these the 'reserved' and 'transferred' subjects, respectively. It then follows that for the management of each of these two categories there must be some form of executive body, with a legislative organ in harmony with it, and if friction and disunion are to be avoided it is also highly desirable that the two parts of the executive should be harmonized. We have considered the various means open to us of satisfying these exacting requirements.

Dualism set aside.

216. In the first place we set aside the idea of establishing two different executives each working in conjunction with a separate legislature of its own. That plan seemed to us only to enhance the division between the two elements in the Government which it should be our object by every possible means to minimize. Such complete dualism in executive and legislature must lead to hopeless friction. One Government would be regarded as official, and one as Indian ; and no great provision is needed to see how differences must ensue over the division of financial resources and other matters. Assuming therefore that the machine of government must as far as possible be single, and not dual, both in its legislative and executive aspects, we examined the alternative ways in which it appeared open to us to construct the executive.

An alternative plan.

217. One plan which we considered was that in all provinces there should be set up councils consisting of four members, of whom two would be qualified, as now, by service under the Crown in India, while for two no such qualification would be required. In practice the composition of the councils would be two European officials and two Indians.

Our further intention was, after subjecting an official executive so composed for a period of years to the influence of a legislative council constituted with an elected majority and associated with the administration by means of elected standing committees attached to the departments, to replace the two Indian members of the executive council by ministers appointed from, and accountable to, the legislative councils. During this period, which would be essentially one of training, some members of the legislative councils would have acquired some practical acquaintance with the art of administration through the standing committees, but there would be no formal distribution of business, so far as administration was concerned, into transferred and reserved subjects ; though in dealing with the transferred subjects the Government would as far as possible endeavour to give effect to the wishes of the legislative councils. The executive in such a scheme, finding itself face to face with an elected majority which might withhold essential legislation or supplies, would have had to be armed with power to make good in the last resort its purposes in respect of reserved subjects. We do not think that such a scheme would have been unfavourably received in India. But further consideration showed that it was open to grave defects. So long as the Indian members of the executive were not appointed from the elected members of the legislative council they would have had no responsibility to the legislature. But if this defect were cured by appointing them from the legislative council we should have formed a government all the members of which were equally responsible for all subjects but were, though to a lesser extent than in the Congress-League scheme, accountable to different authorities. If, on the other hand, we delayed this step until the training period was over, we should have encouraged the elected members of council in the habits of irresponsible criticism which have been the bane of the Morley-Minto councils, and from which it is our aim to escape. Then when ministers responsible to the legislative council were brought into being it would have been necessary, in pursuance of our principles, to place them in charge of the transferred subjects. But either the ministers would still have continued to share with the executive council responsibility for even the reserved subjects, or else they would have relinquished such joint responsibility and confined themselves exclusively to the transferred subjects. The former alternative is objectionable because it would make the ministers, who are responsible to the electorates, accountable to them not only for transferred subjects, for which responsibility is intended, but

also for reserved subjects, over which popular control is not at present intended to operate. In the second place, it is objectionable because the responsibility for the reserved subjects would be shared by members of the executive council responsible to the Secretary of State with ministers responsible to electorates. The latter alternative is open to the criticism that it deprives the Indian element in the Government of such voice in the reserved subjects as they had previously enjoyed.

Our own proposals.

218. We propose therefore that in each province the executive Government should consist of two parts. One part would comprise the head of the province and an executive council of two members. In all provinces the head of the Government would be known as Governor, though this common designation would not imply any equality of emoluments or status, both of which would continue to be regulated by the existing distinctions, which seem to us generally suitable. One of the two executive councillors would in practice be a European, qualified by long official experience, and the other would be an Indian. It has been urged that the latter should be an elected member of the provincial legislative council. It is unreasonable that choice should be so limited. It should be open to the Governor to recommend whom he wishes. In making his nominations the Governor should be free to take into consideration the names of persons who had won distinction, whether in the legislative council or any other field. The Governor in Council would have charge of the reserved subjects. The other part of the Government would consist of one member, or more than one member, according to the number and importance of the transferred subjects, chosen by the Governor from the elected members of the legislative council. They would be known as ministers. They would be members of the executive Government, but not members of the executive council ; and they would be appointed for the lifetime of the legislative council and if re-elected to that body would be re-eligible for appointment as members of the executive. As we have said, they would not hold office at the will of the legislature, but at that of their constituents. We make no recommendation in regard to pay. This is a matter which may be disposed of subsequently.

Relation of the Governor to ministers.

219. The portfolios dealing with the transferred subjects would be committed to the ministers, and on these subjects the ministers together with the Governor would form the adminis-

tration. On such subjects their decisions would be final, subject only to the Governor's advice and control. We do not contemplate that from the outset the Governor should occupy the position of a purely constitutional Governor who is bound to accept the decisions of his ministers. Our hope and intention is that the ministers will gladly avail themselves of the Governor's trained advice upon administrative questions, while on his part he will be willing to meet their wishes to the furthest possible extent in cases where he realizes that they have the support of popular opinion. We reserve to him a power of control, because we regard him as generally responsible for his administration, but we should expect him to refuse assent to the proposals of his ministers only when the consequences of acquiescence would clearly be serious. Also we do not think that he should accept without hesitation and discussion proposals which are clearly seen to be the result of inexperience. But we do not intend that he should be in a position to refuse assent at discretion to all his ministers' proposals. We recommend that for the guidance of Governors in relation to their ministers, and indeed on other matters also, an Instrument of Instructions be issued to them on appointment by the Secretary of State in Council.

Additional members without portfolio.

220. There is another provision which we wish to make. The Governor may be himself unfamiliar with Indian conditions; and his Government, constituted as we have proposed, will contain only one European member. He will thus normally have only one member with official experience. In some provinces where the Governor is himself an official and thoroughly familiar with the requirements of the province, the advice and assistance of one official colleague may suffice. But in other cases this will not be so. We propose, therefore, that the Governor should appoint, if he chooses, one or two additional members of his Government, as members without portfolio, for purposes of consultation and advice. It is true that it is always open to the Governor to seek the advice of any of his officials; but that is not the same thing as appointing them to be members of Government with the status and authority attaching to such office. The additional members would still discharge the functions of, and draw the pay attached to, their substantive appointments.

Working of the executive.

221. It is our intention that the Government thus composed and with this distribution of functions shall discharge them as one Government. It is highly desirable that the executive

should cultivate the habit of associated deliberation and essential that it should present a united front to the outside. We would therefore suggest that, as a general rule, it should deliberate as a whole, but there must certainly be occasions upon which the Governor will prefer to discuss a particular question with that part of his Government, directly responsible. It would therefore rest with him to decide whether to call a meeting of his whole Government, or of either part of it, though he would doubtless pay special attention to the advice of the particular member or minister in charge of the subjects under discussion. The actual decision on a transferred subject would be taken, after general discussion, by the Governor and his ministers ; the action to be taken on a reserved subject would be taken, after similar discussion, by the Governor and the other members of his executive council, who would arrive at their decision in the manner provided in the existing statute. The additional members, if present, would take their share in the discussion, but would in no case take a part in the decision. At a meeting of the whole Government there would never be, in fact, any question of voting, for the decision would be left, as we have stated, to that part of the Government responsible for the particular subject involved. But there are questions upon which the functions of the two portions of the Government will touch or overlap, such, for instance, as decisions on the Budget or on many matters of administration. On these questions, in case of a difference of opinion between the ministers and the executive council, it will be the Governor who decides.

Advantages and disadvantages of this plan.

222. Let us now see the advantages of this transitional arrangement and anticipate criticisms. It has been urged with great force that, at the outset, it would be unfair to entrust the responsibility for the administration of any subject to men holding office at the will of the Legislative Council. The Legislative Council has had no experience of the power of dismissing ministers, or the results attending the exercise of such power. Nobody in India is yet familiar with the obligations imposed by tenure of office at the will of a representative assembly. It is only by actual experience that these lessons can be learned. But our scheme provides security of tenure for ministers for the lifetime of the council during the preliminary period, and therefore gives some time, which we think should be short, to prepare for the full exercise of responsibility. By the device, however, of appointing the ministers from the elected members of the Legis-

lative Council and making their tenure of office conditional on the retention of their seats we have established at once some measure of responsibility, in the form of responsibility to their constituents, and have thus put an end to the condition of affairs in which those entrusted with the administration are wholly irresponsible to the constituents who elect the Legislative Council. By dividing the Government into what will in effect be two committees with different responsibilities we have ensured that members of the Government accountable to different authorities do not exercise the same responsibility for all subjects. By entrusting the transferred portfolios to the ministers we have limited responsibility to the Indian electorate to those subjects in which we desire to give responsibility first. We have done this without now, or at any time, depriving the Indian element in the Government of responsibility for the reserved subjects. The fact that we are entrusting some functions of Government to ministers makes it impossible for us to contemplate the retention in any province of an executive council of more than two members; but the reduction of the European element in the council may be regarded as equivalent to an increase in the Indian element. At the same time, by the appointment of the additional members of the Government we have secured that the Governor shall have at his disposal ample official advice. The arrangement admits of adjustment to the different provinces, because we contemplate that the number of transferred subjects, and therefore the number of ministers, may vary in each province. It is quite true that our plan involves some weakening of the unity of the executive and some departure from constitutional orthodoxy; but whenever and wherever we approach this problem of realizing responsibility at different times in different functions we find it impossible to adhere tightly to theoretical principles. It would be impossible to attain our object by a composite Government so composed that all its members should be equally responsible for all subjects. At the same time it is necessary to secure that the whole executive should be capable of acting together. What we can do is to aim at minimizing causes of friction; and we have proposed arrangements that can be worked by mutual forbearance and a strong common purpose. It is our intention that the decisions of the Government should be loyally defended by the entire Government, but that the ministers should feel responsibility for conforming to the wishes of their constituents. It is true that these two forces may pull different ways; but, though the analogy is clearly not complete, there are occasions when members of a Government, and indeed members of Parliament

at Home, have to choose between loyalty to the Government and to their own constituents. All the members of the composite executive will be chosen by the Governor, and his position in the administration will enable him to act as a strong unifying force. The habit of deliberating as a whole will also tend to preserve the unity of the Government, while the special responsibility of either part for the subjects committed to it will be recognized by the Legislative Council and the electorate. It seems to us, therefore, that, both from the point of view of capacity for development and from that of ensuring co-operation while developing responsibility, our arrangement is the best that can be devised for the transitional period.

Its justification.

223. Our proposals may strike some critics as complicated. But few constitutions, except those of a purely despotic character, can be described without some appearance of complication ; and the course which we have deliberately chosen, and which is in its nature experimental and transitional, is relatively elaborate because it involves the temporary co-ordination of two different principles of Government. If we had proposed to delay the concession of any responsibility at all until such time as we could give complete responsibility our scheme certainly would have had the minor merit of simplicity. But apart from our obligation to comply with the announcement of August 20, we feel that such a course would have subjected the mechanism of government, when the change from irresponsibility to complete responsibility came, to so violent a shock that it might well have broken down. We were driven therefore first to devising some dualism in the executive ; and secondly to providing for such a balance of power between the two portions as would permit the one portion to grow without at the same time disabling the other from discharging its very necessary functions of preserving continuity and safeguarding essentials. Given such difficult conditions, we do not think that a less elaborate solution can readily be devised.

A further proposal.

224. The suggestion has been made to us that in some provinces it might be convenient, where the press of work is heavy, to appoint some members of the legislative council, not necessarily elected, to positions analogous to that of a parliamentary under-secretary in Great Britain, for the purpose of assisting the members of the executive in their departmental duties and of representing them in the legislative council. We feel no doubt that the elaboration

of the machinery which is inevitable in future will impose greater burdens on the members of the Government. We suggest therefore that it may be advisable and convenient to take power to make such appointments.

Provincial Legislatures.

Composition of the councils.

225. We will now explain how we intend that the provincial legislatures of the future shall be constituted. We propose there shall be in each province an enlarged legislative council, differing in size and composition from province to province, with a substantial elected majority, elected by direct election on a broad franchise, with such communal and special representation as may be necessary. This brief epitome of our proposals needs some amplification if it is to be intelligible. We have been invited by many advisers to indicate at once the composition of the councils which we contemplate. We have refrained from that task for good and sufficient reasons. It would be easy to make proposals, but in the present state of our information it would be very difficult to invest those proposals with authority. If a sound beginning is to be made the foundations for the building must be laid deeper. The first step must be not a hard-and-fast adjustment of the composition of the councils to the various interests of each province as estimated from headquarters, but a careful survey of all the material available in the province for an electorate. We must, in fact, measure the number of persons who can in the different parts of the country be reasonably entrusted with the duties of citizenship. We must ascertain what sort of franchise will be suited to local conditions, and how interests that may be unable to find adequate representation in such constituencies are to be represented. Such an electoral survey of the entire country is obviously beyond our powers at the present time. We propose that the work should be undertaken by a special committee, which should be appointed to deal with it as soon as possible; for whatever modifications of our own proposals may be decided upon in further discussion it seems to us certain that work of this particular nature must in any case be done. We suggest that the committee should consist of a chairman, chosen from outside India, two experienced officials, and two Indians of high standing and repute. In each province the material for its deli-

berations would, of course, be prepared for it by the local Government; indeed some spade-work has already been done. As the committee visited each province in turn one civilian officer and one Indian, appointed by the provincial Government, should join it and share in its labours. The committee's investigations into the subjects of the franchise, the constituencies, and the nominated element, to which we refer below, will enable it to advise as to the composition of the councils, which, we propose, should then be determined by the Secretary of State in Council, on the recommendation of the Government of India, in the form of regulations to be laid before Parliament. We think this is certainly a better method than to formulate such matters in the statute itself. All this electoral architecture must inevitably be experimental and will need modification and development from time to time.

The system of election and the franchise.

226. While, however, we refrain from any discussion of details for which the material is not immediately available there are certain broad questions upon which we certainly ought to indicate our conclusions, both because the issues are themselves important and because the committee will need general instructions on points of principle. We consider in the first place that the system of indirect elections should be swept away. It is one main cause of the unreality that characterizes the existing councils, because it effectively prevents the representative from feeling that he stands in any genuine relation to the original voter. Secondly, we consider that the limitaions of the franchise, which it is obviously desirable to make as broad as possible, should be determined rather with reference to practical difficulties than to any *a priori* considerations as to the degree of education or amount of income which may be held to constitute a qualification. It is possible that owing to unequal distribution of population and wealth it may be necessary to differentiate the qualifications for a vote not merely between provinces, but between different parts of the same province. It is essential to take due account of the problems involved in the maintenance of an electoral roll, the attendance of voters at a polling centre, the danger of impersonation, and the subsequent adjudication of electoral petitions. On these considerations the strength of the official and non-official agency which could be made available for electoral purposes throughout the country has an important bearing, and warns us against any such inordinate and sudden extension of the franchise as might lead

to a breakdown of the machinery through sheer weight of numbers.

Communal electorates.

227. At this point we are brought face to face with the most difficult question which arises in connexion with elected assemblies—whether communal electorates are to be maintained. We may be told that this is a closed question, because the Muhammadans will never agree to any revision of the arrangement promised them by Lord Minto in 1906 and secured to them by the reforms of 1909. But we have felt bound to re-examine the question fully in the light of our new policy, and also because we have been pressed to extend the system of communal electorates in a variety of directions. This is no new problem. It has been discussed periodically from the time when the first steps were taken to liberalize the councils. There has hitherto been a weighty consensus of opinion that in a country like India no principle of representation other than by interests is practically possible. Lord Dufferin held this view in 1888, and in 1892 Lord Lansdowne's Government wrote that:—"The representation of such a community upon such a scale as the Act permits can only be secured by providing that each important class shall have the opportunity of making its views known in council by the mouth of some member specially acquainted with them." We note that in 1892 the small size of the councils was reckoned as a factor in the decision and that the contrary view was not without its exponents; but we feel no doubt that Lord Minto's Government followed the predominant opinion when in 1908 they pressed for an important extension of the communal principle. Thus we have had to reckon not only with the settled existence of the system, but with a large volume of weighty opinion that no other method is feasible.

They are opposed to the teaching of history.

228. The crucial test to which, as we conceive, all proposals should be brought is whether they will or will not help to carry India towards responsible government. Some persons hold that for a people, such as they deem those of India to be, so divided by race, religion and caste as to be unable to consider the interests of any but their own section, a system of communal and class representation is not merely inevitable, but is actually best. They maintain that it evokes and applies the principle of democracy over the widest range over which it is actually alive at all by appealing to the instincts which are strongest; and that we must hope to develop the finer, which

are also at present the weaker, instincts by using the forces that really count. According to this theory communal representation is an inevitable, and even a healthy, stage in the development of a non-political people. We find indeed that those who take this view are prepared to apply their principles on a scale previously unknown, and to devise elaborate systems of class or religious electorates into which all possible interests will be deftly fitted. But when we consider what responsible government implies, and how it was developed in the world, we cannot take this view. We find it in its earliest beginnings resting on an effective sense of the common interests, a bond compounded of community of race, religion and language. In the earlier form which it assumed in Europe it appeared only when the territorial principle had vanquished the tribal principle, and blood and religion had ceased to assert a rival claim with the State to a citizen's allegiance; and throughout its development in Western countries, even in cases where special reasons to the contrary were present, it has rested consistently on the same root principle. The solitary examples that we can discover of the opposing principle are those of Austria, a few of the smaller German states, and Cyprus. It is hardly necessary to explain why we dismiss these as irrelevant or unconvincing. We conclude unhesitatingly that the history of self-government among the nations who developed it, and spread it through the world, is decisively against the admission by the State of any divided allegiance; against the State's arranging its members in any way which encourages them to think of themselves primarily as citizens of any smaller unit than itself.

They perpetuate class divisions.

229. Indian lovers of their country would be the first to admit that India generally has not yet acquired the citizen spirit, and if we are really to lead her to self-government we must do all that we possibly can to call it forth in her people. Division by creeds and classes means the creation of political camps organized against each other, and teaches men to think as partisans and not as citizens; and it is difficult to see how the change from this system to national representation is ever to occur. The British Government is often accused of dividing men in order to govern them. But if it unnecessarily divides them at the very moment when it professes to start them on the road to governing themselves it will find it difficult to meet the charge of being hypocritical or short-sighted.

230. There is another important point. A minority which is given special representation owing to its weak and backward state is positively encouraged to settle down into a feeling of satisfied security; it is under no inducement to educate and qualify itself to make good the ground which it has lost compared with the stronger majority. On the other hand, the latter will be tempted to feel that they have done all they need do for their weaker fellow-countrymen, and that they are free to use their power for their own purposes. The give-and-take which is the essence of political life is lacking. There is no inducement to the one side to forbear, or to the other to exert itself. The communal system stereotypes existing relations.

They stereotype existing relations.

231. We regard any system of communal electorates, therefore, as a very serious hindrance to the development of the self-governing principle. The evils of any extension of the system are plain. Already communal representation has been actually proposed for the benefit of a majority community in Madras. At the same time we must face the hard facts. The Muhammadans were given special representation with separate electorates in 1909. The Hindus' acquiescence is embodied in the present agreement between the political leaders of the two communities. The Muhammadans regard these as settled facts, and any attempt to go back on them would rouse a storm of bitter protest and put a severe strain on the loyalty of a community which has behaved with conspicuous loyalty during a period of very great difficulty, and which we know to be feeling no small anxiety for its own welfare under a system of popular government. The Muhammadans regard separate representation and communal electorates as their only adequate safeguards. But apart from a pledge which we must honour until we are released from it, we are bound to see that the community secures proper representation in the new councils. How can we say to them that we regard the decision of 1909 as mistaken, that its retention is incompatible with progress towards responsible government, that its reversal will eventually be to their benefit; and that for these reasons we have decided to go back on it? Much as we regret the necessity, we are convinced that so far as the Muhammadans at all events are concerned the present system must be maintained until conditions alter, even at the price of slower progress towards the realization of a common citizenship. But we can see no reason

The case of the Muhammadans.

to set up communal representation for Muhammadans in any province where they form a majority of the voters.

Other minority representation.

232. We have been pressed to extend the concession to other communities. Some have based their claim on their backward, others on their advanced, condition. Thus, the Sikhs in the Punjab, the non-Brahmans in Madras (although in that presidency these actually constitute a majority), the Indian Christians, the Anglo-Indians, the Europeans, and the Lingayat community in Bombay have all asked for communal representation. The large landowning classes also generally desire representation in an electorate of their own. Now our decision to maintain separate electorates for Muhammadans makes it difficult for us to resist these other claims ; but, as we have said, in the case of the Muhammadans we have felt ourselves bound by promises given and renewed by Secretaries of State and Viceroys, and in their respect at all events our recommendation involves no new departure. Any general extension of the communal system, however, would only encourage still further demands, and would in our deliberate opinion be fatal to that development of representation upon the national basis on which alone a system of responsible Government can possibly be rooted. At the same time, we feel that there is one community from whom it is inexpedient to withhold the concession. The Sikhs in the Punjab are a distinct and important people ; they supply a gallant and valuable element to the Indian Army ; but they are everywhere in a minority, and experience has shown that they go virtually uurepresented. To the Sikhs, therefore, and to them alone, we propose to extend the system already adopted in the case of Muhammadans.

For the representation of other minorities we should prefer nomination. Even in the case of the general European community, whose material interests in the country are out of all proportion to their numerical strength and on whose behalf it may be argued that no departure from principle is involved, inasmuch as unlike all other communities named they are not an integral part of the population of India, we prefer to rely upon nomination. Special electorates will no doubt be required for the representation of the planting and mining interests, for the chambers of commerce, and possibly also for the universities ; but we desire that the number of such electorates should, where necessary, be represented not by class or interest electorates, but by nomination. Where the great landowners form a dis-

tinct class in any province we think that there will be a case for giving them an electorate of their own. The anomaly involved in the presence of nominated members in a council to which we are giving some responsible powers must, we think, be accepted as one of the necessary illogicalities attendant on a transitional period. Such nominations are made for a representative purpose and can be made in such a way as to secure representation. Nomination has in our eyes the great advantage over the alternative of extending the class or communal system that it can be more easily abolished when the necessity for it ceases. We look to the desire of the communities represented by nominated members to see their representatives in council placed upon the same footing as those of other communities to help us in securing the extension of the territorial principle of representation wherever possible. But it should be a clear instruction to the committee that the nominated element in the legislative councils is to be no larger than the exigencies of fair and adequate representation entail.

There may be cases in which nomination proves an unsuitable method of securing the representation of minorities. In such cases the committee should consider whether the needs of the case would be met by reserving to a particular community a certain number of seats in plural constituencies, but with a general electoral roll. We are inclined to look on such an arrangement as preferable to communal electorates.

Official members.

233. There seem to us good and sufficient reasons for not dispensing entirely with the official element in the legislative councils. Once the official *bloc* is swept away the main objection to the presence of officials no longer exists; their presence has the advantage of tending to steady discussion and of keeping it to practical issues; and their official experience will be invaluable. The exact number of official representatives will be a matter for the committee to consider. We advise, however, that the official element appointed by the Governor should be no larger than is considered necessary for the transaction of business. The members of the executive council should be *ex-officio* members of the legislative council, and there should be so many other official members as will provide the Government with first-hand knowledge of the matters likely to be discussed both in the council and in committee. We wish to see the convention established, though we propose to lay down no rule on the point, that on the subjects transferred to the control of ministers the official

members of the legislative council would abstain from voting and leave the decision of the question to the non-official members of council. On other matters, except on occasions when the Government thinks it necessary to require their support, the nominated official members of the legislative councils should have freedom of speech and vote.

Designation of members.

234. The great increase which will result from our proposals in the number of members of the provincial legislative councils makes it desirable that they should no longer enjoy the designation "Honourable" which we desire to reserve for the members of the new bodies whose institution we propose in the next chapter. But conformably with practice in other parts of the Empire we suggest that provincial legislators should be entitled to affix the letters M.L.C. to their names. On the other hand, while the language of section 74 of the Government of India Act with its reference to "additional members" marks the survival of the idea that the legislative councils are merely expansions of the executive Government for the purpose of law-making, our proposals will have made it clear that we intend the Indian legislatures of the future to be substantive legislative organs. We consider therefore that the term "additional members" should no longer be employed in the case of any Indian legislature.

Standing committees.

235. Our next proposal is intended to familiarize other elected members of the legislative council, besides ministers, with the processes of administration; and also to make the relations between the executive and legislative more intimate. We propose that to each department or group of departments, whether it is placed under a member of the executive council or under a minister, there should be attached a standing committee elected by the legislative council from among their own members. Their functions would be advisory. They would not have any administrative control of departments. It would be open to the Government to refuse information when it would be inconsistent with the public interest to furnish it. We do not intend that all questions raised in the course of day-to-day administration should be referred to them; but that they should see, discuss and record for the consideration of Government their opinions upon all questions of policy, all new schemes involving expenditure above a fixed limit, and all annual reports upon the working of the departments. If the recommendations of the

standing committee were not accepted by Government it would, subject of course to the obligation of respecting confidence, be open to any of its members to move a resolution in the legislative council in the ordinary way. The member of the executive council, or minister concerned with the subject matter, should preside over the committee, and as an exception to the rule that it should be wholly non-official, the heads of the departments concerned, whether sitting in the legislative council or not, should also be full members of it, with the right to vote.

Control of business.

236. Bearing in mind the facts that the legislative councils will in future be larger bodies and will contain a certain number of members unversed in discussion, we feel the importance of maintaining such standards of business as will prevent any lowering of the council's repute. The conduct of business in a large deliberative body is a task that calls for experience which cannot be looked for at the outset in an elected member. We consider therefore that the Governor should remain the president of the legislative council, but inasmuch as it is not desirable that he should always preside, he should retain the power to appoint a vice-president. He should not be formally limited in his selection, but we suggest that for some time to come it will be expedient that the vice-president should be chosen from the official members.

Power to make its own rules of business is a normal attribute of a legislative body. But a simple and satisfactory procedure is of the essence of successful working; and it is advisable to avoid the risk that inexperience may lead to needless complication or other defect in the rules. We think therefore that the existing rules of procedure should, for the time being, continue in force, but that they should be liable to modification by the legislative council with the sanction of the Governor.

One or two points in connexion with the rules require notice. Any member of the legislative council and not merely the asker of the original question, should, we think, have power to put supplementary questions. Power should be retained in the Governor's hands to disallow questions, the mere putting of which would be detrimental to the public interests. If a question is not objectionable in itself, but cannot be answered without harm to the public interests, the Governor should not disallow the question, but his Government should refuse to answer it on that ground. We have not considered in what

respect existing restrictions upon the moving of resolutions should be modified; but here also it seems inevitable that some discretionary power of disallowance should remain in the Governor's hands.

Effect of resolutions.

237. We do not propose that resolutions, whether on reserved or transferred subjects, should be binding. The Congress-League proposal to give them such authority is open to the objections which we have already pointed out. If a member of the legislative council wishes the Government to be constrained to take action in a particular direction it will often be open to him to bring in a Bill to effect his purpose; and when ministers become, as we intend that they should, accountable to the legislative council, the council will have full means of controlling their administration by refusing them supplies or by means of votes of censure, the carrying of which may in accordance with established constitutional practice, involve their quitting office.

Division of the functions of government.

238. It is time to show how we propose that the sphere of business to be made over to the control of the popular element in the Government should be demarcated. We assumed in paragraphs 212 and 213, *supra*, that the entire field of provincial administration will be marked off from that of the Government of India. We assumed further that in each province certain definite subjects should be transferred for the purpose of administration by the ministers. All subjects not so transferred will be reserved to the hands of the Governor in Council. The list of transferred subjects will of course vary in each province; indeed it is by variation that our scheme will be adjusted to varying local conditions. It will also be susceptible of modification at subsequent stages. The determination of the list for each province will be a matter for careful investigation, for which reason we have not attempted to undertake it now. We could only have done so if, after settling the general principles on which the lists should be framed, we had made a prolonged tour in India and had discussed with the Government and people of each province the special conditions of its own case. This work should, we suggest, be entrusted to another special committee similar in composition to, but possibly smaller in size than, the one which we have already proposed to constitute for the purpose of dealing with franchises and constituencies. It may be said that such a task can be appropriately undertaken only when our main proposals are ap-

proved. We find it difficult, however, to believe that any transitional scheme can be devised which will dispense with the necessity for some such demarcation; and for this reason we should like to see the committee constituted as soon as possible. It should meet and confer with the other committee which is to deal with franchises, because the extent to which responsibility can be transferred is related to the nature and extent of the electorate which will be available in any particular province. The committee's first business will be to consider what are the services to be appropriated to the provinces, all others remaining with the Government of India. We suggest that it will find that some matters are of wholly provincial concern, and that others are primarily provincial, but that in respect of them some statutory restrictions upon the discretion of provincial Governments may be necessary. Other matters again may be provincial in character so far as administration goes, while there may be good reasons for keeping the right of legislation in respect of them in the hands of the Government of India. The list so compiled will define the corpus of material to which our scheme is to be applied. In the second place the committee will consider which of the provincial subjects should be transferred, and what limitations must be placed upon the ministers' complete control of them. Their guiding principle should be to include in the transferred list those departments which afford most opportunity for local knowledge and social service, those in which Indians have shown themselves to be keenly interested, those in which mistakes which may occur though serious would not be irremediable, and those which stand most in need of development. In pursuance of this principle we should not expect to find that departments primarily concerned with the maintenance of law and order were transferred. Nor should we expect the transfer of matters which vitally affect the well-being of the masses who may not be adequately represented in the new councils, such for example as questions of land revenue or tenant rights. As an illustration of the kind of matters which we think might be treated as provincial and those which might be regarded as transferred we have presented two specimen lists in an appendix to this report. We know that our lists cannot be exhaustive; they will not be suitable to all provinces; they may not be exactly suitable to any province; but they will serve at all events to illustrate our intentions if not also as a starting point for the deliberations of the committee. Our lists are in the main mere categories of subjects. But we have

mentioned by way of illustration some of the limitations which it will be necessary to impose or maintain. In dealing with each subject the powers of the provincial legislatures to alter Government of India Acts on that subject will have to be carefully considered. We have indicated in paragraph 240 *infra*, certain other reservations which seem to us necessary. On the publication of this report we should like to see the lists discussed in the provincial councils and considered by the provincial Governments, so that the committee may have ready at hand considered criticisms upon the applicability of our suggestions to the circumstances of each particular province.

Settlement of dispute.

239. We realize that no demarcation of subjects can be decisive in the sense of leaving open no matter for controversy. Cases may arise in which it is open to doubt into which category a particular administrative question falls. There will be other cases in which two or more aspects of one and the same transaction belong to different categories. There must therefore be an authority to decide in such cases which portion of the Government has jurisdiction. Such a matter should be considered by the entire Government, but its decision must in the last resort lie definitely and finally with the Governor. We do not intend that the course of administration should be held up while his decision is challenged either in the law courts or by an appeal to the Government of India.

Powers of intervention.

240. Further, inasmuch as administration is a living business and its corpus cannot be dissected with the precision of an autopsy, we must, even in the case of matters ordinarily made over to non-official control, secure the right of re-entry either to the official executive Government of the province, or to the Government of India in cases where their interests are essentially affected. For instance, the central Government must have the power, for reasons which will be readily apparent in every case, of intervening effectively, whether by legislation or administrative action. in matters such as those affecting defence, or foreign or political relations, or foreign trade, or the tariff; or which give rise to questions affecting the interests of more than one province; or which concern the interests of all-India services even if serving under provincial Governments. Similarly the Governor in executive council must have power to intervene with full effect in matters which concern law and order, or which raise

religious or racial issues, or to protect the interests of existing services. We do not claim that this list of reservations is exhaustive or definitive; we look to the committee to assist in making it so. Our aim must be to secure to the official executive the power of protecting effectually whatever functions are still reserved to it and to the Government of India of intervening in all cases in which the action of the non-official executive or council affects them to their serious prejudice. For otherwise the official Government which is still responsible to Parliament may be unable to discharge its responsibility properly.

The justification of this division.

241. No doubt we shall be told—indeed we have often been told already—that the business of government is one and indivisible, and that the attempt to divide it into two spheres controlled by different authorities, who are inspired by different principles and amenable to different sanctions, even with the unifying provisions which we have described is doomed to encounter such confusion and friction as will make the arrangement unworkable. We feel the force of these objections. We have considered them very anxiously and have sought out every possible means of meeting them. But to those critics who press them to the point of condemning our scheme we would reply that we have examined many alternative plans and found that they led either to deadlock or to more frequent or greater potentialities of friction. Such destructive arguments, so far as we can discover, are directed not so much against our particular plan, but against any plan that attempts to define the stages between the existing position and complete responsible government. The announcement of August 20 postulated that such stages could be found; indeed unless we can find them it is evident that there is no other course open than at some date or other to take a precipitate plunge forward from total irresponsibility to complete responsibility.

Alternative methods of division.

242. We have, however, encountered other critics whose arguments are worthy of fuller examination. They agree with us that some division of functions is the right, indeed the inevitable, method of progress; but they tell us that by attempting the division of powers upon the provincial plane we are needlessly enhancing the confusion and friction which will arise, and which could be and ought to be mitigated by a different disposition of the machinery. They urge in brief that the line

of division should be horizontal and not vertical; and that popular control and popular responsibility ought to be developed not in the provincial legislative councils, but in new constitutional bodies to be created for this purpose and invested with jurisdiction over smaller areas. They claim that friction will be avoided or at all events diminished, if the delegated functions of the new bodies are more closely circumscribed by the terms of the legislation calling them into existence than is possible in the case of the provincial councils; and if they are protected from the temptation to place themselves in constant opposition to the official element which would be offered by the presence of both elements in one and the same Government and in one and the same council. They reckon it to the credit of their schemes that by confining the operations of the new constitutional bodies to areas smaller than provinces, they hope to draw into the arena of public affairs men who could hardly be expected to come forward for the provincial councils. They urge that by presenting themselves to the official services not so much as rival governments but as organs of local self-government on the largest and most generous scale, they may feel confident of official help and co-operation.

Plan of divisional councils.

243. In their less pretentious form of expression these ideas are embodied in a scheme which has been placed before us for the establishment of divisional councils. These bodies would have jurisdiction over a revenue division, and would deal with all questions of local self-government and certain other matters delegated to them, such as excise, agricultural farms, provincial roads and some branches of education. They would have definite revenues of their own and also power to increase their income by local taxation. They would administer the business delegated to them by means of an executive committee, of whom the president would be elected by the council and would himself choose his own colleagues. The provincial legislative council would be composed of deligations from the divisional councils, and would contain no official members other than the members of the executive council who would attend only to reply to questions and to explain the Government's attitude. As regards the matters made over to the divisional councils the provincial council would retain certain powers of legislation, taxation, and of sanctioning rules; but as regards all other subjects its powers would be only those of deliberation and criticisms unless the Government referred a particular question to it for decisions.

Reasons for rejecting it.

244. Though we desire to acknowledge the thoughtful manner in which the proposals were worked out we need not amplify them in detail because we found at the outest weighty reasons for rejecting them. The scheme in our opinion fails to provide for continuing and ordered progress in the future. The divisions are in very many instances artificial units, which are not suitable areas on which to base permanent institutions; and in any case they are certainly too small to serve permanently as self-governing units. Although it was contemplated that further spheres of business could be from time to time made over to them no great progress would be possible because the range of matters which could be administered on a divisional basis must for practical reasons be limited. Progress would therefore soon be checked unless, as indeed the authors of the scheme contemplated, the divisional councils coalesced so as to form larger bodies. It seems to us better to start from the outest on a plane on which a permanent edifice can be built. However this be, we feel that the scheme is unacceptable for reasons similar to those which led us to decide that it was impossible to confine advance to the limited sphere of purely local self-government. Whatever may be said of it on theoretical grounds it would not satisfy political needs. If the scheme for divisional councils, and the cognate scheme described below, succeeded in drawing into public life men who could hardly be expected to come forward to the provincial councils, it would also have the effect of very largely depriving those who had had some experience of political matters and whose life is spent in the provincial capitals of many opportunities of effective political work. On the legislative council they would find their functions narrowly restricted; and on the divisional councils also they would deal with a far smaller range of subjects than that with which they had hitherto been concerned.

Plan of provincial States.

245. We have also considered a more ambitious development of the same leading idea which was presented to us by the signatories to a joint address of European and Indian gentlemen in Calcutta. They propose that existing provinces should be subdivided into a limited number of smaller areas on a linguistic or racial basis, and that for such provincial States there should be constituted State councils and State governments dealing only with such matters as those which in our scheme would be included in the transferred list. The official

Government of the province would continue to administer the reserved subjects for the whole provincial area; but inasmuch as responsibility would have been given and would be intended to be developed solely in the State councils, the legislative council of the province would, when the daughter bodies came into being, lose its legislative functions and lapse into the position of a purely advisory body, except that if the provincial executive disregarded its wishes it would have the right of appeal to the Government of India and the Secretary of State. As the State councils developed, more and more functions would be made over to them, as the result of provincial inquiry by a recurrent commission—an idea for which we acknowledge our own indebtedness to the authors of the scheme—until finally the provincial Governments disappeared, and the future polity of British India was represented by a series of States enjoying responsible government.

Reasons for rejecting it generally.

246. We have considered this scheme with the care which its skilful preparation and authoritative endorsement deserve. But the disadvantages of the scheme, as it seems to us, far outweigh its advantages. The proposals to withdraw from the provincial councils, even as a transitional arrangement, their present opportunities of affecting the action of Government would certainly meet with great opposition and be regarded as retrogade. Moreover, while the State Governments would indeed be real Governments and not merely larger organs of local self-government, it would, we believe, be necessary to circumscribe their powers to an extent on which it will be difficult to insist in practice. Though differences in area might mitigate the effects of dualism there would actually be in one and the same territory two Governments and two legislatures, each equipped with a separate service of officers. There would be no means of securing cohesion between the two Governments; and we apprehend that grave divergences of view might occur which there would be no easy means of composing. If it true that the presence of two elements in one and the same Government presents opportunities for collision it presents also opportunities for understanding and co-operation. It appears to us that wisdom lies not in equipping each of the different elements with a complete and separate paraphernalia of its own, and trusting to their orbits lying sufficiently apart for collisions to be avoided, but in taking every opportunity of bringing the two elements into contact so as to induce the

habits of joint action. However this be, there remains one practical reason of paramount force against our proceeding with the scheme. In spite of the evidence which has reached us of the existence in parts of India of distinct areas or communities which are anxious to secede from the larger administrative units of which they now form part, we feel sure that any general scheme of geographical partition would evoke such strong opposition as would be fatal to the whole plan. Generally speaking, we may describe provincial patriotism as sensitively jealous of its territorial integrity. Divisions of territory which are not made in response to a popular demand are apt to provoke wide and deep-seated dissatisfaction. We are convinced, after taking note of a recent debate in the Indian Legislative Council upon this subject, that we should be very unwise to attempt to unite the sufficiently difficult task of revising the constitution of India with the highly controversial labour of simultaneously revising the political geography of the entire country. None the less, while we discard as impracticable the idea of calling into existence new provincial States as part of our own constructive scheme, we are impressed with the artificial, and often inconvenient character of existing administrative units. We have seen how historical reasons brought them about. We cannot doubt that the business of government would be simplified if administrative units were both smaller and more homogeneous ; and when we bear in mind the prospect of the immense burdens of government in India being transferred to comparatively inexperienced hands such considerations acquire additional weight. It is also a strong argument in favour of linguistic or racial units of government that, by making it possible to conduct the business of legislation in the vernacular, they would contribute to draw into the arena of public affairs men who were not acquainted with English. We believe emphatically that redistributions of provincial areas cannot be imposed upon the people by official action ; and that such a process ought in any case to follow, and neither to precede nor accompany, constitutional reform. But we are bound to indicate our own clear opinion that wherever such redistributions are necessary and can be effected by process of consent the attempt to do so should be made ; and therefore we desire that it should be recognized as one of the earliest duties incumbent upon all the reformed provincial Governments to test provincial opinion upon schemes directed to this end. In Orissa and Berar at all events it seems to us that the possibility of instituting sub-provinces need not be excluded from consideration at a very early date.

Means of securing the affirmative power of legislation.

247. We now turn to a consideration of the work of the legislative councils. Assuming that they have been reconstituted with elective majorities, and that the reserved and transferred subjects have been demarcated in the way suggested, let us consider how the executive Government is to be enabled to secure the passing of such legislation or such supplies as it considers absolutely necessary in respect of the reserved services. For we must make some such provision if we are going to hold it responsible for the government of the province.

Now in respect of legislation there are several possibilities. We might leave it to the Government of India to pass the laws which a provincial Government has failed to carry in the Indian legislature where, as we shall show, we intend to leave it in a position to pass the laws which it deems essential ; or we might leave it to the Governor-General, or preferably perhaps to the Governor-General in Council, to make and promulgate ordinances, having effect either for a specified period, or else until such time as the life of the provincial legislative council which refused the desired legislation was cut short or expired and a new council was elected in its place ; or we might arm the provincial Government with a similar power of ordinance-making. We shall explain why we reject all these alternatives.

By Government of India legislation.

248. To invite the Government of India to intervene whenever the provincial Government encountered effective opposition to its legislative proposals would strike at one of our root propositions. The provincial Governments must ordinarily be autonomous in their own legislative field ; and for them to call in the Government of India for this purpose would be a negation of this principle. Moreover, we feel the gravest doubt whether the Government of India would in fact be found willing to undertake any such responsibility. The Government of India would be accused of ignorance of local conditions and disregard of provincial wishes ; of giving with one hand and taking away with another. Nor would its legislature be suitably constituted for such a purpose. We question whether it would be at all disposed to assume the ungrateful task of carrying in its own legislature such unpopular and controversial legislation as provincial circumstances might demand.

By ordinances.

249. For even stronger reasons we reject the suggestion that the Governor-General or the Governor-General in Council should be invited to deal

with the refusal of a provincial council to pass a law by the device of promulgating an ordinance. As we saw, this power was a revival of the old system by which the original executives made the law ; it was in its revived form never intended for more than emergency use, to which purpose it has since been strictly confined. Apart from war legislation, the Governor-General's ordinance-making power has been employed only six times in 57 years. To resort to it as an ordinary means of carrying Bills that had been refused by a provincial council would excite the strongest opposition ; and to pass ordinances without first enabling the council to discuss them would be to abandon all the advantages of publicity and criticism. The idea that the provincial Governor in Council should be equipped with a power to make ordinances was also one to which we gave some consideration. Inasmuch as there will be a strong Indian element in the provincial executives of the future the opposition to such legislation by the executive would no doubt be diminished ; but we felt that it was impossible to ask Parliament to confer on the Governments of provinces a power which they had never enjoyed since 1833 and which is opposed to the whole spirit of our reforms. A further practical objection was the likelihood that the executive would be often divided upon the merits of a particular project, and that the Governor who proposed to put it into force by the medium of an ordinance might find himself faced with the resignation of some of his Indian colleagues or ministers.

Other proposals.

250. We considered further whether these objections could not be mitigated by laying the proposed ordinances before an advisory committee, or by carrying them by the machinery of a separate council dealing only with reserved subjects. In this latter case the Governor in Council would obtain his essential legislation and supplies from a Legislative Council so constituted as to enable Government to give effect to its wishes, while the ministers would lay their Bills and financial proposals before another legislative council wholly or predominantly elected. We abandoned this idea, first, because it appeared to us to emphasize most unwisely the severance between the two elements in the administration which it should be our consistent aim to bring together as closely and continuously as possible ; and, secondly, because it deprived the popular legislature of the power which it now enjoys of affecting the action of Government in the reserved subjects.

251. The alternative plan of constituting an advisory committee before which draft ordinances should be placed before their promulgation did not satisfy us. We felt that though the deliberations of such a body might palliate the nakedness of what is really an official edict, the fact that the committee's assent to the measure would not be necessary would deprive the palliative of any political value.

Advisory committees. ordinance

252. Because, as we shall show in paragraph 258, we have decided not to recommend the institution of second chambers in the provinces we cannot apply to the provinces the scheme which we propose hereafter for the Government of India; and we must turn to some form of unicameral arrangement. The solution which we propose is as follows. For the purpose of enabling the provincial Government to get through its legislation on reserved subjects we propose that the head of the Government should have power to certify that a Bill dealing with a reserved subject is a measure "essential to the discharge of his responsibility for the peace or tranquillity of the province or of any part thereof, or for the discharge of his responsibility for the reserved subjects." In employing these words we are not assuming the function of a parliamentary draftsman; we merely mean to indicate that words will be needed to show that this exceptional procedure will be used only when the Government feels that its legislation is necessary if peace and tranquillity are to be secured, or more generally if it is properly to discharge its responsibility for the reserved subjects even if no question of maintaining order arises. It will be seen hereafter that we propose similar procedure for controlling non-official Bills, amendments and clauses and for controlling budget allotments on reserved subjects. In these cases also we shall speak of certification as indicating that the Governor was using the exceptional procedure in the circumstances described above. Such a certificate as we have described would not be given without strong reason; and we suggest that the reasons justifying recourse to it might be included in the Instructions to Governors which the India Office should issue; for instance, we think that the Governor should not certify a Bill if he thought its enactment could safely be left to the Legislative Council. The effect of the Governor's certificate when published with the Bill will be to intimate the procedure which we now describe. The Bill will be read and its general principle discussed in the full legislative council. It will at this stage be open to the council by a majority vote to request the

Our proposals. Grand committees.

Governor to refer to the Government of India, whose decision on the point shall be final, the question whether the certified Bill deals with a reserved subject. If no such reference is made, or if the Government of India decide that the certificate has been properly given, the Bill will then be automatically referred to a grand committee of the council. Its composition should reproduce as nearly as possible the proportion of the various elements in the larger body. Our first intention was that the grand committee in each province should be a microcosm of the existing council. But we find that the existence of communal and special electorates makes it difficult to secure to all of these their due representation on a smaller body without at the same time sacrificing the representation of the interests represented by the general electorates, to which it is our special intention to give a greater voice in the councils than heretofore. Accordingly, we propose that the grand committee in every council should be constituted so as to comprise from 40 to 50 per cent of its strength. It should be chosen for each Bill, partly by election by ballot, and partly by nomination. The Governor should have power to nominate a bare majority exclusive of himself. Of the members so nominated not more than two-thirds should be officials, and the elected element should be elected *ad hoc* by the elected members of the council on the system of the transferable vote. It is clear that the composition of the grand committee ought to vary with the subject matter of the particular Bill ; and we believe that the council and the Governor between them can be trusted to ensure that whether by election or nomination all the interests affected by the Bill are properly represented. It may be objected that such a grand committee so composed offers the official executive no absolute guarantee that its measure will get through. We agree that this is the case ; but there is no such guarantee at present. In a grand committee of 40 members, there could be 14 officials, and we consider that no great harm will ensue if Government defers legislative projects which are opposed by the whole elected element and for which it cannot secure the support of six out of the seven members, whom the Governor has it in his power to select from the whole body of the non-official members in the council.

Procedure after reference to grand committee.

253. On reference to the grand committee, the Bill will be debated by that body in the ordinary course and if necessary referred to a select committee, to which body we think that the grand committee should have power

to appoint any member of the Legislative Council whether a member of the grand committee or not. The select committee will, as at present, have power to take evidence. Then, after being debated in the grand committee and modified as may be determined the Bill will be reported to the whole council. The council will have the right to discuss the Bill again generally but will not be able to reject it, or to amend it except on the motion of a member of the executive council. The Governor will then appoint a time-limit within which the Bill may be debated in the council, and on its expiry it will pass automatically. But during such discussion the council will have the right to pass a resolution recording any objection which refers to the principle or details of the measure (but not of course to the certificate of its character), and any such resolution will accompany the Act when, after being signed by the Governor, it is submitted to the Governor-General and the Secretary of State.

Treatment of mixed legislation.

254. Legislation on transferred subjects and non-certificated legislation on reserved subjects will continue to be passed by the full council. This makes it necessary to provide for the contingency that a Bill on a transferred subject may trench upon the reserved field of legislation. We suggest that it should be open to any member of the executive council (though to prevent irresponsible obstruction we would not give this power to members of the legislative councils generally) to challenge the whole Bill or any clause of it on its first introduction, or any amendment, as soon as such amendment is moved, on the ground that the Bill, clause, or amendment impinges on the reserved sphere. The question will then be referred to the Governor, who may allow the Bill to proceed in legislative council. But if he rules that the Bill, clause, or amendment trenches upon the reserved subjects, he may, if he sees reason to do so (after hearing any representations that the legislative council may desire to make), certify it accordingly. The Governor's certificate to this effect should be final, subject only to the right of the council to require a reference to the Government of India (as provided in paragraph 252, *supra*). If the Governor certifies the Bill, clause, or amendment it will be open to him either to decline to allow it to be discussed, in which case it would drop; or to suggest to the council an amended Bill; or at the request of the council to refer the Bill to a grand committee. With this proviso, there will be no need to impose restrictions other than those already imposed by section 80 of

the Government of India Act, 1915, on the right of private members to introduce Bills. We may be told that the procedure suggested is cumbrous and dilatory, and offers a premium to obstructive tactics. But we confess that we have not been able to find any simpler method of reconciling two competing aims—the competence of Government to secure its necessary legislation, and on the other hand the power of the elected element in council to ensure that such discretion shall not be used arbitrarily or without due necessity by the executive. It must, we think, be left to the good sense of the council itself, which will realize that its own record will be closely scrutinized and adjudicated upon by the periodic commission, which we propose below, to exert itself to check abuses. We consider also that the Governor of a province should have power to dissolve his legislative council and that this will give him a valuable means of control. It will be understood that the assent of the Governor, the Governor General, and the Crown (signified through the Secretary of State) will remain necessary for all provincial legislation, whether certified or not. We think, moreover, that the Governor's discretionary power of assenting to a Bill should include a power to return the measure for reconsideration of particular provisions in it ; and that the Governor-General should have the same power of reserving provincial laws for the Royal assent as he has in the case of all Indian legislation.

Budget procedure.

255. We now come to the crucial question of budget procedure. It is more difficult than that of legislation, because while legislation on a reserved subject may clearly not impinge on transferred subjects, money devoted to reserved objects of expenditure can with some sort of reason be always represented as being diverted from the transferred objects. There must, therefore, be means of securing that the executive council shall be able to find the money to keep the administration of the reserved subjects efficient, and there must also be means of securing that to the expanding cost of the transferred services, a fair proportion of the total revenue is devoted. For it must be remembered that the transferred services are generally those which stand in greater need of development.

Its difficulties and their solution.

256. To this end we have examined various expedients. We were attracted by the possibility of appointing a joint committee representing both official and non-official views to make

a financial settlement dealing with both reserved and transferred subjects, which should hold good for a period of say six years, always supposing that it can be varied meantime by agreement, confirmed by the assent of the legislative council. We were anxious to find some solution for the difficulties and friction which might otherwise annually occur between the two elements in the Government which are responsible for the reserved and transferred services. The device of reference to the Government of India we dismiss as being a negation of our leading principle of provincial autonomy. It seems to us even more idle to suggest a settlement by process of laying papers before Parliament. It has also been proposed that disputes might be composed by an internal tribunal within the province, comprising a high court judge, a Government official, and an elected member; but we dismiss such an expedient from consideration, because so long as the Governor in Council is responsible for reserved subjects, we hold that he must have power to decide what revenues he requires. On full consideration we have decided to set aside all suggestions for a settlement. We doubt whether any committee's recommendations would commend themselves to Indian opinion much better than the Governor's decision, to which in the event of irreconcilable difference of opinion between the two halves of the Government the matter must ultimately come. A settlement would also result in a rigid allocation, which would be yearly attacked in debates and which it might be difficult to vary by agreement; and at best it only defers the difficulty for a six years' period, at the end of which it would present itself again with the accumulated force of six years' discontents. It is impossible to foresee the contingencies which may occur in six years, and to budget in advance for so long a period. The difficulty is fundamental and we cannot overcome it by any simple device. Nor are we without belief in the educative efficacy of the annual budget discussion. We propose therefore that the provincial budget should be framed by the executive Government as a whole. The first charge on provincial revenues will be contribution to the Government of India; and after that the supply for the reserved subjects will have priority. The allocation of supply for the transferred subjects will be decided by the ministers. If the revenue is insufficient for their needs the question of new taxation will be decided by the Governor and the ministers. We are bound to recognize that in time new taxation will be necessary, for no conceivable economies can finance the new developments which are to be anticipated. The budget will

then be laid before the council which will discuss it and vote by resolution upon the allotments. If the legislative council rejects or modifies the proposed allotment for reserved subjects the Governor should have power to insist on the whole, or any part of the allotment originally provided, if for reasons to be stated he certifies its necessity in the terms which we have already suggested. We are emphatically of opinion that the Governor in Council must be empowered to obtain the supply which he declares to be necessary for the discharge of his responsibilities. Except in so far as the Governor exercises this power the budget would be altered in accordance with the resolutions carried in council.

Safeguards against difficulties.

257. We anticipate that anxiety may be felt as to the supply for the transferred subjects. We believe that this anxiety is largely based on an exaggerated view of the possibilities of economy in the reserved subjects. We do not feel, however, that there need be any apprehension. No Governor in Council is likely, without real reason, to disregard the wishes of the legislative council, and we hold that, if he has real reasons, he ought to disregard them in the discharge of his responsibilities. But we may point out the series of safeguards which our plan provides. The budget will be considered by the whole Government acting together. Those in charge of the transferred subjects will have every opportunity of acquainting themselves with the considerations upon which the allotment for the reserved subjects is based. In these joint discussions the provincial revenues will be estimated ; the contribution to the Government of India will be set apart ; the proposed allotments for the reserved subjects will then be carefully scrutinized and examined with a view to facing criticism in the legislative council, and the remainder of the revenue will be at the disposal of the ministers. If such residue is not sufficient, it is open to the ministers to suggest extra taxation either within the schedule of permissible provincial taxation, or by obtaining the sanction of the Government of India to some tax not included in the schedule. Such taxation proposals would be presented to the legislative council only with the approval of the ministers. Moreover, there is a standing committee representative of the legislative councils not only on finance, but attached to all the reserved portfolios ; and these standing committees will have the opportunity of scrutinizing all proposals for substantial expenditure, and of familiarizing themselves

with departmental needs. But if the ministers and the legislative councils are compelled to accept allotments for the reserved subjects with which they do not agree our proposal that a periodic commission shall review the proceedings affords another safeguard. Both the Government and the legislative council will decide on their course of action with the full knowledge that their conduct in the matter will, in due course, come under review by the Commission. There will be opportunity of arguing before the Commission, on the one hand, that reserved subjects have been extravagantly administered, or that the Governor in Council has unnecessarily disregarded the wishes of the legislative council, or, on the other hand, that the attitude of the legislative council with regard to the expenditure on reserved subjects has been so unreasonable as to make it unsafe to transfer further powers. Although we believe, therefore, that no insuperable difficulty will arise if reasonable men conduct themselves in a reasonable manner this periodic sanction will tend to produce a spirit of compromise and co-operation.

Upper houses.

258. At this point we may explain that we have considered the feasibility of establishing a bicameral system in the provinces. Its advocates urge that in creating upper houses we should follow the system which generally prevails in countries where popular government has firmly established itself. We might also expect that the representation of minority interests would become more effective in an upper house than in a single composite chamber, because minority representatives sitting in a chamber of their own might feel themselves freer to defend the interests which they represented than if they sat together with other elements in a lower house. We might secure men for the upper houses who would not seek election or even accept nomination, to a composite assembly where the majority of members were of a different status from themselves ; and so the second chamber might develop a conservative character which would be a valuable check on the possibly too radical proclivities of a lower house. But we see very serious practical objections to the idea. In many provinces it would be impossible to secure a sufficient number of suitable members for two houses. We apprehend also that a second chamber representing mainly landed and moneyed interests might prove too effective a barrier against legislation which affected such interests. Again, the presence of large landed proprietors in the second chamber might have the unfortunate result of discouraging other members of

the same class from seeking the votes of the electorate. We think that the delay involved in passing legislation through two houses would make the system far too cumbrous to contemplate for the business of provincial legislation. We have decided for the present, therefore, against bicameral institutions for the provinces. At the same time we bear in mind that as provincial councils approach more closely to parliamentary forms the need for revising chambers may be the more felt; and we think that the question should be further considered by the periodic commission which we propose hereafter.

Relations of the services to the Government.

259. We should now make it clear what the relations of the executive officers in the provinces will be to the new Government. Let us say at once that we have no intention of introducing any duality into the services. It would be unfair to expect ministers new to responsibility to assume the burden of office unless they could command the assistance of the present highly trained services. To require them to inaugurate new services for their own departments would, we think, be to saddle them with difficulties that would doom the experiment to failure. This consideration, among others, was prominent in our minds when we concluded that ministers should form part of the executive Government of the province rather than a separate Government. That there are difficulties in either case we do not deny, but they would certainly be greater if one and the same officer received his orders from two Governments instead of one. The objection may be taken that the same authority may not be felt to attach to orders coming from ministers as to orders coming from the executive council. We do not admit that they will come from either. All orders will come from the Government, and they will all be Government orders. At the present time it is not the business of an executive officer to differentiate between an order conveyed to him by the secretary to Government in one department, and an order conveyed to him by the secretary in another department, and the procedure will not differ in the future.

Future Development.

Modification by the Government of India.

260. Having now described the new constitution which we propose at the outset let us show how we intend to provide for its assured and regular development in future. Our idea is that as the popular element of the Government acquires ex-

perience and learns to discharge its duties efficiently further powers should be entrusted to it. The process in fact will be one of adding to the transferred subjects and of taking from the reserved ones, until such time as with the entire disappearance of the reserved subjects the need for an official element in the Government, or of procedure by grand committee, vanishes, and thus the goal of complete responsibility is attained in the provinces. What we have to do is at once to encourage and to regulate this process. After five years' time from the first meeting of the reformed councils we suggest that the Government of India should hear applications from either the provincial Government or the provincial council for the modification of the reserved and transferred lists of the province ; and that after considering the evidence laid before them they should recommend for the approval of the Secretary of State the transfer of such further subjects to the transferred list as they think desirable. On the other hand, if it should be made plain to them that certain functions have been seriously maladministered it will be open to them with the sanction of the Secretary of State to retransfer subjects from the transferred to the reserved list, or to place restrictions for the future on the ministers' powers in respect of certain transferred subjects. This examination of the question by the Government of India after the lapse of five years will be of value in enabling the allotment of portfolios to be redetermined, if need be, in the light of the experience gained during that time. But it is also desirable to complete the responsibility of the ministers for the transferred subjects. This should come in one of two ways, either at the initiative of the council if it desires and is prepared to exercise greater control over the ministers, or at the discretion of the Government of India, which may wish to make this change as a condition of the grant of new, or of the maintenance of existing, powers. We propose therefore that the Government of India may, when hearing such applications, direct that the ministers' salaries, instead of any longer being treated as a reserved subject and therefore protected in the last resort by the Governor's order from interference, should be specifically voted each year by the legislative council ; or failing such direction by the Government of India, it should be open to the councils at that time or subsequently to demand by resolution that such ministers' salaries should be so voted, and the Government of India should thereupon give effect to such request. The ministers would in fact become ministers in the parliamentary sense. The councils would have power to refuse to pass their

salaries, and they would have to accept the consequences which constitutional convention attaches to such a vote.

Periodic commission.

261. The arrangements sketched in the last paragraph, however, are intended to provide merely for *ad interim* changes; and we regard it as essential, if the terms of the announcement of August 20 are to be made good, that there should from time to time come into being some outside authority charged with the duty of resurveying the political situation in India and of readjusting the machinery to the new requirements. We would provide, therefore, that ten years after the first meeting of the new councils established under the statute a commission should be appointed to review the position. Criticism has been expressed in the past of the composition of Royal commissions, and it is our intention that the commission which we suggest should be regarded as authoritative and should derive its authority from Parliament itself. The names of the commissioners, therefore, should be submitted by the Secretary of State to both Houses of Parliament for approval by resolution. The commissioners' mandate should be to consider whether by the end of the term of the legislature then in existence it would be possible to establish complete responsible government in any province or provinces, or how far it would be possible to approximate to it in others; to advise on the continued reservation of any departments for the transfer of which to popular control it has been proved to their satisfaction that the time had not yet come; to recommend the retransfer of other matters to the control of the Governor in Council if serious maladministration were established; and to make any recommendations for the working of responsible government or the improvement of the constitutional machinery which experience of the systems in operation may show to be desirable. We intend these propositions to be read rather as an indication of our general intentions than as an attempt to draft the actual terms of the reference to the commission.

Other matters for consideration by the commission.

262. There are several other important matters, germane in greater or less degree to our main purpose, which the commission should review. They should investigate the progress made in admitting Indians into the higher ranks of the public service. They should examine the apportionment of the financial burden of India with a view to adjusting it more fairly between the provinces. The commission should also examine the develop-

ment of education among the people and the progress and working of local self-governing bodies. Lastly the commission should consider the working of the franchise and the constitution of electorates, including the important matter of the retention of communal representation. Indeed we regard the development of a broad franchise as the arch on which the edifice of self-government must be raised; for we have no intention that our reforms should result merely in the transfer of powers from a bureaucracy to an oligarchy. We shall be told that we are laying a heavy charge upon the commission. We agree that this is so, and it will probably be necessary to appoint more than one commission; but we think it important that the review of all these questions should be undertaken at one and the same time. It is our desire to revive the process by which the affairs of India were periodically subjected to searching review by investigating bodies appointed with the approval of Parliament itself; and we propose therefore that the further course of constitutional development in the country, together with the other matters just enumerated, shall from time to time be similarly investigated at intervals of twelve years, a period which represents the life of four councils under the existing regulations.

The importance of an electorate.

263. In proposing the appointment of a commission ten years after the new Act takes effect we wish to guard against possible misunderstanding. We would not be taken as implying that there can be established by that time complete responsible government in the provinces. In many of the provinces no such consummation can follow in the time named. The pace will be everywhere unequal, though progress in one province will always stimulate progress elsewhere; but undue expectations might be aroused if we indicated any opinion as to the degree of approximation to complete self-government that might be reached even in one or two of the most advanced provinces. The reasons that make complete responsibility at present impossible are likely to continue operative in some degree even after a decade. Within that time many persons will have been brought in touch with problems of administration and a considerable number will have some experience of the actual exercise of responsibility; but we recognize that time is necessary for the development of responsibility in the electorates and the growth of proper relations between representatives and constituencies. At present electorates of a

general character hardly exist. Almost all are designed to represent special classes or interests and consist of very few persons. Those which represent Muhammadans were intended to be fairly inclusive but even those are limited to a few hundred electors. The much larger electorates that will now be set up, though still a mere fraction of the population, will be devoid of political experience. The habit of considering political issues as issues to be decided by a man's own judgment, of realizing their value of the proper use of a vote and of judging candidates with regard to their fitness to represent the elector's views have all to be acquired. The physical circumstances of electorates thinly scattered over wide areas with indifferent communications will render the task of educating them particularly difficult, especially for men who will have to undertake a work of which they themselves have so little experience. These difficulties will be increased by the general lack of education. Where the great mass of the population is illiterate, as is unfortunately the case all over India, political ideas may be expected only to spread slowly and the progress of political education to be impeded. But we have already recognized the rapid rate of progress which has taken place in India during recent years in the development of political opinion; and we cannot foresee how much the pace will be accelerated under the new conditions. It is, therefore, clearly desirable that periodic inquiries should take place at intervals that may prove too short rather than that encouragement should be given to agitation by undue delay.

Matter for special consideration.

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

The Government of India and the India Office.

I.—*The Government of India.*

The need for change.

265. We shall have discharged our task indifferently if it is not already plain from our report that all the changes which we suggest are no more than the necessary adjustment of the constitution to a rapidly changing environment. So long as the people of India were content to leave their government in official hands the system was well-devised to the needs of the country, and was directed with astonishing zeal and success to beneficent ends. We have tried to give some account of the burden of the work. We may well pause to pay a tribute to the part played by the Government of India itself in guiding and inspiring the entire system. Rarely has a heavier burden of responsibility continuously rested on a smaller body of men ; rarely has it been discharged with greater ability or a higher sense of public duty. We have changes to propose, corresponding to changing conditions ; but we should keenly regret it if anything we said were taken as failing in the tribute due to great work finely done. But more is now being demanded of the system than it can give. It is no longer sufficient to administer India ; it is necessary also to satisfy her political aspirations ; and because we were all too slow in taking cognizance of the changes that were occurring the task is all the heavier because there is lee-way to make up. We must therefore introduce a new element of strength into the Government.

The burden of work.

266. We have already made our opinion clear that pending the development of responsible government in the provinces the Government of India must remain responsible only to Parliament. In other words, in all matters which it judges to be essential to the discharge of its responsibilities for peace, order, and good government it must, saving only for its accountability to Parliament, retain indisputable power. With the precise manner in which the control by Parliament must in future be modified we shall deal hereafter. For the present we will concern ourselves with changes in the functions, structure, and methods of the Government of India itself. We think we have reason for saying that in some respects the machinery is no longer equal to the needs of the time. The normal work of the departments is heavy. The collective responsibility of the Government is weighty,

especially in time of war. There is little time or energy left for those activities of a political nature which the new situation in the country demands. A legislative session of the Government of India imposes a serious strain upon the departments, and especially on the members in charge of them. They have not merely to carry on their heavy task of administration and to share in the discussion and decision of grave matters of policy, but they have to prepare themselves to meet a growing volume of criticism at meetings of the legislative council ; and when as has now happened, they are called upon in addition to deal with urgent and complex questions of constitutional reform, the burden becomes one that it is unreasonable to impose on so small and highly worked a body of men. We desire to take this opportunity of acknowledging how ungrudgingly their services have been given to our present task. But, apart from the inevitable complexities of the moment, the growing burden of business, which results from the changing political conditions of the country, is leading to an accumulation of questions which cannot be disposed of as quickly as they present themselves. We find the necessity for reforms admitted, principles agreed upon and decisions taken, and then long delays in giving effect to them. Difficulties are realized, inquiries are started, commissions report, and then there is a pause. There is a belief abroad that assurances given in public pronouncements of policy are sometimes not fulfilled. On this occasion, therefore, we have taken steps to guard against such imputations, and to provide means for ensuring the ordered development of our own plans.

Present causes of delay.

267. The main fault for the clogging of the machine does not, we think, lie altogether with its highly trained engineers. What is chiefly wanted is some change of system in the directions of simplicity and speed. How does it happen that announcements are made that arouse expectations only to defeat them? We know that it is not from any intention of deluding the public. We suggest that it is because the wheels move too slowly for the times ; the need for change is realized, but because an examination of details would take too long promises are made in general terms, which on examination it becomes necessary so to qualify with reservations as to disappoint anticipations and even to lead to charges of breach of faith. We suspect that a root cause of some political discontents lies in such delays. Now, so far as the provinces are concerned, we believe

that our proposals for freeing them to a great extent from the control of the Government of India and the Secretary of State will improve matters. But the Government of India are in the worst case. In all important matters they have to consult local Governments, and then to secure the approval of the Secretary of State. Consultation with local Governments there must always be; but with developing autonomy in the provinces, and less frequent interference by the Secretary of State, we see no reason why quicker and more informal methods should not be pursued. We hope that the new departure inaugurated in January last at the conference between the Government of India and all the heads of Governments in Delhi may be repeated annually, and may lead to a closer understanding of the varying conditions of the provinces and some diminution of official correspondence.

References to the India Office.

268. References to the India Office are a second fruitful cause of delay. The India Office, having statutory responsibilities to discharge, exercises its authority with good care and with all the expert knowledge at its command. Proposals that have been examined in India are re-examined in England and fresh suggestions may be forthcoming from Whitehall upon which Delhi may find it necessary to take the further opinion of Calcutta, Bombay, and the rest. Now we recognize that so long as the Indian Government is not responsible to an electorate the guardianship of the welfare of India as a whole must remain in the hands of Parliament. Indeed, as we shall show, we go on hereafter to make suggestions for sustaining the interest taken by Parliament in India better and for improving the means of information at its disposal. But, on the other hand, we must also consider practical needs. We have seen how rarely Parliament asserts its power, how little interest and time it devotes to Indian affairs, and how much it leaves to the Secretary of State in Council. Granting, therefore, that Parliament's understanding of the larger Indian questions, and its responsibility for policy, ought to be increased there is no real inconsistency in saying that we should ask it simultaneously to agree to relax the Secretary of State's control in details. We consider that the Secretary of State's previous sanction to decisions taken in India should be required in fewer cases than in the past; and that in some matters it will suffice in future if he asserts his control by means of a veto, if necessary.

Insufficiency of staff.

269. A further cause contributing to delay is that the departments at head-quarters are now overworked. It is often overlooked how small is the staff which carries on the work of the great departments. Normally, it consists of a member in charge, a secretary, a deputy-secretary, and an under-secretary. The remainder of the staff is purely clerical. If this is compared with the staffing of one of the great departments in Whitehall, and every allowance is made for the difference of conditions, it will be clear how numerically weak the staff of the Government of India is; and how great is the strain upon its members, especially in such times as the present. One reason why the departments can move quickly in England is because their day-to-day administration runs itself. New inquiries can be set on foot, and policies thought out by the head of the department, with the help of a large and experienced permanent staff. In India the higher staff of the secretariats is not permanent, because rightly or wrongly it has always been held desirable to maintain touch between the headquarters offices and the districts. Men are selected from the administrative staff, serve for a time in the offices, and return to administration. One result of this discontinuity is that questions which a permanent civil service can safely dispose of by word of mouth become the subject of continuous minuting. Changes of personnel necessitate a record of the questions, and the aspects of questions considered. We express no opinion on the system, but it requires detailed examination. Indeed, the Viceroy has already signified to his colleagues his intention of causing it to be examined after the war. Till that time comes, the inquiry could not be pursued with advantage; but once the stress of war is over, and departments can estimate their permanent needs, the inquiry should be taken up probably with the assistance of experts from England. Our proposal is made without prejudice to the process of taking further Indians into the services. From whatever source the additional help is to be sought there can be no question of its acute necessity.

Inherent tendencies of an official Government.

270. But a constitutional element of delay may be found in the character of the Government itself. Because it is bureaucratic it is naturally less anxious to move than a responsible Government. In the matters where Parliament does not affect it its duty is to its own conscience—or perhaps we should say to its successors in office—and not to any constituents. We

should do well to associate with it a really representative assembly so as to ensure that in the comparative seclusion of its domicile in Delhi and Simla the wishes of the country are accurately and regularly presented to it and that its action is adequately criticized. In this way not merely shall we get a succession of stimuli from outside which would benefit the Government in India, but the Secretary of State in England will have the means of judging what view is taken in India of the actions of the Government, and so the modified measure of Home control which we propose will come to be exercised not merely in accordance with British views, but with regard also to the expressed views of those who represent constituencies in India. These are the considerations underlying the proposals which we put forward for changes in the structure of the Government of India both in its executive and legislative aspects.

The Governor-General's Executive Council.

271. We have explained already how the executive council of the Governor-General is constituted and how portfolios are allotted in it. Its changed relations with provincial governments will in themselves materially affect the volume of work coming before the departments, and for this reason alone some redistribution will be necessary. We would, therefore, abolish such statutory restrictions as now exist in respect of the appointment of members of the Governor-General's Council so as to give greater elasticity both in respect of the size of the Government and the distribution of work. If it is desired to retain parliamentary control over these matters they might be embodied in statutory orders to be laid before Parliament.

Increase in Indian element.

272. Further, we propose to increase the Indian element in the executive council. We do not think it necessary to argue the expediency of enabling the wishes of India to be further represented in the Cabinet of the country. The decision of Lord Morley and Lord Minto to appoint one Indian member to the council marked an important stage in India's political development; and has proved of value in enabling the Government to have first-hand acquaintance with Indian opinion. In recommending a second appointment we are only pursuing the policy already determined upon in respect of the public services. There exists, of course, at present no racial prescription in the statute, nor do we propose that any should be introduced. There is even no formal guarantee that any appointment shall

be made on the grounds of race. The appointment of Indian members will be made in the future as in the past as a matter of practice by the Crown on the recommendation of the Secretary of State; and we suggest the appointment of another Indian member as soon as may be.

The Indian Legislative Assembly.

273. We now come to the changes required in the Indian Legislative Council. Its existing composition we have already explained. No argument is needed to show that under present conditions 27 elected members, many of them returned by small class electorates, cannot adequately represent the interests of the entire country in the supreme assembly. Indeed, no council the composition of which is conditioned by the necessity of maintaining an official majority could possibly serve that purpose. We recommend, therefore, that the strength of the legislative council, to be known in future as the Legislative Assembly of India, should be raised to a total strength of about 100 members, so as to be far more truly representative of British India. We propose that two-thirds of this total should be returned by election; and that one-third should be nominated by the Governor-General of which third not less than a third again should be non-officials selected with the object of representing minority or special interests. We have decided not to present to His Majesty's Government a complete scheme for the election of the elected representatives; our discussions have shown us that we have not the data on which to arrive at any sound conclusions. Some special representation, we think, there must be, as for European and Indian commerce and also for the large landlords. There should be also communal representation for Muhammadans in most provinces and also for Sikhs in the Punjab. There is no difficulty about direct election in the case of special constituencies. It is in respect of the general, or residuary, electorate, including therein the communal electorates for Muhammadans and Sikhs, that complexities present themselves. Our decided preference is for a system of direct electorates, but the immensity of the country makes it difficult; it may be impossible to form constituencies of reasonable size in which candidates will be able to get into direct touch with the electorates. Moreover, there is the further difficulty (which, however, presents itself in any system of constituencies) of the inequalities of wealth existing between the different communities. If constituencies are to be approximately even in size it may be necessary to concede a special

franchise to the Muhammadans, who, taken as a whole, are poorer than the Hindus; and this means giving a vote to some Muhammadans who would not be entitled to vote if they were Hindus. That is an undesirable anomaly, to which we should prefer the anomaly of unequal constituencies; but on our present information we find it impossible to say how great the practical difficulties of variation in size might be. Similar problems will present themselves in respect of constituencies for the elections to provincial councils. It is obviously desirable to deal on uniform lines with the electoral arrangements both in the provincial and Indian councils. As regards the former we have already recommended the appointment of a special committee to investigate questions of franchises and electorates; and to that body we would, therefore, also commit the task of determining the electorates and constituencies for the Indian Legislative Assembly. They may find it wholly impracticable to arrange for direct election. In that case, they will consider the various possible systems of indirect election. We are fully aware of the objections attaching to all forms of indirect election; but if the difficulties of direct election compel us to have recourse to indirect, we incline to think that election by non-official members of provincial councils is likely to prove far more acceptable to Indian opinion and, in spite of the smallness of the electoral bodies, certainly not open in practice to greater objection than any of the other alternative methods which have been from time to time proposed.

For reasons similar to those which we have given in the case of the provincial legislative councils we recommend that members of the Indian Legislative Assembly should not be designated "Honourable" but should be entitled to affix the letters M.L.A. to their names.

Representation of the provinces.

274. The suggestion we have made for the number of elected members was based on the calculation that the three presidencies would be represented by 11 members each; the United Provinces by 10, the Punjab and Bihar and Orissa by 7 each, the Central Provinces by 5, Burma by 3, and Assam by 2. We also think that in view of the importance of the Delhi province as the Imperial enclave and the seat of the central Government it should be represented by a member.

Nominated members.

275. In respect of the non-official members to be nominated by the Governor-General we advise that no hard-and-fast rule should be laid

down. These seats should be regarded as a reserve in his hands for the purpose of adjusting inequalities and supplementing defects in representation. Nominations should not be made until the results of all the elections are known; and then they should be made after informal consultation with the heads of provinces. The maximum number of nominated officials will be two-ninths of the whole, and it will rest with the Governor-General to determine whether he requires to appoint up to this maximum. The officials will, however, include the executive members of council, sitting not by appointment, but *ex officio*; and also some representation from the provinces. It may, therefore, not be possible for secretaries to the Government of India to continue to sit in the assembly; this may in itself be of advantage as decreasing the dislocation of administrative business during the session. It may, however, be necessary to allow the secretary to speak and vote on behalf of the member when occasion demands. But for this purpose we think that a preferable alternative may be to appoint members of the assembly, not necessarily elected, nor even non-official, to positions analogous to those of parliamentary under-secretaries in England; and we advise that power be taken to make such appointments. We attach importance to the further proposal that official members of the assembly, other than members of the executive government, should be allowed a free right of speech and vote, except when the Government decides that their support is necessary. We think that this change of procedure will affect the tone of discussions very beneficially. We think that, for the reasons which we have given already in support of a similar recommendation in respect of the provincial councils, the president of the Legislative Assembly should be nominated by the Governor-General. We do not propose that his choice should be formally limited, but it seems necessary that, at any rate for the present, the president should be designated from among the official members.

Means of securing the affirmative power of legislation.

276. We began with the fundamental proposition that the capacity of the Government of India to obtain its will in all essential matters must be unimpaired. The institution of an assembly with a large elected majority confronts us with the problem, as in the case of the provinces, of enabling the executive government to secure its essential legislation and its supplies. Here also we have examined several possible expedients. In this instance, there can be no

question of relying on legislation by superior authority. The only superior authority is Parliament, and Parliament is too far off and notoriously too preoccupied and not suitably constituted to pass laws for the domestic needs of India. It is true that the Governor-General has the power of making temporary ordinances for certain emergent purposes. We propose that this power should be retained; its utility has been strikingly demonstrated during the present war. It merely provides, however, a means of issuing decrees, after private discussion in the executive council, and without opportunities for public debate or criticism; and normally it should be used only in rare emergencies. It would be unsuitable for our purpose. What we seek is some means, for use on special occasions, of placing on the statute book, after full publicity and discussion, permanent measures to which the majority of members in the Legislative Assembly may be unwilling to assent. We seek deliberately, when the purpose justifies us, to depart from popular methods of legislation; and it is obvious that no device which conforms to those methods can possibly serve our purpose. For this purpose we have come to the conclusion that we should employ the method now familiar to Indian institutions of maintaing such a number of votes, upon which the Government can in all circumstances rely, as to ensure the passage of the legislation that it requires. It is here alone, and only (as will be seen hereafter) for use in cases where it is obviously necessary, that we propose to perpetuate the official *bloc*. We are seeking to provide for a period of transition; for which purpose no novel expedient, such as multiplying the value of official votes, or calling in officials who have not taken part in the argument to record their votes, or of passing measures automatically after discussion, would be as easily understood, or as acceptable, as the continuance in modified form of the present system.

The Council of State.

277. One suggestion which we considered was that we should follow the plan adopted in the provinces, and institute grand committees to which the Government's essential Bills should be referred. But the conditions of Indian legislation are different from those of provincial. Matters are more important, the Government's responsibility to Parliament is closer, and the affirmative power must be more decisively used. We feel also that there are advantages, both direct and incidental, in setting up a separate constitutional body, in which Government will be able to com-

mand a majority. We do not propose to institute a complete bicameral system, but to create a second chamber, known as the Council of State, which shall take its part in ordinary legislative business and shall be final legislative authority in matters which the Government regards as essential. The Council of State will be composed of 50 members, exclusive of the Governor-General, who would be president, with power to appoint a vice-president, who would normally take his place : not more than 25 will be officials, including the members of the executive council, and 4 would be non-officials nominated by the Governor-General. Official members would be eligible for nomination to both the Legislative Assembly and the Council of State. There would be 21 elected members, of whom 15 will be returned by the non-official members of the provincial legislative councils, each council returning two members, other than those of Burma, the Central Provinces, and Assam, which will return one member each. Elected members returned to the Council of State would vacate any seats they occupied on the provincial council or the Legislative Assembly. The remaining six elected members are intended to supplement the representation which the Muhammadans and the landed classes will otherwise secure ; and also to provide for the representation of chambers of commerce. Each of these three interests should, we suggest, return two members directly to the Council of State. Bearing in mind the fact that among the members of the provincial legislative councils who will elect to the 15 seats there will be a proportion of Muhammadans, and assuming that in each of the bigger provinces each elector will be able as now to give both his votes to one candidate, we estimate that the composition of the Councils of State should comprise at least six Muhammadans whether sitting by direct or indirect election or by the Governor-General's nomination. Moreover, it is desirable that the four seats to be filled by direct election should be used so as to ensure that the Muhammadan and landed members should as far as possible be representative of the whole of India. Deficiencies may occur in this respect in any one council but they should be corrected in elections to the subsequent council. For this reason the regulations for elections to the four seats should be framed by the Governor-General in Council in such a way as to enable him to decide, after consideration of the results of the indirect elections, from what part of India, or possibly in what manner from India, generally the seats should be filled.

Qualifications for membership.

278. Inasmuch as the Council of State will be the supreme legislative authority for India on all crucial questions, and also the revising authority upon all Indian legislation, we desire to attract to it the services of the best men available in the country. We desire that the Council of State should develop something of the experience and dignity of a body of Elder Statesmen ; and we suggest therefore that the Governor-General in Council should make regulations as to the qualifications of candidates for election to that body which will ensure that their status and position and record of services will give to the council a senatorial character, and the qualities usually regarded as appropriate to a revising chamber. We consider that the designation "Honourable" should be enjoyed by the members of the Council of State during their tenure of office. In accordance with the proposals which we make hereafter for associating the Ruling Princes with the Government for the purpose of deliberation on matters of common concern it would be, as will be seen, the Council of State with which the Princes would be associated. It is desirable that as is the case with second chambers elsewhere, the lifetime of the Council of State should be longer than that of the assembly ; and assuming that the life of the latter will be three years, we propose five years as the normal duration of each Council of State.

Legislative procedure. Government Bills.

279. Let us now explain how this legislative machinery will work. It will make for clearness to deal separately with Government Bills and Bills introduced by non-official members. A Government Bill will ordinarily be introduced and carried through all the usual stages in the Legislative Assembly. It will then go in the ordinary course to the Council of State, and if there amended in any way which the assembly is not willing to accept, it will be submitted to a joint session of both Houses, by whose decision its ultimate fate will be decided. This will be the ordinary course of legislation. But it might well happen that amendments made by the Council of State were such as to be essential in the view of the Government if the purpose with which the Bill was originally introduced was to be achieved, and in this case the Governor-General in Council would certify that the amendments were essential to the interests of peace, order, or good government. The assembly would then not have power to reject or modify these amendments, nor would they be open to revision in a joint session.

We have to provide for two other possibilities. Cases may occur in which the Legislative Assembly refuses leave to the introduction of a Bill or throws out a Bill which the Government regarded as necessary. For such a contingency we would provide that if leave to introduce a Government Bill is refused, or if the Bill is thrown out at any stage, the Government should have the power, on the certificate of the Governor-General in Council, that the Bill is essential to the interests of peace, order, or good government, to refer it *de novo* to the Council of State; and if the Bill, after being taken in all its stages through the Council of State, was passed by that body it would become law without further reference to the assembly. Further, there may be cases when the consideration of a measure by both chambers would take too long if the emergency which called for the measure is to be met. Such a contingency should rarely arise; but we advise that in cases of emergency, so certified by the Governor-General in Council, it should be open to the Government to introduce a Bill in the Council of State, and upon its being passed there merely to report it to the assembly.

Private members' Bills.

280. We come now to non-official members' Bills. They would be introduced in whichever of the two chambers the mover sat and, on being carried there, would be taken to the other chamber and carried through that. In the case of a difference of opinion between the two bodies the Bill would be submitted to a joint session of both, and would either be finally rejected, or would be submitted for assent in the form in which it was there passed. It might, however, occur that a non-official member's Bill emerged from the assembly, whether originally introduced there or not, in a form which the Government thought prejudicial to peace, order, and good government. In this case, also, if the Governor-General in Council were prepared to give a certificate in the terms already stated, the Bill would go or go back to the Council of State and could only become law in the form there finally given to it.

Advantages of this procedure.

281. Our object has thus been where possible to make assent by both bodies the normal condition of legislation, but to establish the principle that in the case of certificated legislation the will of the Council of State should prevail, and in other legislation the will of the non-official members of both chambers taken together should prevail. In time to come, if

and when the procedure by certification becomes unnecessary, the Council of State will become, as in other countries, a purely revising chamber, and differences between the two chambers will be adjusted by joint sessions. We considered the alternative course of leaving non-certificated Bills wholly to the Legislative Assembly, and using the Council of State only for certificated Bills. We dismissed this plan, first, because we regard it as important to establish what may hereafter become a normal second chamber; secondly, because we were unwilling to exclude the non-official members of the Council of State, to which we wished to attract the best men available, from all share in the passing of non-certificated business, and all opportunities of introducing Bills. Finally, our own proposal which gives the Government an opportunity of amending a private member's Bill, instead of leaving the Government with no alternative but to veto a measure some features of which it may disapprove, affords the means by which beneficial changes in the law may result from non-official initiative. It will, we believe, be found to be not the least advantage of the institutions which we propose that by allowing questions to be freely discussed, first in a popular assembly and then reviewed by a revising body in which Government is in a position to exert as little influence as it likes, the course of social legislation to which our Indian advisers attach particular importance will be materially promoted. For if Government is assured that projects of social reform have the support of the Indian element in two chambers so differently constituted it will have the less reason for offering any obstacle to their progress.

A possible objection.

282. The objection may be raised to our proposal for joint sessions that the non-official members of the assembly will be swamped by the official members of the Council of State in combination with the official members of the assembly. We think that this criticism will be disposed of by further consideration of the figures. The assembly will consist of, let us say, at last 78 non-official, and at most 22 official, members. The Council of State will consist of 25 non-officials, and at most 25 officials, because the whole number of officials in either chamber need not necessarily be appointed. In a full joint session, however, there might be 103 non-officials, and about 40 officials, because the members of the Governor-General's Executive Council will be members of both bodies. But we have provided that the official members of the assembly may also be nominated to membership of the Council

of State, and we imagine that this will be the rule rather than the exception. It would be difficult, and also inadvisable, from the point of view of departmental business, to bring 40 official members to the meetings of the legislative bodies, and we conceive therefore that, including the members of the executive council, the official element in a joint session might be taken at 30. Moreover, in debates on a non-certificated Bill, official members would be left free to vote and speak as they please, and therefore should not be expected to act as a solid body. In these calculations we have classed together the nominated non-officials and the elected members of both chambers. But the 15 nominated non-officials will be nominated to represent particular interests, and we see no reason to anticipate that they will act less consistently than they have done in the past with their elected fellow-representatives.

Powers of dissolution, assent, etc.

283. The Governor-General should in our opinion have power at any time to dissolve either the Legislative Assembly or the Council of State, or both these bodies. It is perhaps unnecessary to add that the Governor-General and the Secretary of State should retain their existing powers of assent, reservation, and disallowance to all Acts of the Indian legislature. The present powers of the Governor-General in Council under section 71 of the Government of India Act, 1915, to make regulations proposed to him by local Governments for the peace and good government of backward tracts of territory should also be preserved, with the modification that it will in future rest with the head of the province concerned to propose such regulations to the Government of India.

Fiscal legislation. Effect of resolutions.

284. Fiscal legislation will, of course, be subject to the procedure which we have recommended in respect of Government Bills. The budget will be introduced in the Legislative Assembly but the Assembly will not vote it. Resolutions upon budget matters and upon all other questions whether moved in the Assembly or in the Council of State will continue to be advisory in character. We have already given our reasons for holding that it is not feasible to give resolutions a legal sanction. But since resolutions will no longer be defeated in the assembly by the vote of an official majority they will, if carried, stand on record as the considered opinion of a body which is at all events more representative than the legislative Council which it dis-

placed. That in itself will mean that the significance of resolutions will be enhanced ; there will be a heavier responsibility upon those who pass them, because of their added weight ; and the Government's responsibility for not taking action upon them will also be heavier. It will be, therefore, incumbent on Government to oppose resolutions which it regards as prejudicial with all the force and earnestness that it can command in the hope of convincing the assembly of their undesirability. There must, however, remain to the Government power not to give effect to any resolution which it cannot reconcile with its responsibility for the peace, order, and good government of the country.

Standing committees.

285. We wish to apply the procedure of standing committees, described in the last chapter, as far as may be to both portions of the Indian legislature. The committees would be drawn jointly from the Assembly and the Council of State. We do not overlook the difficulties entailed by the nature of many of the subjects with which the central Government is concerned, and also by the comparative infrequency with which, owing to considerations of distance, such committees can assemble. The fact that many matters of ordinary internal administration will in future be left to provincial Governments also limits the scope of utility of standing committees in the central legislature. We would leave it to the Government of India to decide with what departments standing committees can be associated ; and to the member in charge to decide what matters can be referred to the committee. Our idea is that the non-official members of the Assembly and Council of State might elect by ballot in proportion to their respective strength two-thirds of the members of each committee while Government nominates the remaining one-third. It is obvious that these committees cannot play such an important part in the work of the Government as the similar committees which we have suggested in the provinces. It will be difficult to obtain their assistance in practice, except during the session or immediately before and after it, but we think there should be no difficulty ordinarily in obtaining their views on important new projects, whether legislative or administrative. Their functions might be determined by regulations to be made by the Governor-General in Council.

Questions and rules of procedure.

286. A few subsidiary matters of minor importance remain to be dealt with. We think that any member of the Assembly or the Council of State (and not merely the member who

asks the original questions) should have the right to put supplementary questions. The control of questions in both bodies should be regulated on lines similar to those which we have suggested in the case of provincial councils; and the question of restrictions upon resolutions should also be similarly treated. But apart from matters affecting the powers of the legislature we think that the rules of procedure for both bodies should be made in the first instance by the Governor-General in Council. The Assembly and the Council of State should both have power to modify their rules with the sanction of the Governor-General. The approval of the Secretary of State and Parliament should not be required.

An Indian Privy Council.

287. We have a further recommendation to make. We would ask that His Majesty may be graciously pleased to approve the institution of a Privy Council for India. For time to time projects of this kind have been mooted and laid aside; but with the changed conditions we believe that such a body would serve a valuable purpose and do useful work. India for all its changing ideas is still ready to look up with pride and affection to any authority clothed with attributes that it can respect and admire. Appointments to the Privy Council should be made by the King-Emperor, and for life, which would ensure that they would be valued as a high personal distinction. Officials and non-officials, both from British India and the Native States, would be eligible; but it would be necessary to confine appointment to those who had won real distinction, or had held or were holding the highest offices, such as Members of the Governments, Ruling Princes, Members of the Council of State and High Court Judges. Indian Privy Councillors should enjoy the title of "Honourable" for life. The Privy Council's office would be to advise the Governor-General when he saw fit to consult it on questions of policy and administration. It is our hope that for one purpose or another committees of the Council comparable to those of the Privy Council in England, which have done such valuable work in connexion with industrial and scientific research and education, will be appointed.

Periodic commission.

288. At the end of the last chapter we recommended that ten years after the institution of our reforms, and again at intervals of twelve years thereafter, a commission approved by Parliament should investigate the working of the changes introduced into the pro-

vinces, and recommend as to their further progress. It should be equally the duty of the commission to examine and report upon the new constitution of the Government of India, with particular reference to the working of the machinery for representation, the procedure by certificate, and the results of joint sessions. The commission will doubtless, if they see fit, have proposals to make for further changes in the light of the experience gained. There is no need for us at this stage to attempt to anticipate the line which their recommendations may take.

Summary.

289. Let us now sum up our proposals. We seek to create an enlarged Legislative Assembly with an elective majority; to reserve to the decision of the Council of State, in which the Government will command a bare majority, only those measures which it must have power to carry in the discharge of its continuing responsibility for the good government of the land; to restrict the official *bloc* to the smallest dimensions and the least frequent activity that is compatible with the same guiding principle; to institute a Privy Council of India as a means of honouring and employing ripe wisdom or meritorious service; to admit a second Indian member into the innermost counsels of the Indian Government. It is true that we do not offer responsibility to elected members of the Legislative Assembly; and that we define the sphere in which the Government will defer to the wishes of the elected members not by specific directions in a schedule, as we have done in the provinces, but by a general prescription which we leave the Government to interpret. But we have carried the advance right up to the line beyond which our principles forbid us to go; and by confining the use of the special machinery of autocracy to essential cases where a public declaration of necessity must be made we have gone definitely beyond the position implied in the Morley-Minto reforms. If there be among Indian politicians those who are impatient of any delay that they encounter on their way to occupy the citadel they may remind themselves how often before in Indian history has it been said '*Hanoz Dihli dur ast*' *. Impatience we cannot, and ought not, to seek to satisfy. What we have done is to afford Indians a fair share in the government of the entire country, while providing in the provinces the means for them to attain the stage of responsible government to which the beginning of responsibility for the Government of India itself must be the sequel.

* 'Delhi is yet afar off.'

II.—*The India Office.*

Powers of the Secretary of State.

290. It now remains for us to examine the effect of our proposals upon the position of the Secretary of State for India in Council and the control which Parliament exercises through him over all the Governments in India. We have already explained how the Act of 1858, which brought the East India Company to an end, set up the Secretary of State with the Council of India to assist him, as the Minister of State responsible for Indian affairs. In the language of the existing law the Secretary of State has power to "superintend, direct and control all acts, operations and concerns which relate to the Government or revenue of India and all grants of salaries, gratuities and allowances and all other payments and charges, out of or on the revenues of India." Again, section 21 of the Government of India Act, 1915, reads as follows :—"The expenditure of the revenues of India, both in British India and elsewhere, shall be subject to the control of the Secretary of State in Council ; and no grant or appropriation of any part of those revenues, or any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, or this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council of India."

Delegation to the Government of India. In transferred matters.

291. It has been, of course, impossible in practice that the affairs of a vast and remote Asiatic dependency should be administered directly from Whitehall; and, as we have seen, large powers and responsibilities have always been left by the Secretary of State to the Government of India and again by the Government of India to local Governments. At the same time, the Secretary of State's responsibility to Parliament has set very practical limits to the extent of the delegation which he can be expected to sanction. Now that His Majesty's Government have declared their policy of developing responsible institutions in India—we are satisfied that Parliament must be asked to assent to set certain bounds to its own responsibility for the internal administration of that country. It must, we think, be laid down broadly that, in respect of all matters in which responsibility is entrusted to representative bodies in India, Parliament must be prepared to forego the exercise of its own power of control, and that

this process must continue *pari passu* with the development of responsible government in the provinces and eventually in the Government of India. The process should, we think, begin with the conclusions arrived at on the report of the committee which will consider the question of transferred subjects. Having taken their report and the views of the Government of India upon it into consideration the Secretary of State would, we imagine, ask Parliament's assent to his declaring by statutory orders which he would be empowered to make under the Act that such and such subjects in the various provinces have been transferred; and when Parliament has assented to such orders the Secretary of State would cease to control the administration of the subjects which they covered. The discussion of such matters by Parliament in future would be governed by the fact of their transfer. We appreciate the difficulties of the situation; but it must be recognized that it will be impossible for Parliament to retain control of matters which it has deliberately delegated to representative bodies in India. At the same time, it will be necessary to ensure that the Secretary of State is in a position to furnish Parliament with any information upon Indian affairs that it desires; and nothing in our proposals should be taken as intended to impair the liability of the Government of India and the provincial Governments to furnish such information to the India Office at any time.

And in reserved matters.

292. So far we have had in mind only the transferred subjects. But even as regards reserved subjects, while there cannot be any abandonment by Parliament of ultimate powers of control, there should, as we have indicated already, be such delegation of financial and administrative authority as will leave the Government of India free, and enable them to leave the provincial Governments free, to work with the expedition that is desirable. On the purely financial side this delegation will involve an examination of the various codes and other regulations and orders, which we have already described as limiting too straitly the power of the authorities in India. This matter is already being examined in India, and the Government of India will make proposals to the Secretary of State in Council. On the purely administrative side there are as we have seen no general orders, like those embodied in the financial codes, prescribing the matters for which the Secretary of State's sanction is required. But in an earlier chapter we gave an illustrative list of the subjects regarded as falling within that category; and

generally speaking, it is well understood that all important new departures require his previous approval. The drawing of the line between the important and unimportant can only be left to the common sense of the authorities in India and at Home. But we are agreed that a wider discretion ought henceforth to be left to the Governor-General in Council; and that certain matters which are now referred Home for sanction might in future be referred merely for the information of the Secretary of State in Council. The exact definition of these particular matters must also be pursued at greater leisure and the Government of India will take this question in hand. It will follow in such cases in future that when the policy of the executive Government in India is challenged Parliament must be asked to accept the explanation that in accordance with deliberate policy the Government of India have been given discretion in respect of the topic in question and that for this reason the Secretary of State is not prepared to interfere with what has been settled in India. It is not part of our plan to make the official Governments in India less amenable to the control of Parliament than hitherto. It must be for Parliament itself to determine the limits which it will set to the exercise of its own powers. On the other hand, intervention by Parliament may involve intervention by the Government of India in matters which otherwise would be recognized as of provincial concern. It will be distracting both to the Government of India and the provincial Governments if the operation of this principle of discretionary delegation is left either to the idiosyncrasies of Secretaries of State, or to the disposition of party forces in Parliament. We hope, therefore, that Parliament will assent to facilitate the working of our reforms by a provision authorizing the Secretary of State, by rules to be laid before Parliament, to divest himself of control of the Government of India in some specified matters even although these continue to be the concern of the official Governments, and to empower the Government of India to do likewise in relation to provincial Governments. On large matters of policy in reserved subjects there can, of course, be no question of such delegation.

Organization of the India Office.

293. It will be seen that our proposals involve material alterations in the functions of the India Office; and in conformity with these we think that its organization should be reconsidered. This obviously can best be done by a committee sitting in London for the purpose. We propose that such a

committee should be appointed forthwith. Without attempting to draft the terms of the reference to it we may suggest the main principles by which its deliberations should be guided. The India Office should in future be so organized as to discharge its functions as expeditiously as possible. Knowledge is an important element in coming rapidly to a right decision; and hence it is almost as essential now as it was in 1858 that the Secretary of State should be in a position to command expert advice. It is necessary that Parliament should be satisfied, and expedient that the Government of India should be satisfied, that the decisions conveyed in orders from the India Office have been arrived at after consideration of the advice of those whose knowledge of India is greater than that of the Secretary of State. But such advice needs to be informed with recent acquaintance with a changing India; and for this reason it will probably be well to modify the present constitution of the Council of India, and to arrange if not for the recruitment of the India Office staff from the Indian Civil Service, at least for some interchange of personnel between the staff of the India Office and the public services in India. Either method would have the advantage of enabling an Indian element to be employed at the India Office otherwise than on the Council of India.

Relations of the Secretary of State with Parliament.

294. But whatever control over Indian affairs the Secretary of State keeps he keeps in the name of Parliament; and it will not suffice to improve the agent so long as his relations with his principal are not what they should be. Of all the great departments of the State the India Office is at present the least concerned with Parliament. Parliamentary control cannot in fact be called a reality. Discussion is often out of date and ill-informed; it tends to be confined to a little knot of members, and to stereotyped topics; and it is rarely followed by any decision. We fully realize the other pre-occupations of Parliament, and yet we are sure that means must be found of enabling it to take a real and continuous interest in India. No one would wish matters that ought to be discussed and settled in India to be debated and decided in Parliament; but there remain large questions of policy with which only Parliament can deal. We are anxious that Parliament should be in a position to take them up with interest and to decide them with knowledge. We have already made one important proposal—that for periodic commissions to deal with the political progress

of India—which will be of value for this purpose. We will add two further suggestions. We advise that the Secretary of State's salary, like that of all other ministers of the Crown should be defrayed from Home revenues and voted annually by Parliament. This will enable any live questions of Indian administration to be discussed by the House of Commons in Committee of Supply. On previous occasions when this proposal has been made it has encountered the objection that it would result in matters of Indian administration being treated as party questions. Without entering into speculations as to the future of parties in Parliament we do not see why this result would follow from such a debate more than from the existing debate on the budget; and in any case the proposal which we make in the next paragraph would do something to prevent it. It might be thought to follow that the whole charges of the India Office establishment should similarly be transferred to the Home Exchequer; but this matter is complicated by a series of past transactions, and by the amount of agency work which the India Office does on behalf of the Government of India; and we advise that our proposed committee upon the India Office organization should examine it and, taking these factors into consideration, determine which of the various India Office charges should be so transferred, and which can legitimately be retained as a burden on Indian revenues.

A select committee on Indian affairs.

295. But the transfer of charges which we propose although it will give reality to the debates on Indian affairs, will not ensure in Parliament a better informed, or a more sustained, interest in India. We feel that this result can only be accomplished by appointing a select committee of Parliament on Indian affairs. We have considered whether such a committee should be drawn jointly from both Houses. But it is in the House of Commons that effective control over the Indian administration will be exercised by means of the debate on the estimates; and also it is to the House of Commons that the comments in the preceding paragraph mainly apply. We recommend, therefore, that the House of Commons should be asked to appoint a select committee on Indian affairs at the beginning of each session. Such a select committee would, like other select committees, exercise its powers by informing itself from time to time upon Indian questions, and by reporting to the House before the annual debate on the Indian estimates. Like other select committees it would have no administrative

functions. The Secretary of State would appear before it to answer questions about those aspects of Indian administration in which he, and therefore Parliament, continued to exercise the right to interfere. Thus by means of interrogations and requisitions for papers the members of the committee would keep themselves informed upon Indian questions. To such a select committee Indian Bills might be referred after their second reading. There would thus soon grow up a body of men in Parliament who took a continuous and well-informed, interest in Indian questions; and by the committee's reports the House of Commons would be invited to focus their attention in the debate on the budget on matters of importance which had arisen during the year. There is, we may repeat, no inconsistency in distinguishing between the general direction and the execution of policy, nor in desiring at one and the same time, that the directing power shall be more interested and better informed and that the executive agents shall be given a larger measure of discretion within the limits laid down for them.

PART VII.

SELECT DOCUMENTS ILLUSTRATING THE RELATIONS BETWEEN THE BRITISH GOVERNMENT AND THE NATIVE STATES OF INDIA.

I. DOCUMENTS RELATING TO HYDERABAD.

A. Treaty with the Nizam.*

Dated the 21st May, 1853.

Whereas friendship and union have subsisted for a length of time between the Honourable East India Company and His Highness the Nawab Nizam-ool-Moolk Ausuph Jah Bahadoor, and have been cemented and strengthened by treaties of general defence and protection ; and whereas in the lapse of time many changes in the condition of Princes and neighbouring States have taken place, by reason of which it has now become expedient to revise the military arrangements that were formerly agreed upon for the fulfilment of the said Treaties ; and whereas differences and discussions have for some time existed between the contracting parties regarding the adjustment of charges connected with portions of the military arrangements subsisting between the States ; and whereas it is fit and proper, and for the mutual advantage of both powers, that such differences should now be finally settled, and that the recurrence of such discussions, which tend to disturb the friendship and harmony of the contracting parties, should effectually be prevented : wherefore the Honourable East India Company and His Highness the Nawab Nizam-ool-Moolk Ausuph Jah Bahadoor have agreed upon the following Articles of a Treaty between the States :—

Article 1. The peace, union, and friendship so long subsisting between the Honourable East India Company and His Highness the Nawab Nizam-ool-Moolk Ausuph Jah Bahadoor shall be perpetual ; the friends and enemies of either shall

* Aitchison's Treaties &c., Vol. ix, p. 93.

be the friends and enemies of both ; and the contracting parties agree that all the former Treaties and agreements between the two States now in force, and not contrary to the tenor of this engagement, shall be confirmed by it.

Article 2. The subsidiary force, which for general defence and protection has been furnished by the Honourable East India Company to His Highness the Nizam, shall be continued, and shall consist, as heretofore, of not less than eight battalions of sepoys, and two regiments of cavalry, with their requisite complement of guns, and European artillerymen, fully equipped with warlike stores and ammunition.

Unless with the express consent of His Highness, there shall never be less than five regiments of infantry, and one of cavalry (with a due proportion of artillery) of the said subsidiary force stationed within the territories of His Highness, and the residue of such subsidiary force shall at all times be brought into His Highness's territories without delay, on His Highness making requisition therefor.

The said subsidiary force shall be employed when required to execute services of importance, such as protecting the persons of His Highness, his heirs and successors, and reducing to obedience all rebels and exciters of disturbance in His Highness's dominions ; but it is not to be employed on trifling occasions, or like sebundee, to be stationed in the country to collect revenue.

Article 3. The Honourable East India Company further agrees that in lieu of His Highness's present contingent, it shall maintain for His Highness, his heirs and successors, an auxiliary force which shall be styled the "Hyderabad Contingent," according to the provisions for the maintenance of that force which are detailed in 6th Article of this Treaty.

It shall consist of not less than five thousand infantry and two thousand cavalry, with four field batteries of artillery. It shall be commanded by British officers fully equipped and disciplined and controlled by the British Government, through its representative the Resident at Hyderabad.

Whensoever the services of the said contingent may be required, they shall be afforded at all times to His Highness the Nizam, fully and promptly, throughout his whole dominions. If rebellion or disturbance shall be excited, or if the just claims and authority of His Highness shall be resisted, the said contin-

gent, after the reality of the offence shall have been duly ascertained, shall be employed to reduce the offenders to submission.

Article 4. As the interests of the two States have long been identified, it is further mutually agreed that if disturbances shall break out in the districts belonging to the Honourable East India Company, His Highness the Nizam shall permit such portions of the subsidiary force as may be requisite, to be employed in quelling the same within the said districts. In like manner, if disturbances shall break out in any part of His Highness's dominions contiguous to the territories of the Honourable East India Company, to which it might be inconvenient, owing to the distance from Hyderabad to detach any portion of the subsidiary force, the British Government, if required by His Highness the Nizam, shall direct such portions of its troops as may be most available to assist in quelling the disturbances within His Highness's dominions.

Article 5. In the event of war His Highness the Nizam engages that the subsidiary force, joined by the Hyderabad Contingent, shall be employed in such manner as the British Government may consider best calculated for the purpose of opposing the enemy, provided that two battalions of sepoys shall always remain, as settled by former Treaties, near to the capital of Hyderabad; and it is also hereby agreed that, excepting the said subsidiary and contingent forces, His Highness shall not under any circumstances be called upon to furnish any other troops whatsoever.

Article 6. For the purpose of providing the regular monthly payment to the said contingent troops and payment of Appa Dessaye's chout, and the allowances to Muhiput Ram's family, and to certain Mahratta pensioners, as guaranteed in the 10th Article of the Treaty of 1822, and also for payment of the interest at six per cent per annum of the debt due to the Honourable Company, so long as the principal of that debt shall remain unpaid, which debt now amounts to about fifty lakhs of Hyderabad Rupees the Nizam hereby agrees to assign the districts mentioned in the accompanying Schedule marked A, yielding an annual gross revenue of about fifty lakhs of Rupees, to the exclusive management of the British Resident for the time being at Hyderabad, and to such other officers, acting under his orders, as may from time to time, be appointed by the Government of India to the charge of those districts.

Article 7. By the 12th Article of the Treaty of 1800 the British Government can in time of war call upon that of His Highness the Nizam to furnish nine thousand cavalry and six thousand infantry to accompany the British troops in the field; the present Hyderabad Contingent, which is to be maintained at all times (whether in peace or war), is accepted as an equivalent for the larger body of troops above specified to be furnished in time of war; and it is accordingly hereby declared that the Nizam shall not be called upon at any time by the British Government to furnish any other troops but those of the subsidiary force and the Hyderabad Contingent, and that part of the 12th Article of the Treaty of 1800, which requires the Nizam to furnish nine thousand cavalry and six thousand infantry is accordingly hereby annulled.

Article 8. The districts mentioned in Schedule A are to be transferred to Colonel Low, C. B., the Resident, immediately that the ratified Treaty shall be received from Calcutta; and that officer engages on the part of the British Government, that the Resident at the Court of Hyderabad for the time being shall always render true and faithful accounts every year to the Nizam of the receipts and disbursements connected with the said districts, and make over any surplus revenue that may exist to His Highness, after the payment of the contingent and the other items detailed in Article 6 of this Treaty.

Article 9. This treaty, consisting of nine Articles, being this day concluded and settled by Colonel John Low, C. B., on behalf of the Honourable the English East India Company, with the Nawab Nizam-ool-Moolk Ausuph Jah Bahadoor, Colonel Low has delivered one version thereof, in English and Persian, signed and sealed by himself, to the Nawab, who on his part has also delivered one copy of the same to Colonel Low, duly executed by His Highness; and Colonel Low hereby engages to deliver a copy of the same to His Highness the Nizam, duly ratified by the Governor-General in Council, within thirty days from this date.

B. Translation of a Sunnud from the Nizam's Government.*

Dated 10th July, 1861.

Whereas many Europeans, foreigners and others, descendants of Europeans, and born in India, are resident in the territory of His Highness the Nizam; and as disturbances arise

* Aitchison's Treaties, Vol. ix, p. 107.

amongst themselves and the inhabitants of the said territory ; it is hereby made known by the Nizam's Government that, in the event of any dissension or dispute arising among the classes aforenamed within the said territory, except those employed by this Circar and its dependants, the Resident at Hyderabad, or other officer or officers whom he may from time to time consider it desirable to vest with the same, shall be empowered to enquire into and punish any such offences.

C. Adoption Sunnud granted to His Highness the Nizam of Hyderabad—1862.*

Her Majesty being desirous that the Governments of the several Princes and Chiefs of India who now govern their own territories should be perpetuated, and that the representation and dignity of their Houses should be continued ; I hereby, in fulfilment of this desire, convey to you the assurance that on failure of natural heirs any succession to the Government of your State, which may be legitimate according to Mahomedan law, will be upheld.

Be assured that nothing shall disturb the engagement thus made to you so long as your House is loyal to the Crown and faithful to the conditions of the Treaties, grants or engagements which record its obligaton to the British Government.

Dated 11th March, 1862. (Sd.) CANNING.

D. Extradition Treaty between Her Majesty the Queen of Great Britain and His Highness the Nizam.—1867.†

Article 1. The two Governments hereby agree to act upon a system of strict reciprocity, as hereinafter mentioned.

Article 2. Neither Government shall be bound in any case to surrender any person not being a subject of the Government making the requisition. If the person claimed should be of doubtful nationality, he shall, with a view to promote the ends of justice, be surrendered to the Government making the requisition.

Article 3. Neither Government shall be bound to deliver up debtors or civil offenders, or any person charged with any offence not specified in Article 4.

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* Aitchison's Treaties, Vol. ix, p. 108.

† Aitchison's Treaties, Vol. ix, p. 108.

Article 4. Subject to the above limitations, any person who shall be charged with having committed within the territories belonging to, or administered by, the Government making the requisition any of the undermentioned offences, and who shall be found within the territories of the other, shall be surrendered :—The offences are mutiny, rebellion, murder, attempting to murder, rape, great personal violence, maiming, dacoity, thuggee, robbery, burglary, *kidnapping*,* *abduction*, knowingly receiving property obtained by dacoity, robbery, or burglary, thefts of property exceeding 100 Rupees in value, cattle-stealing, breaking and entering a dwelling house and stealing therein, setting fire to a village, house, or town, forgery, or uttering forged documents, counterfeiting current coin, knowingly uttering base or counterfeit coin, embezzlement, whether by public officers or other persons, and being an accessory to any of the abovementioned offences.

Article 5. In no case shall either Government be bound to surrender any person accused of any offence, except upon requisition duly made by, or by the authority of, the Government within whose territories the offence shall be charged to have been committed, and also upon such evidence of criminality as, according to the laws of the country in which the person accused shall be found, would justify his apprehension and sustain the charge if the offence had been there committed.

Article 6. The above Treaty shall continue in force until either one or the other of the high contracting parties shall give notice to the other of its wish to terminate it, and no longer.

Article 7. All existing engagements and agreements shall continue in full force.

E. Agreement made between His Highness the Nizam and the Government of India—1887†

Whereas a Treaty relating to the extradition of offenders was concluded on the 25th May, 1867 between the British Government and the Hyderabad State; and whereas the procedure prescribed by the Treaty for the extradition of offenders from British India to the Hyderabad State has been found by experience to be less simple and effective than the procedure

* These have been added subsequently to the list in 1884.

† Aitchison's Treaties Vol. ix, p. 110.

prescribed by the law as to the extradition of offenders in force in British India ; it is hereby agreed between the British Government and the Hyderabad State that the provisions of the Treaty prescribing a procedure for the extradition of offenders shall no longer apply to cases of extradition from British India to the Hyderabad State, but that the procedure prescribed by the law as to the extradition of offenders for the time being in force in British India shall be followed in every such case.

F. Agreement made between the Government of His Highness the Nizam of Hyderabad and the Government of India—1900.*

Whereas His Highness Asaf Jah, Muzaffar-ul-Mamalik, Nizam-ul-Mulk, Nizam ud-Daulah, Nawab Mir Mahbub Ali Khan Bahadur, Fatteh Jung, G. C. S. I., Nizam of Hyderabad (Deccan), maintains a force of Imperial Service Troops for the purpose of co-operating, if need be, in the defence of the British Empire, and

Whereas it is necessary that the Imperial Service Troops of the Hyderabad State, when associated with troops of the British Army, should be under the orders of the Officer Commanding the combined forces, and subject to the like discipline and control as the officers and soldiers of Her Majesty's Indian Army, and

Whereas it is not the wish or intention of the Government of India that a British Officer should be appointed to command any corps of Imperial Service Troops, though British officers are employed in order to assist in the instruction of and inspect the said troops,

It is hereby agreed between the Governor-General of India of the one part and His Highness Asaf Jah, Muzaffar-ul-Mamalik, Nizam-ul-Mulk, Nizam-ud-Daulah, Nawab Mir Mahbub Ali Khan Bahadur, Fatteh Jung, G. C. S. I., Nizam of Hyderabad, of the other, as follows, namely—

1. Whenever the said troops or any portion thereof are moved beyond the frontiers of the said State, and so long as they remain beyond those frontiers, they, together with their own commanding officer, shall be attached to the command and be under the orders of the British Officer Commanding the District, Contingent or Force in or with which they are employed or associated.

* Aitchison's Treaties, Vol. ix, p. 176.

2. The aforesaid British officer shall, by virtue of this agreement, be authorised to administer in respect of the said troops, so serving beyond the frontiers of the said State, the Military laws and regulations to which they are subject under the laws of the said State and for that purpose and for the due preservation of discipline among the same to convene all such Courts, and to issue all such orders, and to pass all such judgments and sentences, and generally to exercise all such authority as may be lawfully convened, issued, passed and exercised by the authorities of the Hyderabad State when the said troops are serving within the territorial limits of the said State : Provided always that the execution of every sentence so passed beyond the territorial limits of the said State shall be carried out with the sanction and under the orders of His Highness Asaf Jah, Muzaffar-ul-Mamalik, Nizam-ul-Mulk, Nizam-ud-Daulah, Nawab Mir Mahbub Ali Khan Bahadur, Fatteh Jung, G. C. S. I., Nizam of Hyderabad, or of some person to whom the requisite authority in this behalf has been expressly delegated by him.

3. In order further to ensure the efficiency of the said Imperial Service Troops, and the maintenance of discipline among them when serving along with Her Majesty's forces, His Highness Asaf Jah, Muzaffar-ul-Mamalik, Nizam-ul-Mulk, Nizam-ud-Daulah, Nawab Mir Mahbub Ali Khan Bahadur, Fatteh Jung, G. C. S. I., Nizam of Hyderabad, has embodied in the disciplinary law of his State, applicable to the said Imperial Service Troops when employed on active service either within or without British India, the provisions, with necessary modifications, of the Indian Articles of War for the time being in force.

4. The due application and enforcement of the said provisions in respect of the Imperial Service Troops aforesaid shall be carried out under the authority of the British Officer commanding the District, Contingent or Force aforesaid.

II. DOCUMENTS RELATING TO MYSORE.

A. Proclamation.*

Dated the 30th March, 1868.

His Excellency the Right Hon'ble the Viceroy and Governor-General in Council announces to the Chiefs and people of Mysore the death of His Highness the Maharajah Krisnaraj Wadiar Bahadoor, Knight Grand Commander of the Most Exal

* Aitchison's Treaties &c., Vol. ix, p. 230.

ted Order of the Star of India. This event is regarded with sorrow by the Government of India, with which the late Maharajah had preserved relations of friendship for more than half a century.

His Highness Chamrajendra Wadiar Bahadoor, at present a minor, the adopted son of the late Maharajah, is acknowledged by the Government of India as his successor and as Maharajah of the Mysore Territories.

During the minority of His Highness, the said territories will be administered in His Highness's name by the British Government, and will be governed on the same principles and under the same regulations as heretofore.

When His Highness shall attain to the period of majority, that is, the age of eighteen years, and if His Highness shall then be found qualified for the discharge of the duties of his exalted position, the Government of the country will be entrusted to him, subject to such conditions as may be determined at that time.

B. Instrument of Transfer*—1881.

Whereas the British Government has now been for a long period in possession of the territories of Mysore and has introduced into the said territories an improved system of administration : and whereas, on the death of the late Maharajah the said Government, being desirous that the said territories should be administered by an Indian dynasty under such restrictions and conditions as might be necessary for ensuring the maintenance of the system of administration so introduced, declared that if Maharajah Chamrajendra Wadiar Bahadur, the adopted son of the late Maharajah, should, on attaining the age of eighteen years, be found qualified for the position of ruler of the said territories, the Government thereof should be intrusted to him, subject to such conditions and restrictions as might be thereafter determined : And whereas the said Maharajah Chamrajendra Wadiar Bahadur has now attained the said age of eighteen years and appears to the British Government qualified for the position aforesaid, and is about to be intrusted with the Government of the said territories : And whereas it is expedient to grant to the said Maharajah Chamrajendra Wadiar Bahadur a written Instrument defining the conditions subject to which he will be so intrusted : It is hereby declared as follows :—

* Aitchison's Treaties &c., Vol. ix, p. 231.

1. The Maharajah Chamrajendra Wadiar Bahadur shall, on the twentyfifth day of March, 1881, be placed in possession of the territories of Mysore, and installed in the administration thereof.

2. The said Maharajah Chamrajendra Wadiar Bahadur and those who succeed him in manner hereinafter provided shall be entitled to hold possession of, and administer, the said territories as long as he and they fulfil the conditions hereinafter prescribed.

3. The succession to the administration of the said territories shall devolve upon the lineal descendants of the said Maharajah Chamrajendra Wadiar Bahadur, whether by blood or adoption, according to the rules and usages of his family, except in case of disqualification through manifest unfitness to rule :

Provided that no succession shall be valid until it has been recognized by the Governor-General in Council.

In the event of a failure of lineal descendants, by blood and adoption, of the said Maharajah Chamrajendra Wadiar Bahadur, it shall be within the discretion of the Governor-General in Council to select as a successor any member of any collateral branch of the family whom he thinks fit.

4. The Maharajah Chamrajendra Wadiar Bahadur and his successors (hereinafter called the Maharajah of Mysore) shall at all times remain faithful in allegiance and subordination to Her Majesty the Queen of Great Britain and Ireland and Empress of India, Her Heirs, and Successors, and perform all the duties which in virtue of such allegiance and subordination may be demanded of them.

5. The British Government having undertaken to defend and protect the said territories against all external enemies, and to relieve the Maharajah of Mysore of the obligation to keep troops ready to serve with the British army when required, there shall, in consideration of such undertaking, be paid from the revenues of the said territories to the British Government an annual sum of Government Rupees thirty-five lakhs in two half-yearly instalments, commencing from the said twenty-fifth day of March, 1881.

6. From the date of the Maharajah's taking possession of the territories of Mysore, the British sovereignty in the island of Seringapatam shall cease and determine, and the said island

sulted. It can never be too often emphasised that we represent about one-third of the Indian Empire's population, and that no scheme for the progress of India can be regarded as satisfactory or complete which does not take into consideration questions relating to these important territories outside British India. We feel that we, too, must keep a definite goal in front of us, and whilst it is essential that our rights and provinces, our position as allies and friends, guaranteed to us by solemn treaties and engagements with the British Government, remain unaltered, our States cannot afford to lag behind in the general advance which India's association with Great Britain alone has rendered possible.

It is for these reasons that we are now all the more anxious to see the early establishment of a Constitutional Chamber which may safeguard the interests and rights of ourselves and of our States. As we clearly stated last year, we have no desire to encroach upon the affairs of British India any more than we we want outside interference in the affairs of our States and ourselves. It is hardly necessary, therefore, to repeat that we have no desire to claim a voice in the settlement of any matters other than those relating to ourselves and our States, or which are of Imperial or common concern.

* * * *

The need for an authoritative declaration of policy in regard to minority administrations was greatly felt, and the fact that the Government of India have stated in their resolution that the policy announced has the additional weight of the authority of His Imperial Majesty's Government will be all the more gratifying and reassuring.

We listened with special attention to what Your Excellency stated in regard to the question of successions in our States and the ceremonials to be observed at the accession and coming of age of the Ruling Princes. We desire to express to Your Excellency our grateful thanks for those modifications in regard to the ceremonial procedure of such occasions, which have been made in deference to the wishes we expressed at last year's conference. As the revised memorandum has only recently been placed before us, it is not possible for us to deal fully with any points on this occasion, but we will in due course address Your Excellency on the subject. We appreciate the consideration for our convenience which prompted the Government of India to alter the arrangements in regard to our visits to places in British India.

We are specially indebted to Your Excellency for securing the representation of the Ruling Princes at the recent Imperial War Cabinet and the Imperial War Conference in London, and we have noted with gratification Your Excellency's reference to our partnership in the innermost councils of the Empire. While offering our gratitude to Your Excellency nominating His Highness the Maharaja of Bikaneer to represent us, it is a matter of sincere gratification to us that Your Excellency's choice fell on one of our most distinguished members who upheld the traditions and dignity of our order and justified, as we are glad to learn from Your Excellency's speech, your selection and the confidence of the Imperial Government. With Your Excellency's valued assistance we confidently look forward to the continuation of special representation on behalf of the Ruling Princes in future meetings of the Imperial Cabinet and the Imperial Conference.

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E. Extracts from H. E. Lord Chelmsford's reply.

The Viceroy in reply said :—

Your Highnesses,—I am gratified to learn from the address which His Highness the Maharaja of Bikaneer has read on your behalf that my decision to hold these conferences annually, and to preside over them myself, has given you satisfaction, and I can assure you that to myself it has been not only a source of enlightenment and instruction, but also a very great personal pleasure to preside at your gathering and to listen to your debates. It would not be fitting for me on this occasion to speak at any length on your request now again repeated, for the early establishment of a Constitutional Chamber to represent your interests in matters of Imperial or joint concern. We have already recognised by the institution of these annual conferences the need for some assemblage for the discussion of matters affecting yourselves, your States and your peoples and Your Highnesses will not have failed to notice that our deliberations have in practice passed beyond the domain of purely State affairs into that of questions having a common interest to the States and to British India. I have deprecated the immediate institution of a more formal assemblage with a fixed constitution and strictly defined powers, for the reasons explained in my opening address. I do not, however, in any way wish to discourage Your Highnesses from devoting to the subject at once that earnest and deliberate consideration which its paramount

importance demands, and I can assure you that any scheme which you may put forward will receive the most careful and sympathetic consideration of my Government. It may be possible to arrange for a preliminary and quite informal discussion of the subject towards the close of Mr. Montagu's stay in India, and I shall lose no time in placing before him your views on the subject when they have been formulated. In the meanwhile I would suggest that you turn the matter over in your minds with a view to framing the outlines of a scheme which, while ensuring due scope for the representation of your views, will not infringe the principle to which you have given expression, namely, that the scope of any such assemblage which you may advocate shall be strictly limited to matters relating to yourselves and to your States, or which are of joint interest to yourselves and to the Government of India. In framing your scheme you will no doubt bear in mind the possibility of providing that the Chamber or Council which you would wish to bring into being should be so constituted as to permit of joint consultation with the high dignitaries of British India.

* * * * *

I rejoice to hear that our declaration on minority administrations and on the ceremonials connected with successions in your States have met with general approval, and while I would deprecate any further discussion, I shall of course, be prepared to consider carefully and sympathetically any individual representation which you may wish to address to me on these subjects. Your desire that the Ruling Princes should be specially represented in future meetings of the Imperial Cabinet and of the Imperial Conference will receive my careful attention, but this is a matter which, as Your Highnesses will recognise, raises somewhat wide issues, and I am not in a position at present to give any undertaking in the matter. I note with great satisfaction and gratitude Your Highnesses' assurance of your continued co-operation in the prosecution of the war, although after what you have already done in this direction no such assurance was needed. The aid by the great Ruling Princes towards the Imperial cause and their unflinching loyalty to the King-Emperor and his Crown, are matters of history, and I feel sure that when the war is over there will not be one among you who will not have cause to look back with legitimate pride and satisfaction to the services which his State has rendered to the cause of justice and freedom.

VIII. PROPOSALS REGARDING THE NATIVE STATES CONTAINED IN THE REPORT ON INDIAN CONSTITUTIONAL REFORMS BY THE RT. HON. MR. MONTAGU AND H. E. LORD CHELMSFORD.

Introductory.

296. As we have said already it is impossible to deal with the constitutional position in British India without also considering the problems presented by the Native States. India is in fact, as well as by legal definition, one geographical whole. The integral connexion of the States with the British Empire not only consists in their relations to the British Crown, but also in their growing interest in many matters common to the land to which they and the British provinces alike belong.

Position of the States.

297. Although compared with the British provinces the States are thinly populated, they comprise among them some of the fairest portions of India. The striking differences in their size, importance, and geographical distribution are due partly to variations of policy, partly to historical events, which no Government could control. Wherever consolidating forces were at work before the British advance occurred we find that large units of territory were constituted into States; wherever disorder or other disintegrating factors were at work longer, as in Bombay and Central India, we find a large number of fragmentary territories. "Political, as well as physical, geography bears witness to the stress of the destructive forces through which a country has passed." The policy of the British Government towards the States has changed from time to time, passing from the original plan of non-intervention in all matters beyond its own ring-fence to the policy of "subordinate isolation" initiated by Lord Hastings; which in its turn gave way before the existing conception of the relation between the States and the Government of India, which may be described as one of union and co-operation on their part with the paramount power. In spite of the varieties and complexities of treaties, engagements, and *sanads*, the general position as regards the rights and obligations of the Native States can be summed up in a few words. The States are guaranteed security from without; the paramount power acts for them in relation to foreign powers and other States, and it intervenes when the internal peace of their territories is seriously threatened. On the other hand the States' relations to foreign powers

are those of the paramount power; they share the obligation for the common defence; and they are under a general responsibility for the good government and welfare of their territories.

Effects of the war.

298. Now let us consider what factors have been at work to bring the Ruling Princes into closer relations with the Government of India. Foremost is the war. No words of ours are needed to make known the services to the Empire which the States have rendered. They were a profound surprise and disappointment to the enemy; and a cause of delight and pride to those who knew beforehand the Princes' devotion to the Crown. With one accord the Rulers of the Native States in India rallied to fight for the Empire when war was declared; they offered their personal services, and resources of their States. Imperial Service Troops from over a score of States have fought in various fields, and many with great gallantry and honour. The Princes have helped lavishly with men and horses, material and money, and some of them have in person served in France and elsewhere. They have shown that our quarrel is their quarrel; and they have both learned and taught the lesson of their own indissoluble connexion with the Empire, and their immense value as part of the polity of India.

Points of contact.

299. For many years, however, influences more persistent though less forceful, than war have been at work to increase the range of matters in which the States realize their solidarity with British India. A perceptible process of infiltration has been going on. We have helped the States in times of famine; we have lent them officers trained in British India to revise or supervise their revenue or financial administration, or to improve their agriculture and irrigation. Many of them have adopted our civil and criminal codes. Some have imitated, and even further extended, our educational system. Co-operation in matters of police and justice has been developed. Our railway and telegraph systems have been carried through and serve many of the States. The Indian customs tariff is a matter of concern to all States, including those which have ports of their own. It is, of course, true that external influences have not affected the States equally. They have not all been equally able to assimilate new principles. They are in all stages of development, patriarchal, feudal, or more advanced, while in a few States are found the beginnings of representative institutions. The characteristic features of all

of them, however, including the most advanced, are the personal rule of the Prince and his control over legislation and the administration of justice. Nor have any changes which have occurred in the least impaired the validity of the treaties which assured to the States their powers of internal administration. Indeed it may be said that in a composite society like India's, and in times when ideas are changing rapidly, the existence of States in which ideals of chivalry and personal devotion survive as the motive principle of government has been the more clearly seen to have an abiding value. The independence of the States in matters of internal administration carries with it the counter-obligation of non-interference in British Indian affairs. If the Princes were to intervene, either informally or formally, in the internal affairs of British India, such action would, we think, be reasonably questioned, unless the representatives of British India were given a corresponding right of influencing the affairs of the States. On either hand, we believe, there is no desire to cross the frontier. Rulers and politicians alike recognize that they are best employed in attending to their own progress. The obligation of mutual abstention must be always borne in mind in estimating the future position of the Native States in a changing Indian Empire.

Modern influences.

300. We know that the States cannot be unaffected by constitutional development in adjoining provinces. Some of the more enlightened and thoughtful of the Princes, among whom are included some of the best-known names, have realized this truth, and have themselves raised the question of their own share in any scheme of reform. Others of the Princes—again including some of the most honoured names—desire only to leave matters as they are. We feel the need for caution in this matter. It would be a strange reward for loyalty and devotion to force new ideas upon those who did not desire them; but it would be no less strange if, out of consideration for those who perhaps represent gradually vanishing ideas, we were to refuse to consider the suggestions of others who have been no less loyal and devoted. Looking ahead to the future we can picture India to ourselves only as presenting the external semblance of some form of 'federation.' The provinces will ultimately become self-governing units, held together by the central Government, which will deal solely with matters of common concern to all of them. But the matters common to the British provinces are also to a great extent those in which the Native States are

interested—defence, tariffs, exchange, opium, salt, railways, and posts and telegraphs. The gradual concentration of the Government of India upon such matters will, therefore, make it easier for the States, while retaining the autonomy which they cherish in internal matters, to enter into closer association with the central Government if they wish to do so. But, though we have no hesitation in forecasting such a development as possible, the last thing that we desire is to attempt to force the pace. Influences are at work which need no artificial stimulation. All that we need or can do is to open the door to the natural development of the future.

Evolution of the Chiefs' Conference.

301. In this respect the trend of recent events has helped. The desire to give greater reality to the consciousness of common interests is stirring among the Princes, and it is now possible and desirable to turn it to more practical account than our predecessors were able to do. Lord Lytton's proposal to constitute an Imperial Privy Council which should comprise some of the great Princes resulted only in the ephemeral and purely honorific body known as the Councillors of the Empress. Lord Dufferin's institution of Imperial Service Troops was of much greater value in giving actual and useful expression to the feeling of community of interests. Lord Curzon's plan for a Council of Ruling Princes and Lord Minto's schemes, first for an Imperial Advisory Council and then for an Imperial Council of Ruling Princes, were suggestions only a little in advance of the time. The idea which attracted his two predecessors gained fresh life as a result of the conferences which Lord Hardinge held with the Princes to consider questions of higher education in the States. Lord Hardinge made no secret of his desire to seek the collective opinion of the Princes as trusted colleagues whenever possible on matters affecting their Order; and in responding to His Excellency's invitation Their Highnesses the Maharajas of Gwalior and Indore also laid stress upon the essential identity of interest between the two halves of India. Lord Chelmsford carried the system of conferences further by utilizing them for the purpose of discussing general questions affecting the States as a whole; and His Highness the Gaekwar in welcoming the new development expressed the hope that what had by that time become an annual conference would develop into a permanent Council or Assembly of Princes. Moreover, only last year the claim of the States to be heard in matters of Imperial concern were signally recognized

by the deputation of His Highness the Maharaja of Bikaneer to the meeting of the Imperial Conference and the War Cabinet.

Effect of British policy. The term "Native States".

302. In view of the fact that constitutional changes in British India may react in an important manner on the Native States we have carefully considered their present relations with the Government of India. We became aware at the outset that, although the policy which has been followed for more than a century towards the States has been amply vindicated by the trust and confidence which the Princes as a body repose in the British Government, yet in some quarters uncertainty and uneasiness undoubtedly exist. Some Rulers are perturbed by a feeling that the measure of sovereignty and independence guaranteed to them by the British Government has not been accorded in full, and they are apprehensive lest in process of time their individual rights and privileges may be whittled away. We ascribe this feeling to two causes. In the first place, the expression "Native States" is applied now, and has been applied during the past century, to a collection of about seven hundred rulerships which exhibit widely differing characteristics, which range from States with full autonomy over their internal affairs to States in which Government exercises, through its agents, large powers of internal control, and even down to the owners of a few acres of land. Uniformity of terminology tends to obscure distinctions of status ; and practice appropriate in the case of the lesser Chiefs may be inadvertently applied to the greater ones also. We are convinced that it would improve and assist future relations between the Crown and the States if a definite line could be drawn separating the Rulers who enjoy full powers of internal administration from the others. Our own proposals in paragraphs 306 to 311, *infra*, assume that such classification can, and will, after due inquiry, be effected, and are intended to relate only to States of the former class.

Government intervention.

303. In the second place, we cannot disregard the fact that the general clause which occurs in many of the treaties to the effect that the Chief shall remain absolute Ruler of his country has not in the past precluded and does not even now preclude, "interference with the administration by Government through the agency of its representatives at the Native Courts." We need hardly say that such interference has not been employed in wanton disregard of treaty obligations. During the earlier

days of our intimate relations with the States British agents found themselves compelled, often against their will, to assume responsibility for the welfare of a people, to restore order from chaos, to prevent inhuman practices, and to guide the hands of a weak or incompetent Ruler as the only alternative to the termination of his rule. So, too, at the present day, the Government of India acknowledges, as trustee, a responsibility (which the Princes themselves desire to maintain) for the proper administration of States during a minority, and also an obligation for the prevention or correction of flagrant misgovernment.

Interpretation of treaties.

304. Moreover, we find that the position hitherto taken up by Government has been that the conditions under which some of the treaties were executed have undergone material changes, and the literal fulfilment of particular obligations which they impose has become impracticable. Practice has been based on the theory that treaties must be read as a whole, and that they must be interpreted in the light of the relations established between the parties not only at the time when a particular treaty was made, but subsequently. The result is that there has grown up around the treaties a body of case-law which anyone who is anxious to appreciate the precise nature of existing relations must explore in Government archives and in text books. The Princes, viewing the application of this case-law to their individual relations with Government, are uneasy as to its ultimate effect. They fear that usage and precedent may be exercising a levelling and corroding influence upon the treaty rights of individual States.

Need for re-examination of the position.

305. It is thus clear that some ambiguity and misunderstanding exist as to the exact position. The Government of India has already taken cognizance of this, and is affording opportunity for the verification of any specific complaints that may be made. We do not desire to say anything that might prejudice the issue of these inquiries. In the meanwhile, however, we suggest that the time has come when it would be well to review the situation, of course only by consent of parties, not necessarily with a view to any change of policy, but in order to simplify, standardize, and codify existing practice for the future. Before we pass on to state our own proposals we wish to say that we think that the Princes should be assured in the fullest and freest manner that no constitutional changes which

may take place will impair the rights, dignities, and privileges secured to them by treaties, *sanads* and engagements, or by established practice.

A Council of Princes.

306. We have explained how, on various occasions in recent years, the Princes have met in conference at the invitation of the Viceroy. These conferences have been of great value in assisting in the formulation of the Government's policy on important matters like minority administration and succession, and promoting interest in such questions as scientific agriculture and commercial and agricultural statistics. The meetings have given the Princes the opportunity of informing the Government as to their sentiments and wishes, of broadening their outlook, and of conferring with one another, and with the Government. But although the meetings have in the last few years been regular they depend upon the invitation of the Viceroy; and our first proposal is to replace them by the institution of a Council of Princes. We wish to call into existence a permanent consultative body. There are questions which affect the States generally, and other questions which are of concern either to the Empire as a whole, or to British India and the States in common, upon which we conceive that the opinion of such a body would be of the utmost value. The Viceroy would refer such questions to the council, and we should have the advantage of their considered opinion. We think it is all-important that the meetings should be regular, and that ordinarily the council should meet once a year to discuss agenda approved by the Viceroy. Any member of the council, or the council as a whole, might request the Viceroy to include in the agenda any subject on which discussion was desired. If questions of sufficient importance arose in the intervals between the annual meetings the Princes might suggest to the Viceroy that an extraordinary meeting should be held. We contemplate that the Viceroy should be president, and should as a rule preside, but that in his absence one of the Princes should be chairman. The rules of business would be framed by the Viceroy, after consultation with the Princes, who might perhaps from time to time suggest modifications in the rules. We believe that most of the Princes desire to see such a council created, although some of the most eminent among them have not taken part in the conferences in 1916 and 1917. The direct transaction of business between the Government of India and any State would, of course, not be affected by the institution of the council. We have used the

name "Council of Princes" to describe the body which we desire to see instituted. We have had difficulty, however, in finding a name appropriate to such a unique assembly. We wish to avoid a designation associated with other institutions, and to find one which will connote the real position of this body of Rulers, with the representative of the King-Emperor as chairman. From both these points of view the terms Council, or Chamber, or House of Princes, are open to criticism. There is much to be said in favour of an Indian name for an Indian body which, from the circumstances of the case, would exist nowhere else; but it would be necessary to choose one not peculiarly associated historically either with Hindus or with Muhammadans. While therefore we have adopted the term Council for temporary purposes we hope that discussion may produce some happier alternative.

Standing committee of the council.

307. It has been represented to us that difficulties have occurred in the past by reason of the fact that the Political Department comes to decisions affecting the Native States without being in a position to avail itself of the advice of those who are in a position to know from their own personal experience or the history of their States the right course to pursue. On matters of custom and usage in particular we feel that such advice would be of great value, and would help to ensure sound decisions. Our second proposal therefore is that the Council of Princes should be invited annually to appoint a small standing committee, to which the Viceroy or the Political Department might refer such matters. We need hardly say that no reference affecting any individual State would be made to the committee without the concurrence of its Ruler. The Council of Princes might appoint to the standing committee not only Princes but also Dewans or Ministers, who were willing to place their services at the disposal of the Viceroy when called upon for advice. This machinery is based on the principle of consultation which in so many matters underlies our recommendations in regard to British India.

Commissions of inquiry into disputes.

308. Our next proposal is concerned with disputes which may arise between two or more States, or between a State and a local Government or the Government of India, and with a situation caused when a State is dissatisfied with the ruling of the Government of India or the advice of any of its local representatives. In such cases there exists at the present

moment no satisfactory method of obtaining an exhaustive and judicial inquiry into the issues, such as might satisfy the States, particularly in cases where the Government of India itself is involved, that the issues have been considered in an independent and impartial manner. Whenever, therefore, in such cases the Viceroy felt that such an inquiry was desirable, we recommend that he should appoint a commission, on which both parties would be represented, to inquire into the matter in dispute and to report its conclusions to him. If the Viceroy were unable to accept the finding, the matter would be referred for decision by the Secretary of State. The commission that we have in mind would be composed of a judicial officer of rank not lower than a high court judge and one nominee of each of the parties concerned.

And into cases of misconduct.

309. In another class of cases we have a similar proposal to make. It has happened, and we conceive that it may happen though rarely in the future, that the question arises of depriving the Ruler of a State of his rights, dignities, and powers, or of debarring from succession a member of his family. If such cases occur in the future we think that they should be always referred to a commission to be appointed by the Viceroy to advise him. It should consist of five members, including ordinarily a high court judge and two Ruling Princes. The names of the commissioners should be intimated in advance to the defendant before they were appointed; and the proceedings of the commission should be made public only if the defendant so desired.

Relations with the Government of India.

310. Our two remaining proposals bear a direct relation to our constitutional scheme for British India. We recommend that as a general principle all important States should be placed in direct political relations with the Government of India. We feel that the necessity of communicating with the central Government through two, or even more, intermediaries is an obstruction to good understanding and a great obstacle to business. The present position is that while four large States and one small State deal directly with the Government of India through their Resident, there are in the Central India Agency some 150 States and in the Rajputana Agency some 20 States and in Baluchistan 2 States under the Agents to the Governor-General. The remaining States are in

political relations with local Governments. Madras deals with 5 States; Bombay with over 350; Bengal with 2; the United Provinces with 3; the Punjab with 34; Burma with 52; Bihar and Orissa with 26; the Central Provinces with 15; and Assam with 16. We have already laid stress in our report upon the need in domestic affairs for dividing matters of all-Indian, from those of provincial, concern. Now on general grounds the relations between the States and Government are clearly a matter for the central Government; and where this principle has been departed from it has been on grounds of history or convenience. It seems to us that the changing conditions of the time afford strong reason for affirming the principle, both because the institution of a Council of Princes will give greater solidarity to the views of the States, and also because the growth of responsibility in provincial Governments will to some extent unfit them to act in political matters as mere agents for the Government of India. There will, we recognize, be difficulty in some cases where the territories of the States and British provinces intersect, but such obstacles are not insurmountable. As a general principle, therefore, we recommend that all important States should be placed in direct political relations with the central Government. We do not intend, of course, that the Durbars should write direct to the Political Secretary, but that there should, wherever possible, be only one political officer through whom the State would correspond with the Government of India. This is already the case with the States of Hyderabad, Baroda, Mysore and Kashmir. In other cases, it will be necessary to revise the existing arrangements by which correspondence passes through a local Political Agent or Resident to an Agent to the Governor-General or a local Government and thence to the Government of India. Where the authority immediately subordinate to the Government of India is an Agent to the Governor-General the choice lies generally between abolishing the offices of local Political Agents or Residents, while transferring their functions to the Agent to the Governor-General, with an increased staff of assistants, and abolishing the post of Agent to the Governor-General, while retaining Residents accredited to States, or groups of States. In other cases, instead of abolishing either the Agent to the Governor-General or the Resident, where both officers exist, the Residents of particular States might be allowed to communicate direct with the Government of India, sending a copy of such communications to the Agent to the Governor-General for his information. The future position of other States which are

now in relation with provincial Governments cannot be determined immediately since both the wishes of the Durbars, and also the administrative advantages must be considered. It may be that the Government of India will assume direct relations with these States, or that they may be left for the time being in relation with the provincial Governments ; but in the latter case it seems to us that the head of the province should in each case act in his relations with the States as agent for the central Government, and that relations with the Native States should not be matters of provincial concern in the sense that they are intended ever to be transferred to the control of the legislative council.

Joint deliberation on matters of common interest.

311. Our last proposal is intended to provide some means of deliberation between the Government of India and the Princes on matters of common interest to both, and so to ensure that as far as possible decisions affecting India as a whole shall be reached after the views of the Durbars have been taken into account. In the past it certainly has occasionally happened that the States were vitally affected by decisions taken without reference to them ; and yet no machinery for such collective consultation with them has hitherto existed. It seems to us that they have a clear right to ask for it in the future. We have abandoned for the present all consideration of suggestions that the Ruling Princes, or some representatives of their Order, should be members of the Council of State. Not only would this at the present stage infringe the doctrine of non-interference on the part of the Princes in the affairs of British India, but we are satisfied that few, if any, of the Princes themselves are ready for such a step. On the other hand, it seems to us that, when a Council of Princes has been established, and when a Council of State and a Privy Council have been created, the machinery will exist for bringing the senatorial institutions of British India into closer relations when necessary with the Rulers of the Native States. Matters affecting the Native States generally, or the Native States and British India in common, or the Empire, might, as we have seen, be referred to the Council of Princes. It would thus be possible for the Viceroy, when he thought fit, to arrange for joint deliberation and discussion between the Council of State and the Council of Princes, or between representatives of each body. He might also invite members of the Council of Princes to serve on committees of the Privy Council.

312. With these indications of the position to be occupied by the Native States in future we may rest content. We believe that the trend of events must draw them still closer into the orbit of the Empire ; we think that the process need give rise to no alarm lest their internal autonomy be threatened. We need not conceal our conviction that the processes at work in British India cannot leave the States untouched and must in time affect even those whose ideas and institutions are of the most conservative and feudal character. But in that respect there can be no intention or desire to accelerate growth by artificial means. We believe that our proposals will afford satisfaction to the progressive Rulers while respecting the legitimate desire of those less advanced to go forward at their own pace.

Future position of the States.

PART VIII.

DOCUMENTS RELATING TO THE REPRESENTATION OF INDIA IN THE IMPERIAL CONFERENCE.

I. THE HON'BLE MR. M. SHAFI'S RESOLUTION IN THE INDIAN LEGISLATIVE COUNCIL (22ND SEPTEMBER, 1915.)

Khan Bahadur M. M. Shafi moved :—"That this Council recommends to the Governor-General in Council that a representation be sent, through the Right Hon'ble the Secretary of State, to His Majesty's Government urging that India should, in future, be officially represented in the Imperial Conference."

II. EXTRACTS FROM THE SPEECH OF LORD HARDINGE AT A MEETING OF THE INDIAN LEGISLATIVE COUNCIL, DATED 22nd. SEPTEMBER, 1915, ON THE ABOVE RESOLUTION.

"It has been a source of profound satisfaction to me that it has been within my power to accept for discussion the very moderate and statesmanlike Resolution, happily devoid of all controversial character, that has been proposed by the Hon'ble Mr. Muhammad Shafi, and it is a matter of still greater satisfaction and pleasure to me to be able to announce that the Government of India gladly accept this important Resolution, which has their warmest sympathy, and, if it is accepted by the Council as a whole the Government will readily comply with the recommendation contained therein.

We have all listened with deep interest to Mr. Muhammad Shafi's eloquent speech, and it is a real pleasure to the Government of India to be able to associate themselves with his Resolution.

Before proceeding further, it would be as well that I should recapitulate what has taken place at Imperial Conferences in the past, and define the actual constitution of the Conference as created by the Governments who have hitherto been represented in it.

It was due to the presence in London, in 1887, of the Premiers of the various self-governing Dominions, representing their countries at the celebration of the Jubilee of the late Queen Victoria, that the idea of a Colonial Conference first took practical shape, and similar meetings took place in 1897, 1902, 1907 and 1911. At the earlier meetings, the Secretary of State for the Colonies presided.

In 1887, the Secretary of State for India attended the formal opening meetings of the Colonial Conference, but at subsequent proceedings neither he nor any representative of Indian interests was present.

At the meetings of the Colonial Conference held in 1897 and 1902, the Secretary of State for India neither attended nor was represented.

In 1907, by arrangement between Lord Morley, then Secretary of State for India, and the Prime Minister, Sir James Mackay, now Lord Inchcape, was permitted to attend the meetings in the absence of Lord Morley, not as a member of the Conference nor as the representative of India, but on behalf of the India Office, and "with a view to the representation of Indian interests" and in a debate upon Colonial preference, Sir James addressed the Conference at some length, explaining the Free Trade principles on which the economic situation in India is based.

In that year a new constitution was approved by the Conference for its future gatherings.

Henceforth it was to be known as the Imperial Conference, and was to be, in the words of a Resolution passed by the Conference, 'a periodical meeting for the discussion of matters of common interest between His Majesty's Government and His Governments of the self-governing Dominions beyond the seas.' With the change of title additional importance was given to the Assembly by the assumption of the Presidency by the Prime Minister of the United Kingdom.

The Members of the Conference, as then and now constituted, are the Prime Minister of the United Kingdom, the Secretary of State for the Colonies and the Prime Ministers of the self-governing Dominions, but again in the words of the Resolution, 'such other Ministers, as the respective Governments may appoint, will also be members of the Conference, it being

understood that, except by special permission of the Conference, each discussion will be conducted by not more than two representatives from each Government, and each Government will have only one vote."

At the Imperial Conference of 1911, the Secretary of State for India was present at a meeting, but India herself had no recognised place in the Conference.

Representation is, therefore, at present confined to the United Kingdom and the self-governing Dominions, and no one can now attend the Conference as a Representative except a Minister. Further, alterations in the constitution of the Conference are made only by, and at, the Conference itself: and, if precedent be followed, take effect only at the next succeeding Conference. From this statement of the actual constitution of the Imperial Conference, you will see that the ultimate decision upon the representation of India at the next meeting of the Conference rests with the Conference itself. It is of course premature to consider the manner in which the representation of India, if admitted, should be effected, but *prima facie* it would appear reasonable that India should be represented by the Secretary of State and one or two representatives nominated by the Secretary of State in consultation with the Viceroy, such nominees being ordinarily selected from officials resident or serving in India. The present practice of the Imperial Conference excludes non-official representatives. It would of course be incumbent on these nominees to act in the Conference in conformity with the policy and wishes of the Secretary of State Just as in the case of the self-governing Dominions, the Ministers accompanying the Prime Ministers have to take their policy from him, and the constitutional position of the Secretary of State is infinitely superior.

I have thought it desirable to put before you all the difficulties and obstacles that present themselves to the attainment of the object that we all desire and have in view. At the same time I am authorised by His Majesty's Government, while preserving their full liberty of judgment and without committing them either as to principles or details, to give an undertaking that an expression of opinion from this Imperial Legistive Council, in the sense of the Resolution that is now before us, will receive most careful consideration on their part, as expressing the legitimate interest of the Legislative Council in an Imperial question, although the ultimate decision of His

Majesty's Government must necessarily depend largely on the attitude of other members of the Conference.

This is, I venture to think, all that we can reasonably expect at the present time, and that such a pledge is eminently satisfactory as showing due consideration for the claims of India. We can only hope, with trust and confidence, that, when the right moment arrives, these claims may merit the approval and support of His Majesty's Government and receive sympathetic consideration from the Governments of the self-governing Dominions.

We have no knowledge of the date when the next Imperial Conference will be held, nor what form it will take. But much has already happened, since the last Conference was held in 1911, which will leave a lasting mark upon the British Empire, and it is to me inconceivable that statesmen of such distinguished ability and far-seeing patriotism as the Premiers and Ministers of the Self-governing Dominions will not have realised, from recent events, the great and important position that India occupies amongst the various Dominions and Dependencies composing the British Empire. It is true that India is not a self-governing Dominion, but that seems hardly a reason why she should not be suitably represented at future Conferences. India's size, population, wealth, military resources, and, lastly, her patriotism demand it. No Conference can afford to debate great Imperial issues in which India is vitally concerned, and at the same time to disregard her. To discuss questions affecting the defence of the Empire, without taking India into account, would be to ignore the value and interests of the greatest Military asset of the Empire outside the United Kingdom. So also in trade, to discuss questions affecting commerce within the Empire, without regard to India, would be to disregard England's best customer. To concede the direct representation of India at future Imperial Conferences does not strike me as a very revolutionary or far-reaching concession to make to Indian public opinion and to India's just claims, and I feel confident that if, and when, this question is placed in its true light before the Governments of the self-governing Dominions they will regard it from that wider angle of vision from which we hope other Indian questions may be viewed in the near future, so that the people of India may be made to feel that they really are, in the words of Mr. Asquith, 'conscious members of a living partnership all over the world under the same flag'."

III. EXTRACTS FROM LORD HARDINGE'S SPEECH IN THE INDIAN LEGISLATIVE COUNCIL ON THE 24TH MARCH, 1916.

"As regards the position of India within the Empire, the announcement which I made in this Council last September to the effect that India's demand to be represented in future on Imperial Conferences would be sympathetically considered by His Majesty's Government is, I think, likely to become historic, for it marks the beginning of a new era, and the growth of more liberal ideas in regard to India not previously entertained. At the same time the reception by the Colonial Press of the resolution relating to the representation of India at the next Imperial Conference, proposed in this Council last September by the Hon'ble Mr. Muhammad Shafi and unanimously accepted, was most encouraging, and was a good indication of the change in the angle of vision of our fellow-subjects in the Dominions towards India, and the place that India should hold in the Councils of the Empire. I feel confident that the statesmen of the self-governing Dominions, recognising the splendid services rendered by India to the Empire during the war, will generously seek a modification of the constitution of the Imperial Conference, so as to admit the properly accredited representatives of India to sit side by side with them at the Imperial Council table on terms of equality. I rejoice in this matter to leave India with high opportunity before her to take her place, a just and proud place, in the Empire.

IV. EXTRACTS FROM THE SPEECH OF RT. HON. MR. LLOYD GEORGE IN THE HOUSE OF COMMONS ON DECEMBER 19, 1916.*

Speaking in the House of Commons on December 19, 1916, Mr. Lloyd George said :—

"We feel that the time has come when the Dominions ought to be more formally consulted as to the progress and course of the war and as to the steps that ought to be taken to secure victory, and as to the best methods of garnering in these fruits. We propose, therefore, at an early date, to summon an Imperial Conference, to place the whole position before the Dominions, to take counsel with them as to what further action

* London Times dated 20th December 1916.

they and we should take together in order to achieve an early and complete triumph for the ideals they and we have so superbly fought for."

V. EXTRACTS FROM THE LONDON "TIMES" OF DECEMBER 27, 1916.

The Secretary of State for the Colonies communicated the following copy of a telegram sent by him to the self-governing Dominions on December 25, 1916 :—

"I wish to explain that what His Majesty's Government contemplate is not a session of the ordinary Imperial Conference, but a special War Conference of the Empire. They, therefore, invite your Prime Ministers to attend a series of special and continuous meetings of the War Cabinet, in order to consider urgent questions affecting the prosecution of the war, the possible conditions on which, in agreement with our Allies, we could assent to its termination, and the problems which will then immediately arise. For the purpose of these meetings Your Prime Minister would be a member of the War Cabinet.

In view of the extreme urgency of the subjects of discussion, as well as of their supreme importance, it is hoped that Your Prime Minister may find it possible, in spite of the serious inconvenience involved, to attend at an early date, not later than the end of February. While His Majesty's Government earnestly desire the presence of Your Prime Minister himself, they hope that if he sees insuperable difficulties he will carefully consider the question of nominating a substitute, as they would regard it as a serious misfortune if any Dominions were left unrepresented."

The Secretary of State for India sent a telegram to Lord Chelmsford, communicating the intention of His Majesty's Government to hold a special War Conference of the Empire, and adding :—

"His Majesty's Government have invited the Secretary of State for India to represent India at these sittings of the War Cabinet, of which for that purpose I shall be a member. I desire the assistance of two gentlemen specially selected for the purpose in consultation with you as foreshadowed in Lord Hardinge's speech in the Legislative Council on September 22, 1915."

VI. EXTRACTS FROM H. E. LORD CHELMSFORD'S SPEECH IN THE INDIAN LEGISLATIVE COUNCIL, (FEBRUARY 7TH, 1917,)*

"His Majesty's Government, as you know, have decided to convene a special War Conference in London in order to consider urgent questions affecting the prosecution of the war, the possible conditions on which in agreement with our Allies, we could assent to its termination, and the problems which will then immediately arise. As Members are aware, His Majesty's Government have invited the Secretary of State for India to represent India and the Secretary of State has appointed, in consultation with the Government of India, three gentlemen to assist him at that Conference.

Criticism has been made of the method of representation and the manner of selection of India's special delegates. I think our critics have misapprehended the nature of the Conference and of the representation. The conference is of the Mother Country, the Dominions and India. Each dominion is represented by its Prime Minister, and has but one voice in the Conference, but the Prime Ministers are permitted to bring with them such other Ministers as they may desire and may invite these Ministers to speak on behalf of the Dominions on any particular question. It is obvious that in the case of India, so long as the Secretary of State is directly responsible to Parliament for the policy of the Indian Government, the Secretary of State must be the head of the Indian delegation, and the policy propounded by India must be the policy of the Secretary of State in Council, but I have the Secretary of State's assurance that he will be glad to have his colleagues from India to speak, whenever possible on behalf of India.

The Conference then being a Conference of Governments, it follows that the responsibility for the choice of the representative must rest with the Government. No Government could divest itself from that responsibility, and so in the case of India, the Secretary of State, in consultation with the Government of India, has chosen the three gentlemen whose names you know. The choice in fact goes beyond the promise made by Lord Hardinge in his speech of 22nd September, 1915 to which I would refer Hon'ble Members".

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* The Gazette of India, February 17, 1917.

I am sorry to think that the enormous importance of the decision taken by His Majesty's Government stands in danger of being minimized and discounted by hasty and not very well-informed criticism. As the French proverb has it :—'It is the first step which counts'—and India has been admitted to-day for the first time to a place of honour at the Council table of the Empire. It marks a point in the history of India, which, though it may not be seen in its true perspective to-day, will, I have no hesitation in saying, be the beginning of a new Chapter in India's history under the Imperial flag.

Our three representatives have been chosen. They embark shortly. They are, I think you will all agree, men who will rise to the height of India's opportunity, and do India credit on the new stage to which she is summoned.

May they so bear themselves that from these early beginnings may spring a full and generous interpretation of India's future within the Empire : I have every confidence that by their talents they will establish India's claim to retain at the Council of Empire the place which was first won for her by the loyalty of her people and the gallantry of her soldier-sons when the Empire lay under the shadow of the Great War."

VII. RESOLUTION REGARDING REPRESENTATION OF INDIA IN THE IMPERIAL WAR CONFERENCE. (APRIL 22ND, 1917).

His Excellency the Viceroy received the following telegram from the Secretary of State for India, which was published for general information :—

"I have great pleasure in transmitting to Your Excellency the following resolution, unanimously passed by the Imperial War Conference, on the motion of Sir R. Borden, seconded by Mr. Massey : 'The Imperial War Council desire to place on record its view that the resolution of the Imperial Conference of April 20th, 1907, should be modified to permit of India being fully represented at all future Imperial Conferences, and that necessary steps should be taken to secure the assent of the various Governments in order that the next Imperial Conference may be summoned and constituted accordingly.'

As explained by Lord Hardinge in the Legislative Council on September 22nd, 1915, the constitution of the Imperial Conference was fixed by the Conference itself and can only be altered by the consent of all the governments concerned.

The present Conference, being summoned exceptionally and for a special purpose, did not feel competent to alter the constitution of the ordinary Conferences, but Your Excellency will be gratified by their ready acceptance of the claim to representation preferred by your Government and by the recommendation made by them to the governments concerned. His Majesty's Government will take necessary steps to carry out this resolution."

VIII. EXTRACTS FROM THE SPEECH OF THE RT. HON. MR. LLOYD GEORGE IN THE HOUSE OF COMMONS. (MAY 18, 1917).

I think that I ought to report to the House a very important decision that was arrived at as a sequel to the recent meeings of the Imperial War Cabinet. It is desirable that Parliament should be officially and formally acquainted with an event that will constitute a memorable landmark in the constitutional history of the British Empire. The House will remember that in December last His Majesty's Government invited the Prime Ministers or leading Statesmen of the overseas Dominions and of India to attend the sittings both of the Cabinet and of an Imperial War Conference to be held in this country. It is to the former body, which assembled in March and held 14 sittings before separately, that I desire to refer.

The British Cabinet became for the time being an Imperial War Cabinet. While it was in session its overseas members had access to all the information which was at the disposal of his Majesty's Government and occupied a status of absolute equality with that of the members of the British War Cabinet. It had prolonged discussions on all the most vital aspects of Imperial policy, and came to important decisions in regard to them—decisions which will enable us to prosecute the war with greatest unity and vigour, and will be of the greatest value when it comes to the negotiation of peace.

I should like to add on behalf of the Government that fresh minds and new points of view which our colleagues from over the seas had brought to bear upon the problems with which we have been so long engrossed have been an immense help to us all.

The Imperial War Cabinet was unanimous that the new procedure had been of such service not only to all it members but to the Empire that it ought not to be allowed to fall into

desuetude. Accordingly, at the last session I proposed formally on behalf of the British government, that meetings of an Imperial Cabinet should be held annually, or at any intermediate time when matters of urgent Imperial concern require to be settled, and that the Imperial Cabinet should consist of the Prime Minister of the United Kingdom and such of his colleagues as deal specially with Imperial affairs, of the Prime Minister of each of the Dominions, or some specially accredited alternate possessed of equal authority, and of a representative of the Indian people to be appointed by the government of India. This proposal met with the cordial approval of the overseas representatives, and we hope that the holding of an annual Imperial Cabinet to discuss foreign affairs and other aspects of Imperial policy will become an accepted convention of the British constitution.

I ought to add that the institution in its present form is extremely elastic. It grew, not by design, but out of the necessities of the war. The essence of it is that the responsible heads of the governments of the Empire, with those Ministers, who are specially entrusted with the conduct of Imperial policy, should meet together at regular intervals to confer about foreign policy and matters connected therewith, and come to decision in regard to them which, subject to the control of their own Parliaments, they will then severally execute. By this means they will be able to obtain full information about all aspects of Imperial affairs, and to determine by consultation together the policy of the Empire in its most vital aspects, without infringing in any degree the autonomy which its parts at present enjoy. To what constitutional developments this may lead we did not attempt to settle. * * * We felt, however, that the experiment of constituting an Imperial Cabinet, in which India was represented, had been so fruitful in better understanding and in unity of purpose and action that it ought to be perpetuated, and we believe that this proposal will commend itself to the judgment of all the nations of the Empire"

IX. EXTRACTS FROM H. E. LORD CHELMSFORD'S SPEECH IN THE INDIAN LEGISLATIVE COUNCIL.* (5TH SEPTEMBER, 1917.)

"The position of India within the Empire has obviously the first claim on our attention. You will perhaps remember what Lord Hardinge said in his speech of 22nd September 1915 to this Council—

'From this statement of the actual constitution of the Imperial Conference you will see that the ultimate decision upon the representation of India at the next meeting of the Conference rests with the Conference itself. It is of course premature to consider the manner in which the representation of India, if admitted, should be effected, but *prima facie* it would appear reasonable that India should be represented by the Secretary of State and one or two representatives nominated by the Secretary of State in consultation with the Viceroy, such nominees being ordinarily selected from officials resident or serving in India.'

The next step was taken when His Majesty's Government decided at the beginning of this year to convene a special War Conference in London and the Secretary of State, in consultation with the Government of India nominated His Highness the Maharaja of Bikaneer, the Hon'ble Sir James Meston, and Sir Satyendra Sinha as his colleagues in the representation of India—a notable advance on the representation which Lord Hardinge foreshadowed. In alluding to this subject I said at our last session—

'I am sorry to think that the enormous importance of the decision taken by His Majesty's Government stands in danger of being minimised and discounted by hasty and not very well-informed criticism. As the French proverb has it, 'it is the first step which counts,' and India has been admitted to-day for the first time to a place of honour at the Council table of the Empire. It marks a point in the history of India which, though it may not be seen in its true perspective to-day will, I have no hesitation in saying, be the beginning of a new chapter in India's history under the Imperial flag.'

I think I can claim to-day that events have proved me to be right.

An Imperial Cabinet, it is now announced, is to meet once a year. India is to be represented in this Cabinet and one representative from India is to attend the Cabinet in the same way that one representative attends from each self-governing Dominion.

The status of India in the Empire is thus fully recognised and an advance has been made such indeed as might have been hoped for, but was scarcely to be expected a year ago."

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* (The Gazette of India Sept. 15, 1917.)

X. EXTRACTS FROM THE SPEECH OF THE HON'BLE SIR WILLIAM VINCENT IN THE INDIAN LEGISLATIVE COUNCIL ON MARCH 19, 1918.

The Hon'ble Sir William Vincent said :—"Sir, in answering this Resolution,* I think there is very little to add to what was said by His Excellency when he addressed this Council on the 7th of February, 1917, and I will ask the Council to bear with me while I read what appear to me to be the relevant portions of that speech. His Excellency then said :—

'Criticism has been made of the method of representation and the manner of selection of India's special delegates. I think our critics have misapprehended the nature of the Conference and of the representation. The Conference is of the Mother Country, the Dominions and India. Each Dominion is represented by its Prime Minister, and has but one voice in the Conference, but the Prime Ministers are permitted to bring with them such other Ministers as they may desire, and may invite these Ministers to speak on behalf of the Dominions on any particular question. It is obvious that in the case of India, so long as the Secretary of State is directly responsible to Parliament for the policy of the Indian Government, the Secretary of State must be the head of the Indian delegation, and the policy propounded by India must be the policy of the Secretary of State in Council, but I have the Secretary of State's assurance that he will be glad to leave his colleagues from India to speak, whenever possible, on behalf of India.

The Conference then being a Conference of Government, it follows that the responsibility for the choice of the representatives must rest with the Government. No Government could divest itself from that responsibility, and so in the case of India, the Secretary of State, in consultation with the Government of India, has chosen the three gentlemen whose names you know. The choice in fact goes beyond the promise made by Lord Hardinge in his speech of 22nd September, 1918.

"The next paper to which I would refer in this connection is the declaration of the Prime Minister in the House of Commons. I have only a telegraphic summary of it. It is dated the 18th of May, 1917. He began by saying, 'that the Imperial War Cabinet was an important event and constituted a landmark in the constitutional history of the British Empire.' He went on to explain how great the success of that Cabinet had been and added :—

'As far as the Government were concerned they could state with confidence that the experiment had been a complete success and the Imperial

* The resolution referred to here is the following one moved by the Hon'ble Mr. S. N. Banerjea :—"That this Council recommends to the Governor-General in Council that the Indian members for the next Imperial War Conference be appointed on the recommendation of the elected members of the Imperial Legislative Council."

War Cabinet was unanimous that the proceedings had been of such service not only to its members but to the Empire that it ought not to be allowed to fall into desuetude. Accordingly it was agreed that meetings should be held annually. The Imperial War Cabinet would consist of the British Premier and such of his colleagues as dealt with Imperial affairs, of Dominion Premiers or specially accredited representatives and an Indian representative appointed by the Government of India. The essence of the institution was that responsible heads of Governments of Empire with ministers specially entrusted with the conduct of Imperial policy would meet together at regular intervals to confer about foreign and Imperial policy and come to decisions regarding them.'

In a later part of the speech he said : 'It was felt, however, that the experiment of constituting Imperial Cabinet, in which India was represented, had been so fruitful in better understanding and unity of purposes and action that it ought to be perpetuated, and he believed that the proposal would commend itself to all the nations of Europe.'

Well, Sir, on a later occasion than that, a few days later, in reply to a question by Mr. Charles Roberts as to what modifications in the position of India relative to the Empire were effected as a result of the Imperial Conference, the Secretary of State gave the following reply :—

'In answering my Hon'ble friend's question it will be convenient to consider together the results, so far as published, of the Imperial War Cabinet and the War Conference. As my Hon'ble friend is aware the Imperial War Conference recommended to the Governments concerned that steps should be taken to amend the constitution of the Imperial Conference so that India should be represented at future sittings with the same right of speech and vote as is accorded to the representatives of other Governments. Further, India will be represented at the annual session of the Imperial Cabinet by a nominee of the Government of India as well as by the Secretary of State for India who will sit as one of the British Ministers especially concerned with Imperial affairs.'

This decision marked an immense advance in the position of India within the Empire.

Well, the only other communication I have is the telegram to which reference was made by the Hon'ble Mr. Bannerjea. In that telegram, which is dated the 5th of March, 1918, in answer to a question by Mr. Denman, Mr. Fisher replied 'that the War Cabinet consisted of Governments of chief portions of the Empire, and it was impossible to adopt the suggestion that one of the representatives of India should be selected by the elected members of the Legislative Council.'

That, then, is the decision of His Majesty's Government, and in the face of that decision I do not think that it would be possible for me to accept this Resolution, and I trust that the Council will realize the position of the Government of India in the matter having regard to the very clear statement made by a Minister of His Majesty's Government. Indeed, I cannot help feeling that the Hon'ble Member is on this occasion rather beating his head against a wall....

Then, the Hon'ble Member said : 'Oh ! yes, you may continue to appoint a man, but we must really select him.' That is a form of *camouflage* which, I think, will deceive nobody. Either a man is appointed by the Government or he is selected by the Council. The two things are really different and incompatible. If the Council is to select the man, why then, well and good, let them do it ; if Government is to nominate him, then surely the Government must be entitled to select any man in whom they have the greatest confidence, whether that person is the man selected by the members of the Legislative Council or not. In such circumstances, however deeply members of the Council may sympathise with the aspirations which prompt this Resolution, I fear that its acceptance by Government would not be consistent with the present constitution of the Imperial Conference, which is a Conference of those who are responsible for the Government of the different parts of the Empire ; and I think a gentleman who had no such responsibility and who was selected by members of the Council, who, however eminent, are not responsible for the Government of India, would be out of place in an Imperial Conference of this character.

I submit really that this Resolution is opposed to the logic of existing facts, and, on the part of the Government of India, I must oppose it. At the same time I hope that Members of Council will remember that on the occasion of the last War Cabinet the Government nominated an Indian who was not only in the confidence of the Government of India, but who also, I believe, command the respect and trust of Indians generally, a gentleman who a few years ago presided, if I am right in my recollection, over the National Congress, and whose liberal sentiments, loyalty, patriotism and devotion to his country are well known. I was glad to find that this view is endorsed by what the Hon'ble the Mover said, and I think that the Council will rest assured that the choice of the Government on this occasion will not fall on less suitable a person."

XII. NOMINATION OF REPRESENTATIVES OF INDIA IN THE IMPERIAL WAR CABINET, 1918.*

"IN a speech made by the Prime Minister in the House of Commons on May 17th, 1917, it was indicated that India would be represented at future meetings of the Imperial War, Cabinet by the Secretary of State for India and a representative of the Indian people to be appointed by the Government of India.

It is now stated that His Excellency the Viceroy has nominated the Hon. Sir Satyendra Prasanna Sinha to attend the forthcoming sessions of the Imperial War Conference and the Imperial War Cabinet, and that he has accepted the nomination.

His Majesty's Government has also requested the Viceroy, as on the last occasion, to invite a ruling Prince to be present at the Imperial War Conference as representative of the Indian States. His Excellency's invitation has been accepted by His Highness the Maharaja of Patiala."

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* Associated Press telegram, dated Simla, the 24th April 1918.

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PART IX

DOCUMENTS RELATING TO PROVINCIAL AND LOCAL SELF-GOVERNMENT. (1870-1918).

1. LORD MAYO'S RESOLUTION ON PROVINCIAL FINANCE, 1870.

[No. 3334, dated 14th December, 1870.]

1. The Governor-General in Council is satisfied that it is desirable to enlarge the powers and responsibility of the Governments of Presidencies and Provinces in respect to the public expenditure in some of the Civil Departments.

2. Under the present system, these Governments have little liberty, and but few motives for economy, in their expenditure, and it lies with the Government of India to control the growth of charges, to meet which it has to raise the revenue. The Local Governments are deeply interested in the welfare of the people confided to their care ; and, not knowing the requirements of other parts of the Country or of the Empire as a whole, they are liable, in their anxiety for administrative progress, to allow too little weight to fiscal considerations. On the other hand, the Supreme Government, as responsible for the general financial safety, is obliged to reject many demands, in themselves deserving of all encouragement, and is not always able to distribute satisfactorily the resources actually available.

3. Thus, it happens that the Supreme and Local Governments regard from different points of view, measures involving expenditure ; and, the division of responsibility being ill-defined there occur conflicts of opinion injurious to the public service. In order to avoid these conflicts, it is expedient that, as far as possible, the obligation to find the funds necessary for administrative improvements should rest upon the authority whose immediate duty it is to devise such measures.

4. This is the more important, because existing Imperial Resources will not suffice for the growing wants of the Country. Writing of Roads and Communications in October 1869, the

Government of India in the Public Works Department stated that it had for some years "been satisfied that to attempt to provide and maintain all the Roads required for the inter-communications of so vast a Territory from the ordinary revenues would be to enter on an altogether impracticable task." "The matter," it was added, "has been before this Government on several occasions since 1862, and the view now taken of it has already received, in general terms, the approval of the Secretary of State. It is only by a judicious system of local assessment and control that what is needed can be accomplished. This is not less true of some other Departments of the Administration.

5. The Supreme Government is not in a position to understand fully Local Requirements ; nor has it the knowledge necessary for the successful development of Local Resources. Each Province has special wants of its own, and may have means for supplying them which could not be appropriated for Imperial purposes. A tax, adapted to the circumstances of one part of the country may be distasteful, or inapplicable, elsewhere ; and everywhere, rates may be proper for Provincial or Local Purposes which could not be taken for the Imperial Revenue.

6. These principles are now generally recognised, and important steps have been already taken to develop Provincial Resources. The Government of Bombay has, for some years, raised a considerable revenue for local purposes. Important measures to the same intent, are under the consideration of the Legislative Council of Madras. The Gonernment of Bengal is maturing a Scheme, in accordance with the decision of the Secretary of State, for the levy of a Rate for Local Objects in the Lower Provinces of Bengal. In all the other Provinces of India Provincial Revenues have long been raised, and measures for increasing them are now being devised.

7. These measures have been promoted, chiefly, to provide for urgent administrative wants, the means for which are not otherwise forthcoming. It is inexpedient that the funds so raised should be intercepted, to any considerable extent, for objects the cost of which has been hitherto defrayed from the General Revenues, even though such objects be of an admittedly local character. Moreover, the Governor-General in Council is not desirous that the demands on the people for Provincial Purposes should be indefinitely, or too rapidly, increased.

8. It would have been satisfactory had His Excellency in Council been able to propose the enlargement of the power and responsibility of the Local Governments without charging upon Local Resources any part of the existing Imperial expenditure. This cannot be done; but it has been determined to make as small a demand upon these resources as possible. At the same time, it should be remembered that the relief of the Imperial Finances has been a principal object in the discussion of such measures on former occasions.

9. The Income Tax of six pies in the rupee imposed for the current year was never intended to be permanent; and the Governor-General in Council has, already, announced a resolution not to renew the tax for the next year at this high rate, unless some unforeseen contingency compels him to do so.

10. It was thought, at first, that the Income Tax could not be reduced to the desired extent without imposing upon Local Resources almost as large a sum as might be given up. Anticipations made so long before the beginning of the financial year must be uncertain; but, as far as the Governor-General in Council can now judge, it will be possible next year to give substantial relief from existing taxation without the substitution of any considerable new burden.

11. The Government of India is, accordingly, pleased to make over to the Governments, under certain conditions to be presently set forth, the following Departments of the Administration in which they may be supposed to take special interest; and to grant, permanently, from the Imperial Revenue, for these services, the sum of £4, 688, 711, being less by £330, 801 only, than the Assignments made for the same services in 1870—

Jails.	Printing.
Registration.	Roads.
Police.	Miscellaneous Public Improvements.
Education.	
Medical Services, (except Medical Establishments)*	Civil Buildings.

A Statement (A) is appended explanatory of the method by which the Assignments to be thus made have been calculated.

* By Medical Establishments here is meant the first sub-division of the Grant 2, Medical Services, as hitherto made.

This Statement shows the estimated receipts and charges under the first six of these heads during the current year, the "Police" charges, in Bombay and the North-Western Provinces, having been slightly reduced by the final adjustments necessary in consequence of the Government becoming liable for the Superannuation Allowances of the force.

12. The figures entered for "Roads," "Civil Buildings," and "Miscellaneous Public Improvements" are the Grants for for this year, exclusive of the sum of £ 135,679 reserved for certain works detailed in Appendix B, which will not, in future, be a charge upon Local Governments, but will be separately provided for by the Supreme Government. The portion of this £135, 679 reserved in each Province bears the same proportion to the Grant made to the Province for the current year that the expenditure in the Province, upon the reserved works has borne, during the last five years, to the whole expenditure under these three heads.

13. To the £1,168,701 thus assigned for "Works," £327, 236 has been added for "Establishments" and "Tools and Plant," being the proportion of the current year's Grants for these purposes, which appertains to that share of the total Grants for "Works" of all kinds which is transferred. This £327,236 has been distributed among the Presidencies and Provinces in the proportions in which the larger sum of £1,168,701 has been distributed. The Governments will, henceforth, provide themselves with "Tools and Plant" without the intervention of the Government of India. The future arrangements in regard to "Establishments" cannot be settled without detailed correspondence. For the year 1871-72, the Supreme Government will continue to provide "Establishments" as heretofore, and each Presidency or Province must bear a share of the cost, in the proportion which the estimated outlay upon "Works" from Provincial funds* bears to the total estimated outlay upon "Works," Ordinary and Extraordinary, and Imperial and Provincial, in all India. It is to be clearly understood that Local Governments must maintain in efficient repair existing lines of through communication, such as the Trunk Roads, unless authorised by the Supreme Government to abandon them.

14. The actual Permanent Imperial Assignments for "Provincial Services" will be as follows ; All Receipts heretofore

* Provincial Funds, here, does not include existing Local Funds.

credited in connection with these Services being given up to the Provinces in which they accrue :—

	£
Oudh	206,948
Central Provinces	261,263
Burma	275,332
Bengal	1,168,592
North-Western Provinces	640,792
Punjab	516,221
Madras	739,488
Bombay	880,075
	4,688,711 *

15. In calculating these Allotments, £350,000 has been deducted rateably from the Grants made to the several Provinces in 1870-71. But it has been thought expedient to remit the deduction (£19,199) which would, thus, fall upon British Burma, the circumstances of that Province being exceptional. No additional deduction has been made from the other Provinces in consequence of this concession to Burma.

16. These assignments will not be classified in the Financial Statement and in the Imperial Estimates and Accounts, but will appear under a single new head, "Provincial Services." The Imperial Revenue will continue to bear such charges for the Absentee and Superannuation Allowances of officers on establishments now transferred, as have, hitherto, appeared in the Home Accounts, or under other Heads in the Indian Accounts. But it would be inconvenient and difficult to maintain any distinction between these officers and officers who are paid from other Local Funds, or who may be added, hereafter, for "Provincial Services." Questions of some importance regarding this and other like details will have to be settled, hereafter.

17. Unless some fiscal misfortune, such as a heavy loss in the Opium Revenue, or national disaster such as war or severe famine, occurs, the Governor-General in Council will maintain

* If it be found, when the accounts of the year 1870-71 are made up, that the actual expenditure, during that year, for the official postage of the services affected exceeds the amount of the Grants for that purpose, then the several Assignments will be, once for all, increased by the difference.

for the future, the Assignments for "Provincial Services" at the amounts now fixed. They will not, in any case, be reduced without previous consultation with the Governments.

18. For the coming year, the Provincial Service estimates should be immediately prepared upon the basis of these Assignments, which may be distributed, at the discretion of the Governments, among the several Departments for which they will now be responsible. Any portion of the Assignments made to any Province that may be unspent at the end of the year will not lapse to the Imperial Revenue, but will remain at the disposal of the Local Government. The Estimates and Accounts of these Governments should, therefore, open and close with balances brought and carried forward. They should show not only the Receipts and Charges of the new "Provincial Services", but also the Income and Expenditure of all existing Local Funds ; it being understood, of course, that the Governments are not relieved by this Resolution from any legal or equitable obligation which may govern the appropriation of any particular Local Fund. It is essential that the Estimates and Accounts of all the Presidencies and Provinces should be uniform, and the precise forms to be used will be settled by the Supreme Government. The Imperial financial year must be the Provincial Year of Account.

19. Each Local Government will publish its own yearly Estimates and Accounts in the Local Gazette, together with a Financial exposition (which should, where possible, be made before the Local Legislative Council) analogous to that annually made in the Legislative Council of the Governor-General. The several Estimates and Accounts will be compiled, and a General Statement for all India published as a supplement to the Imperial Estimates and Accounts.

20. In preparing its Estimates for the coming year, each Government will have to consider, without delay, how any deficiency in the Ways and Means for its Provincial Services can most conveniently be supplied.

21. The financial control which is, thus, entrusted to the Local Governments is to be exercised subject to the following conditions* :—

* It must be understood that these conditions are prescribed, for the present, tentatively, and that they are subject to revision, as experience may require,

I. Without the previous sanction of the Government of India—

(1) no appointment is to be created with a salary of more than Rs. 250 a month; and no addition is to be made to the pay and allowances of any officer if they exceed, or would, after the addition, exceed, Rs. 250 a month.

(2) no *class* or *grade* of officers is to be created or abolished, and the pay of no *class* or *grade* of officers is to be raised:

(3) no addition is to be made to the pay or allowances of any individual or class of officers that would lead to increase in the emoluments of any public servants doing duty in the same Province, whose pay and allowances are charged to the Imperial Revenues. The Government of India reserves to itself the right to forbid alterations in rates of pay or allowances, which, in its opinion, would produce inconvenience in other Provinces.

(4) no moneys are to be removed from the public treasuries for investment:

(5) no services now rendered to other Departments at the charge of the Departments made over to the control of the Local Governments are to be diminished, and no services now rendered to these Departments at the charge of other Departments are to be increased.

II. The rules of the Supreme Government in respect to leave of absence and Absentee, Deputation, and Superannuation Allowances are to be observed.

III. Returns, Accounts, and Estimates are to be submitted to the Supreme Government in such forms, and at such times, as may be prescribed.

22. The Governor-General in Council is fully aware that this Resolution will effect a wide change in Indian Administration. It has been adopted, after long and careful consideration, in the hope that it will be received by the Governments in the spirit in which it is promulgated. The Governor-General in Council believes that it will produce greater care and economy; that it will import an element of certainty into the fiscal system which has, hitherto, been absent; and that it will lead to more harmony in action and feeling between the Supreme and Provincial Governments than has, heretofore, prevailed.

23. But beyond all this, there is a greater and wider object in view. Local interest, supervision and care are necessary to success in the management of funds devoted to Education, Sanitation, Medical Charity, and Local Public Works. The operation of this Resolution, in its full meaning and inte-

grity, will afford opportunities for the development of Self-government, for strengthening Municipal Institutions, and for the association of Natives and Europeans, to a greater extent than heretofore, in the administration of affairs.

24. The Governor-General in Council is aware of the difficulties attending the practical adoption of these principles. But they are not insurmountable. Disappointments and partial failures may occur; but, the object in view being the instruction of many peoples and races in a good system of Administration, His Excellency in Council is fully convinced that the Local Governments and all their subordinates will enlist the active assistance, or, at all events, the sympathy, of many classes, who have, hitherto, taken little or no part in the work of social and material advancement.

25. The additional powers of financial control which will now be assumed by the Governments, must be accompanied by a corresponding increase of administrative responsibility. It is the desire of the Governor-General in Council to confine the interference of the Supreme Government in India in the administration of the "Provincial Services" to what is necessary for the discharge of that responsibility which the Viceroy in Council owes to the Queen and her responsible advisers, and for the purpose of securing adherence to the financial conditions now prescribed, and to the general policy of the Government of India.

26. The procedure of the Departments of "Registration," "Jails," and "police" is, to a large extent, governed by law. No law exists upon the subject of "Education"; but the policy of the Government has been declared and prescribed in despatches* from the Secretary of State, the authority of which, and of the Rules sanctioned by the Government of India regarding "Grants-in-aid" and other matters of general principle, is not affected by this Resolution.

27. Subject to these general restrictions, the Governments will, henceforth enjoy full liberty in the expenditure of the funds appropriated to "Provincial Services." It must, however, be understood that, in thus divesting himself of control, the

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* Such as No. 49, dated 19th July, 1854.
„ 4, „ 7th April, 1859.
„ 1, „ 23rd January, 1864.
„ 5, „ 19th May, 1870.

Governor-General in Council divests himself also, to a large extent, of his former responsibility. If responsibility for expenditure is retained, control cannot be renounced.

28. The Governor-General in Council delegates to the Local Governments this large additional share of the administrative power without hesitation or distrust, believing that it will be exercised with wisdom, liberality and prudence.

II. EXTRACTS FROM THE RESOLUTION BY THE GOVERNMENT OF INDIA ON THE EXTENSION OF PROVINCIAL FINANCE, DATED SEPTEMBER 30, 1881, NO. 3353.

1. These proceedings contain the record of the existing agreements with the several Local Governments for the administration of the provincial service.

2. These agreements are the outcome of what is popularly known as Lord Mayo's Decentralisation Scheme of 1870. The principles of that scheme could in 1870 only be applied in a limited and tentative manner. Certain heads of expenditure were handed over to the more unfettered control of Local Governments, together with the means of providing for them, consisting partly of the receipts under the same heads, and partly of a fixed consolidated allotment from the Imperial revenue. The Governments were to use as they pleased any surplus, but to make good any deficit, resulting from their administration.

3. In 1877 an important advance was made by handing over to certain Governments heads of revenue, but also introducing the principle of provincial responsibility for works constructed for mere local and Provincial purposes. At the same time were issued (Resolution, Financial Department, No. 1709 of 22nd March, 1877) new "rules and conditions," which are still the standard, for the administration by the Governments of all revenues and services handed over to them. All the Governments except that of Madras, which remains under the arrangements of 1870, readily accepted the more independent position offered to them; and in 1877, or subsequently, have entered into revised agreements of more or less extended scope, the latest (for Assam and British Burma) affecting almost all heads of revenue and expenditure. These agreements were in some cases for short terms, and all either have expired already, or will expire with the current year, except the two last specified, which

extend to 1882-3. These two, it is proposed, with the consent of the Local Governments concerned, to terminate on the 31st. March next, in order to secure an early establishment of the decentralisation system in all the Provinces on a uniform and extended basis.

4. In the first place, it is now proposed to apply to the whole of India the principle upon which the most recent settlement, namely, that with Burma in 1879, was framed. That principle is that, instead of giving Local Governments a fixed sum of money to make good any excess of provincialised expenditure over provincialised receipts, a certain proportion of the Imperial revenue of each province should be devoted to this object. Certain heads, as few in number as possible, are wholly or with minute local exceptions only, reserved as Imperial; others are divided, in proportions for the most part equal, between Imperial and Provincial; the rest are wholly or with minute local exceptions only, made Provincial. The balance of transfers being against the Local Governments, is rectified for each province by a fixed percentage on its Land Revenue (otherwise reserved as Imperial), except in Burma where the percentage is extended to the Imperial rice export duty and salt revenue also. The advantage of this system over that which now generally prevails is, that the Provincial Governments will be given a direct interest, not only in the provincialised revenue, but also in the most important item of Imperial Revenue raised within their own Province.

5. Another important change which is contemplated requires somewhat fuller explanation. In the Resolution No. 3334, dated 14th December, 1870, the Imperial Government, speaking broadly, announced a policy of divesting itself of both responsibility and control within certain limits, but a reservation was made (paragraph 17) of power to modify the resources granted, in the event of "some fiscal misfortune such as heavy loss in the opium revenue, or national disaster, such as war or severe famine." On two occasions already within a decade this reservation has been acted on. On the occasion of the great famine of 1876-77 in western and southern India, the Supreme Government necessarily came to the rescue of the Local Governments in meeting the enormous outlay involved; but it directed that all Provincial and Local resources must be exhausted before Imperial aid could be supplied. This decision was unexceptionable in the sense in which it was meant; but it may have led to developments which were not altogether intended. The second

occasion on which the reservation has been acted on is that of the Afgan war. The Local Governments were called upon during the years 1879-80 and 1880-81 to contribute £6,70,000 from the resources made their own by the decentralisation policy, and in the Financial Statement of 1880-81 (paragraph 170) the hope was expressed that they had been able "to afford this timely help to the general finances with little apparent difficulty." The circumstances of the time were, without doubt, peculiar, and the strain upon the finances was undoubtedly severe. But the sudden suspension of improvements in progress, the starvation of public works, and the discouragement of care and economy by requiring a surrender of their results could not, in themselves, be otherwise than prejudicial.

6. In modification, therefore, of the reservation hitherto in force, it is proposed to declare, on the one hand, that the local Governments must look for no special aid from the Imperial Government except in the case of severe famine (and then only within limits to which allusion will presently be made) ; and on the other, that the Imperial Government will make no demand on them except in the case of disaster so abnormal as to exhaust the Imperial reserves and resources, and to necessitate a suspension of the entire machinery of public improvement throughout the empire.

7. The question of relief to be afforded on the occasion of severe famine presents considerable difficulties. It has been suggested that each local Government should be held responsible for a fixed share of any expenditure incurred on famine relief, and that exceptional cases may be left for exceptional treatment at the time. To this course the objections are that any fixed share of the expenditure will always be either too much or too little, and that a time of actual famine is a bad time for driving bargains and defining responsibilities. It is obvious that the Provincial Government ought to have a direct interest in keeping down relief expenditure, and equally so that a Provincial Government, emerging from a great famine, after exhausting all its resources, cannot be saddled with a further liability for interest on Imperial famine expenditure, and will even be crippled in its ordinary administration for many years to come. The real question seems to be, how far should Provincial resources be depleted before Imperial aid steps in.

8. Assuming that Provincial responsibility ought to be enforced within reasonable limits, His Excellency in Council considers that those limits must bear relation to the Provincial

resources, not to the relief expenditure. Provincial resources consist of (1) current income during the period of distress; (2) accumulated savings of past years, in excess of the ordinary "working balance"; and (3) the margin of provincialised income over expenditure in normal years, which is the Provincial Government's "profit on the contract" available for public improvements. Upon these, provincial responsibility will be enforced in proportion to their nature. The first should be entirely exhausted, every avoidable expense in every department being retrenched, and the Public Works grants being applied to famine works to the very utmost possible. The second should be drawn upon up to two-thirds only of their total amount. The third will, in the first place, be made liable to whatever extent may be necessary in addition to the ordinary Public Works grants, for the completion of works begun as relief works under the pressure of famine. In cases where no such need for completion remains after a famine, this third resource will be chargeable up to one-fourth, at most, for payment of interest of Imperial loans (if any) which have been raised to meet the excess cost of that famine in the province.

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10. There is, however, another very important question which is intimately connected with the general scheme for the decentralisation of finance, namely, the development of self-government. Allusion was prominently made to this point in the 23rd paragraph of the Resolution of December 14th, 1870, in the following terms:—

"But beyond all this there is a greater and wider object in view. Local interest, supervision, and care are necessary to success in the management of funds devoted to education, sanitation, medical charity and local public works. The operation of this Resolution in its full meaning and integrity will afford opportunities for the development of self-government, for strengthening municipal institutions, and for the association of Natives and Europeans to a greater extent that heretofore in the administration of affairs."

In pursuance of the policy thus laid down, considerable progress has been made since 1870. The bulk of the local rates and cesses now existing has been imposed since that date; in some Provinces a portion of these have been entrusted to the management of Committees; in others, such as Bombay, the committees previously existing have made great advances in resources and in efficiency. Municipalities, also, have increased in number and usefulness. At the same time, it must be admitted that there has been greater inequality in the progress

in the direction of self-government attained in the various Provinces than their respective circumstances can be altogether held to justify. There undoubtedly exists very great variety in the weight of the burdens borne by different localities, and very great diversity in the objects for which the latter are called on to provide. The inequality sometimes produces a sense of injustice ; the objects are often those the advantage or local obligation of which the people are least able to understand. Matters such as primary education and minor public works, which have in some Provinces been for many years under local management with acknowledged advantage, are in others reserved to the Provincial Government, while heavy contributions are levied from municipalities for Police, in the administration of which they necessarily can take no part.

11. His Excellency the Governor-General in Council is, therefore, of opinion that the time has now arrived when further practical development might be afforded to the intentions of LORD MAYO'S government, and that the Provincial agreements should no longer exclude from all consideration the mass of taxation under Local and Municipal management, together with the similar resources still retained in Provincial control, and ignore the question of local self-government. The Provincial Governments, while being now largely endowed from Imperial sources, may well, in their turn, hand over to local self-government considerable revenues, at present kept in their own hands, but similar in kind to many which have long been "locally" managed with success by Committees, partly composed of non-official members, and subject only to a general remedial control reserved to the State by the legislature. At the same time, such items should be generally made Local as the people are most likely to be able to understand the use of and to administer well.

His Excellency would, therefore, invite the Local Governments to undertake a careful scrutiny of Provincial, Local, and Municipal accounts, with the view of ascertaining (1) what items of receipt and charge can be transferred from "Provincial" to "Local" heads, for administration by Committees comprising non-official, and, wherever possible, elected members, and what items already "Local" but not so administered, might suitably be so ; (2) what redistribution of items is desirable in order to lay on Local and Municipal bodies those which are best understood and appreciated by the people ; (3) what measures, legislative or otherwise, are necessary to ensure more

Local Self-government. Incidentally to the scrutiny they will probably notice, and might carefully consider (4) ways of equalising local and municipal taxation throughout the Empire, checking severe or unsuitable imposts, and favouring forms most in accordance with popular opinion or sentiment. The Government of India have already made some preliminary enquiries in the same direction, the results of which will shortly be communicated to the several Local Governments for consideration in conjunction with their own.

* * * * * *

13. It is deemed expedient that the Imperial and Provincial Governments should have joint and equal interests in the net revenue from Forest, Excise, Assessed Taxes, Stamps, and Registration, including Record Room Fees. Such a joint interest in the more important of these revenues already practically exists in most Provinces, although in a somewhat complex form. Regarding Registration, however, it may be observed that the present policy of the Government of India is not to look upon it as a source of revenue.

14. The Imperial Government will, henceforth, claim no share in the revenue from Provincial Rates, which will be appropriated wholly by the Local Governments.

15. The Medical Establishments have not hitherto been included in the provincial services, except in the case of Bombay and British Burma, because their cost is not immediately within the control of the Local Governments. But experience shows that these items are subject to little fluctuation ; and it seems simpler and better now to include them in the provincial allotments. The Ecclesiastical Establishments are, to some extent, in a similar position, but it appears desirable, for various reasons, that they should, for the present, be provincially administered outside the new arrangements, on the fixed allotment system.

16. With respect to Pensions some of the Local Governments have hitherto objected to become responsible for them, because the pensioners of one Government may draw their pensions from treasuries under another Government. But, as it is evidently desirable that the Government which grants a pension or gratuity should be responsible for its cost, the Governor-General in Council has lately, in order to obviate that objection, allowed the inter-provincial adjustment of expenditure on pensions.

In the same way, it is proposed to allow the inter-provincial adjustment of revenue collected by one Local Government for another (such for example, as the excise on spirit distilled, or on fermented liquors and drugs produced in India, when carried by land or sea, and under bond or otherwise, into some other province)* * *

17. RAILWAYS, IRRIGATION, AND NAVIGATION, AND OTHER PUBLIC WORKS:—* * * Under the arrangements now in force, each Local Government bears, as a provincial charge, interest on the whole Imperial part of the capital cost of every such work in its jurisdiction, of which capital and revenue accounts are kept, whether such cost has been recorded under Productive Public Works or under some other ordinary head, and is entirely responsible for its construction and administration. The connextion of the Government of India with such works is confined to the enforcement of the rules and tests prescribed by itself or the Secretary of State, and to the provision of the funds required from the Imperial Treasury under the head of Productive Public Works. The Local Governments do not, of course, pay interest upon any part of the capital cost of such works which has been provided from Provincial Revenues, or by means of Local Debenture Loans the interest on which is a Provincial charge.

18. Since the time, however, when the arrangements just described were matured, Public Works policy and prospects have altered most materially. The "Famine Relief and Insurance" annual allotment has been permanently fixed, the invocation of private enterprise is producing a response the limits and effects of which no one can now foresee, and the resources of the Empire for public works will require manipulation, as a whole, from new standpoints, and for the attainment of hitherto uncontemplated ends. Under these circumstances, it seems to be unwise, and might prove to be improvident, to stereotype, much more to alter hastily, the *status quo.* Irrigation works will, probably, still be constructed almost entirely by the State, in which case provincialisation may still be freely pursued ; but as regards railways, the future is altogether uncertain.

The Governor-General in Council desires to make the administration of all these services as far as possible Provincial, but is unable, for the reasons explained, to give more than a general declaration of intention to provincialise hereafter, every work which, on mature consideration, proves suitable for

such treatment. Existing provincialisation will not be now interfered with, but should be considered to be provisional only.

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20. While thus inviting the Local Governments to assume new obligations, the Government of India has assigned to them, simultaneously, the means of discharging these obligations. The prospects of the revenues which it is proposed to divide between the Central and Local Governments, as well as of those which will be exclusively Provincial, are good, and the details of the administration will be so completely in the hands of the Local Governments, that they will be able effectually to promote economy as well as to develop the revenues. Their share of the increased resources thus obtained will be at their free disposal, subject always to standing rules to be made from time to time. After such modifications as may be made upon a consideration of the criticisms of the Local Governments, it is intended that this scheme should supersede all the existing contracts, with effect from the beginning of the financial year 1882-83.

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III. LORD RIPON'S RESOLUTION ON LOCAL SELF-GOVERNMENT, 1882.

1. The Governor-General in Council in the Resolution of the Financial Department, dated the 30th September, 1881, set out, for the information of the Local Governments, the principles upon which it was proposed to revise the agreements then in force for the administration of the Provincial Services, and to establish the decentralised system of finance on a uniform and extended basis. It was explained that intimately connected with this general scheme for the decentralisation of finance was the very important question of developing Local Self-Government. Considerable progress in the direction had, it was admitted, been made since 1870. A large income from local rates and cesses had been secured, and in some Provinces the management of this income had been freely entrusted to local bodies. Municipalities had also increased in number and usefulness. But there was still, it was remarked, a greater inequality of progress in different parts of the country than varying local circumstances seemed to warrant. In many places services admirably adapted for local management were reserved in the hands

of the central administration, while everywhere heavy charges were levied on Municipalities in connection with the Police, over which they had necessarily no executive control.

Paragraph 11 of the Resolution went on to say :—"His Excellency the Governor-General in Council is, therefore, of opinion that the time has now arrived when further practical development may be afforded to the intentions of Lord Mayo's Government, and that the Provincial Government should no longer exclude from all consideration the mass of taxation under Local and Municipal management together with the similar resources still retained in Provincial control, and ignore the question of Local Self-Government. The Provincial Governments, while being now largely endowed from Imperial sources, may well, in their turn, hand over to local self-government considerable revenues, at present kept in their own hands, but similar in kind to many which have long been locally managed with success by Committees, partly composed of non-official members and subject only to a general remedial control reserved to the State by the Legislature. At the same time, such items should be generally made local as the people are most likely to be able to understand the use of and to administer well. His Excellency would, therefore, invite the Local Governments to undertake a careful scrutiny of Provincial, Local and Municipal accounts, with the view of ascertaining (1) what items of receipt and charge can be transferred from 'Provincial' to 'Local' heads, for administration by Committees comprising non-official and, wherever possible, elected members, and what items already 'Local', but not so administered, might suitably be so ; (2) what redistribution of items is desirable, in order to lay on Local and Municipal bodies those which are best understood and appreciated by the people ; (3) what measures, legislative or otherwise, are necessary to ensure more Local Self-Government. Incidentally to the scrutiny they will probably notice, and might carefully consider (4) ways of equalising Local and Municipal taxation throughout the Empire, checking severe or unsuitable imposts, and favouring forms most in accordance with popular opinion or sentiment. The Government of India have already made some preliminary enquiries in the same direction, the results of which will shortly be communicated to the several Local Governments for consideration in conjunction with their own."

2. Accordingly on the 10th October 1881 letters were addressed to the various Local Governments indicating those

branches of expenditure which appeared to the Government of India most suited for local control, and inviting each Government to examine any other heads of accounts which might seem to cover items capable of transfer to such control. It was pointed out that it was not the intention of the Government of India that the proposed transfer of the control of expenditure of a specially local character to local bodies should involve any addition to existing local burdens; and it was, therefore, shown to be necessary to arrange for the simultaneous transfer of receipts sufficient to meet any net balance of additional expenditure which in any instances might arise. The receipts to be thus transferred should, it was suggested, be such as to afford a prospect that, by careful administration, with all the advantages due to local sympathy, experience and watchfulness, they would be susceptible of reasonable increase. In cases where larger assignments of funds were required, the receipts from pounds, or a share of the assessed taxes collected within the jurisdiction of a local body, were indicated as suitable sources of revenue to be made over. But on this, as on other points a wide discretion was left to the Local Governments.

3. As regards the character of the local bodies to whom those powers of control and administration were to be entrusted, it was remarked that already in most parts of British India there were in existence Municipal Committees whose powers might in many cases be advantageously extended, and District Committees for various purposes, which might very well be consolidated into single homogeneous working bodies, with ancillary subordinate committees for each tahsil or sub-division of the district. It was suggested that the Magistrate and Collector should be President of the District Committee, and the Assistant or Deputy Magistrate in charge of the sub-division, President of the subordinate committees, but in each case the local bodies should, it was said, comprise persons not in the service of Government, and elected or nominated, as might seem best, in a proportion of not less than from one-half to two-thirds of the whole numbers. For the satisfactory development of this plan, it was admitted that legislation would probably be necessary in most provinces, and the Local Governments were invited in their replies to explain the general outlines which such legislation should follow. In regard to this it was said—

"Special attention will be required in setting the relations between the various local bodies and the officers of the general

administration, and in providing for a certain measure of control and inspection on the part of Government. It would be hopeless to expect any real development of self-government if the local bodies were subject to check and interference in matters of detail; and the respective powers of Government and of the various local bodies should be clearly and distinctly defined by statute so that there may be as little risk of friction and misunderstanding as possible. Within the limits to be laid down in each case, however, the Governor-General in Council is anxious that the fullest, possible liberty of action should be given to local bodies."

4. The policy thus enunciated by the Government of India has on the whole, been loyally, and in some cases, warmly accepted by the Local Governments, several of which have already drawn up schemes for giving effect to it, and have submitted these for the approval of the Government of India. The Governor-General in Council desires to acknowledge the care and thought with which some of these schemes have been worked out. Upon each the Government of India will communicate hereafter its views in detail to the local Government concerned. Meantime, however, it will be convenient that the Governor-General in Council should explain somewhat more fully than he has hitherto done, the general mode in which he would wish to see effect given to the principle of Local Self-government throughout British India outside the Presidency Towns. This is the more necessary, as further considerations of the subject and examination of the schemes prepared for the different provinces have suggested the propriety of certain modifications of the plan sketched out in the Circular letters of the 10th October last.

5. At the outset, the Governor-General in Council must explain that in advocating the extension of Local Self-government, and the adoption of this principle in the management of many branches of local affairs, he does not suppose that the work will be in the first instance better done than if it remained in the sole hands of the Government District officers. It is not primarily, with a view to improvement in administration that this measure is put forward and supported. It is chiefly desirable as an instrument of political and popular education. His Excellency in Council has himself no doubt that in course of time, as local knowledge and local interest are brought to bear more freely upon local administration, improved efficiency will in fact follow. But at starting, there will

doubtless be many failures, calculated to discourage exaggerated hopes, and even in some cases to cast apparent discredit upon the practice of self-government itself. If, however, the officers of Government only set themselves, as the Governor-General in Council believes they will, to foster sedulously the small beginnings of the independent political life ; if they accept loyally and as their own the policy of the Government, and if they come to realise that the system really opens to them a fairer field for the exercise of administrative tact and directive energy than the more autocratic system which it supersedes, then it may be hoped that the period of failures will be short and that real and substantial progress will very soon become manifest.

6. It is not uncommonly asserted that the people of this country are themselves entirely indifferent to the principle of self-government ; that they take but little interest in public matters ; and that they prefer to have such affairs managed for them by Government officers. The Governor-General in Council does not attach much value to this theory. It represents no doubt the point of view which commends itself to many active and well-intentioned District officers ; and the people of India are, there can be equally no doubt, remarkably tolerant of existing facts. But as education advances, there is rapidly growing up all over the country an intelligent class of public-spirited men whom it is not only bad policy, but sheer waste of power, to fail to utilise. The task of administration is yearly becoming more onerous as the country progresses in civilisation and material prosperity. The annual reports of every Government tell of an ever-increasing burden laid upon the shoulders of the local officers. The cry is everywhere for increased establishments. The universal complaint in all departments is that of over-work. Under these circumstances it becomes imperatively necessary to look around for some means of relief ; and the Governor-General in Council has no hesitation in stating his conviction that the only reasonable plan open to the Government is to induce the people themselves to undertake, as far as may be, the management of their own affairs ; and to develop, or create if need be, a capacity for self-help in respect of all matters that have not, for imperial reasons, to be retained in the hands of the representatives of Government.

7. If it be said that the experiments hitherto made in this direction have not been encouraging, the Governor-General in Council must avow his belief that the principle has not as

yet been, in any general or satisfactory fashion, fully and fairly tried. There is reason to fear that previous attempts at Local-Self-Government have been too often over-ridden and practically crushed by direct, though well-meant, official interference. In the few cases where real responsibility has been thrown upon local bodies and real power entrusted to them, the results have been very gratifying. There is even now a vast amount of assistance rendered to the administration by Honorary Magistrates, Members of Municipal Corporations and other Committees ; and there is no antecedent improbability in the theory that if non-official auxiliary agency were more thoroughly organised and more fully trusted, there would be a speedy and marked improvement, not only in its amount, but in its efficiency.

8. Holding therefore, that it is the duty and interest of the ruling power to take care that the further advance which it is now proposed to make in the direction of Local Self-Government shall be, though cautious, yet at the same time real and substantial, the Governor-General in Council will proceed to indicate, for the guidance of the Provincial Administrations, the general principles upon which, in the judgment of the Government of India, these measures should be shaped. The subject may, for the purposes of this Resolution, be divided into two parts—the first, relating to the mode in which Local Boards, whether Municipal or District, should generally be constituted ; and the second, to the degree of control which the Government should retain over such bodies, and the manner in which that control should be exercised.

9. In regard to the first of these points, the Governor-General in Council would observe that he is quite aware of the absurdity of attempting to lay down any hard and fast rules which shall be of universal application in a country so vast, and in its local circumstances so varied, as British India. It would be unreasonable to expect that any uniform system of Local Government could be applied with equal success in Provinces differing as the Punjab, for instance, from Madras, or Bengal from Burma. A large latitude of application must, therefore, in every case be left to the local authorities. Indeed, we are really as yet so much in the infancy of Self-Government, and have, perhaps, so little knowledge of the directions in which it would naturally develop itself among the people, that there is a distinct advantage in having different schemes tried in different places in order to test, by practical experience, what arrangements are best suited to the ways of thinking, habits,

and other idiosyncrasies of the heterogeneous populations of the Empire. But there are, nevertheless, fundamental principles which, after every allowance has been made for local peculiarities, must be universally followed and frankly adopted if the system is to have anywhere a fair trial.

10. The Government of India desires, then, that while maintaining and extending, as far as practicable, the plan of municipal Government in the cities and towns of each Province, the Local Governments will also maintain and extend throughout the country, in every district where intelligent non-official agency can be found, a net-work of Local Boards, to be charged with definite duties and entrusted with definite funds. The Governor-General in Council considers it very important that the area of jurisdiction allotted to each Board should in no case be too large. If the plan is to succeed at all, it will be necessary to secure among the members both local interest and local knowledge. Experience proves that District Committees are, as a rule, very badly attended by members not actually residing in the vicinity of the head-quarters' station. Those who do attend have frequently no intimate acquaintance with the wants of outlying parts of the district. The consequence is, either that undue attention is given to the requirements of the immediate neighbourhood of the central station, or that the business falls entirely into the hands of the District Officer, the Committee contenting itself by formally endorsing his proposals. Modifying, therefore, to some extent the suggestions made in paragraph 8 of the Circular letters of the 10th October last, the Governor-General in Council desires that the smallest administrative unit—the sub-division, the taluka or the tahsil—shall ordinarily form the maximum area to be placed under a Local Board. He would not indeed object to even smaller jurisdictions, were these deemed suitable. In some Provinces it may be found possible to leave these sub-divisional Boards to their own independent working, arranging for a periodical District Council, to which delegates from each Local Board might be sent, to settle such common matters as the rate of land-cess to be levied during the year, allotment to be made of district funds, and other questions of general interest. In other Provinces, again, it may be thought best to have a District Board with controlling power over the smaller Local Boards. But whatever system is followed, the cardinal principle, which is essential to the success of Self-Government in any shape, is this, that the jurisdiction of the primary Boards must be so limited in area as to

ensure both local knowledge and local interest on the part of each of the members.

11. The Municipal Committees will, of course, remain in the Local Boards for areas included within town limits. The relations between such Municipal Boards and the sub-divisional or District Boards within whose jurisdiction the towns lie, must be carefully settled in each case. In some instances the Town Boards will be left entirely independent and apart. In others it may be found desirable to give the Rural Boards a certain share in the settlement of questions of common interest. In others, again, the Town Boards would be required to send delegates to the District Board or Council.

12. The Local Boards, both urban and rural, must everywhere have a large preponderance of non-official members. In no case ought the official members to be more than one-third of the whole, unless in places in which the elective system is followed, when there would be no ground for objecting to an elected member merely on the ground that he was in the service of Government. The Governor-General in Council is disposed to think that the non-official members of the Boards should hold office for at least two years after election or appointment ; but probably the best plan to follow would be that of the compulsory retirement by rotation of a fixed proportion of members, those retiring being eligible to sit again. A detail of this description may, however, fitly be left to the Local Government.

13. Members of the Boards should be chosen by election wherever it may, in the opinion of the Local Governments, be practicable to adopt that system of choice. The Governor-General in Council does not require the adoption of the system of election in all cases, though that is the system which he hopes will ultimately prevail throughout the country, and which he wishes to establish now as widely as local circumstances will permit. Election in some form or other should be generally introduced in towns of any considerable size, but may be extended more cautiously and gradually to the smaller Municipalities and to backward rural tracts. Even as regards these last, however, the Governor-General in Council is disposed to think that if the Government officers cordially accept the principle, and set themselves to make it successful, a great advance might be made with comparatively little difficulty. Thus when the Local Governments had determined the nature of the qualifications suited to such a district (and these might ordinarily at first be fairly high), each Sub-Divisional Officer might be instructed to

prepare a list or register of candidates qualified to sit upon the Local Board and might invite all those residing in any particular area, such as a Police (thana) jurisdiction, to meet him on a day fixed at some convenient spot near their homes. He might then explain to them the objects of Government, and the nature of the duties they are invited to undertake, and call upon them to elect then or on a future day the number of representatives that had been fixed for the area in question. In the course of a few years, when the members of the Board find that they have real powers and responsibilities entrusted to them, any Government interference will become unnecessary. The electors may safely then be left to conduct their own elections under such rules as may be from time to time laid down.

14. As to the system of election to be followed, the Governor-General in Council would here also leave a large discretion to the Local Governments. Experience is wanting to determine the most suitable general system for each province; and it is desirable that a variety of plans should be tried in order to a future comparison of results. The simple vote, the cumulative vote, election by wards, election by the whole town or tract, suffrage of more or less extended qualification, election by castes or occupation—these and other methods might all be tried. New methods, unthought of in Europe, may be found suitable to India; and after a time it will probably be able to say what forms suit best the local peculiarities and idiosyncrasies of the different populations. The Provincial Governments should through their District officers, consult the leading Natives of each locality, not only as to the possibilities of introducing the elective system, but as to the arrangements most likely to meet their local circumstances, and should use every effort to make the schemes adopted as consonant as possible to the feelings and habits of the people.

15. Doubtless the first consequence of this mode of proceeding will be that the electoral system, viewed as a whole, will present for a time a very diversified appearance, and in some places arrangements made will turn out badly and call for change; but the Governor-General in Council is not disposed to attach undue importance to this. The problem before the Government is one of no slight difficulty; being that of discovering in what manner the people of the town and district of British India can be best trained to manage their own local affairs intelligently and successfully. The attempts hitherto made with this object have met with but little success. The

best men in many cases do not present themselves as candidates for Municipal Office. The number of voters is generally insignificant compared with the number on the registers. And yet there can be no doubt that among the more intelligent classes of the community there is a real and growing interest being taken in administrative matters. It may be suspected, therefore, that the cause of comparative failure in the efforts hitherto made is to be found rather in the character of those efforts than in the nature of the object pursued. They have been, it seems to the Governor-General in Council, wanting to a great degree in earnestness and in real endeavours to adopt the system adapted to the feelings of the people by whom it has to be worked. If this is so, the remedy must lie in ascertaining by patient and practical experiment how best to call forth and render effective the desire and capacity for self-government which all intelligent and fairly educated men may safely be assumed to possess.

16. With a view to stimulating the candidature of men of respectable standing in Native society, and to mark the importance of the functions of these Local Boards in the eyes of Government, the Governor-General in Council is pleased to direct that the courtesy titles of "Kai (or Rao) Bahadur or Khan Bahadur" shall in all official correspondence be applicable to Native members of all Local Boards during their term of office.

17. Turning now to the second division of the subject—the degree of control to be retained by the Government over the Local Boards, and the manner in which that control should be exercised—the Governor-General in Council observes that the true principle to be followed in this matter is that the control should be exercised from without rather than from within. The Government should revise and check the acts of the local bodies but not dictate them. The executive authorities should have two powers of control. In the first place their sanction should be required in order to give validity to certain acts, such as the raising of loans, the imposition of taxes in other than duly authorized forms, the alienation of Municipal property, interference with any matters involving religious questions or affecting the public peace, and the like. (The cases in which such sanctions should be insisted upon would have to be carefully considered by each Government, and they would at the outset be probably somewhat numerous, but, as the Boards gained in experience, might be reduced in number.)

In the second place, the Local Government should have power to interfere either to set aside altogether the proceedings of the Board in particular cases, or, in the event of gross and continued neglect of any important duty, to suspend the Board temporarily, by the appointment of persons to execute the office of the Board until the neglected duty had been satisfactorily performed. That being done the regular system would be re-established, a fresh Board being elected or appointed. This power of absolute supersession would require in every case the consent of the Supreme Government. A similar power is reserved to the Executive Government under several English statutes; and if required in England, where Local Self-Government is long established and effective, it is not probable that it could be altogether dispensed with in India. It should be the general function of the executive officers of Government to watch, especially at the outset, the proceedings of the Local Boards, to point out to them matters calling for their consideration, to draw their attention to any neglect of duty on their part, and to check by official remonstrance any attempt to exceed their proper functions or to act illegally or in an arbitrary or unreasonable manner.

18. It does not appear necessary, for the exercise of these powers, that the chief executive officers of towns, sub-divisions or districts should be Chairmen or even members of the Local Boards. There is, indeed, much reason to believe that it would be more convenient that they should supervise and control the acts of those bodies, without taking actual part in their proceedings. The Governor-General in Council is aware that many high authorities hold that the District officer should always be *ex-officio* Chairman of all the Local Boards within the district, and should directly guide and regulate their proceedings. This was indeed the view taken by the Government of India itself in the Circular letters of the 10th October last, so far as the constitution of district Boards was concerned. But even then the Governor-General in Council did not see his way to accepting the principle in the case of Municipal Boards; and further consideration has led him to the belief, that on the whole, it is better to lay down no such general rule in the case of any class of Local Boards. There appears to him to be great force in the argument that so long as the chief executive officers are, as a matter of course, Chairmen of the Municipal and District Committees there is little chance of these Committees affording any effective training to their

members in the management of local affairs, or of the non-official members taking any real interest in local business. The non-official members must be led to feel that real power is placed in their hands, and that they have real responsibilities to discharge. It is doubtful whether they have under present arrangements any sufficient inducement to give up their time and attention to the transaction of public business. There is this further objection to the District officer acting as Chairman, that if the non-official members are independent and energetic, risk may arise of unseemly collision between the Chairman and the Board. The former would be in a far more dignified and influential position if he supervised and controlled the proceedings of the Board from outside, acting as arbiter between all parties, and not as leader of any.

19. The Governor-General in Council, therefore, would wish to see non-official persons acting wherever practicable, as Chairmen of the Local Boards. There may, however, be places where it would be impossible to get any suitable non-official Chairman, and there may be districts where the chief executive officer must for the present retain these duties in his own hands. But His Excellency in Council trusts that the Local Governments will have recourse sparingly to the appointment of executive officers as Chairmen of Local Boards; and he is of opinion that it should be a general rule that when such an officer is Chairman of any Local Board, he shall not in that capacity have a vote in its proceedings. This arrangement will, to some extent, tend to strengthen the independence of the non-official members, and keep the official Chairman, where there must be such, apart from the possible contentions of opposing parties.

The appointment of Chairmen should always be subject to the approval of the Local Government, but need not be always made by it. The Governor-General in Council would be glad to see the Boards allowed, in as many cases as possible, to elect each its own Chairman. But this matter is one which must be left to the discretion of Local Governments.

20. These, then, are the principles upon which the Governor-General in Council desires to see the experiment of Local Self-Government introduced throughout the several provinces of India; and he would ask the Local Governments to revise their several schemes and shape any proposed legislation in general accordance with these principles. On such of the local schemes as have already come before the Government of

India separate orders will, as already intimated, be passed in accordance with the foregoing exposition of policy. There are, however, one or two points to which attention has been drawn by a perusal of the orders of the Local Governments, which, though matters of detail, are still of sufficient importance to warrant their being noticed in this Resolution.

21. In the orders of the 10th October last the Government of India laid special stress on the importance of entrusting to the Local Boards, not merely the expenditure of fixed allotments of funds, but the management of certain local sources of revenue. Sufficient regard does not as yet appear to have been paid to this part of the scheme. Not only should every Local Board have the entire control over the proceeds of all local rates and cesses levied within its jurisdiction for its own special purposes, but along with the charge of any expenditure that is at present Provincial should be transferred where possible, the management of equivalent revenue. The License Tax assessments and collection, for example, might very well be made over to the Local Boards, municipal and rural, in many parts of the country, subject to the control provided by the existing law. Pounds and ferry receipts have been already indicated as suited for transfer. The allotment of lump grants from Provincial revenues should be reserved as much as possible to balance receipts and expenditure of the Local Boards. The Governor-General in Council hopes that this part of the scheme will receive vary careful consideration from all Local Governments, with a view to giving full effect to the policy which the Government of India has laid down on this point.

22. Another point deserving of notice is the control that should be exercised over the execution of local works. It will not always be possible for a Local Board to entertain a competent engineer of its own : and in any case when Government buildings and important works of other kinds are made over for maintenance, there must be some effective guarantee for thoroughness of execution. It will probably be most convenient that, while all subordinate establishments are entirely under the control of the Boards, Government should supply the District Engineer, and furnish professional supervision, the Boards defraying in such manner as may be determined by the Local Governments with reference to the amount of work done for each Board, the payments to be made to Government on this account. Care must, however, be taken that the Boards are left unfettered in the initiation and direction of operations and

that the Engineer is placed in the position of their servant and not of their master. The power of check vested in the District officer will suffice to remedy any carelessness or improper working on the part of the Boards. If this arrangement be carried out, it will probably be found possible to make over to the charge of the Boards most of the public buildings in the districts, and other works of various kinds which would otherwise have to be kept in the hands of the Government officers. Double establishments will thus be avoided, and public money saved.

IV. THE GOVERNMENT OF INDIA RESOLUTION ON PROVINCIAL FINANCE NO 27-F. DATED, SIMLA, THE 18TH MAY, 1912.

In connection with the Report of the Royal Commission upon Decentralization, the Government of India referred, for the opinion of local Governments, a number of specific points affecting the financial relations of the Imperial with the Provincial Governments. The particular questions on which advice was sought may be summarised as follows :—

(*a*) Certain problems regarding the assignment of revenue to the provinces under the quasi-permanent settlements.

(*b*) The desirability of provincial taxation.

(*c*) The advisability of floating provincial loans in the open market.

(*d*) The control to be exercised over the borrowing of local bodies.

(*e*) The delegation of powers of reappropriation.

The reports of local Governments have been considered in detail by the Governor-General in Council ; the orders of the Secretary of State have been taken where necessary ; and the object of the present resolution is to bring together in one place the decisions which have been reached upon the various points at issue.

The reason for not issuing the Resolution earlier lies in the desire of the Government of India to see the results of the first year's working of the new financial arrangements with the provinces.

2. *The revision of the Provincial Settlements.*—In connection with the quasi-permanent provincial settlements, the scope of the reference was comparatively limited. The Government of India expressly declared their intention of retaining unchanged the principles underlying the existing settlements, and

the control which they exercised over the provincial budgets. They invited the opinions of the local Governments on three relatively minor points only ; namely, the reduction of overgrown fixed assignments, the gradual elimination of divided heads, and the policy of making special grants from Imperial to Provincial revenues. When, however, the time came to consider the replies, conditions had changed. The financial position of India was such that it was clearly desirable to take a step which would constitute a decided advance in the evolution of the settlement system. It is not necessary here to describe at any length the history of this system. Its institution represents an attempt to solve a problem which must always arise where there exists a local Government in complete or partial subordination to a central authority. Certain classes of expenditure must obviously be left to the subordinate authority, while other services can be satisfactorily administered by the Central Government alone. Both these bodies require to be kept in funds. In India, where the great bulk of the revenues of the country is collected in, and credited in the accounts of, the various provinces, the problem resolves itself into the question how the Central Government can best be supplied with resources to meet the charges of the services which it must of necessity administer. The provincial settlements represent a method of attaining this object, which has been evolved by diverse and protracted experiment. To meet its own expenditure, the Government of India retains, in the first place, the entire profits of the commercial departments and, secondly, all the revenue whose *locale* is no guide to its true incidence, such as the net receipts from Customs, Salt and Opium. The income derived from these sources is, however, insufficient to cover the cost of the Imperial services, and an arrangement had therefore to be made by which the other sources of revenue should be distributed between the central and the various Provincial Governments.

Theory of the settlements.

3. This arrangement took a semi-contractual shape, as a separate settlement, or agreement, concluded by the Government of India with each individual province. In the stage of development which it had reached when the Royal Commission reported, the settlement system presented three main features. In the first place, the settlements had been declared to be *quasi*-permanent. The Government of India had, it is true, reserved the right of

Their main features.

revision, but they had promised to exercise that power "only when the variations from the initial relative standards of revenue and expenditure were, over a substantial term of years, so great as to result in unfairness either to the province itself, or to the Government of India, or in the event of the Government of India being confronted with the alternatives of either imposing general taxation, or seeking assistance from the provinces." The second Important principle of the system was that the distribution of revenues between the provincial and Central Governments was made, except on occasions of grave emergency, with direct reference not to the needs of the Central Government, but to the outlay which each Province might reasonably claim to incur upon the services which it administered. The first step taken in concluding a settlement was to ascertain the needs of the province and assign revenue to meet them ; the residue only of the income of the province coming into the Imperial exchequer. The third feature of the system was the method by which the revenue accruing from various sources was distributed. The residue which was available for Imperial purposes was taken in the shape of a fixed fractional share in a few of the main heads of revenue, which were known as "divided heads." As, however, the distribution of these heads could never be so adjusted as to yield to the Province, when added to the 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.

Undesirability of altering their general principles except in the direction of greater permanency.

4. In the general principles of this system the Government of India had no desire to make any change. Various alternative methods of financing the Imperial Government had from time to time been suggested, and certain of these are discussed in paragraphs 65 to 68 of the report of the Royal Commission. The Government of India were in entire agreement with the Commission that any radical change of system was undesirable, and fully accepted the grounds on which they rejected the specific alternatives which they considered. It was clearly preferable to abide by the main lines of a system which had gradually been built up to meet the needs of the country, than to look about for an untried scheme of greater abstract perfection. There was, however,

one main feature in which the system appeared susceptible of development and this development seemed to the Government of India to be eminently desirable in the interests of both the Imperial and the Provincial Governments. The direction in which they desired to advance was that of giving greater permanency to the settlements. From the point of view of the central Government a measure of this kind was rendered vitally important by the existing situation of Imperial finances.

Simultaneously with the prospect of the loss of a considerable annual revenue from opium, the Government of India were faced by the necessity of providing large and increasing funds for the extension of education, for the improvement of sanitation, and for other kindred purposes. To ensure successful conduct of their finance in these circumstances it was essential to remove every avoidable element of uncertainty. They, therefore, decided to introduce as great a degree of finality as possible into the financial relation of the Imperial with the Provincial Governments. If Provinces could be provided, once and for all with settlements so framed that Local Governments could develop their administration from their own assigned resources and could fairly be warned that they must not, except in cases of unusual calamity, expect assistance from Imperial funds, the task before the Government of India would be greatly simplified. At the same time it was considered that, by imparting greater precision to their relations with Local Governments they would give the latter a more abiding interest in the husbanding and direction of their own resources; while a sharper definition of the limits of provincial independence in financial matters would make it possible to allow much greater freedom of action within those limits. Before detailing the steps which the Government of India decided to take in order to secure an increase of permanency in the settlements it will be convenient to discuss the minor points which were specifically referred for the opinion of Provincial Governments.

Conversion of unduly large assignments into shares of growing revenue.

5. The first of these points was the desirability of converting over-grown fixed assignments into shares of growing revenue. As the needs of a Province inevitably grow and the Province is required to meet them from the expansion of its resources, it is frequently argued that the inclusion of a fixed and inelastic element in those resources hampers a Local Government in its task of finding funds to meet the normal growth of its expenditure. The Royal Commission

wrote with caution on this subject, but recommended the conversion of unduly large fixed assignments into shares of growing revenue by means of the gradual provincialization of heads of revenue which are now divided, and for which the Provincial Governments must always be specially responsible. As suitable subjects for provincialization they suggested the revenue from Excise and Forests. The Government of India were in entire sympathy with the cautious attitude adopted by the Commission in this matter. It is by no means always the case that a fixed assignment hampers a Province. The cardinal issue in the success of a settlement is that the normal growth of the assigned revenues should be at least equal to the necessary and carefully regulated growth of provincial expenditure. If this object is achieved, the fact that a part of the assigned revenue is fixed is of little or no importance. It is only when the normal increment of revenue falls short of the legitimate increase in expenditure that the fixed assignment becomes an evil and danger. On these grounds, the Government of India were unable to accept the suggestion of certain Local Governments for frequent and radical action in the matter of commutation. They considered that fixed assignments should be replaced by a share of growing revenue in the following circumstances only :—

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

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

Such commutation will usually take the shape of the provincialization of heads formerly divided. Except in this connection, however, the Government of India were not inclined to accept the imperialization or provincialization of divided heads as an object in itself. Such heads possess the advantages detailed in paragraph 70 of the Royal Commission's Report, and constitute a factor of some value in the general system of Indian finance.

Lump grants from Imperial to Provincial balances.

6. The second point of reference was the question of lump grants from Imperial to Provincial balances. Such grants have frequently been given to individual Provinces, in order either to admit Local Governments to a share in an exceptional increase of prosperity, or to afford the means of financing a policy which commends itself to the central authority. The

principle of making allotments of this kind, which has been described as a "policy of doles," was subjected to considerable criticism before the Royal Commission. The chief charges brought against it are that it increases the opportunities for interference by the Government of India in provincial affairs; that a fair distribution of the grants among the Provinces is frequently a matter of extreme difficulty; and that the system often compels Local Governments to spend money on objects of less comparative urgency than other needs of their populations. From the point of view of the stability of Imperial finances, the policy has the additional disadvantage that it must tend to decrease the provincial sense of financial responsibility, by accustoming Local Governments to look for special and spasmodic assistance outside the terms of their settlements. While fully appreciative of these drawbacks attaching to the system, the Government of India were in complete agreement with the Royal Commission that the total abolition of doles is impracticable. Special grants from Imperial to Provincial revenues are almost inevitable. A line of policy pressed upon the Government of India by the Secretary of State, by the obvious trend of public opinion, or by the competition for efficiency among local Governments must frequently be passed on to the Provinces, and to insure its efficient prosecution, it is essential that the latter should be provided with funds additional to their ordinary resources. Such will doubtless be the case with the forward movement in education and sanitation, when special grants will have to be given on conditions to be settled in correspondence with Local Governments. Again, it often happens that the Imperial Government secures a surplus which cannot suitably be employed in the reduction of taxation, and it naturally wishes to share its windfall with the Provinces. In both these cases, doles are unavoidable. To minimise their disadvantages, the Royal Commission recommended the adoption of three principles :—

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

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

(3) They should not necessarily be assigned for the same object in every Province.

These principles, which received the full support of the Local Governments were readily accepted by the Government of India. The Government of Bombay, which discussed the

natter in some detail, made certain further proposals for the egulation of doles. They suggested, as the most satisfactory nethod of subsidising a Province, the remission of Imperial taxaion which might, if the provincial authorities so desired, be remposed as a provincial burden. This scheme will merit further :onsideration at any time when the remission of taxation)ecomes a practical possibility, but there is little immediate)rospect of any such action. The suggestion that doles, when:ver given, should take the shape of a fractional addition to the)rovincial share of land revenue has been sufficiently met by he decision of the Government of India, already described, in he matter of the commutation of cash assignments. In any ase this system, if adopted, could not be of universal appliation ; as it would clearly be unsuitable to a grant made gainst a fixed payment, such as the Famine Insurance credit, r to a dole given to a Province in which the expansion of evenue already outpaces the normal growth of expenditure. To a third opinion expressed by the Government of Bombay, he Government of India were unable to subscribe. They could ıot admit that the employment of a grant should, except in the arest instances, be left to the discretion of the Local Government vhich receives it. While they could readily agree to abstain rom critical inquiry into the objects to which a dole is applied, hey held that the cases in which it would be necessary to pecify the general purposes of the assignment would be the ule rather than the exception. When, for example, considerable acrifices have been incurred in order to raise money for educaion, they could not contemplate with equanimity its expendiure upon hospitals or bridges. Similar considerations apply vhen the Government of India are engaged in distributing a vindfall. The disposal of a surplus is akin to a legislative act,)eing decided after debate in the Imperial Legislative Council ; nd it is often an alternative to a remission of taxation, in which ase the purposes to which it is proposed to devote the surplus re deliberately accepted as more needful and expedient than he relief of the general taxpayer. In such cases the Government f India incur a responsibility with reference to the disposal of rants made to Local Governments of which they could not conent to divest themselves.

Alleged inequality in he Settlements with the ifferent provinces.

7. Before any steps could be taken to impart greater permanency to the provincial contracts, it was clearly desirable to remove any imperfections in the various settlements

which might be found to exist. The Government of India wer fully alive to the charge often brought against the settlement: that they are of unequal liberality in the different province: The assumption underlying the existing condition of quasi-per manency is that the settlements start from equilibrium at th given point of time when the contract is made, and that the in evitable growth of provincial expenditure will be met from th expansion of the revenues which have been assigned to th Provinces. It is urged by certain critics that, to make the as sumption tenable, it must also be assumed that all Province received equality of treatment at their settlement, and mor particularly that the settlement standards Provided for an equa degree of advance in the different administrations. It is perfectl well known, however, that, at the time of concluding the lates contracts, some Provinces were more backward than others ; i is known that some of the previous settlements had been framec on generous and others upon less liberal lines, that the standard: of expenditure were in consequence unequal and that certai Provinces have thus been placed at a definite disadvantage fo all time. In this way, it is argued that the older Provinces an those which were most insistent in their demands when the ear lier settlements were framed now find themselves in comfortabl circumstances ; while the more backward and less demonstrativ administrations have to face permanent financial stringency The Government of India were prepared to admit the extrem difficulty of giving a conclusive reply to these arguments. I is impossible to devise a satisfactory test of equality of treat ment, which could be applied with safety to the results of th various settlements. They were not, however, ready to conced the justice of the criticisms. The supposed inequality of treat ment, if it exist at all, is historical and inevitable rather tha the outcome of administrative partiality ; while its very existenc is extremely doubtful. Each Province has had periodical re settlements since 1882. During the intervening years, there ha been a steady advance in the equipment of every Loca Government. The pressure has been constant, both from withi and from above, in the direction of greater efficiency and in creased administrative comfort : while the supervision an control of the central Government have had the same tendency All these influences have reacted on each successive revision o the provincial settlements, and have inevitably worked toward an equalization of the scale of expenditure in the differen Provinces. At every periodical review, the poorer Local Govern ments have pressed their grievances, and the haggling of

quarter of a century has established a rough equity which could not now be replaced by theoretical calculations. One province may be behind another in its jails, or a third in its roads, and its subordinate officials may be worse paid than in a fourth ; but it probably spends more than its neighbours on police or on education. Taking the administrative equipment as a whole, the Government of India found it impossible to believe that inequality in the settlements had gone far enough to starve one Province in its necessities in order to load another with luxuries, and they considered it entirely unnecessary, in seeking a basis for permanency, to make any radical alterations in the existing settlements which have been evolved by the slow process of years.

Removal of minor defects in the settlements preliminary to the introduction of permanent arrangements.

8. At the same time, it was undoubtedly the fact that imperfections were to be found in certain of the present contracts, which it was undesirable to confirm in perpetuity. Certain of these were due to miscalculations at the time of revision of settlement, or to an unexpected course taken after revision by the revenue of particular Provinces. In a number of Provinces the fixed assignment had reached a figure which showed signs of becoming excessive. The Government of India accordingly decided to undertake a careful revision of all existing settlements, with a view to the removal of minor defects and the replacement of large cash assignments by shares of growing revenue. With this object, they made a detailed review of the financial position of each Province on the lines ordinarily followed in framing a new settlement, checking their conclusions by means of an independent report of the working of each contract obtained from the Accountant-General of the Province concerned. As a result of this examination, it was found advisable to make variations in the terms of the settlements, before attempting to make them permanent, in order to give the Provinces a larger share in the expanding sources of revenue. The exact concessions made have been separately indicated in detail to the various Local Governments, but they may for convenience sake, be briefly recapitulated here :—

(1) (*a*) Forest revenue and expenditure were made wholly provincial in all the Provinces.

(*b*) Excise revenue and expenditure were made wholly provincial in Bombay, while in the Central Provinces and the United Provinces, the provincial share of these heads was increased to three-quarters.

(*c*) Land revenue was made half provincial in the Punjab an five-eighths provincial in Burma.

(*d*) The provincial interest of the Punjab in major irrigatio works (direct receipts, working expenses and interests c debt) was raised from three-eighths to one-half.

(2) The fixed assignments of the various Provinces were reduce by the amount which these changes of classification added t the provincial share of growing revenue.

The financial effect of these arrangements was to conver fixed assignments amounting to 350 lakhs of rupees int growing net revenue, and to deprive the Imperial Governmen in future years of an annual net increment of 8·15 lakhs in it share of divided revenue. (In the foregoing description of th new settlements no allusion is made to Bengal or Easter Bengal and Assam, because the subsequent re-constitution o these Provinces has abrogated the permanent settlements an necessitated the formation of new and temporary arrangements.

Reservation in respect of widespread famine.

9. Having thus remedied the defects of the existin settlements, the Government of India ap proached the task of imparting greate permanency to their financial relation with provincial Governments. They realised, at the outset that complete permanency was not attainable. The possibilit of famine constitutes a danger to the settlement contract against which it is impossible to provide adequate safeguards The famine insurance scheme is a convenient device for dis tributing the expenditure on famine in its earlier stages, or o a partial scarcity; but a really widespread calamity woul sweep it away and leave the Provinces dependent in larg measure upon the bounty of the Imperial Government. In crisis of this kind the Government of India must of necessit step in and supplement the provincial resources, as it has don in the past, and the contract obligations will, for the tim being, remain partially in suspense. Subject, however, to pro vision against famine, the Government of India considered tha the settlements, as now revised, might safely be declared to b fixed in perpetuity. They held that the time had come whe Local Governments might reasonably be informed that certai growing sources of revenue had been placed, once and for all at their disposal from which to meet the future needs of th Province which they administered. It would be for them t husband their resources and lay them out to the best econo

mical advantages. With the introduction of this element of fixity into the financial relations, it would be possible to allow provincial authorities far greater independence within definite limits, and to relax a great measure of the control which the Government of India have hitherto exercised over the provincial bodies.

Summary of rules governing the future relations of provincial and imperial finance.

10. The views of the Government of India on the various points discussed in the preceding paragraphs were communicated to the Secretary of State, and, with his approval, the following rules have been laid down to govern the future relations of Provincial and Imperial finance :—

(*i*) With the exception indicated in rule II, the provincial settlements for Madras, Bombay, the United Provinces, Burma, the Punjab and the Central Provinces will in future be permanent and not subject to revision ; and permanent settlements will be framed, as soon as may be found convenient, for Bengal, Bihar and Orissa, and Assam. In case of serious famine in a Province, the question of assistance from the revenues of the Government of India will be considered. The Government of India reserve the right to call for assistance from provincial revenues in the event of grave embarrassment in their own finances.

(*ii*) When the fixed assignment of a Province becomes unduly large and hampers the expansion of its revenue, as compared with the legitimate and necessary growth of expenditure, it will ordinarily be converted, either in whole or in part, into a share of growing revenues, as soon as the state of Imperial finances permits.

(*iii*) In the event of the grant of special allotments to Local Governments out of surplus revenues not required for the remission of taxation, the reduction of debt, or other purposes, the Government of India will retain the option of declaring the purposes for which the money is provided ; but

(*a*) the grants will not involve greater interference by the Central Government than at present exists;

(*b*) they will be allotted with due regard to the wishes of the recipient Government; and

(*c*) they need not necessarily be devoted to one and the same purpose in every province.

(*iv*) A Local Government may not budget for a deficit, unless it satisfies the Government of India that the excess expenditure is due to an exceptional and non-recurring cause, and also, if the deficit involves a reduction of the provincial balance

below the prescribed minimum, that suitable arrangements will be made for the restoration of the minimum.

(*v*) If a Local Government exhausts its own balances and receives permission to overdraw upon the general balances, it will be required to take the necessary amount as a short loan from the Government of India. The loan will bear interest and will be repayable in such instalments as the Central Government may direct.

(*vi*) Future corrections in provincial budgets by the Government of India will be restricted to

(*a*) divided heads, and

(*b*) the proposed totals of revenue and expenditure.

A limit will be fixed by the Government of India for ordinary *plus* fresh recurring expenditure, and care will be taken to secure its observance. All extraordinary receipts will be excluded from the limit and will be applied to such non-recruiting outlay on public works or other objects as the Local Governments, assisted (where these exist) by their Councils, may determine. Relief should not, however, be afforded from these receipts towards meeting the ordinary civil works budget of a Province in such a manner as indirectly to set free funds for recurring expenditure under another head. Moreover, when a Local Government has taken a loan from the Government of India under the provisions mentioned above, extraordinary receipts shall not be regarded as applicable to non-recurring expenditure on public works or other objects until the whole of such loan is repaid. In a year in which there is no object of sufficient urgency and importance to justify the expenditure thereon of such extraordinary receipts, they should be added to provincial balances to serve as a reserve against future emergencies. In framing the budget estimates, the attention of the Government of India should be drawn to the existence of these special resources and to the manner in which it is proposed to dispose of them.

These rules represent, in the opinion of the Government of India, a decided advance in the path of decentralization. They place a greater responsibility on Local Governments for the stability of their provincial finances, while at the same time investing them with wide independence. The arrangement aims at securing a clear division of duties and liabilities; and the Government of India trust that it will now be followed, on the part of each Local Government; by a careful examination

of the scale of expenditure which now prevails, particularly in the Roads and Buildings Branch of the Public Works Department. The Government of India have now conducted such an examination into their own finances, with a view to economy and retrenchment; and they think it would be well if Local Governments should now do the same, bearing in mind the rigidity of the new arrangements and the grave responsibility for keeping the growth of provincial expenditure at a ratio which shall in no circumstances be greater than the growth of provincial resources.

11. *Provincial Taxation.*—On the subject of Provincial taxation the Royal Commission wrote with studied caution. They found in existence a restriction upon the powers of Local Governments which forbade them to impose additional taxation without the previous sanction of the Government of India, and they did not advise the removal of this restriction. They thought, however, that if, in the future, there should come about a clear separation between Imperial and Provincial finance, with a more effective control over the latter by Legislative Councils, it might become practicable and necessary to allow Local Governments to levy special provincial taxation if they wished to increase their scale of provincial expenditure. They did not propose to relax the present statutory safeguards of legislation, without which no taxation can become effective. The Government of India are once again in general agreement with the Commission. Their attitude towards provincial taxation in the past has never been one of disfavour. It has frequently been employed, and still in some measure exists, as a supplement to the general revenues for purely provincial purposes. The provincial rates and taxes which have recently been remitted owed their abolition, not to their provincial character, but to the fact that they rested almost entirely on the land, which the Government of India, in pursuance of a settled policy, desire to relieve of miscellaneous burdens. The Central Government have in the past frequently advised that provincial resources should be supplemented by small and cautious measures of provincial taxation. They have assented to the theoretical considerations that, in a vast country of greatly varying conditions, Imperial taxation must of necessity be restricted in its range, as very few taxes are suitable for imposition in every part of the Indian Empire; that the incidence of an Imperial impost must be lighter in some areas than in others; that provincial taxation might not inappropriately

balance such inequalities; that a tax which would cause dissatisfaction in one part of the country might arouse no opposition in another; and that experiments in taxation might thus be made with safety on a small scale which would be imprudent or even dangerous if applied to India as a whole.

12. These considerations are, however, theoretical only. In actual practice definite schemes of provincial taxation have never been pressed with any enthusiasm, and the Government of India can see no strong reason for removing the safeguards which now surround its imposition. They fully recognise that such taxation is a necessary corollary of a fully decentralised system of finance; but pending the development of such a system they consider that no useful purpose would be served by an attempt to define its proper scope or to lay down the criteria which it should satisfy. Financial autonomy for the Provinces, if and when it arises, must carry with it the power of taxation. In existing circumstances there is nothing to be gained by varying or diminishing the control, both executive and legislative, which the Government of India now retain. These views have been reported to the Secretary of State, who has expressed his concurrence with them.

13. *Provincial Borrowing.*—The Royal Commission discussed the advisability of permitting Local Governments to raise provincial loans in the open market. The majority of its members considered that the existing embargo on such loans should be maintained, but that Local Government should be granted short-term loans from Imperial revenues to meet the cost of large non-productive works of manifest utility which they cannot finance from their own resources. With the exception of the Government of Bombay, who were particularly anxious to obtain access to the open market, these views found general acceptance with the Local Governments, and the Government of India are strongly of opinion that they should prevail. The question of loans from Imperial funds has already been settled by means of the new provisions regarding provincial overdrafts which have been incorporated in the settlement rules. An overdraft on Imperial balances will in future be treated as a short-term loan, and it is precisely in connection with works of the kind contemplated by the Commission that such overdrafts will in future be sanctioned. The chief argument for the admission of Local Governments to the open market lies in the claim that objects of purely provincial interest would

succeed in attracting, at reasonable rates, capital which is not touched by the Imperial loans. The truth of this argument could be tested by experience alone; though it is theoretically probable that a project which aroused local enthusiasm might tap resources which are not open to the Government of India. The drawbacks attaching to such an experiment are, however, very much greater than the possible advantages which might accrue from it. It would be extremely difficult to prevent a loan of the kind contemplated from competing with the Imperial loans. The local market is narrow; the period of cheap money is confined to a few months of the year; and the loan business is mainly in the hands of a few large banks. On these grounds the Government of India have always been compelled to refuse to local authorities, such as Port Trusts and Municipalities, all access to the market during the months reserved for their own operations. Provincial loans would either have to be similarly held back until the Government of India had completed their own issues, a course which would certainly affect their prospects; or they would be floated simultaneously with the Imperial loans with depressing effect upon the prices of both.

14. A further objection to the flotation of provincial loans lies in the undesirability of increasing the non-productive debt of India. For really productive projects the Government of India are ordinarily prepared to find funds from their capital account, and the effect of allowing Local Governments to enter the open market would undoubtedly be the creation of a considerable quantity of largely unproductive debt, which could not but injuriously affect the credit of India. The existence of a provincial public debt would, moreover, afford an inducement for lavish outlay upon public works and might thus lead up to a type of financial embarrassment which the Government of India could not view without grave concern. The experience of other countries has shown that debts of this kind tend to grow in volume until the magnitude of the loan charges either effects a material reduction in the margin available for current expenditure on public works or drives the Government into enhanced taxation. In these circumstances the Government of India are clearly of opinion that the grant of independent borrowing powers to Local Governments should be deferred until a more distinct separation has taken place between the finances of the Provincial and those of the Central authority. The Secretary of State has expressed his general agreement with this view.

15. *Borrowing by local bodies.*—On the subject of borrowing by local bodies, the Royal Commission reviewed the existing practice with general approval and suggested two minor changes only :—

(*a*) Local Governments should have final power to sanction the borrowing in the open market of sums not exceeding 5 lakhs and repayable within 30 years ; and

(*b*) the provision in section 2 of Act XII of 1897, which requires the previous sanction of the Governor-General in Council to every loan under the Act, should be abrogated ; general rules governing such loans should be drawn up under section 3 of the Act ; and Local Governments should then have power to sanction subject to compliance with these rules.

The former recommendation had reference to previous orders which directed that all proposals of local bodies for loans in the open market should be submitted to the Government of India, whose sanction was required in advance to the period of the loan, the date of issue and all other important features of the operation. Effect has already been given to the modifications advised by the Commission by the Notification in the Finance Department No. 6215-A, dated 30th October, 1908. The second recommendation alluded to loans raised by the local authorities to meet such temporary emergencies as the occurrence of famine or the outbreak of dangerous epidemic disease. The Government of India have accepted the proposed change, and steps will be taken to carry it out. The rules to be prescribed under section 3 of Act XII of 1897 will be framed as soon as the necessary delegation has been made of the power vested by section 2 in the Governor-General in Council.

16. *Delegation to heads of departments of power of re-appropriation.*—In paragraph 96 of their Report the Royal Commission advised that, under certain conditions, the powers of reappropriation enjoyed by Local Governments should be delegated by them to their heads of departments. The Government of India have accepted this view and have, with the approval of the Secretary of State, authorised Local Governments and the Administrations of the Central Provinces, Baluchistan, the North-West Frontier Province, Ajmer-Marwara and Coorg to delegate to Boards of Revenue, Financial Commissioners, and such other officers subordinate to them as have been declared to be heads of departments, the power of making reappropriations in connection with the budget grants of the branches of the

administration which they control. It has been laid down that such reappropriations shall be of a routine character only and shall be made from one minor head to another within the same major head, and that the power shall be exercised subject to the following conditions :—

(1) that savings under salaries and establishment shall not be reappropriated to other classes of expenditure ;

(2) that savings on non-recurring expenditure under supplies and services contingencies and other detailed heads shall not be reappropriated in order to provide for additional recurring expenditure under salaries or establishment, or on any other account ; and

(3) that it will be open to the Government of India and local Governments to require, at any time of financial pressure, that the exercise by heads of departments of their powers of reappropriation shall be suspended.

These orders do not involve the curtailment of any more extended powers that may have already been delegated with the sanction of the Government of India to any authorities subordinate to Local Governments and administrations.

17. *Relaxation of the limits imposed on the spending powers of Local Governments and Administrations.*—In conclusion, the Government of India desire to intimate to Local Governments that they have had under separate consideration the recommendations regarding the relaxation of the limits imposed on the spending powers of Local Governments and Administrations which are contained in paragraphs 119 to 148 of the Royal Commission's Report. They have made extensive proposals for the increase of provincial powers in this connection which have met with the general approval of the Secretary of State ; and they hope soon to be in a position to issue separate orders on the subject.

V. RESOLUTION ON THE LOCAL SELF-GOVERNMENT POLICY OF THE GOVERNMENT OF INDIA.

Nos. 55-77.

Dated Simla, the 28th April, 1915.

Historical retrospect.

Local Self-government as a conscious process of administrative devolution and political education dates, outside presidency towns, from the financial reforms of Lord Mayo's government. Consultative committees had indeed been appointed in various towns in 1850, and measures were taken in 1864 and following years to give effect to the recommendations of the report of the Royal Army Sanitary Commission, which was published in 1863, but no comprehensive scheme was introduced until the years following 1870. Legislation affecting several Provinces was then undertaken. Lord Ripon's government in 1882 carried still further the principles of Local Self-government with the object, by measures cautiously but substantially progressive, of inducing the people themselves to undertake, as far as might be and subject to necessary control from without, the management of their own local affairs, and of developing and creating, if need be, a capacity for self-help in respect of all matters that had not, for administrative reasons, to be retained in the hands of a representative of Government. Various Acts were passed, by which the elective principle, financial independence and the reduction of official control were given a wide extension. In two resolutions nos. $\frac{1}{146\text{-}164}$, dated the 24th October, 1896, and nos. 18-37, dated the 20th August, 1897, respectively, Lord Elgin's government again reviewed the subject and laid down further conditions of progress. Important principles have, from time to time, been considered by the Government of India in connection with the revision of Local Self-government Acts and otherwise, and recently the whole field of policy has, in their survey of Indian administration, been ably and exhaustively reviewed by the Royal Commission upon Decentralization.

Substantial progress.

2. The Governor-General in Council is glad to be assured by the report of the Commission and the opinions of Local Governments and Ad-

ministrations upon it, that the results have on the whole justified the policy out of which Local Self-government arose. The degree of success varies from Province to Province and from one part of a Province to another, but there is definite and satisfactory evidence of the growth of a feeling of good citizenship, particularly in the towns. The spread of education is largely responsible for the quickening of a sense of responsibility and improvements in the machinery. In certain Provinces, beneficial results have followed the elaboration of a system of local audit. On all sides there are signs of vitality and growth.

Future general policy.

3. The obstacles in the way of realising completely the ideals which have prompted action in the past are still, however, by no means inconsiderable. The smallness and inelasticity of local revenues, the difficulty of devising further forms of taxation, the indifference still prevailing in many places towards all forms of public life, the continued unwillingness of many Indian gentlemen to submit to the troubles, expense and inconveniences of election, the unfitness of some of those whom these obstacles do not deter, the prevalence of sectarian animosities, the varying character of the municipal area, all these are causes which cannot but impede the free and full development of Local Self-government. The growing demand among the educated classes in towns for greater efficiency, involving more direct expert control, in matters affecting public health and education, is a further influence of a different character. A similar tendency, it may be observed, is discernible in England and in other European countries, the Governments of which have shown a growing disposition to place on central authorities the duty of stimulating and encouraging local bodies in cases of default or deficiency on their part, and to give to the former powers of intervention and, in case of need, of actual supersession of the latter. These and similar considerations indicate the need for caution in delegating powers to non-official bodies, when they are not as yet adapted nor prepared for them. But on the whole the Government of India declared unhesitatingly in favour of a general policy of further progress, limited only by such conditions as local circumstances may dictate. Uniformity, even were it attainable, would be undesirable as tending to monotony, lifelessness and discouragement of new experiments. But, in fact, any attempt to exact uniformity in local administration would be foredoomed to failure. In each Province, sometimes in each part of a Province, the administra-

tive system has grown up on lines of its own with reference to local needs and the wishes and abilities of the people. On a review of all the circumstances, the Government of India have decided to accept in almost every case the conclusion of the Local Government or Administration as to the degree of progress possible at the present time. But in the more backward provinces in particular, it is their conviction that there is room for advance, and that the aim to be steadily pursued is abstention from interference in detail and increased reliance on the non-official element in local bodies.

Reforms accepted by Local Governments.

4. Local Governments and Administrations in general are prepared to advance in the direction of the main recommendations of the Commission. They propose in varying degrees to expand the electoral element in the constitution of local bodies, to extend the employment of non-official chairmen in municipalities, to allow local bodies more ample control over budgets and freer powers of reappropriation, to concede increased authority to local bodies over establishments and to relax existing restrictions in regard to outside sanction for expenditure on works of importance. These changes will mark a real and immediate extension of the principles of Local Self-government.

5. The Government of India now propose to state the principal conclusions that have been reached after full discussion in the public press, in debates of the Legislative Councils, and in consultation with Local Governments and, in certain matters, with His Majesty's Secretary of State, on the questions that arise respecting (1) towns, (2) districts, (3) villages, or other small local areas ; in other words, in relation to (1) municipal boards, (2) district and sub-district boards, and (3) panchayats or other unions. In each case they will consider the constitution of the local body, its ability to tax and its powers in regard to its budget and its establishment. Finally, they will deal with the recommendations of the Commission in connection with presidency towns and Rangoon.

MUNICIPAL BOARDS.

Elective majority.

6. The Commission recommended that Municipal Boards should ordinarily be constituted on the basis of a substantial elective majority and that nominated members should be limited to a number

sufficient to provide for the due representation of minorities and official experience. This recommendation has already been adopted in several provinces and is generally accepted by Local Governments and the Government of India, subject to the proviso that the principle should in places, where its success is doubtful, be introduced gradually, and after experiment in selected municipalities.

Chairmen.

7. The Commission also proposed that the municipal chairman should usually be an elected non-official, that Government officers should not be allowed to stand for election, and that where a nominated chairman might still be required he should be an official. The following statistics show how in the different provinces chairmen of municipalities are at present secured :—

Number of chairmen of municipalities, elected and nominated, officials and non-officials.

Province.	Elected non-officials.	Elected officials.	Nominated non-officials.	Nominated officials.	Total.
Madras	38	2	15	8	63
Bombay	53	37	3	60	153
Bengal	74	10	8	19	111
United Provinces	20	34	19	11	84
Punjab	15	77	1	11	104
Burma	.	41	...	4	45
Bihar and Orissa	7	7	5	36	55
Central Provinces and Berar ...	12	36	...	8	56
Assam	3	4	...	8	15
North-West Frontier Provinces	...	...	...	6	6
Coorg	..	...	...	2	2
Delhi	...	...	...	1	1
Total ...	222	248	51	174	695

Non-official chairmen.

8. The majority of Local Governments are in favour of substituting, so far as possible, non-official for official chairmen, and the Government of India are in full sympathy with the proposal. The increasing burden of administration, apart from other considerations, renders it desirable that the district officer should be relieved of the executive control of municipal bodies. The Governor-General in Council recognises, however, that the change must be made gradually, and that in the absence of suitable

candidates, it may not be possible to make it finally and once for all in particular places. He agrees with the opinion expressed in several quarters that discretion should be reserved to a Local Government to nominate a non-official as chairman. Many gentlemen of influence, well fitted to be chairmen of boards, are not prepared to offer themselves for election, and insistence on election as the only alternative to the nomination of an official would unnecessarily narrow the field of choice. Nor does it appear necessary to prohibit boards under any circumstances from electing an official as their chairman. It may be desirable, however, to require the election of an official as chairman to be confirmed by the Commissioner, or even higher authority.

The Bombay system in larger municipalities.

9. The Commission suggested that some of the largest cities should adopt the system in force in Bombay city, where there is an elected chairman, who is the official mouthpiece of the corporation as a whole, the executive administration, however, vesting in a full-time nominated official subject to the control of the corporation and of standing committee thereof. In the Bombay District Municipal Act, 1901, also there are provisions under which a Chief Officer can be appointed by a city municipality, on its own initiative or at the instance of the Governor in Council. The Governor in Council may also appoint an executive officer known as the Municipal Commissioner for any municipal district which contains one hundred thousand inhabitants, or for any other municipal District on the application of the municipality, provided that such application has been previously supported by not less than two thirds of the whole body of councillors. A Municipal Commissioner has in some respects more extensive powers than a Chief Officer. Under this arrangement the direction of the general policy of a municipality vests in the whole body of councillors, while the executive power, with certain reservations, vests in the Municipal Commissioner. The Municipal committee may cause him to furnish any returns and reports on matters appertaining to municipal administration and they retain financial control. The Chief Officer or Municipal Commissioner is not removeable, except by order of the Governor in Council, or by the vote of three-fourths of the whole number of councillors. These officers exercise certain executive powers specifically conferred on them by the Municipal Act, and such other powers as may be delegated to them under the provisions

of the Act; and the Governor in Council may require that they shall be invested with any powers which can be lawfully delegated. The system works well in Bombay. The Government of India do not desire to press for its adoption in Provinces where it may not be suited to the local conditions. They are, however, of opinion that it has the advantages of ensuring a continuous and strong executive administration by an efficient paid staff, while maintaining the corporate control and activity of the municipal board. It is in fact not dissimilar to the system in force in England. They commend it to Local Governments as a means of overcoming, at any rate, in large cities, the difficulties inherent in the introduction of the important changes contemplated, especially when non-official chairmen are busy professional men. In smaller towns they suggest that the object aimed at might be attained by the wider delegation of executive functions to responsible secretaries, engineers and health officers and that power to enforce such delegation might be secured by legislation.

Financial resources.

10. The aggregate income of 701 municipalities in existence at the close of the year 1912-1913 (excluding the presidency towns and Rangoon) amounted to £3,282,845 (Rs. 4,92,42,675) apart from loans, sales of securities and other extraordinary receipts, or an average of about £4,683 (Rs. 70,245) a year. This income was distributed as follows:—

	£
Madras	454,908
Bombay	586,054
Bengal	339,979
United Provinces	592,391
Punjab	435,039
Burma	292,524
Bihar and Orissa	145,270
Central Provinces	177,496
Berar	37,594
Assam	34,764
North-West Frontier Province	72,560
Coorg	3,700
Delhi	110,566*
	£3,282,845 (Rs. 4,92,42,675)

* Note—The figures are abnormal on account of large grants from Government during the year.

The following further statements show the proportions under various heads of municipal income and expenditure respectively in the different Provinces for the year 1912-1913.

Income.

Province.	Percentage of total income from municipal rates and taxes derived from								Percentage of total income excluding loans and advances derived from				
	Octroi.	Tax on houses and lands.	Tax on animals and vehicles.	Tax on professions and trades.	Tolls.	Water rate.	Conservancy tax.	Other taxes.	Taxation.	Under special Acts.	Municipal property.	Grants from Government and other sources.	Miscellaneous.
Madras	...	45·0	10·2	8·6	19·0	16·8	...	0·4	44·0	0·3	15·1	36·4	4·2
Bombay	46·9	16 3	3·2	0·3	4·5	16·9	8·0	3·9	62·6	0·5	16·4	17·1	3·4
Bengal	...	37·2	5·5	1.8	2 1	13 9	25 1	14 4	75·8	2·1	8·4	11·5	2·2
United Provinces	69·2	5·4	1·0	3·8	2·8	6 6	1·1	10·1	62·8	1·6	19·7	13·6	2·3
Punjab	89·7	6·8	0 8	...	...	1·3	1·2	0·2	63·1	0·8	19·3	13·7	3·1
Burma	...	42·5	3·7	...	14·0	9·2	20 6	10·0	38.1	1·1	42·3	17·2	1·3
Behar and Orissa	1·7	40·7	9·5	1·8	5 6	3·5	21·6	15·6	62·5	1·4	9·9	25 1	1 1
Central Provinces	61·6	3·3	4·3	0·1	1·2	15·3	10·9	3 3	60·3	2·7	16·3	16·4	4·3
Berar	...	20·7	4·3	26·8	10 4	4 6	20·5	12·7	47·9	8 2	13·5	29·5	0·9
Assam	...	40·5	7 6	...	9·9	11·6	22·1	8 3	36·8	4·0	10·8	47 3	1·1
North-West Frontier Province	98·0	0·6	0·1	...	...	1·2	0·1	...	42·1	0·2	15·9	41·1	0·7
Coorg	...	62·7	3 9	18·9	7·1	7·4	...	...	28·7	2·6	11·9	56 8	...
Delhi	80·2	13·1	4·8	...	1·9	...	...	...	38·5	0·3	19·8	39.5	1·9

Expenditure.

Province.	Percentage of Municipal Expenditure on							
	General administration.	Public safety.	Water-supply and drainage.	Conservancy.	Public works.	Other measures for public health and convenience.	Public instruction.	Miscellaneous.
Madras	6·9	4·2	10·5	20·3	27·6	13·2	10·2	7·1
Bombay	8·5	5·2	25·1	14·1	14·3	10·5	15·2	7·1
Bengal	7·2	6·9	24·7	26·8	16·4	7·5	3·3	7·2
United Provinces	10 2	6·0	27·7	17·2	13·9	6·2	4·5	14·3
Punjab	12·0	6·1	16·8	13·8	15·5	15·9	10·6	9·3
Burma	10·1	6·6	10·7	19·3	18·3	25·5	4·3	5·2
Bihar and Orissa	8·2	5·5	12·7	28·3	15·7	21·9	3·0	4·7
Central Provinces	11·1	3·2	30·4	15·9	10·3	11·9	10·2	7·0
Berar	9·4	4·6	24·4	21·6	8·9	10·5	18·3	2·3
Assam	5·7	3 8	32·6	23·3	19·4	7·9	4·2	3·1
North-West Frontier Province ...	10·8	7·4	11·1	16·5	13·7	21·3	14·3	4·9
Coorg	10·8	3·4	1·6	19·3	9·6	8·4	16·5	30·4
Delhi	7·4	4·0	33·5	18·0	10·9	11·0	1·8	13·4

Taxation.

11. The taxes, tolls and fees which may ordinarily b levied by municipalities are provided fo in the municipal enactments in force i the different Provinces. They are imposed in most cases witl the previous sanction of the Local Government concerned an within the limits laid down in the Acts. They usually take on or other of the following forms :—

(1) Tax on arts, professions, trades, callings, offices and appoin ments.

(2) Tax on buildings, lands, and holdings.

(3) Water, drainage, sewage, conservancy, scavenging and lightin tax.

(4) Tax on vehicles, boats, palanquins and animals kept for use c used within municipal limits.

(5) Tax on circumstances and property.

(6) Tax on private menials and domestic servants.

(7) Tax on private markets.

(8) Octroi on animals or goods or both, brought within municipa limits for consumption or use.

(9) Tolls on vehicles and animals entering municipal limits, an tolls on ferries, bridges and metalled roads.

(10) Fees on the registration of cattle sold within municipal limi and of carts and other vehicles.

The taxes provided for in the Acts vary, however, in th different Provinces, and not all these taxes are actually levie in any one Province. Any tax other than those specified i the Acts, which is proposed to be levied, ordinarily require and should continue to require the sanction of the Governor General in Council.

12. The most important taxes now in force are octro duties, levied principally in Bombay, the United Provinces, th Punjab, the Central Provinces and the North-West Frontie Province, and the tax on houses and lands which holds th chief place in the other Provinces as well as in Bombay city.

Octrói and the terminal tax.

13. The octroi system in the existing circumstances o the country has certain obvious advan tages. As a tax octroi is productive an grows with the prosperity of the town Its imposition is sanctioned by immemorial usage, and th people are habituated to the system by long custom. The ta is usually paid in small amounts and the effect of the paymen

is not generally felt as a burden. On the other hand, there is no doubt that it provides constant opportunities for fraud, delay and oppression owing to the necessity of entrusting large discretionary powers to a subordinate agency, that it is expensive to collect and wasteful and, finally, that in many places it constitutes a serious burden on trade in general, and in particular on through trade, notwithstanding the provision made for refunds. On the recommendation of a strong representative committee and the Local Government, the Government of India have sanctioned an experiment in the United Provinces, which involves (*a*) the substitution of direct taxation for octroi in the smaller towns, and (*b*) the application to a large number of other towns in which conditions are suitable of the system of a terminal tax, or light transit dues on imports or exports, subject to no refunds. The Government of the United Provinces consider that some of the main benefits of such a system, and in particular a reduction of the high cost of collection can only be secured if the tax is collected through the agency of the railway companies, who should be adequately remunerated for their services. The Government of India are prepared to facilitate negotiations to this end. The Government of Bombay have assented to the tentative replacement of octroi by a terminal tax in a few municipalities selected from those desirous of making the experiment. The question is under consideration or experiment in other Provinces also. The Government of India while adhering to the principle that municipal taxation should not operate, so far as can be avoided, as a transit duty on through trade, are prepared to concede that a light terminal tax with no refunds may in practice prove less burdensome to through trade than the octroi system as hitherto administered, provided that the following conditions are observed—*viz.*, (1) that the terminal tax, wherever imposed, should be substantially lower in its rates than the octroi which it replaces, (2) that it should be limited to places where there are special grounds for applying it, which must be adequately demonstrated, (3) that it should be regarded as facilitating the transition to a system in which direct taxation will form an increasingly important factor, and not as an elastic means of progressively increasing the resources of municipalities apart from normal development due to increase of traffic and (4) that it should not be adjusted with the primary object of compensating municipalities for the loss of octroi.

14. The house and land tax is the chief source of municipal income in Madras, Bengal, Burma, Bihar and Orissa, and

Assam and it has been imposed with some success in portions of Northern India. This tax, however, is difficult of assessment, in many places, where it is the custom to own rather than to rent dwelling houses, because in such cases the house affords no indication of the financial status of the owner. Many aristocratic but impoverished families live in large buildings which are merely relics of vanished prosperity, while the rich trader often remains content with the humble dwelling in which he was born. There is, however, a growing tendency on the part of the professional and trading classes to spend a larger proportion of their incomes on securing sanitary accommodation, so that it is reasonable to anticipate that the house tax revenue will gradually expand, and will generally be contributed by those best able to pay. The technical and administrative difficulties of assessment have in places been overcome by entrusting the preparation and periodic revision of registers to outside agency.

House and land tax.

15. A tax on professions and trades yields a considerable revenue in certain Provinces, *e. g.*, £17. 239 (Rs. 2,58, 591) in Madras, £4,697 (Rs. 70,465) in Bengal, £14, 106 (Rs. 211, 599) in the United Provinces and £4,809 (Rs. 73,036) in the Central Provinces. It has also been imposed in some towns in Northern India. But neither it nor the tax on circumstances and property is likely to yield a large revenue, and there is always danger lest local taxation of this kind encroach on the field of Imperial taxation.

Tax on professions and trades.

16. In Benares there is a form of terminal tax which is imposed, with certain exceptions, on passengers coming to or leaving that station by rail. There is a radius of exemption beyond which the tax is levied and it is collected by the railway companies as a surcharge on railway fares. A similar tax is also in force in Calcutta which is levied by the Calcutta Improvement Trust and is collected from passengers entering or leaving that city by rail or steamer. In Hardwar, Ajudhia and Thaneswar, there is a tax on pilgrims and other persons who enter the limits of those municipalities. The tax at Hardwar is levied on railway passengers throughout the year, while that at the other two municipalities is imposed only on the occasion of certain special fairs. In Bombay a pilgrim-tax may be levied under section 59 (*b*) (*x*) of the District Municipal Act, III of 1901.

Tax on pilgrims.

Powers of taxation.

17. The Commission were of opinion that municipalities should have full liberty to impose or alter taxation within the limits laid down by the municipal laws but that the sanction of an outside authority to any increase in taxation should be required where the law did not prescribe a maximum rate. Subject to the general control of the Government of India over the principles to be followed, the sanction of the Local Government is at present necessary to every proposal for the imposition of taxation. A maximum rate is prescribed in Madras, Bengal, and Burma Acts, and in the Punjab, United Provinces and Central Provinces, so far as regards the tax on buildings and lands ; but none is laid down in Bombay. The recommendations of the Commission do not command general assent. It is pointed out, for instance, that a municipality might reduce its taxation without due consideration to the needs of the administration and the security of loans. The Government of India, while recognizing the force of such objections, are, on the whole, in general sympathy with the Commission's recommendations. They think, however, that power to vary any tax might be reserved by such Local Governments as are unable to accept in full the recommendations of the Commission and that in the case of indebted municipalities the previous sanction of higher authority should be required to any alteration of taxation.

Subventions by Government.

18. Municipal finance has shown a marked expanse during the last decade. The total income of 701 municipalities in 1912-1913 was £3,282,845 (Rs. 4,92,42,675) as compared with £1,844,081 (Rs. 2,76,61,215) for 753 municipalities in 1902-1903. Contributions from Government have materially assisted this expansion. Since 1911, the Government of India have made grants amounting to £3,076,466 (Rs. 4,61,47,000), of which £368,200 (Rs. 55,23,000) are recurring, for urban sanitation. Municipalities have also received their share—the exact figure is not easily ascertainable—of the large educational grants made by the Government of India since 1911, amounting to about £3,987,800 (Rs. 5,98,17,000) of which £826,666 (Rs. 1,24,00,000) are recurring. Municipal boards have been relieved of all charges for the maintenance of police within municipal limits. In almost every Province the recommendation that municipalities should be relieved from financial responsibility for famine relief and should receive assistance from Government in the case of severe epidemics,

has been already given effect to, or the principle has been accepted.

There is a growing demand on every side for improvements and it is not possible for all municipalities to finance large schemes of water-supply and drainage without substantial aid. Such aid has been freely given by the Imperial and Local Governments. The power of the Government to make grants is, however, limited and financial assistance of this nature cannot be expected unless the rate-payers are prepared to bear a reasonable proportion of the burden. Where, however, further taxation is not possible the Government of India trust that municipalities will bear in mind the possibility of supplementing taxation by development of municipal property, so as to ensure the best possible returns and by maintaining the principle that special services such as the supply of water, electric lighting, etc., should, as far as possible, pay for themselves.

The Government of India have also accepted a further recommendation of the Commission, namely, that assistance may legitimately be given by Government to poorer municipalities which, without it, would be unable to carry on the normal standard of administration required from them. In such cases, the Government of India agree with the Commission that assistance can best be given, when it is given, by a general recurring grant-in-aid, which should be at the discretion of the Local Government and met from its own resources.

Payment and control of services.

19. The Commission proposed that if a municipal or rural board has to pay for a service it should control it, and that where it is expedient that the control should be largely in the hands of Government, the service should be a provincial one. The Government of India, while not prepared to accept the proposal in full, have approved it in a somewhat modified form. They consider that charges should be remitted in cases where a local body contributes to Government for services inherent in the duty of supervision and control by Government officers, or for services which cannot expediently be performed except by Government agency. For example, Government may properly cease to charge for clerical establishments in the offices of supervision and control, or for the collection of District cesses which it is clearly expedient to realise along with the Government revenue. On this principle they have made assignments which will relieve both munici-

palities and rural boards of payments amounting to £40,000 (Rs. 6,00,000) a year approximately.

Tramway cess.

20. It was suggested by the Commission that municipalities should be empowered to levy a special rate for the construction or promotion of tramways. Local Governments generally are doubtful as to the value of the proposal. The Government of India will, however, be prepared to consider any practical proposal to this end, which they may receive.

Budget and financial control.

21. Commenting on the minute control exercised in some Provinces over municipal finance, the Commission recommended that municipalities should have a free hand with regard to their budgets; the only check required should, they thought, be the maintenance of a minimum standing balance to be prescribed by the Local Government. They acknowledged that relaxed control might lead to mistakes and mismanagement, but they were of opinion that municipal bodies could attain adequate financial responsibility only by the exercise of such powers and by having to bear the consequences of their errors. Further checks would be provided by the control which Local Governments would exercise over loans, and by the power which should be reserved to compel a municipality to discharge its duties in case of default. The system proposed is stated to be in force in the Bombay Presidency where, however, no minimum balance is required by law. The Government of the United Provinces accept the recommendations subject to the condition that Commissioners should pass and that Government should see the budgets of indebted municipalities. The Punjab Government also agree subject to the proviso that the budget of an indebted municipality should be forwarded to the Government for information. The Government of Bengal are prepared to introduce the change experimentally in certain selected municipalities. They intend also to issue general instructions to Commissioners in this Province to abstain from interference in details and to restrict their supervision to securing (1) a minimum closing balance, (2) provision for the service of loans, (3) the observance of the provisions of the Act or statutory rules and of any standing orders of Government. Other Governments concede certain relaxations of existing rules. The Government of India accept these opinions for the present, but they nevertheless

regard the recommendations of the Commission as expressing a policy to be steadily kept in view and gradually realised.

Estimates for public works.

22. The Commission proposed that the existing restrictions on municipalities, which require outside sanction for works estimated to cost more than a certain amount, should be removed but that Government should scrutinize and sanction estimates of projects to be carried out from loan funds. The majority of the Local Governments are prepared to relax the existing rules in the direction of giving more freedom to municipal boards. The Government of India are in favour of extended freedom subject, where necessary, to proper precautions against extravagant and ill-considered projects. They are content, however, to leave the precise extent of relaxation to be determined by Local Governments. One important factor in this connection will be the quality of the professional agency available in the various boards. In their resolution No. 1019-A., dated the 10th November, 1914, promulgating rules relating to the grant of loans to local bodies under the Local Authorities Loans Act, 1914, the Government of India have emphasised the necessity for a proper scrutiny of projects financed with borrowed money and they trust that the rules in question will be carefully observed.

Establishments.

23. It was recommended by the Commission that the degree of outside control over municipal establishments should be relaxed, that the appointment of municipal secretaries or other chief executive officers, of engineers and health officers, where these exist, should require the sanction of the Local Government in the case of cities, and of the Commissioner elsewhere, and that the same sanction should be required for any alteration in the emoluments of these posts, and for the appointment and dismissal of the occupants. As regards other appointments, they proposed that the Local Government should lay down for municipal boards general rules in respect to such matters as leave, acting and travelling allowances, pensions or provident funds and maximum salaries, and that their sanction should be required for any deviation therefrom. Almost all Local Governments have expressed their willingness to relax outside control over the appointment of the staff employed by local bodies. In Bombay, the system is generally that recommended by the Commission. In some other Provinces, the existing rules give a free hand to municipalities,

subject to outside control in the case of certain appointments. The Government of India, while considering that Government control over other posts might reasonably be relaxed, accept the view that outside sanction should be required to the appointment or dismissal of secretaries, engineers and health officers, and they have already advised Local Governments to take powers where these do not exist, to require a municipality to appoint a health officer and to veto the appointment of an unfit person. Such powers already exist in the Bombay Presidency and have recently been taken by legislation in Bengal. The Imperial and Provincial Governments have given liberal grants to selected municipalities in order to establish a trained service of health officers and sanitary inspectors, the conditions of these grants being, as in England, such as will ensure the appointment of qualified men and reasonable security of tenure.

Special outside control.

24. The Commission thought that the Collector should retain certain powers, given under the existing Acts, *e.g.*, the power to suspend in certain cases the operation of municipal resolutions and that the Commissioner should be able to require a municipality which had neglected a particular service to take such action as he may consider necessary. The Local Governments generally and the Government of India are of opinion that special powers of outside control are necessary and should continue.

Town-planning and relief of congested areas.

25. The question of extending the powers of selected municipalities to enable them to relieve the pressure of population in congested areas, and to undertake schemes of orderly town-planning in order to provide for future needs, has been dealt with by the Government of India in paragraphs 43 and 44 of their Sanitary Resolution Nos. 888-908, dated the 23rd May, 1914. A Town Planning Bill, combining many original features with others derived from the latest English and Continental legislation, has now been passed into law in the Bombay Presidency, and the Government of India will watch with deep interest the results of this experiment, which will, they trust pioneer a fruitful expansion of municipal activities in India.

RURAL BOARDS (DISTRICT AND SUB-DISTRICT).

26. The Commission desired that sub-district boards should be universally established and that they should be the

principal agencies of rural boards administration. They noted that there was a considerable body of evidence that the sub-district boards existing in Bombay, Bengal, the Punjab, Bihar and Orissa and the Central Provinces had not been efficient or successful bodies, and this they attributed largely to the circumscription of their powers and resources. They thought that these boards should have adequate funds and a large measure of independence, and that their jurisdiction should so limited in area as to ensure local knowledge and interest on the part of the members, and be at the same time a unit well known to the people. For this purpose they suggested the taluka or tahsil as a suitable unit. The system recommended by the Commission is in force in Madras, where, however, the territorial jurisdiction is conterminous with the revenue division. In Bombay the taluka board is universal and is the principal agency in rural boards administration. In Bengal and in Bihar and Orissa the sub-district boards are merely the agents of the district boards and have restricted powers. The Local Governments concerned deprecate such a reconstitution as would involve sapping the vitality of district boards while in entire agreement with the Commission that sufficient use has not hitherto been made of these bodies. In the Central Provinces where also sub-district boards with limited powers exist, a scheme has been introduced for enlarging their scope by entrusting them with the management of minor public works, sanitation, water supply, etc., and placing an adequate share of the district council funds at their disposal for these purposes. In Assam the rural boards have jurisdiction over sub-divisional areas, and perform the duties assigned elsewhere to district boards. The Governments of the United Provinces and the Punjab and the Chief Commissioner of the North West Frontier Province consider the scheme unsuitable in view of local conditions. Districts in Northern India are comparatively small and form an easily controlled unit, communications are good, and moreover under existing conditions in the Provinces concerned it would be more difficult to secure competent boards in tahsils than in districts. The Lieutenant-Governor of the United Provinces considers, moreover, that there is every prospect of a steady advance in the reality and utility of district boards by a continuous and orderly development of the existing system of delegation to tahsil or sub-divisional committees. The Punjab Government favour the formation of sub-committees within a district board on a local basis.

Sub-district boards.

The Government of India accept the views of the several Local Governments in regard to their own Provinces.

Elective majority.

27. District and sub-district boards, in the opinion of the Commission, should contain a large preponderance of elected members, together with a nominated element sufficient to secure the due representation of minorities and of official experience.

In the United Provinces, the number of nominated members on a district board cannot exceed one-third of the elected members, while in the Central Provinces the number of such members cannot exceed one-third of the total number. The Government of Madras are prepared to raise the proportion of elected members to two-thirds and one-half of the maximum strength on district boards and sub-districts respectively. In Bombay, the Governor in Council regards it as inadvisable, in present conditions to provide for an elected majority on the boards. There is already a substantial majority of elected members both in district and sub-district boards in Bengal, and in Bihar and Orissa. In the Punjab, the elective system has been applied to many districts and the Local Government has expressed its readiness to extend it. The Chief Commissioner of Assam has adopted the principle of granting an elective majority. In the North-West Frontier Province, the change is not yet practicable owing to factional and tribal feeling. It will be seen that Local Governments in general are in sympathy with the Commission's proposal.

Chairmen.

28. The Commission were of opinion that an official should remain, as he usually is at present, chairman of every district and sub-district board. They considered that the removal of the district and sub-divisional officer from the presidentship of rural boards would have the effect of dissociating them from the general interests of the district in such matters as roads, education, sanitation, etc., and would divorce them from healthy contact with instructed non-official opinion. They differentiated the circumstances of rural boards from those of municipalities, in that the latter are less connected with general district administration, that they have reached a higher level of political education and that the jurisdictional area is much smaller and more compact. All Local Governments have accepted this view with which the Government of India are in agreement, though they will have no objection to non-official chairmen being retained

where such exist, or appointed where a Local Government or Administration desires to make the experiment.

Financial resources.

29. The funds of district boards are mainly derived from a cess levied upon agricultural land over and above the land revenue, with which it is collected, and not usually exceeding one anna in the rupee (6¼ per cent.) on the annual rent value. Since 1905 this income has been specially supplemented by a Government contribution amounting to 25 per cent. of the then existing income. Besides this, special grants are frequently made to district boards by Local Governments. The total number of district and sub-district boards in 1912-1913 was 199 and 536, respectively, with an aggregate income of £3,787,219 (Rs. 5,68,08,292). In the same year they received specially large grants from the sums allotted by the Imperial Government for education and sanitation. Prior to 1913 the district boards of several Provinces did not receive the whole of the land cess. For example, this cess in Bengal and Bihar and Orissa was divided into two parts, *viz.*, the road cess and the public-works cess. The district boards only enjoyed the benefits of the road cess, while the public-works cess belonged of right to the Local Governments which returned, however, a portion in the shape of discretionary grants. In other Provinces, *e.g.*, the United Provinces, the Punjab and the North-West Frontier Province, considerable deductions were made by the Local Governments concerned from the cess for various purposes. In 1913 the Imperial Government made assignments to the Local Governments concerned to enable them to hand over the entire net proceeds of the cess to the boards. The relief thus given amounted to £548, 866 (Rs. 82,33,000) a year and the Provinces which benefited were Bengal, the United Provinces, Bihar and Orissa, and to a smaller extent the Punjab and the North-West Frontier Province. The income of district boards in Bengal, the United Provinces and Bihar and Orissa has mainly by this measure been increased by 44, 43 and 55 per cent., respectively, in the year 1913-1914. This notable expansion will enable them in future to undertake or develop many beneficent activities from which they have hitherto been debarred by lack of financial means.

The following statements show the proportions under various heads of income and expenditure of the district boards in the different Provinces for the year 1912-1913.

Income.

Province.	Percentage of total income excluding loans and advances derived from								
	Rates.	Cattle-pound receipts.	Educational receipts.	Medical receipts.	Miscellaneous receipts.	Receipts from civil works.	Contributions. From provincial to local.	Contributions. From other boards.	Other items.
Madras... ...	36·8	..	1·9	0·4	5·1	10·5	34·0	0·9	10·4
Bombay ...	43·2	2·0	2·5	0·1	0·3	6·4	40·5	1·7	3·3
Bengal	46·2	5·7	0·9	0 1	0·4	7·4	34·3	2·6	2·4
United Provinces ...	45·8	6·3	3·6	0·3	0·4	8·4	27·2	6·5	1.5
Punjab... ...	45·8	1·4	4·0	0·3	1.3	10·2	30·7	2·1	4·2
Bihar and Orissa ...	53·9	4·9	0 7	...	0·4	7·6	29·5	1·5	1·5
Central Provinces ...	33·3	20·9	0·5	0·1	3·5	4·0	34·2	2·7	0·8
Berar	41·4	16·7	0·1	...	16·1	1·6	18·0	5·2	0·9
Assam	32·8	3·2	0·9	...	0·1	5·4	55·4	0·3	1·9
North-West Frontier Province ...	36·5	0·6	1·5	0·1	0·2	3·3	52·9	1·2	3·7
Coorg	28·2	3 1	2·9	1·8	4·0	15·7	39·3	0·3	4·7
Delhi	48·5	3·3	2·1	0 2	0·2	5·7	35 1	1·8	3·1

Expenditure.

Province.	Education.	Medical.	Civil works.	Refunds and drawbacks.	Administration (general establishment of local funds).	Cattle pound charges.	Miscellaneous.	Famine relief.	Contribution.	Other items.
Madras ...	10.3	10·0	50·6	0·1	2·9	...	2·6	...	8 4	15·1
Bombay ...	38.6	4·5	46·6	...	2·3	0·1	1·3	0·1	2·9	3·6
Bengal ...	25.3	5·9	53·7	...	3·3	0·4	0·3	...	0·5	10·6
United Provinces	31·7	12·5	45·2	...	2·7	2·0	0·1	...	2·2	3 6
Punjab ...	23.7	7·8	41·4	...	2·7	1·1	1·0	...	13·6	8·5
Bihar and Orissa	17.1	6·4	56·3	...	2·9	0·3	0·3	...	1·4	15·4
Central Provinces	30.0	6·3	33·0	...	2·8	6·3	0·3	...	1·0	19·3
Berar ...	31·7	8·4	37·8	...	3·8	3·2	0·2	...	4·6	10·3
Assam ...	26.4	8·7	57·8	0·2	1·5	...	0 9	...	1·6	2·9
North-West Frontier Province ...	30·0	12·5	34·5	...	3·8	0·1	0·3	...	7·5	11·3
Coorg	21·8	11·6	51·3	...	2·3	1·8	1·4	...	1·2	8·6
Delhi	24·4	9·2	51·0	...	3·5	1·3	0·9	...	3·3	6·4

Taxation.

30. It was the opinion of the Commission that district boards should not be empowered to raise the land cess beyond one anna in the rupee on the rent value, as this would be an unpopular measure. Under present conditions any proposal to raise the limit imposed by the existing law, would require the previous sanction of the Government of India. Such proposals would need the most careful consideration on their merits, and the Government of India do not consider it necessary for the present to make any pronouncement on the subject.

Railway or tramway cess.

31. The Commission proposed to allow district boards to levy a special extra land cess of 3 pies in the rupee on the annual rent value of land for the construction of light railways or tramways conditional on the approval of the tax by not less than three-fourths of the members of the board. This resolution would be subject to confirmation after a period of six months by an equal majority, at a like meeting and to the sanction of the Local Government. The Government of India, after consulting Local Governments, have, with the sanction of the Secretary of State, empowered Local Governments to undertake legislation, if they so desire, in accordance with the Commission's proposals. The scheme is to be commended from many points of view. It has an educative value by associating Local Self-government with responsibility for taxation for local objects and it opens up great possibilities of economic development. The actual imposition of the tax will in many instances probably not be necessary ; the power to impose it, if necessary, will be sufficient for purposes of guarantee. In a few districts in Bengal the ordinary resources of district boards have proved sufficient for the construction of railways within the limits of the district. The eminently satisfactory results which have attended the construction of district board lines in the presidency of Madras encourage the Government of India to hope that the financial results of carefully selected schemes will in the course of a few years materially strengthen the financial resources of district boards which are in a position to undertake the construction or guarantee of these lines. Legislation to carry out the proposal has already been undertaken in Assam and is under consideration in the Punjab. The Government of India trust that other Local Governments will take steps to confer the necessary powers on the local authorities and that selected boards throughout the country will experiment on the lines suggested.

Methods of railway construction.

32. There are two general methods by which district boards, which possess the necessary resources, may secure the construction of a railway within the limits of the district. A district board may wait until the surplus funds, which it has accumulated from the levy of a special cess or otherwise, are adequate to justify it in undertaking construction at its own cost, or it may decide to allow to a company floated for the special purpose of the construction of the proposed railway a firm guarantee on the capital paid up. In such cases in return for the guarantee, the district board will become entitled to a share of the surplus profits over a certain fixed percentage accruing from the working of the feeder railway. If the former method be adopted, it will usually be found convenient and economical to entrust the construction and working of the railway owned by the district board to the main line—whether worked by the State or by a company—with which the district board railway connects. In the latter case, the Branch Line Company receiving the district board's guarantee may itself undertake construction and working, or may arrange for construction and working through the agency of the main line. The Government of India are of opinion that when a light railway using steam locomotives is projected outside urban limits it will ordinarily be preferable to deal with the project as a railway under the Railways Act rather than as a tramway under the Tramways Act. In any event the sanction of the Railway Department is necessary in order to ensure that the project shall not conflict with others which that Department may have under their consideration, and the Railway Department will at all times, when so desired, endeavour to arrange suitable terms for construction and working on behalf of the district board, or on behalf of a Company which has received a district board guarantee. As a result of a recent reference from the Government of Madras the Government of India have decided that when a district board has accumulated a sum which, though substantial, is insufficient to meet the entire cost of a railway project which a district board desires to carry out, there is no objection to the raising of a debenture loan on the security of the railway to be constructed and the potential resources which a district board possesses through the power to continue the levy of a railway cess. For the redemption of such debentures a special sinking fund need not be accumulated. By this expedient a district board may become the owner of a district railway at a much earlier date than would formerly have been

possible. A large field is thus offered for district board enterprise. This recent decision will, it is hoped, be of substantial assistance in accelerating the construction of local feeder railways outside the Imperial programme.

Budgets and financial control.

33. A further recommendation was that rural boards should be given full power to pass their budgets subject only to the maintenance of a prescribed minimum balance. The procedure recommended by the Commission is stated to be already in force in the Bombay Presidency. Other Local Governments generally are not prepared to accede to this complete removal of restrictions, although some of them propose some relaxation in the existing rules. The Government of India consider that the present restrictions on the powers of the boards with regard generally to budget expenditure should be gradually relaxed with due regard to local conditions and requirements. The fact that an official is almost invariably president of a rural board and that powers of inspection and control by certain officers of Government are provided under the Acts relating to rural boards should ordinarily, in their opinion, be sufficient safeguards against gross inefficiency or mismanagement.

Estimates for public works.

34. The Commission also proposed that the existing stringent restrictions on rural boards with regard to estimates for public works should be removed. At present rural boards have to obtain outside sanction in respect to roads and other public works, the estimates of which involve any considerable amount, the limits varying for different Provinces. In the opinion of the Government of India, which has the general support of Local Governments, the grant to rural boards of full powers in the allotment of funds and the passing of estimates cannot, for the present at least, be conceded, but the extent of the necessary financial control might depend in the case of rural boards on the competence of the staff employed, and, where this varies, it would not be desirable to lay down hard and fast rules for the whole Province. In such cases district boards might be placed in different classes according to the staff employed. The Government of India accept the view of the Commission that in districts where there are sufficient works to justify the special appointment of a trained engineer, a district board which desires to entertain such an officer and can afford to pay him an adequate salary should be permitted to do so.

Establishments.

35. The Government of India have come to the same conclusions in the case of establishments of rural boards as in the case of municipalities (paragraph 23 *supra*). They have recently, in their Sanitary Resolution, Nos. 888908, dated the 23rd May, 1914, expressed the opinion that the appointment of well-qualified and wholetime district sanitary officers to control and organise all sanitary arrangements and experiments in the district is one of the urgent needs of the present time.

Special outside control.

36. Special powers of control over rural boards are vested in outside authorities under the existing Acts, and the Commission recommended that these should continue. The Local Governments in general as well as the Government of India accept this view.

VILLAGE ORGANISATION—PANCHAYATS OR OTHER COMMITTEES.

Recommendations of the Commission.

37. The Commission recommended the constitution and development of village panchayats possessed with certain administrative powers, with jurisdiction in petty civil and criminal cases, and financed by a portion of the land cess, special grants, receipts from village cattle pounds and markets, and small fees on civil suits. This proposal, favourably commended by the Government of India, who expressed their readiness to acquiesce in some form of permissive taxation, if need be, has in general been sympathetically received. The practical difficulties are, however, felt to be very great in many parts of India. The Government of Burma and the Chief Commissioner of the Central Provinces deprecate the introduction of a system which, in their judgment, is alien to the customs of the people and will not command public confidence. Other Governments are willing to experiment, but on different lines. The Punjab Government have already established panchayats for civil cases only and of a voluntary character. Sir LESLIE PORTER, when officiating as Lieutenant-Governor of the United Provinces, expressed his willingness to entrust selected panchayats with criminal as well as civil jurisdiction. The Madras Government are desirous of experimenting in the establishment of Panchayats but consider that action should be confined for the present to the encouragement of voluntary

self-contained organisms independent of statutory sanction and consisting of village elders conferring together for common village purposes. So far as judicial functions are concerned they are content to rely on the provisions of the Madras Village Panchayats Regulation, 1816, and the Madras Village Courts Act, 1888, which authorise the assembling of Panchayats and the convening of village bench courts for the settlement of particular civil suits on the application of the parties and to encourage the operation of these enactments wherever practicable. The Governments of Bengal and of Bihar and Orissa are of opinion that their existing laws sufficiently provide for the establishment of Panchayats with administrative duties, while powers to dispose of criminal cases could be given under the existing Acts dealing with these matters. The Chief Commissioner of Assam has expressed his readiness to develop village government, and the local self-government Bill which has recently passed the Legislative Council of that Province permits the constitution of village authorities, the grant of funds by local boards and from other sources, and the delegation of minor powers of local control. The whole question has now been raised again in the discussions contained in the report of the Bengal District Administration Committee, 1913-1914.

Panchayats.

38. The Commission recognised that any policy of establishing panchayats would be the work of many years, would require great care and discretion, and much patience and judicious discrimination between the circumstances of different villages. The Government of India desire that where any practical scheme can be worked out in co-operation with the people concerned, full experiment should be made on lines approved by the Local Government or Administration concerned. Throughout the greater part of India the word "Panchayat" is familiar. The lower castes commonly have voluntarily constituted panchayats, to whom they allow quasi-judicial authority in social matters. The more artificial administrative committees such as chaukidari panchayats, local fund unions, and village sanitation and education committees, and, in places even village panchayats, already exist. The spread of co-operative societies and the distribution of Government advances in times of famine and scarcity on joint security are educative influences. Village tribunals for the disposal of petty civil suits have got beyond the experimental stage in some places and are in the experimental stage in others. There is, therefore, some material with which to

build. The Government of India agree, however, with the view prominently brought forward by the Bengal District Administration Committee that much will depend on the local knowledge and personality of the officers who may be selected to introduce any scheme.

General principles.

39. With this general commendation, the Government of India are content to leave the matter in the hands of Local Governments and Administrations. They are disposed to consider that the following general principles indicate the lines on which advance is most likely to be successful :—

(1) The experiments should be made in selected villages or areas larger than a village, where the people in general agree.

(2) Legislation, where necessary, should be permissive and general. The powers and duties of panchayats, whether administrative or judicial, need not and, indeed, should not, be indentical in every village.

(3) In areas where it is considered desirable to confer judicial as well as administrative functions upon panchayats the same body should exercise both functions.

(4) Existing village administrative committees, such as village sanitation and education committees, should be merged in the village Panchayats where these are established.

(5) The jurisdiction of Panchayats in judicial cases should ordinarily be permissive, but in order to provide inducement to litigants reasonable facilities might be allowed to persons wishing to have their cases decided by panchayats. For instance, court fees, if levied, should be small, technicalities in procedure should be avoided and possibly a speedier execution of decrees permitted.

(6) Powers of permissive taxation may be conferred on Panchayats where desired, subject to the control of the Local Government or administration, but the development of the panchayat system should not be prejudiced by an excessive association with taxation.

(7) The relations of panchayats on the administrative side with other administrative bodies should be clearly defined. If they are financed by district or sub-district boards, there can be no objection to some supervision by such boards.

PRESIDENCY CORPORATIONS AND RANGOON.

Recommendations of the Commission.

40. The Commission recommended that all the Presidency Corporations should be invested with the powers possessed by the Corporation of Bombay, and that the system of ad-

ministration in force in that city, *viz*, that of a nominated official Commissioner in combination with an elected chairman, should be extended to the other towns. They also considered that the same privileges should be conferred on the Rangoon municipality in view of its population, the large future which lies before it, and the strength of its commercial community.

Bombay, Calcutta, Madras.

41. The presidency municipalities are regulated by special Acts, and their resources and powers are far greater than those of any district municipality. In Calcutta and Madras, the municipal chairman is appointed by Government. In Bombay, he is elected, but the executive administration is vested in a Commissioner nominated by Government. He is assisted by a Deputy Commissioner appointed by the Corporation subject to the confirmation of Government. The Commissioner possesses wide executive powers; in some matters he must obtain the sanction of the standing committee (a statutory body, one-third of whose members are nominated by Government); in others again of the Corporation. The Corporation enjoys a very full discretion in the work of municipal administration; it passes its own budget, and may impose taxation within the limits of the law; and the sanction of Government is necessary only to the appointments of health officer and engineer.

The Corporation of Calcutta possesses similarly wide powers. The sanction of Government is, however, required to the execution of works costing one lakh of rupees or more and to the salary of any employee drawing more than Rs. 1,000 a month, as well as to the appointments of health officer and engineer.

In Madras, the Government possess numerous powers which are not reserved to the Governments of Bengal and Bombay.

The adoption of the Bombay constitution.

42. As regards the main proposal of the Commission, the Government of Bengal were in 1909 disposed to agree with the preference expressed for the constitution of the Bombay municipality in respect of the offices of municipal Commissioner and chairman, but stated that the point would be considered hereafter, should the amendment of the Calcutta Municipal Act be undertaken. The Government of Madras agree with the Corporation as to the advisability of introducing the Bombay system, and they have no objection to the general emancipation of the Corporation from Government control, provided that the Municipal Commissioner is placed in a position substantially as strong as he occupies in Bombay.

43. The Government of India have accepted in the main recommendations of the Local Governments which will go far towards carrying out the proposals of the Commission. They have expressed to the Government of Madras the opinion that a free hand might be left to the Corporation to impose, without the sanction of Government, any tax specifically sanctioned by the Act with regard to which maximum rates have been laid down therein. They consider that in order to provide security of tenure, the health officer, revenue officer, and engineer should not be removeable without the sanction of Government. In the case both of Calcutta and Madras, the limit of cost of works which may be undertaken without the sanction of Government will be raised to Rs. $2\frac{1}{2}$ lakhs, and, with regard to Calcutta, the Government of Bengal have agreed to remove the restriction requiring the sanction of Government to salaries carrying more than Rs. 1,000 a month. The appointments of health officer and engineer will continue to require this sanction.

Rangoon.

44. With regard to Rangoon, the Government of Burma are not prepared to make the concessions recommended. The circumstances of Calcutta, Madras and Rangoon are in many respects widely different, and the Government of India defer, at any rate at present, to the views of the Local Government on this point. But they observe, as a general proposition, that in cities where there is a responsible public press and representation in the Provincial councils, the case for entrusting large powers and extended freedom to the municipal bodies appears to be specially strong.

Local Government Board.

45. The suggestion that Government control over rural boards and municipalities should be exercised in each Province by a Local Government Board, which should contain a proportion of non-official members was not accepted by the Commission. They considered that, since their proposals would greatly reduce the outside control exercised over the proceedings of municipal and rural boards and would provide for the delegation in large measure of such powers of guidance as are necessary to Commissioners and other local officers, no benefit would be derived from the creation of a special controlling board of this nature. The Government of India also are not prepared to support the proposal, which is not only unnecessary in the opinion of the Local Governments consulted but is undesirable as tending to

perpetuate the very centralisation in local affairs, which it is the object of Government to diminish.

Conclusion.

46. In conclusion, the Governor-General in Council hopes that this declaration of policy may lead to steady and sound progress, without hampering Local Governments and Administrations or unduly fettering local self-government. It is designed to mark a definite advance in devolution and political education. His Excellency in Council trusts that it will be interpreted in the spirit in which it is framed, a spirit of prudent boldness, calculating risks but not afraid to take them in the cause of progress.

VI. RESOLUTION ON THE LOCAL SELF-GOVERNMENT POLICY OF THE GOVERNMENT OF INDIA.

No 41.

Simla, the 16th May, 1918.

Declaration of 20th August 1917.

It was announced in the House of Commons on the 20th of August 1917 that the policy of His Majesty's Government, in respect of the future of this country, was that of increasing the association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire. It was added that progress in this policy could only be achieved by successive stages and that the British Government and the Government of India, on whom the responsibility lay for the welfare and advancement of the Indian peoples, must be the judges of the time and measure of each advance and must be guided by the co-operation received from those upon whom new opportunities of service would thus be conferred and by the extent to which it was found that confidence could be reposed in their sense of responsibility.

Progress to be made in local self-government.

2. In commenting on this pronouncement in the Imperial Legislative Council on the 5th of September 1917, His Excellency the Viceroy explained that there were three roads along which an advance should be made towards the goal indicated in the above pronouncement. Of these the first road was in the domain of local self-government, the village or rural board

and the town or municipal council. The domain of urban and rural self-government was the great training ground from which political progress and a sense of responsibility have taken their start, and it was felt that the time had come to quicken the advance, to accelerate the rate of progress and thus to stimulate the sense of responsibility in the average citizen and to enlarge his experience.

The object of the present Resolution is to indicate the manner in which the Government of India would desire to initiate the progress to be made along this road of local self-government.

The policy of Lord Ripon's government.

3. Although the beginnings of local bodies can be traced to an earlier epoch, the course of local self-government, as now understood, was first set out by the government of Lord Ripon more than 30 years ago. A determined effort was made by the Government of India in 1881 to 1884 to implant a system of local self-government in the country and much was said and written on the subject in those years. During and shortly after that period a number of Acts were passed to form the foundation of the new arrangements. There was, however, little enthusiasm about the further development of the system either in official circles or outside and the advance during subsequent years, though not inconsiderable, has on the whole been slow. As might be expected, it has been more rapid in the great towns, but it has lagged behind over the country at large.

The Decentralization Commission and the Resolution of 1915.

In 1907-09 the whole field of local self-government came under the consideration of the Decentralization Commission, and that Commission made a number of detailed proposals on the subject almost all of which were in the direction of giving greater scope and freedom to local bodies. These proposals were referred in 199-10 to local Governments, and a large mass of opinions was received during the ensuing three or four years. The Secretary of State had, meantime, intimated his opinion that the time had come to undertake a general review of the results obtained by the policy of Lord Ripon's government ; and the Government of India after an intermediate correspondence with the Secretary of State and Local Governments complied with this desire by embodying their views on the proposals of the Commission in a comprehensive Resolution on the main problems of local

self-government. This Resolution was issued in April 1915. After pointing out the degree of substantial progress that had already been achieved and the signs of vitality and growth that were everywhere apparent, it proceeded to explain the obstacles in the way of realising completely the ideals which had prompted action in the past. The smallness and inelasticity of local revenues, the difficulty of devising further forms of taxation, the indifference still prevailing in many places towards all forms of public life, the continued unwillingness of many gentlemen to submit to the troubles, expense and inconveniences of election, the unfitness of some of those whom these obstacles did not deter, the prevalence of sectarian animosities, the varying character of the municipal area—all these were causes which could not but impede the free and full development of local self-government. The growing demand among the educated classes in towns for greater efficiency involving more direct expert control in matters affecting public health and education was a further influence of a different character ; but, while these and similar considerations indicated the need for caution, the Government of India, on the whole, declared themselves unhesitatingly in favour of a general policy of further progress limited only by such conditions as local circumstances might dictate. At the same time, the Resolution emphasized the fact that any attempt to exact uniformity in local administration would be foredoomed to failure, and on a review of all the circumstances the Government of India decided to accept in almost every case the conclusions of each Local Government as to the degree of progress possible at the present time. The Resolution, therefore, while indicating in broad outlines the ideals which the Government of India had before them, left the Local Governments in most respects to move towards these ideals in the manner and at the pace which was considered best fitting to local circumstances. In some provinces—as in the United Provinces, Bengal and Assam—legislation has since been effected or initiated and in others action has been taken in other ways towards securing further progress on the lines suggested by the Commission, but as a rule the statutory provisions for local self-government have remained unchanged since the Resolution of 1915 was issued and no remarkable departure of a general character has been made from the previously existing arrangements.

In their recent correspondence with the Secretary of State on the general subject of constitutional reforms the Government

of India have considered afresh the whole subject of local self-government and have laid before the Secretary of State a scheme of expansion suited to the altered circumstances of the present time. Having received his approval to their recommendations they now desire to intimate the lines upon which they would wish Local Governments to move in the direction of more complete local self-government. The Government of India fully recognise that it will not be possible to make all the injunctions formulated below of absolutely uniform application and are, therefore, willing to reserve to the Local Governments the power to modify their application in specific cases and for specific reasons: but they expect that in the absence of such specific occasions a substantial advance should now be made on the lines laid down, and from indications received in the course of their recent communications with heads of Local Governments, they believe that the Local Governments, each in its own degree, are also anxious to adopt a forward policy in general conformity with the wishes of the Government of India.

The main principles involved.

4. As the whole subject has been so recently dealt with in the Resolution of 1915, the Government of India do not propose to re-state the history or the objects and principles of local self-government in this country at any length. The first and foremost principle which was enunciated in Lord Ripon's Resolution of May 1882 and which has since been emphasized by successive Secretaries of State, is that the object of local self-government is to train the people in the management of their own local affairs and that political education of this sort must, in the main, take precedence of considerations of departmental efficiency. It follows from this that local bodies should be as representative as possible of the people whose affairs they are called on to administer, that their authority in the matters entrusted to them should be real and not nominal, and that they should not be subjected to unnecessary control, but should learn by making mistakes and profitting by them. The general policy, therefore, must be one of the gradual removal of unnecessary Government control and of differentiating the spheres of action appropriate for Government and for local bodies respectively. So far as education is concerned, the views of the Government of India have been already communicated in their circular no. 873 of the 19th September 1916 and the present Resolution will not deal with the educa-

tional aspects of the policy. The control of Government over local bodies is at present exercised both from within and from without, and it is mainly by the substitution of outside for inside control and by the reduction of outside control, so far as is compatible with safety, that progress in the desired direction will be achieved. The internal control is capable of relaxation by the introduction of a greater use of election in the selection of members and chairmen of boards; and the external control by such means as the removal of unnecessary restrictions in connection with taxation, budgets, the sanction of works and the local establishments.

Internal control :— Elective majorities on boards.

5. In dealing with the election of members to local bodies the Decentralization Commission proposed that municipal boards and rural boards—district and sub-district—should ordinarily have a substantial elective majority, nominated members being limited to a number sufficient to provide for the due representation of minorities and of official experience. In their Resolution of 1915 the Government of India approved this policy as regards municipalities, subject to the proviso that where its success might be doubtful it should be introduced gradually; and as regards rural boards, they observed that Local Governments in general were in sympathy with the Commission's proposals. At present something over a half of the members in municipalities and something under a half in rural boards are elected, and the Government of India are now of opinion that as a general principle the Commission's proposals in favour of a substantial elective majority, both as regards municipalities and as regards rural boards, should be accepted and carried out by the Local Governments. Where the members of district boards are elected by the sub-district boards there is no reason to interfere with this arrangement, but the observance of the principle should be enforced as regards the elective element in the membership of the sub-district boards which make the elections for the district boards. As regards the special representation of minorities where this is necessary, the Government of India would prefer that this should be effected by retaining the practice of nomination rather than by introducing some system of communal or proportional representation. But as regards the special representation of official experience, they consider that this might often be adequately secured by the nomination to the board of men possessed of such experience for purposes of advice or discussion only and without the right

of voting. It has been suggested that, apart from the officials who would count as supernumeraries under the above arrangement, the proportion of nominated members on a board should not ordinarily exceed one-fourth; and it will be open to local Governments to adopt a standard of this character, but the Government of India recognise that in the case of boards to which the elective system has not hitherto been applied there may be local opposition to the immediate introduction of election on so extensive a scale and the proportion of nominated members on boards must necessarily vary from place to place. In cases where it is considered advisable to retain the power to nominate to a certain number of posts for the purpose of retaining the services of men who would not stand for election, it should be considered whether a system by which a proportion of the members should be co-opted by the remainder and hold office for a period longer than that ordinarily prescribed would not serve to meet the same object. In one province proposals are now under consideration for dispensing altogether with nomination by (i) omitting the official members in view of the existence of expert servants of the boards, (ii) meeting the case of minorities by communal representation, and (iii) introducing a system of co-opted 'aldermen' on the lines above described in order to attract men who will not stand for election. Except so far as it provides for communal representation, a scheme of this character coincides with the principles which the Government of India themselves advocate and, in the cases where the question of communal minorities does not arise, it indicates a line of action which ensures the full exercise of the right of election to local bodies. It should be recognised that by whatever method this may be effected a substantial increase should be secured in the present elective element in local bodies and in view of this contemplated increase the Government of India desire that district officers should as recommended in paragraph 534 of the Decentralization Commission's Report utilize their district boards more fully than at present for consultation and advice in matters of general concern which lie outside the sphere prescribed for the activities of these boards.

Extension of the franchise.

6. In accepting the proposals of the Decentralization Commission with regard to the provision of a substantial elected majority on local bodies, the Government of India desire to add the important corollary that the franchise for such election should be sufficiently low to obtain constituencies which will be

really representative of the body of the rate-payers. So far as information is at present available, it would appear that the average electorate in municipalities in India represents some 6 per cent. of the population and the electorate in district boards some 6 per cent. It is recognised that a full elective system analogous to that which obtains in the West (such as the municipal franchise in England which is understood to include some 16 per cent. of the population concerned) cannot be immediately or universally applied, but it should be regarded as the end to be kept in view and worked up to. The relation of the electorate for local bodies to that which may hereafter be provided for purposes of elections to the provincial legislatures is a matter which will have to be taken up separately : but several Local Governments have already under consideration and extension of the existing franchise for rural boards and where such extension can be made without recourse to special legislation there is no objection to their being carried out at once if the Local Government concerned are of opinion that this can be done without inconvenience. An enlarged franchise is in any case an essential condition of an extension of the elected element on boards and it should be understood that the increase in the elective element on local bodies must, if it is to be of value, be accompanied sooner or later by a substantial extension of a franchise upon which that election is based.

Elected chairmen in municipalities.

7. In dealing with the appointment of chairmen in municipalities the Decentralization Commission desired that the municipal chairmen should ordinarily be elected non-officials, that Government officers should not be allowed to stand for election and that if a nominated chairman was required, an official should be elected. The Government of India in their Resolution of 1915 accepted this view, subject to the qualification that in special cases in which it was necessary to nominate the chairman (election being the ordinary method) discretion should be reserved to Local Governments to nominate non-officials as well as officials, and subject also to the further condition that although boards should not be absolutely prohibited from elective officials, the election of an official should be a special matter requiring confirmation by the Commissioner or by some higher authority. It may be roughly laid down that at the present time one-third of the chairmen in municipalities in India are nominated officials, one-third are elected officials and one-third are elected non-officials, but certain Local Governments have latterly evinced

a desire to increase the proportion of elected non-official chairmen within their respective areas. The Government of India accept the proposals of the Decentralization Commission as qualified by the Resolution of 1915 on the understanding that when an official is elected to be a chairman the election should be by a majority of the non-official votes. In certain Provinces, such as Burma and the United Provinces, it is already the ordinary practice for municipalities to elect their chairmen. In others, as in Bihar and Orissa and the Punjab, efforts have been made of recent years, but have not always met with the consent of the municipalities concerned, to increase the number of elected chairmen. In others, as in Bengal and Bombay, the principle of election has in practice been extended and further extensions have been seriously considered. The Government of India trust that the principles which they have laid down above will commend themselves to Local Governments and they hope that under the arrangement now prescribed there will be a general replacement of nominated official chairmen of municipalities by elected non-officials, though municipalities should be able to elect an official as chairman, or if they so desire, to ask the Government to nominate a chairman.

System in large cities.

8. The Decentralization Commission, however, indicated that in the larger cities it would be desirable to adopt the practice which has been worked with success in the city of Bombay. In order that the large amount of every day administration necessary should be efficiently carried on, this administration is in Bombay placed under a special nominated Commissioner, who is, however, subject to the general control of the Corporation and of its standing committee. This proposal was commended in the Resolution of 1915, and it appears to the Government of India to be worthy of consideration. So long as the executive officer of a city is protected from the possible caprices of a board by provisos requiring that, though his nomination may be by the board, his appointment should be approved by Government and that he should not be removed without the sanction of the Government unless by the vote of a substantial majority of the board, it is not necessary to require that the executive officer should be a Government official, and competent men can be appointed to the post who have not been or no longer are in Government service. A system of executive officers on the above general lines has been rendered possible in the cities of the Bombay Presidency by legislation passed in 1914, and

in the United Provinces by the United Provinces Municipalities Act of 1916: while a similar system is contemplated by the legislation now under consideration for the Corporations of Calcutta and Madras.

Elected chairmen in rural boards.

9. As regards rural boards the Decentralization Commission found that in practice the Collector was nearly always the president of the district board either *ex-officio* or by nomination or by election, and that the sub-district boards were also, as a rule, presided over by official subordinates of the Collector. They recommended that the Collector should remain as president of the district board as it was undesirable to dissociate him from the interests of the district and it was important to utilise his administrative experience. They differentiated the circumstances of rural boards from those of municipalities in that the latter are less connected with general district administration, that they had reached a higher level of political education and that their jurisdictional area was much smaller and more compact. //For these reasons, they held that it was desirable that the presidency of rural boards should continue to vest in the Collector and his assistants, but they added that the vice-presidents should, in each case, be elected non-officials. The Government of India in their Resolution of 1915 accepted the view of the Commission above cited. They added, however, that they would have no objection to non-official chairmen being retained, where they already existed, or freshly appointed where a Local Government desired to make the experiment. From statistics provided in 1916 it would appear that at that time out of 191 district boards only 13 had non-official presidents (elected), all but one of these being in the Central Provinces: and as regards sub-district boards, out of a total of 525, the chairmanship of 41, mostly in Bengal, was held by elected non-officials and of 20, nearly all in Madras, by nominated non-officials. Since these figures were collected, however, fresh experiments have been made, more especially in Bengal and Bombay, to extend the principle of elected non-official chairmen; and other Provinces also have evinced their desire to move in this direction.

The circumstances of district boards and of large subdivisional boards, such as those in Madras, are materially different from those of municipalities, since they need much more time and widely extended travelling on the part of the head of the board if the work is to be satisfactorily carried out.

The Government of India would urge provincial Governments to arrange for the election of chairmen, wherever this is possible, and where this is not possible to encourage the appointment of non-official chairmen. When the chairman is a non-official, however, they think it essential in regard to district boards and to such sub-district boards as deal with large areas that, as in the case of large cities, the ordinary official work should be largely in the hands of a special executive officer, whose appointment should require the approval of the Government and who should not be removed in ordinary circumstances without Government sanction. If such a board, wishing to save the expense of a special officer, or desirous of remaining under the presidency of the Collector or of one of his assistants, should wish to elect such an official as chairman, the Government of India think that its wishes might be acceded to, subject to the condition that the election should be made by the non-official members of the board and that it should be a special matter requiring confirmation by the Commissioner or some higher authority.

External control :— Powers of taxation in municipalities.

10. In the above paragraphs the views of the Government of India have been expressed in favour of a liberalization of the constitution of local bodies and the consequent substantial reduction of what is ordinarily termed the "internal control" of local bodies by the Government. Turning to the other aspect of the case, namely, the possible reduction of external Government control, they would first deal with the matter of local taxation. Under this head the Decentralization Commission were of opinion that municipalities should have full liberty to impose or alter taxation within the limits laid down by the municipal laws, but that the sanction of an outside authority to any increase in taxation should be required where the law did not prescribe a maximum rate. The Government of India in their Resolution of 1915 expressed a general sympathy with the Commission's recommendations. They thought, however, that power to vary any tax might be reserved by such Local Governments as were unable to accept in full the recommendations of the Commission and that in the case of indebted municipalities the previous sanction of higher authorities should be required to any alteration of taxation. The suggested proviso that Local Governments should have power to vary any tax is one that practically renders the general principle nugatory as it enables Local

Governments to decline to act upon it, and the Government of India consider that this proviso should now be given up in the case of boards which contain substantial elected majorities. The further proviso with regard to indebted municipalities is undoubtedly sound in cases where the Government has lent money to a municipality or guaranteed repayment of its loans and in that case the sanction of Government should obviously be required to any alteration in taxation which might reduce the municipality's resources. Subject to this proviso, the Government of India consider it most important that municipal boards should be allowed to vary taxation in the manner proposed by the Commission. In cases where the constituencies are (as the Government of India consider it essential that they should be) so organized as to be really representative of the body of the rate-payers a municipal board which abuses its powers of taxation will be open to correction by its own constituents and, as will be observed from the remarks made in paragraph 17 below, it is proposed that in cases of grave abuse the Government should retain special powers of intervention.

Powers of taxation in rural boards.

11. The bulk of the income of rural boards is derived from a cess levied upon agricultural land over and above the land revenue and not usually exceeding 1 anna in the rupee, or $6\frac{1}{4}$ per cent. on the rent value or on the land revenue according to the circumstances of the Province. Subject to an exception in favour of railway construction, the Decentralization Commission held that district boards should not be empowered to raise the land cess beyond the above mentioned limits. They represented that the policy of the Government was in favour of lightening the burden on land, that district boards were not fully representative, and that changes in the rate of cess would lead to misunderstanding and fraud. They accordingly declined to recommend the grant of unlimited powers of taxation to rural boards, but thought that they should have power to raise the ordinary land cess up to a rate of 1 anna in the rupee on rental value and to levy rates and fees at their discretion within the limits laid down in the various Acts, the sanction of the Commissioner being required for proposed changes in the rates where no limits had been laid down by the law. In their Resolution of 1915 the Government of India observed that under present conditions any proposal to raise the limit imposed by the existing law would require the previous sanction of the Government of India, that such proposals would need the most

careful consideration on their merits and that the Government of India did not consider it necessary for the present to make any pronouncement on the subject. Under the general principle indicated above in respect of municipalities the Government of India would now accept a somewhat similar position. Where no limit has been imposed by the law on the rate of the cess, a change in the rate at which the cess is levied will need the sanction of outside authority: but where a limit is imposed, either by existing or by future legislation, a rural board will be at liberty to vary the rate at which the cess is levied within the limits imposed by law without the interference of outside authority.

The control of services paid for by local bodies.

12. The Commission proposed that, if a municipal or rural board had to pay for a service, it should control it: and that, where it was expedient that the control should be largely in the hands of Government, the service should be a provincial one. The Government of India, though not prepared to accept the proposal in full, declared in their Resolution of 1915 that they approved of it in a somewhat modified form. They considered that charges should be remitted in cases where a local body contributed to Government for services inherent in the duty of supervision and control by Government officers or services which could not expediently be performed except by by Government agency. For example, Government might properly cease to charge for clerical establishments in the offices of supervision and control or for the collection of district cesses which it was clearly expedient to realise along with the Government revenue. The Government of India are now of opinion that in this matter it would be well to go the whole way with the Commission, in accordance with the general principle that if local bodies have to raise funds for any particular object they should have the control of these funds. If a board is to provide, for instance, for civil works or medical relief, it ought, subject to such general principles as the Government may prescribe, to have real control over the funds thus provided, and should not be under the constant dictation of Government departments in matters of detail.

The budgets of local bodies.

13. Commenting on the minute control exercised in some Provinces over municipal finances, the Decentralization Commission recommended that municipalities should have a free hand with regard to their budgets. The only check required

should, in their opinion, be the maintenance of a minimum standing balance to be prescribed by the Local Governments. They acknowledged that relaxation in control might lead to mismanagement but they were of opinion that municipal bodies could attain adequate financial responsibility only by the exercise of such powers and by having to bear the consequences of their errors. Further check would be provided by the control which Local Governments would exercise over loans and by the power which should be reserved to compel a municipality to discharge its duties in cases of default. In dealing with these proposals in their Resolution of 1915 the Government of India, while introducing exceptions suggested by various Local Governments, declared that, though they would accept these reservations for the present, they nevertheless regarded the recommendations of the Commission as expressing a policy to be steadily kept in view and gradually realised. The Government of India now desire that Local Governments should make every effort to attain the full realization of the recommendations in question as soon as possible.

A similar recommendation was made by the Decentralization Commission in respect of rural boards, and the Government of India in their Resolution of 1915 considered that the present restrictions on the powers of these boards with regard to the general principle of budget expenditure should be gradually relaxed with due regard to local conditions and requirements ; the fact that an official would almost invariably be the chairman and that powers of inspection and control were retained by Government being sufficient safeguard against gross mismanagement. In this case, as in that of municipalities, the Government of India desire that the recommendations of the Commission should be realised as soon as possible subject only, as in the case of municipalities, to control in the case of rural boards which are indebted to Government and in cases of gross default.

Specification of income and earmarking of grants.

14. The Government of India would similarly endorse the recommendation made in the Decentralization Commission's report that the system of requiring local bodies to devote fixed portions of their revenues to particular objects of expenditure should be done away with as unduly limiting their freedom of action, subject, as indicated by the Commission, to outside intervention in cases of grave neglect or

disregard. If the Government give a grant for a particular object, the money must, of course, be applied thereto, but the Government of India endorse the Commission's recommendation that grants-in-aid should normally take the form of a lump grant or a percentage contribution towards specific services rather than be more definitely earmarked. If, again, funds have been raised locally for particular objects, they must necessarily be applied to those objects; but otherwise the general principle laid down by the Commission is one which the Government of India would wish to see ordinarily observed.

Sanction for works.

15. The Decentralization Commission further proposed that the existing restrictions on municipalities which require outside sanction for works estimated to cost more than a certain amount should be removed, but that Government should scrutinize and sanction estimates of projects to be carried out from the loan funds. In their Resolution of 1915 the Government of India observed that the majority of the Local Governments were prepared to relax the existing rules in the direction of giving more freedom to municipal boards, and the Government of India expressed themselves in favour of extended freedom subject, where necessary, to proper precautions against extravagant and ill-considered projects. With reference to a similar recommendation made by the Decentralization Commission in respect of rural boards the Government of India in their Resolution expressed their opinion that the grant to rural boards of full powers in the allotment of funds and in the passing of estimates could not for the present at least be conceded, but the extent of the necessary financial control might depend in the case of rural boards on the competence of the staff employed, and where this varied it would not be desirable to lay down hard and fast rules for the whole of a Province. The Government of India still adhere to the views expressed by them in 1915, but they desire to go somewhat beyond the general pronouncement then made and would ask for a definite indication on the part of Local Governments that, allowing for the necessarily different circumstances of different boards, there will now be made a material advance in the direction of the proposal made by the Decentralization Commission. It may be found convenient to arrange for this advance by a classification of bodies according to the character of their local technical staff, and to divide them into three or more classes according as sanction is not required, or is required in the case of works whose cost is calculated to exceed certain specified figures.

Establishments of local bodies.

16. It was also recommended by the Decentralization Commission that the degree of outside control over municipal establishments should be relaxed, but that the appointments of municipal secretaries or other chief executive officers or engineers and health officers, where these existed, should require the sanction of the Local Government in the case of cities and of the Commissioner elsewhere, and that the same sanction should be required for any alteration in the emoluments of these posts and for the appointment and dismissal of the occupants. As regards other appointments, the commission proposed that the Local Government should lay down for municipal boards general rules in respect of such matters as leave, acting and travelling allowances, pensions or provident funds and maximum salaries, and that their sanction should be required for any deviation therefrom. The system recommended by the Commission is already substantially in force in Bombay, and almost all the Local Governments expressed their willingness to relax outside control over the appointment of the staff employed by local bodies. The Government of India are now of opinion that steps should be taken to carry out into practice the general recommendations of the Commission in respect of municipalities : and that as regards rural boards, for which the Commission made similar recommendations, similar action should be taken. They consider, moreover, that the requirement of Government sanction to the appointment and dismissal of the special officers above mentioned may properly be accompanied by the right on the part of Government to require their dismissal in cases of proved incompetency.

Outside powers of intervention.

17. In addition to the specific forms of outside control to which reference has above been made, the existing legislation confers certain special powers of intervention on the part of Government officers. The Decentralization Commission were of opinion that the Collector should retain certain powers given under the existing Acts, such as the power to suspend in certain cases the operation of municipal resolutions and that the Commissioner should be able to require a municipality, which had neglected a particular service, to take such action as he might consider necessary. The Local Governments generally, and the Government of India in 1915, were of opinion that special powers of outside control were necessary and should continue. The Commission also recommended that the special powers of

control over rural boards vested in outside authorities under the existing Acts should continue, and the Local Governments in general and the Government of India accepted this view.

It is certainly necessary to maintain such ultimate powers of intervention which are in no way peculiar to India, and which carry out the view expressed in paragraph 17 of the Government of India's Resolution of the 17th of May 1882, that the control of Government over local bodies should be exercised from without rather than from within, and that the Government instead of dictating the acts of local bodies should revise and check them. In view of the relaxations which are contemplated in respect of the powers of external control exercised by Government in respect of taxation, budgets, public works and local establishments, it might be expected that the powers of Government officers in respect of external intervention should, if altered at all, be altered in the direction of greater stringency. In consequence of the increasing demand for sanitary improvements, it may indeed be necessary to provide a special agency for enforcing modern requirements in the matter of sanitation, and to provide that agency with adequate powers, and this is a matter upon which the Government of India will, if necessary, address Local Governments separately at a later date. It is moreover possible that very important changes may be necessary hereafter in the procedure and organization of public works establishments as a consequence of the inquiries recently made by the Public Works Department Reorganization Committee whose report is at present under the consideration of the Government of India. But, as has been already remarked at the outset of this Resolution, the general principle before the Government of India is that, except in cases of really grave mismanagement, local bodies should be permitted to make mistakes and learn by them rather than be subjected to interference either from within or from outside. The Government of India do not, therefore, with the possible exceptions above noted, suggest the addition of any substantial powers of intervention on the part of Government officers, and they trust that in the exercise of such powers as the law allows the principle which has above been referred to may be borne in mind. They would further suggest that penal action from outside might in some cases be dispensed with if the Government took power to itself to dissolve a municipal council or rural board and require a fresh election before making use of the more drastic powers conferred upon it by the legislature.

Central control.

18. As regards the agency through which the outside control of Government should be exercised the proposal has from time to time been put forward that the main powers of control should be concentrated in the hands of a central board at provincial headquarters working under Government and invested with powers of compulsion similar to those enjoyed by the Local Government Board in England. A proposal to constitute a board of this character was put forward for Bengal in 1882 and was negatived by the Secretary of State. It was again examined by the Decentralization Commission and rejected by them in 1909. The Local Governments concurred in the conclusions of the Commission and the Government of India, in their Resolution of 1915, vetoed the scheme as not only unnecessary but tending also to perpetuate the very centralization in local affairs which it is the object of Government to diminish. The Government of India recognise that the powers of Collectors and Commissioners should be maintained but they would suggest for the consideration of the provincial Governments the constitution of a central body which should co-ordinate the experiences of the local bodies and provide improved control and guidance by entertaining further expert inspecting establishments, if necessary. Such a central body should be in direct touch with the Government and might fitly be presided over by a member of the Executive Council where such exists. It should further be considered whether in place of a formal board there might not be a Standing Committee for local and municipal affairs in direct contact with the Government, to be largely drawn from elected members of the Legislative Council.

Notified areas, etc.

19. In the above paragraphs the Government of India have indicated a few of the main principles which they consider should be borne in mind in the future relations of Government to the local bodies ordinarily known as municipalities and district or sub-district boards. They do not consider it necessary to lay down any general principle in regard to embryonic municipalities whether these be styled "notified areas", or "village unions" as in Madras, or "town panchayats" as suggested by the Decentralization Commission. Many of the bodies dealing with these areas will in due course develop into municipal councils, but until they are fit for this stage they must obviously be subjected to greater control and be less non-official in character. It might often be undesirable, for instance, that the chairman should be a non-

official. The development of these bodies is left to the discretion of Local Governments subject merely to the general instruction that they should be allowed as full authority as is possible and their powers should be gradually enhanced.

Village panchayats.

20. The policy initiated by the Resolution of Lord Ripon's government related solely to the machinery of local self-government as represented by municipal or sub-district boards, but reference has, from time to time, been made during subsequent years to the possibility of providing some organization for the development of village life and this aspect of the question was brought into special prominence by the Decentralization Commission of 1909. A special section of their report was devoted by that Commission to the question of village panchayats and the Commission indicated the principles upon which such panchayats should, in their opinion, be instituted. As, however, there is some misapprehension as to the nature of the recommendations of the Commission, it is advisable to bear in mind the crucial point that in their proposals in this respect, the Decentralization Commission were not contemplating an additional machine for the promotion of local self-government in the sense in which that term is used in the Resolution of Lord Ripon's government and in subsequent official literature but desired to develop the corporate life of the individual villages and to give the villagers an interest in, and some control over, local village affairs. Consequently, they made a clear distinction between the panchayat organization which they recommended and artificial agglomerations, such as the Madras local fund unions, the chaukidari unions in Bengal and the sanitary committees to be found in the United Provinces, Bombay and the Central Provinces. These artificial organizations may be found useful as an adjunct to local self-government in the sense in which that word is used in the Resolution of 1882 by affording smaller administrative areas in that connection than those administered by municipal or sub-district boards; but such organizations are quite unconnected with the development of individual village corporate life. The Decentralization Commission have pointed out that the common traditions of the village, the fact that the inhabitants are largely connected by ties of blood and caste and by many interests in common and the measure of corporate life still existing in Indian villages which is shown occasionally by voluntary taxation for special purposes warrant the action recommended by the Commission

for the organization of panchayats. The Government of India consider that the distinction drawn by the Commission is a real one and that in dealing with the principles governing general proposals in respect of panchayats attention should be confined either to individual villages or to villages which are so closely connected that their people habitually act together.

Proposals of the Decentralization Commission in respect of village panchayats.

21. The Decentralization Commission recognised, however, very clearly that the different character of the villages not merely in different Provinces but in a single Province and even within the parts of a Province would necessitate caution in taking up the policy of developing panchayats, and the Government of India while recognising the necessity of making some effort in the direction of developing village government are constrained to emphasize the note of caution sounded by the Commission. Similarly, while the Commission indicated certain general functions and powers which might be allotted to panchayats, they were careful to explain that there should be no question of developing these on any uniform system. They contended that functions must be gradually and cautiously assigned and must vary with the circumstances of the locality and the manner in which the panchayat discharges the duties first placed upon it. They recommended that the panchayats should be placed under the district authorities, and, if possible, under special assistants, that they should be confined, as a rule, to one village, and that the members should be informally selected, the headman being ordinarily *ex officio* chairman. They proposed that to these panchayats should be attached civil and criminal jurisdiction in petty cases but that the courts mignt be given special revisional jurisdiction in cases where there appeared to be some grave miscarriage of justice. The administrative functions of the panchayats were to include sanitation and education and the power of taxation being likely to lead to unpopularity was not to be conferred, but the panchayat was to obtain part of the land cess and grants from sub-district boards or Collectors together with small fees, etc.

Views expressed in the Resolution of 1915.

22. With the general line of the Commission's proposals the Government of India in their Resolution of 1915 expressed their concurrence, and in leaving the matter in the hands of Local Governments they suggested the following general

principles as indicating the lines on which advance was most likely to be successful :—

(*i*) The experiments should be made in selected villages or areas larger than a village, where the people in general agree.

(*ii*) Legislation, where necessary, should be permissive and general. The powers and duties of panchayats, whether administrative or judicial, need not and, indeed, should not, be identical in every village.

(*iii*) In areas where it is considered desirable to confer judicial as well as administrative functions upon panchayats the same body should exercise both functions.

(*iv*) Existing village administrative committees, such as village sanitation and education committees, should be merged in the village panchayats where these are established.

(*v*) The jurisdiction of panchayats in judicial cases should ordinarily be permissive, but in order to provide inducement to litigants, reasonable facilities might be allowed to persons wishing to have their cases decided by panchayats. For instance, court fees, if levied, should be small, technicalities in procedure should be avoided and possibly a speedier execution of decrees permitted.

(*vi*) Powers of permissive taxation may be conferred on panchayats, where desired, subject to the control of the Local Government but the development of the panchayat system should not be prejudiced by an excessive association with taxation.

(*vii*) The relations of panchayats on the administrative side with other administrative bodies should be clearly defined. If they are financed by district or sub-district boards, there can be no objection to some supervision by such boards.

Modifications now suggested in the above views.

23. The development of the panchayat system has since attracted considerable attention in several Provinces and legislation has been introduced in Assam for the purpose of instituting a system of this kind, while a special committee has investigated and reported on the subject in the United

Provinces. The Government of India desire that the matter should be further pursued and with the exceptions noted below they concur in the views expressed in the Resolution of 1915. They would, however, modify the first of the principles suggested in that Resolution by saying that the area under a panchayat should normally be a village unless, as above stated, villages are so closely connected that they may be treated as one. The Government of India would further omit the seventh of the principles quoted above on the ground that at the present stage it is not desirable to make any rigid classification of the connection of panchayats with other administrative bodies from which indeed they should be kept apart as much as possible, while the way in which they do their work should be tested by inspections by the administrative district staff. At the outset, moreover, such control as is necessary in the way of replacing incompetent panchayats or members of panchayats, should be exercised by the local revenue officers provided that these be of a grade higher than that of Tahsildar.

As regards the constitution of the panchayat, the points to which the Government of India attach most importance are the association of the principal village officers with the panchayats and an informal election of the other members by the villagers themselves. They would, however, allow the panchayat to choose its own president and would not render it obligatory that the president should be the village headman as suggested by the Decentralization Commission. Of the possible functions to be assigned to panchayats the most important are, in their opinion, village sanitation and village education (in the directions indicated in paragraph 712 of the Decentralization Commission's Report) and jurisdiction in petty civil and criminal cases. With reference to this last class of functions, it is especially desirable that the panchayat should be, as a rule, a body representing a single village, otherwise the great safeguard for the proper disposal of such cases, namely, local public opinion, will be lost. It should also be permissible, though not as the Commission suggested universally necessary, that the panchayat should receive some portion of the land cess raised in their villages. The Government of India are also prepared, differing herein from the opinion of the Decentralization Commission, to allow to the panchayats voluntary powers of supplementary taxation, the proceeds of which would be devoted to the special purpose or purposes for which the tax was levied.

24. Where it is decided to call these panchayats into existence, the legislation entailed should be as simple and elastic as possible with the fullest scope for details. These may be left to rules which will be gradually evolved and be improved by experience. The Government of India, however, recognise the impossibility of any universal enforcement of a system of panchayats by reason of the different circumstances prevailing in different tracts, in some of which indeed there are no regular villages at all. It is essential, however, that an effective beginning should be made, where possible ; and, if the Government of any Province, where there is still some real village life, should think that these recommendations are unsuited to local circumstances, it will be open to such a Government to put forward alternative proposals. It is not, for instance, intended to prevent in any way the establishment of unions or circles for local self-government purposes. As observed above, such unions or circles may be a very useful adjunct to district and sub-district boards relieving them of duties which can be better discharged by committees dealing with smaller areas and such bodies would be especially useful and desirable in tracts in which it is found impossible or premature to establish a village panchayat system.

Exceptions and alternatives.

25. It will probably be found on examination that a large part of the suggestions put forward in this Resolution can be brought into effect without any change in the existing legislation and so far as this can be done, action should be taken without further delay. In some Provinces, as in Madras, the amendment of the existing law is already in contemplation. In others, as in the United Provinces and Assam, there has been recent legislation which to a large extent meets the necessities of the present Resolution and it will be for the Local Governments in such Provinces to determine whether fresh legislation will be necessary at the present time to meet the requirements now suggested. The development of a village panchayat system, where this is undertaken, should in any case be secured by separate legislation unconnected with the Acts relating to municipal and rural boards.

Action now required.

It is hoped that by the adoption of the policy indicated in this Resolution a substantial advance may be made in the direction of a more developed and more liberal form of local self-

Provinces. The Government of India desire that the matter should be further pursued and with the exceptions noted below they concur in the views expressed in the Resolution of 1915. They would, however, modify the first of the principles suggested in that Resolution by saying that the area under a panchayat should normally be a village unless, as above stated, villages are so closely connected that they may be treated as one. The Government of India would further omit the seventh of the principles quoted above on the ground that at the present stage it is not desirable to make any rigid classification of the connection of panchayats with other administrative bodies from which indeed they should be kept apart as much as possible, while the way in which they do their work should be tested by inspections by the administrative district staff. At the outset, moreover, such control as is necessary in the way of replacing incompetent panchayats or members of panchayats, should be exercised by the local revenue officers provided that these be of a grade higher than that of Tahsildar.

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25. It will probably be found on examination that a large part of the suggestions put forward in this Resolution can be brought into effect without any change in the existing legislation and so far as this can be done, action should be taken without further delay. In some Provinces, as in Madras, the amendment of the existing law is already in contemplation. In others, as in the United Provinces and Assam, there has been recent legislation which to a large extent meets the necessities of the present Resolution and it will be for the Local Governments in such Provinces to determine whether fresh legislation will be necessary at the present time to meet the requirements now suggested. The development of a village panchayat system, where this is undertaken, should in any case be secured by separate legislation unconnected with the Acts relating to municipal and rural boards.

Action now required.

It is hoped that by the adoption of the policy indicated in this Resolution a substantial advance may be made in the direction of a more developed and more liberal form of local self-

government. It is probably in the sphere of local self-government more than in any other that the changes which are now being effected in India will touch the great mass of the population. If the local administration is freed in the manner proposed from undue official guidance, a vast number of persons should feel themselves for the first time placed in effective control of the matters which affect their every day life and the local bodies will be invested with opportunities not hitherto enjoyed by them of improving the conditions of the populations entrusted to their charge. The duties of local bodies cover most of the activities upon which the essential welfare of the country depends. They have the care of the public health and all the circumstances upon which that health depends : they control elementary education : they construct and maintain local buildings and communications and they touch the life and convenience of the people at every point. In the development of their interests and the extension of their responsibilities the self-government of the country will secure a very real and important advance and it is on the increased experience to be gained in the administration of local civic affairs that the country must to a large degree rely for the expansion of its self-dependence in the sphere of Central Government.

APPENDIX A.

General Summary of the conclusions and recommendations of the Royal Commission on decentralization, Dated the 25th February, 1909.

General relations of the Provincial Governments with the Government of India : Chapter II.

1. Provincial Governments should be subject in all respects to the general control of the Government of India, and their functions and powers should be variable by that Government or by the Secretary of State.

2. Future policy should be directed to the enlargement of the spheres of detailed administration entrusted to Local Governments and the authorities subordinate to them.

Finance : Chapter III.

3. While, in present circumstances, we are generally satisfied with the financial relations now existing between the Government of India and the Local Governments, we suggest :—

(i) That when fixed assignments in any Province become unduly large, they should be commuted, as circumstances permit, into shares of growing revenue.

(ii) That when the revenues of Provincial Governments require general increase, this might be provided by gradually provincializing certain heads of revenue which are now divided.

(iii) That in respect of services for which they pay, wholly or in part, Provincial Governments should receive the powers lately granted to the Government of India as regards creation of appointments, and alteration in their emoluments ; grant of office, house, conveyance or fixed travelling allowances; passing of additions to minor establishments up to a limit of Rs. 50,000 per annum ; and deputation and temporary appointments.

We also suggest further enhancement of the powers of the Government of India, and of Provincial Governments, in respect to the creation of new appointments, and the raising of salaries.

(iv) That the restrictions on Local Governments in respect to the abolition of appointments or reduction in their emoluments, and to the creation, abolition, or reduction in pay, of classes or grades of officers should be done away with in the case of 'Provincial' and 'Subordinate' services.

(v) That uniformity of pay is unnecessary in respect of 'Provincial' and 'Subordinate' services of the same general character, but working under different Local Governments; and that rules for the recruitment of 'Provincial' services need not require the sanction of the Government of India.

4. If, however, Provincial Legislative Councils obtain an effective control over Provincial finances, we consider that it will be necessary hereafter:—

(i) To give the Provinces more distinct sources of revenue, and greater powers over their budgets.

(ii) To allow Local Governments to impose special Provincial taxation, subject to the preliminary sanction of the Government of India and the Secretary of State.

(iii) To give them larger latitude in regard to appointments belonging to 'Provincial' and 'Subordinate' services.

(iv) To raise the Rs. 50,000 limit above referred to in the case of minor establishments, and to confine scrutiny of proposals in respect of such establishments to financial considerations.

5. We deprecate, even in present circumstances, minute criticism on points of administrative detail in cases which Local Governments have to submit for sanction under financial rules.

6. We recommend some increase of the powers of Provincial Governments in dealing with establishments which are wholly paid for from Imperial revenues; and we propose that the Chief Commissioner of the North-West Frontier Province should be given a quasi-provincial settlement.

7. In regard to the Civil Service Regulations, we think:—

(i) That a number of the rules are rigid and complicated, especially those relating to leave, travelling allowances, and "foreign service."

(ii) That in respect of officers serving under them, Local Governments should usually have the same power to relax ordinary rules in special cases as is enjoyed by the Government of India.

(iii) That they should be allowed to delegate to Boards of Revenue, heads of Provincial departments, and Commissioners—in respect of officers appointed by, or serving under these—a large portion of the powers vested in them by the Code.

We recommend that the Civil Service Regulations should be thoroughly revised in accordance with the principles we have suggested.

8. The Civil Account Code is also unnecessarily minute, and should be revised so as to confine it to rules of procedure necessary from the point of view of Imperial finance.

9. Accounts rules and procedure, and audit requirements should be simpler in the case of expenditure incurred by local bodies, than in the case of direct Government outlay.

10. The detailed control hitherto exercised by the Government of India over Excise administration in the Provinces should now be largely diminished.

Public Works : Chapter IV.

11. We point out the necessity for further decentralization in regard to the Public Works Department. Our principal recommendations are as follows :—

(i) Local Governments and the Government of India should be allowed to pass estimates for individual works up to a limit of 20 lakhs total cost, the present limit being 12½ lakhs.

(ii) The Governments of the other major Provinces should have the same power of passing construction estimates for Imperial works as is now enjoyed by Madras and Bombay.

(iii) Local Governments should be allowed full discretion in delegating to their officers powers of professional sanction in respect to public works.

(iv) They should have larger discretion in the matter of constructing houses for their officers.

(v) The Governments of all the major Provinces should be able (as Madras and Bombay now are) to appoint their own Chief and Superintending Engineers.

(vi) Local Governments should not be under any special restrictions in respect to their 'Provincial' and 'Subordinate' Public Works staff.

12. With a possible exception in regard to railways, the Public Works accounting staff should be under the Finance Department of the Government of India.

13. The Public Works Code should be materially simplified, its provisions being confined to rulings necessary for general application in the interests of Imperial finance and control.

Land Revenue : Chapter V.

14. All the major Provinces should have the same powers as the Governments of Madras and Bombay now possess in settlement matters.

15. The general principles of land revenue assessment should be embodied in Provincial legislation.

16. In land revenue, and in all other matters, rules which an Act permits to be made by a Local Government should be subject merely to the general control of the Government of India, and not to its previous sanction.

17. We suggest general principles in respect to alienation of Government land and rights appertaining thereto, which give a clearer position, and larger freedom, to the Local Governments. The general principles governing such alienation should be made the subject of legislation.

Forests, etc. : Chapter VI.

18. We emphasize the need for further decentralization in regard to forest administration, and recommend that :—

(i) The Inspector-General of Forests should cease to be a *de facto* Deputy Secretary to the Government of India, and be simply an advisory and inspecting officer.

(ii) The Government of all major Provinces which possess a considerable forest staff should be able to appoint their own Conservators (and Chief Conservators where these exist) as Madras and Bombay now do.

(iii) Certain restrictions now imposed on Local Governments by the Forest Acts should be relaxed, and any future important amendment of the Forest law should be undertaken in the Provincial Legislative Councils.

(iv) If the Indian Forest Code is to be retained at all, it should only contain matters essential for Imperial control.

Subjects dealt with in the Home Department: Chapter VII.

19. In regard to police, the control of the Government of India, apart from that vested in them by financial rules, should be limited to the prescription of general principles and lines of policy. Nor should they exercise any special control over 'Provincial' and 'Subordinate' police establishments in the Provinces.

20. Any material alteration in the Police laws should be effected by Provincial legislation.

21. While desiring to maintain in the Indian Medical Service an Imperial, and essentially military, organization, we recommend that Local Governments should have larger control in respect to commissioned medical officers doing civil work in the Provinces. In particular, they should be able to select the heads of their Medical and Sanitary Departments.

22. Local Government should have as full power over their civil assistant surgeons and hospital assistants as in regard to other 'Provincial' and 'Subordinate' services.

Imperial Inspectors General: Chapter VIII.

23. We dwell upon the danger of these officers—who should be mainly confined to technical functions, inspection, and the giving of advice and information—being allowed to usurp any administrative control in respect to Provincial departments, and we lay down what their duties ought to be, and how they should be exercised.

Legislation, Appeals, and Reports and Returns: Chapter IX.

24. The legislative amendments consequent on our proposals can be most conveniently accomplished by the enactment of a General Act of Delegation, which will permit the transmission of executive functions to a lower authority than that indicated in any particular Act, by Government notification. We suggest conditions and safeguards which will prevent this procedure from leading to any material encroachment on the prerogatives of the Legislatures.

25. Officers of 'Imperial' services must retain a right of appeal against orders of a Local Government which affect them prejudicially. Otherwise, we would only, as a rule, allow appeal from original orders of Local Governments. Where these have acted as appellate authorities, their decisions should be final.

26. As a means of reducing reports and returns, we suggest a fresh inquiry similar to that set on foot by Lord Curzon's administration, which should be repeated every few years.

27. Provincial administrative codes and manuals are too lengthy, and should be curtailed as opportunity offers.

Constitution of Provincial Governments: Chapter X.

28. From the administrative point of view, we consider that the system of single Lieutenant-Governors is no longer suited to the larger Provinces. We are not in favour, however, of providing Civilian Lieutenant Governors with Civilian colleagues, or of converting members of Boards of Revenue into subordinate colleagues of the Lieutenant Governor. We prefer a regular Council Government, such as exists in Madras and Bombay, with a Governor usually, but not invariably, appointed from Home. We think that all Council Governments should consist of not less than four members besides the Governor, and that not less than two of these should be appointed under the conditions which now apply in Madras and Bombay. This enlargement would permit of the appointment of specially qualified natives of India.

We recognize, however, that change in the existing system is not equally urgent in all Provinces, and that the time for making such change must be largely determined by political considerations.

29. We make suggestions for placing Secretariat officers more in touch with district work, and we draw attention to an undesirable tendency to uniformity in Provinces whose constituent portions are not homogeneous.

30. Executive Councils of the character we propose should allow of more satisfactory arrangements for the control of public works and finance in the Provinces.

Boards of Revenue and Financial Commissioners: Chapter XI.

31. We think that, with the Local Governments constituted as at present, Boards of Revenue and Financial Commissioners should be retained; but that they might advantageously be absorbed in the Executive Councils which we have suggested.

32. In that event, the existing Board of Revenue in Madras should be replaced by a system of territorial Commissioners. Under existing conditions, we would enlarge the functions of the Board of Revenue so as to include matters, outside revenue, dealt with by Commissioners in other Provinces.

33. In Bombay, where there is no Board of Revenue, Commissioners should have full opportunity for collective consultation, while an enlarged Executive Council should afford the further co-ordination in respect of revenue matters which is elsewhere provided by a Board of Revenue or Financial Commissioner.

34. So long as Boards of Revenue and Financial Commissioners remain, they should have larger powers than at present, the control of the Local Government in matters dealt with by the Board, etc., being confined, as far possible, to matters of principle and policy.

Commissioners : Chapter XII.

35. We consider it essential to give larger powers to Commissioners, and reject proposals for their abolition, or their conversion into mere advisory and inspecting officers.

36. It is specially necessary to entrust them with the co-ordination of the work of the various special departments within their divisions. A commissioner should have full right to call for any information from the officers of such departments, and to have it given to him spontaneously in regard to any proposed new departure of importance. Any views he may express should receive the fullest consideration, and he should be able to stop any action of a department which he considers undesirable, reference to the Local Government being thereupon made if the departmental authorities ask for it.

37. We make specific suggestions for co-ordination in respect of local public works expenditure.

38. We make proposals for giving Commissioners and Collectors a voice in regard to secondary and collegiate education, and in respect of training and technical schools.

39. We suggest larger financial powers for Commissioners.

40. We consider that they should have power to appoint tahsildars and officers of like standing ; that they should be able to post junior Civilians and Deputy Collectors within their divisions ; and that they should be competent to invest officers with magisterial powers.

41. In matters connected with land revenue and general administration, Commissioners should be given all powers which cannot safely be delegated to Collectors, and the exercise of which is not deemed an essential function of the headquarters officers.

42. We suggest the general adoption of a system of Provincial conferences similar to that adopted in Bengal. Such conferences would

consist of (*a*) Commissioners of divisions ; and (*b*) members of the Board of Revenue, or the Financial Commissioner, of the Province (so long as these exist), Secretaries to Government, and heads of Provincial departments. Non-officials of standing should also be invited to attend for the discussion of particular subjects.

43. Commissioners in all Provinces should also meet by themselves for the discussion of important questions, and should be able to submit joint representations to Government on questions of policy and procedure.

44. We suggest that the Provincial conferences should be supplemented by analogously constituted conferences in each division.

45. We do not consider it advisable to create special advisory councils for Commissioners and Collectors, in view of the fact that the Commissioner will have the benefit of the opinions of the divisional conference above suggested, while the Collector can consult his district board. We should like to see the practice of consultation with the district board on matters outside their legal sphere, extended.

Collectors : Chapter XIII.

46. We consider it necessary to enhance the powers and position of the Collector. He should be recognized as the head of the district in all administrative matters ; and he should be entitled to call for information from officers of special departments, and to have such information given to him spontaneously in matters of importance, while any views he may express should receive the fullest consideration from such officers.

47. The Collector should have a weighty voice in regard to the distribution of irrigation water, outlay on Provincial roads, and other matters dealt with by the Public Works Department ; but his relations with the officers of that department in such matters must be left for Local Governments to determine.

48. His present position in regard to police matters should in no case be weakened.

49. In all matters affecting the people, district forest officers should be regarded as assistants to the Collector ; and minor forest lands and pastures might be transferred to the control of the land revenue authorities.

50. In matters connected with land revenue and general administration, our recommendations for the universal application and development of the sub-divisional system will make the Collector mainly a supervising, controlling, and appellate authority in regard to the ordinary district

administration. The relief from detailed work thus given to Collectors will enable the transmission to them of a variety of powers hitherto reserved to Commissioners. The general presumption should be that, in cases which come up to him, the Collector should be the deciding authority; and while there are certain matters, financial and otherwise, in which he cannot be given a free hand, the sphere of these should be limited as far as possible.

51. We make suggestions for giving larger financial powers to Collectors, and for improving their office establishments.

52. District establishments which deal with land records or with work in connexion with assessments outside a special land revenue settlement, should be under the Collector, and the main results of land revenue settlement schemes should be submitted by the Settlement Officer through him.

53. The Collector should be the final authority in matters affecting village officers.

54. The necessity for a general increase in the district staff cannot be gauged until the full effect of our proposals has been considered, but we are satisfied that an increase in the *cadre* is of primary importance in several Provinces, and we think this question should be taken up without delay.

Sub-divisional, and other subordinate district, officers: Chapter XIV.

55. We consider that the sub-divisional system should be universally applied; and that the Sub-divisional officer should be a Collector of first instance, having the tahsildars of his sub-division under him, and dealing himself with revenue matters which they cannot dispose of, or with appeals from them. Apart from special difficulties in decentralizing work affecting the realization of the land revenue in the two Bengals, the general presumption should be that the Sub-divisional officer is competent to dispose (subject to appeal to the Collector) of questions with which the tahsildar cannot deal; but we indicate exceptions which must apply to such a general proposition.

56. Sub-divisional officers should deal with the appointment and removal of village officers, and of junior clerks within their sub-divisions.

57. They should hear appeals in criminal cases from second and third class magistrates in their sub-divisions.

58. They should reside permanently within their charges, but they may spend some portion of the year at the headquarters of the district, if the Local Government considers this expedient.

59. In Provinces in which Collectors, Sub-divisional officers and tahsildars now dispose of civil suits, they should be relieved of this duty as soon as circumstances permit.

60. The tahsildar should be the disposing officer (subject to appeal to the Sub-divisional officer) in matters in which his opinion must in practice be accepted. We would not, however, give tahsildars financial powers, save in the matter of agricultural loans, nor the power to appoint to village offices, or to fill up vacancies, other than those occurring in menial posts, in their own office establishments.

61. Tahsildars who discharge criminal functions should receive second class magisterial powers as soon as they have proved their fitness as magistrates of the third class, and some may expediently be granted first class powers.

62. We have had much evidence as to tahsildars being over-worked. In so far as they cannot adequately be relieved by the grant to them of larger powers, by the transfer of criminal case-work to separate officers, or by the delegation of some of their functions to deputy tahsildars, the necessary remedy is reduction in the size of the heaviest tahsils.

63. Deputy tahsildars should have powers of their own, and should not be merely head clerks to the tahsildar.

64. We condemn the system of recruiting tahsildars from the clerical ranks which prevails in Madras. The subordinate revenue service should be divided into two grades, an upper and a lower, and the upper grade, which would include tahsildars and deputy tahsildars, should be separately recruited from young men of good character and family, and superior educational attainments. We would not, however, preclude the promotion of deserving men from the lower ranks.

65. In the two Bengals, owing to the absence of charges corresponding to the tahsils of other Provinces, the direct communication of the administration with the people is mainly through the police. We propose to remedy this by the creation of circles, within the sub-divisions, which would be in the local charge of sub-deputy collectors, who would hold the same position here as the tahsildars elsewhere.

66. We desire to extend the system of appointing non-official gentlemen of position and influence to deal with criminal cases which would

Suspensions and remissions of land revenue, Agricultural loans, Acquisition of land for public purposes, and Court of Wards administration: Chapter XV.

67. We make proposals with the object of giving freer discretion to Commissioners and Collectors in respect of suspensions and remissions of land revenue.

68. We also propose larger powers to Commissioners, Collectors, Sub-divisional officers and tahsildars in respect to agricultural loans.

69. We suggest that Commissioners should be able to deal with minor cases of land acquisition for public purposes, which now have to go up to the Local Government.

70. We think that Commissioners and Collectors should have larger powers in the administration of Court of Wards estates, and we propose to effect this by dividing such estates into three classes. The management of all must rest primarily with the Collector, but his final powers in regard to third class estates might be much fuller than in respect to others, while Commissioners might similarly be entrusted with very full powers in respect to all but first class estates.

71. Subject to their retention of general control, Collectors should be permitted to delegate to Sub-divisional officers or to local managers, all or any of their powers in Court of Wards matters.

72. In the event of the disappearance of Boards of Revenue and Financial Commissioners, the Local Government would have to take their place as the central authority in Court of Wards matters; but in that case, still larger powers ought to be given to the Commissioners.

Method of appointment of Commissioners and Collectors, and the principal officers of other departments; Transfers, Knowledge of the Vernaculars; Touring; and Contact with the people: Chapter XVI.

73. Promotion to Collectorships should be by seniority, but subject to rigorous rejection of the unfit. This principle has already been laid down but is not adequately applied in practice.

74. When a man is found definitely incompetent to be a Collector, the Local Government should have the power to retire him on a suitable pension.

75. The same principle should apply in regard to District Judges, and to high district officials in other departments.

76. Commissionerships should be filled by the best Collectors of the Province, seniority being only regarded when other qualifications are practically equal ; but special pensions need not be granted to men not selected.

77. The same principle should apply to the highest officers of other departments.

78. Transfers of district officers are far too frequent, and the attendant evils have not been adequately recognized by the Provincial Secretariats. We make suggestions for material reduction in transfers, and we consider that every effort should be made to keep an officer for three years, at the very least, in the same district. We draw attention also to the fact that transfers are particularly undesirable when they involve frequent changes of men between different language areas.

79. We find that European officers, more especially in Madras, Bombay and the two Bengals, are not sufficiently acquainted with the vernaculars, and we suggest remedies for this.

80. We also make some suggestions in regard to touring.

81. We consider that the officers of Government, and especially the European officers, are not in sufficient contact with the people ; and while indicating the difficulties which have to be met, we make some suggestions for improvement.

Appeals : Chapter XVII.

82. In Chapter IX we have considered the question of appeals from decisions of Local Governments. We now deal with appeals within the Provinces.

We think that at least one appeal should be allowed to Government officers against any order which affects their prospects materially. Subject to this, we would leave the question of restricting appeals from such officers in the hands of Local Governments. No appeal should, however, be admitted from an officer passed over for promotion to a post to which considerations of seniority are not usually held to apply.

83. As regards other administrative appeals, each Local Government must fix its own conditions, but one appeal should ordinarily suffice as regards questions of fact, and when an appeal is allowed it should be to the next highest authority.

84. The exercise of special revisionary powers in cases where a regular appeal does not lie should be very closely restricted.

Village organization : Chapter XVIII.

85. It is most desirable to constitute and develop village *panchayats* for the administration of certain local affairs within the villages. This system must, however, be gradually and cautiously worked. The headman of the village, where one is recognized, should be *ex-officio* chairman of the *panchayat* ; other members should be obtained by a system of informal election by the villagers. The *panchayat* should be a small body of about five members, and only in exceptional circumstances should different villages be brought under the same *panchayat.*

86. The functions of *panchayats* must be largely determined by local circumstances and experience. We make the following general suggestions :—

(i) They should have summary jurisdiction in petty civil and criminal cases.

(ii) They should be allowed to incur expenditure on the cleansing of the village and minor village works.

(iii) They might be entrusted with the construction and maintenance of village school-houses, and with some local control in respect of school management.

(iv) Selected *panchayats* might have the management of small fuel and fodder reserves.

87. We consider it essential for the success of the *panchayat* system that it should not be concomitant with any new form of local taxation. *Panchayats* should receive a portion of the land cess levied for local board purposes in the village, special grants for particular objects of local importance, receipts from village cattle-pounds and markets entrusted to their management, and small fees on civil suits filed before them. Their application of the funds entrusted to them should be judged by general results, and should not be subject to rigid audit.

88. With the *panchayat* system thus developed, we do not consider it necessary to retain artificial local agencies such as village unions and sanitary committees.

89. Such outside supervision of *panchayat* affairs as is necessary, including the creation of new *panchayats*, enhancement or diminution of powers, and, where necessary, abolition of an unsatisfactory *panchayat*, must rest with the district officers. *Panchayats* should not be placed under the control of district or sub-district boards.

90. We call attention to evidence received in some Provinces as to the under-payment of village officers, and their resort to corrupt practices.

Rural Boards : Chapter XIX.

91. We think that sub-district boards should be universally established, and that they should be the principal agencies in rural boards administration.

92. Ordinarily a sub-district board should be established for each taluka or tahsil, but where sub-divisional boards have been working, or may be made to work, satisfactorily, the subdivision may remain the jurisdictional area.

93. We do not, however, propose to abolish district boards, or to make them mere councils of delegates from the sub-district boards for the settlement of matters of common interest. Nor, on the other hand, do we desire to place sub-district boards entirely under the control of the board for the whole district. We suggest a scheme under which the sub-district boards will have independent resources, separate spheres of duty, and larger responsibilities within these ; while the district board, besides undertaking some direct functions for which it seems specially fitted, will possess co-ordinating and financial powers in respect of the district as a whole.

94. Sub-district boards should have the charge of minor roads in the district ; of primary and (where they desire it) of middle vernacular education ; of medical work ; of vaccination ; and of sanitary work in rural areas where this has not been entrusted to *panchayats*.

95. They should have a freer hand than at present in respect of school curricula and other matters dealt with in the Provincial Educational Codes, and should seek to promote education by grants-in-aid to indigenous or private institutions rather than through board schools. The board school staff, and the local inspecting agency required for board and aided schools, should be under their control, but there should be a further inspection of such schools on behalf of Government.

96. The district board should keep up the main roads in the district, with the exception of trunk roads which should be a Government charge ; and should maintain district services, for work under the sub-district boards, in respect of roads, education, medical relief and sanitation.

97. District boards which desire to maintain their own engineers should be allowed to do so, and it should be left to the discretion of the Local Governments to employ such engineers to execute minor works for Government.

98. The present restrictions on the sanction of ordinary works and sanitation estimates by rural boards should be abrogated, but they should

have the right to call upon Government engineers and sanitary officers for assistance in regard to such matters.

99. We see no objection to district boards levying a special cess for the construction of tramways or light railways, subject to the conditions now in force in Madras.

100. The Government should place rural boards on a sounder financial footing—

(i) By letting them have the whole of the land cess.

(ii.) By rateable distribution of the special grant of 25 per cent. on the land cess now made.

(iii.) By increasing this grant when circumstances permit.

(iv.) By taking over charges in respect of trunk roads; famine and plague relief; local veterinary work; and any charges now incurred by the boards in regard to police, registration of births and deaths, etc. Nor should rural boards be required to make any contribution in repect of Provincial services, for other items of Provincial administration, or for assistance rendered to them by Government officers in the ordinary course of their duties.

101. Where poor districts require special grants from Government, these should be made in lump sums, or as percentages of expenditure incurred on specific services, and they should be given under a *quasi*-permanent settlement.

102. District board should not be allowed to increase the land cess beyond one anna in the rupee on the annual rental value, and sub-district boards should not raise any separate land cess. Otherwise rural boards should be able to levy rates and fees at their discretion within the limits laid down by law. Where no definite limits have been prescribed, the sanction of the Commissioner should be required to changes in the rates.

103. Sub-district boards should receive a fixed proportion, generally one-half, of the land cess raised in their areas, and certain sources of miscellaneous revenue. Additional resources would come from grants distributed by the district board.

104. The district board's principal items of revenue would be the rest of the land cess, less the amount to be assigned to village *panchayats*; certain miscellaneous receipts; and grants from Government. Such monies as are not required for direct district board services should be distributed among the sub-district boards, with reference to their varying needs.

105. Rural boards should not be bound to spend specific proportions of their income on particular services.

106. Sub-district boards should not have borrowing powers. District boards may borrow under present conditions.

107. Rural boards, whether district or sub-district, should have full power to pass their own budgets. They should, however, maintain prescribed minimum balances, which should not be drawn on without the sanction of the Commissioner in the case of district boards, and of the district board in the case of the sub-district boards.

108. The sanction of the Commissioner should be required in regard to the appointment, removal and salary of district board engineers, paid secretaries and health officers, where these are entertained. Otherwise, the only outside control required over rural boards in establishment matters is the promulgation by the Local Government of model bye-laws or schedules, laying down general rules in regard to such matters as leave, acting and travelling allowances, pension or provident funds, and the maximum salary to be given to officials of various classes. Departure from these schedules should require the sanction of the Local Government, or of the Commissioner in salary matters.

109. Sub-district boards should contain a substantial majority of elected members, with a nominated element sufficient to secure the due representation of minorities, and of official experience. The method of election should be suited to local circumstances and should be such as to provide for the due representation of different communities, creeds and interests. District boards should also contain an elective majority, to be chosen by the non-official members of the sub-district boards.

110. The Collector should be president of the district board; and the sub-district board president should be nominated, and should usually be the Sub-divisional officer or the tahsildar. The vice-presidents should, however, be elected non officials.

111. The appointment of nominated members of rural boards and of presidents of sub-district boards, and the gazetting of elected members and vice-presidents, should rest with the Commissioner.

112. Rural boards should have power to delegate any of their administrative functions to committees, and to include in them persons who are not members of the board.

113. The proceedings of sub-district boards should be conducted in in the vernacular, and those of all rural boards should be published in the vernacular.

114. The creation, suspension or abolition of rural boards, and all alteration in their constitution, must remain in the hands of the Local Government, but there need not be previous reference to the Government of India as is now required in some Provinces.

115. The Commissioner should be able to direct a board to perform any specific act or duty imposed on it by law, and, if his warnings have been neglected, should be competent to take action at its expense. The present powers given to Commissioners and Collectors to intervene in urgent cases, where action of a board is in excess of its legal power or seems likely to lead to a breach of the peace, etc., must remain.

116. The right of inspection of rural board works and properties now given to Commissioners and Collectors should remain. Officers of special Government departments, such as those dealing with public works, education and sanitation, should also have the right to inspect rural boards' works and institutions.

117. While we look forward eventually to a system of rural boards in Burma, the time and method of introducing these should be left entirely to the discretion of the Local Government. We would leave similar discretion to the Local Government as to the creation of district boards in Assam, where there are now only sub-divisional boards.

Municipalities : Chapter XX.

118. A number of the petty municipalities now existing will not be fit to exercise the large powers which we propose for municipalities in general, and should, like the present "notified areas" and some of the existing local fund "unions," be administered, on more simple lines, by committees which may be styled "town *panchayats*."

119. Municipalities should have the same full powers as we suggest for rural boards in respect to the services assigned to them.

120. They should undertake primary education and may—if they are able and willing to do so—devote money to middle vernacular schools.

Otherwise, the Government should relieve them of any charges they now have to incur in regard to secondary education, hospitals at district headquarters, famine relief, police, veterinary work, etc. Nor should they contribute for services which are made Provincial, or be made to devote specific proportions of their income to particular objects.

We do not propose to relieve them from plague charges, but where these are heavy the Government should contribute substantially.

121. While we do not propose that municipalities should receive any regular subvention from Government, corresponding to the 25 per

cent. on the land cess given to rural boards, they should receive assistance in respect to specially large projects, such as those concerned with drainage or water supply ; and in the case of the poorer municipalities some subvention for general purposes will probably be required. Grants of this latter description should, as in the case of rural boards, be of a practically permanent character.

122. Municipalities should have full powers in regard to taxation, within the limits of the laws under which they work.

123. Government control over municipal borrowing should continue, and any permanent alienation of municipal property, or lease of the same for periods of seven years and upwards, should require outside sanction.

124. Subject to the maintenance of prescribed minimum balances, municipalities should have a free hand in respect to their budgets.

125. The control of municipalities over their establishments should be of the same character as has been suggested for rural boards.

126. Municipal council should ordinarily contain a substantial elective majority, and should usually elect their own chairman. Government officers should not be allowed to stand for election ; but where a nominated chairman is necessary, he should be an official.

127. In some of the larger cities it might be desirable to vest the executive administration in the hands of a full-time nominated official, apart from the chairman of the municipal council. Such an officer would, however, be subject to the control of the council as a whole, and of a standing committee thereof.

128. Where a vice-chairman of a municipal council is required, he should be an elected non-official.

129. The appointment of nominated members and chairmen of municipal councils, and the gazetting of elected members and chairmen should be entrusted to the Collector ordinarily, and to the Commissioner in the case of cities. The removal of a member for special reasons should always rest with the Commissioner.

130. Municipal councils should be able to delegate any of their administrative functions to committees, which may include persons not on the council.

131. The general outside control of the Local Government, and of the Commissioner and Collector, should be of the same character as in the case of rural boards ; and officers of special Government departments should enjoy similar right of inspection.

132. The corporations of the Presidency municipalities, in which category we would also include Rangoon, should all have powers as large as those which the Bombay municipality now possesses.

133. We consider that the Bombay system of vesting the executive municipal administration in the hands of a separate commissioner, responsible to the corporation (which elects its own chairman), and to standing committee thereof, is preferable to the Calcutta and Madras method of making the chairman an official nominated by Government.

134. Where it is considered expedient that hospitals and educational institutions in a Presidency town should be directly controlled by Government, the Municipality should not be forced to contribute thereto.

APPENDIX B.

A JOINT ADDRESS from Europeans and Indians to His Excellency the Viceroy and Governor-General and the Right Honourable the Secretary of State for India.

THE following is a record of meetings, held at Darjeeling and Calcutta, to discuss the position created by the pronouncement of the 20th of August on Indian Policy, by the Imperial Government :—

"*The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of increasing the association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India, as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible, and that it is of the highest importance, as a preliminary to considering what these steps should be, that there should be a free and informal exchange of opinion between those in authority at Home and in India. His Majesty's Government have accordingly decided, with His Majesty's approval, that I should accept the Viceroy's invitation to proceed to India, to discuss these matters with the Viceroy and the Government of India to consider with the Viceroy the views of Local Governments, and to receive the suggestions of representative bodies and others. I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the time and measure of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility. Ample opportunity will be afforded for the public discussion of the proposals, which will be submitted in due course to Parliament.*"

I.—PRINCIPLES.

The Imperial Government having sent the Secretary of State to India for the purpose of gathering the opinions of all sections, we feel that the members of both the communities should discuss together the advice to

be offered to the Government, bearing in mind that future generations are more affected than ourselves by changes about to be made. We also think that, in times like these, anything of the nature of civil discord amongst those not called upon for active service is out of place. Our opinion is that Europeans and Indians should first agree as to the main outlines which they think the pending reforms should follow. These outlines having been settled, it will then be possible for the different sections to formulate their own views as to details, in respect of which it would be to the public advantage that the Government should have every shade of opinion before them. The agreement relates only to the points printed in black type.

Turning then to the recent pronouncement, we note that it was issued as embodying the policy of the Imperial Government upon which the three principal parties in Great Britain are now represented. As no contrary motion has been raised in either House, it must, in accordance with all precedents, be recognized as a declaration of policy accepted unanimously by the supreme legislature of the British Commonwealth.

In view of these considerations **we agree to accept the pronouncement of the 20th August as common ground, within the limits of which the discussion can take place.**

We have next to consider the positions implied in this pronouncement. To begin with we note that for the first time in any official pronouncement the vague and ambiguous term 'self-government' is replaced by the plain and definite words 'responsible government,' which necessarily means the creation of executives responsible to, and therefore removable at the will of, elective bodies and electorates. This principle finds no expression in the various proposals already before the public on the 20th of August, which were all inspired by the looser conception embodied in the words 'self-government.' The pronouncement thus creates a new position, which cannot be met by the adoption of any scheme of reforms as yet submitted for public consideration.

We agree that, having accepted the pronouncement, we are not only free, but even bound to consider the new situation created thereby with open minds.

We are further of opinion that the direction of any steps taken in the immediate future ought to be considered first and foremost from the point of view whether they are calculated to lead towards the goal presented in the pronouncement under review. The necessary criterion, whereby all

immediate proposals must be judged, is a clear conception of the ultimate goal, however remote. That goal is defined as 'responsible government in India as an integral part of the British Empire.' This implies the calling into existence in India of a self-governing nation or nations, on the lines of the great self-governing Dominions. The all-important question is, therefore, raised, whether India is to be regarded, like the continent of Europe, as the future home of a number of self-governing nations, or else like the United States as it would have been, had it developed as a British Dominion, a nation living within the bounds of one territory, but in size so great that it must be divided into a number of self-governing provinces. Is India to become a nation or a continent of nations, a Dominion or a group of Dominions? Are the separate provinces to be developed as separate self-governing nations? Or are we to look forward to a time, however remote, when interests common to India will be controlled by a Government responsible to India as a whole?

For those who accept the pronouncement the answer will be found implicit in its terms. Bengal, Madras, Bombay, Bihar and Orissa, the United Provinces and the Punjab are indeed units of population equal or approximating to the scale of great European powers. But, if developed as self-governing nations, their future electorates would still be unable to control railways, tariffs, commercial law, and other major interests common to India as a whole. The control of interests purely Indian, would still have to be exercised in the future, however distant, by the Imperial Government of the British Commonwealth. Responsible government for India in Indian affairs could never be realized under these conditions. The history of the United Kingdom of Canada, of Australia and of South Africa proves that national self-government cannot be realized here for any unit smaller than the Indian Peninsula. However formidable that enterprise may seem, and however remote its ultimate attainment, that goal must be adopted by those who accept the pronouncement and read its terms in the light of the experience gained in the other Dominions. In the comprehensive nationhood of India, to be called into being in centuries to come, the individualities of the Bengalee, the Maratha, the Sikh, the Canarese and all the other numerous races must each find their place as sub-nationalities, like those of the English, Scotch, Welsh and Irish in the United Kingdom, and like those of the British and French in Canada. The goal to be kept in mind must, therefore, be, not the nations of Europe but rather the United States as it would have been had it developed as a self-governing dominion of the British Commonwealth. However remote the realization of this conception may be, steps to be taken in the imme-

diate future must yet be judged by the criterion whether they tend towards that goal.

To begin with, we are bound to consider how far the existing map is in harmony with this conception.

The map of India has been designed to suit the needs of a great dependency, whose internal and domestic affairs are subject in every detail to direction from an authority on the other side of the world. A government, whose mainspring is outside the area it is governing has no difficulty in uniting under one administrative machine, not only communities which are different in character, but separate territories. Under this system, the Imperial Government had no difficulty in incorporating Burma as a province of India. But if India is now to be governed with a view to becoming a self-governing nation, Burma, by reason of her situation, never can have a place in its national fabric. She has less in common with India than Ceylon. Her affinities with India are less than those of Finland with Russia, or of Mexico with the United States. The project of developing India as a self-governing nation can be rendered less formidable at once by eliminating Burma. It has no place in the picture. It ought to be put in the same category as Ceylon, and nothing in these suggestions should be taken as referring to Burma.

In like manner, the conception, abandoned in the recent pronouncement, has operated to divide India into a few great satrapies commensurate with the principal nations of Europe. In Bombay it has united communities so diverse as Sind, the Marathas and the Canarese. No less artificial is the union of Bihar with Orissa. In the United Provinces more than 48 000,000 souls have been brought under the rule of a single officer and so long as these Governments are solely amenable to a Government which takes its direction from London, no difficulty is experienced. But the moment any real beginning in responsible government is made, and executives responsible to electorates are created, however limited the powers entrusted to them may be to begin with, such combinations will surely break down. They will fail as certainly as did the attempt to unite Ontario and Quebec under one executive responsible to a common electorate. The foundations of Canadian nationhood were only laid by according separate provincial governments to both the races, under which each race could enjoy unhampered its own language, religion and system of law. The examples of the United States, Canada, Australia and South Africa, as contrasted with India, China and the dependencies of Spain and France in the eighteenth century prove

that under elective institutions provincial administration cannot be made effective for units of population the size of great nations. Had the United States attempted to develop herself on the basis of five or six provinces, each would, for administrative reasons, have been driven to subdivide itself into minor self-governing provinces commensurate in size with the existing forty-eight States. County Councils or District Boards cannot take the place of Provincial Governments, which in nations of a certain magnitude, must be interposed between local authorities on the one hand and the national Government on the other. Hence, the Government of the United Kingdom with its population of 45,000,000 is increasingly unable to cope with their need for social reform.

Thus, had America tried to develop on the basis of five or six provinces, each with subordinate provinces, each therefore on the scale, and organized on the pattern, of great federal nations, each would have felt and acted as nations. They would have fallen apart, and the United States would have failed to achieve national unity in accordance with the demands of nature and good government. Her territory would have become the home of five or six nations, with no common control of interests common to all. Like Europe or South America, she would have become the theatre of ceaseless wars, instead of the home of internal peace.

The conclusion is that it is impossible for India to develop as a self-governing Dominion or to achieve a genuine nationhood in the future, however distant, on the basis of a map inherited from the Moghul Empire and fashioned to suit the needs of an administration which has its mainspring in England. We agree, therefore, that the selection of areas capable of development as the self-governing provinces of a future United States of India within the British Empire should be undertaken at the outset. These areas should be termed "Provincial States" as a reminder that they are designed to serve as the autonomous provinces of the future United States of India within the Empire. The term also recalls the Native States. Their areas should be commensurate with the larger of those States like Hyderabad and Mysore, and should be determined, so far as possible with reference to history, to community of race, language and religion and above all effective self-government on true provincial lines. Care should also be taken not to combine under one Provincial Government areas of totally different types, the economic interest of wh ich are wholly distinct.

So long as an autocratic regime exists, its subdivisions can be re-adjusted with relative ease. But the moment they are made the areas of elective

authorities, the difficulty of changing them tends to become insuperable. Had the States of America been too large at the outset to serve as the ultimate areas of provincial autonomy, no power could alter them now. short of conquest or civil war. The Kingdom of Prussia overshadows all Germany, and no one dares to suggest its partition into provinces commensurate with its partners. To-day it needs but the nerve and foresight of a statesman to find and fix areas in India capable of developing into effective self-governing provinces, and yet such as will admit of her growth as a nation at unity with herself.

We agree, therefore, that the existing provinces need not be assumed to be areas suitable as a basis for responsible government, but such areas must be settled at the moment when the first instalment of responsible government is granted.

Bearing in mind, then, the picture of India as a self-governing Dominion of the federal type, we recognize that, in the words of the pronouncement before us, 'progress in this policy can only be achieved by successive stages.' There must be stages, and the questions before us are, where those stages should begin, and what they should be. Reason and experience alike point to the conclusion that it is not in the sphere of the central Government that the beginning should be made. Whether in the case of the United States of America, of Canada, Australia or South Africa, nothing was done, or could have been done, to create a central and national Government responsible to the nation as a whole, until responsible government had been completely and finally established in the several provinces. This does not imply that changes cannot, or ought not, to be made whereby public opinion may be voiced more freely in the counsels of the central authority, while that authority remains in theory and practice responsible to the Secretary of State. But responsible government means entrusting some functions to executives which hold office, and can be dismissed from office, by elected legislatures or electorates. That principle must first be tried and established in the provinces. It is only when provincial executives are answerable for all their functions to provincial electorates that the Indian executive can be rendered answerable to, and removeable by, an Indian Parliament and an Indian Electorate.

We, therefore, agree that the first steps towards responsible government cannot be taken in the sphere of the central Government.

We have next to consider the fact that administrative mechanism designed to obey an authority remote from India itself cannot, as it

stands, respond to the impétus of Indian electorates. Mechanism must be adapted to the nature of the force which drives it. The whole administrative system of England would have to be revised, if the control of the electorate were replaced by a centralized power exercised from without. The reverse is equally true of India. If electorates are to be given responsibilities however limited, they must to a great extent, and to an increasing degree, operate through departments, organised on principles different from those of the present machinery. With the introduction of responsible government it is necessary, therefore, to contemplate a change, not only of areas, but also in the character of the departments through which the electorates are to operate. The existing provincial administrations can not be moulded by a series of gradual changes into the provinces of a self-governing Dominion. Their place must gradually be taken by provincial organs of a new type. The first step must be to create new organs responsible to the electorates of suitable areas. To these, specified functions, together with corresponding revenues and powers and additional taxation, must be transferred. All other functions must be reserved to the existing provincial Governments, to be transferred by successive stages to the elective organs, as each may prove its capacity for assuming the additional burden.

It follows, therefore, that during the period of transition governments of two different types will have to exist side by side. No instalment of responsible government can be granted without creating executives responsible to, and therefore removeable by, elective assemblies and electorates for certain functions and revenues within suitable areas. Meanwhile, the powers not yet transferred must be exercised by the existing provincial Governments, which must be kept in being for that purpose, and remain responsible to, and therefore removeable only by, the Government of India, the Secretary of State and finally Parliament itself. If responsible government is the goal, the only other alternative is sooner or later to transfer all powers of government at one stroke to executives removeable at the will of Indian electorates. But this course is expressly barred by the terms of the pronouncement we have agreed to accept. It follows that in the transition stage governments of two different types must co-exist, the one responsible to electorates, the other to the Secretary of State. In our opinion, therefore, it is of the utmost importance to insist now that the responsibility must in either case be a real one. The responsibility of the new executives to their assemblies and electorates, however limited their functions, must be real. It must not be confused and destroyed by a net-work of minor restrictions and sanctions. On the

other hand, the responsibility of the old governments to the Secretary of State for the functions reserved to them must be no less a real one. In discharging those functions, they can and should be exposed in every detail to the criticism and influence of Indian opinion. But in the last analysis the ultimate power of decision in respect of those functions must be reserved to the Secretary of State and his agents, until they can be transferred to the executives responsible to the electorates. And, in the words of the pronouncement, 'the British Government and the Government of India must be judges of the time and measure of each advance.'

We agree, therefore, that, during the period of transition, Governments of two types must co-exist, the one responsible to electorates for specific powers, the other to the Secretary of State for all other powers, and that the responsibility of each must in fact be a real one, and their powers must be sufficient to enable them to discharge that responsibility efficiently.

We have now to approach the question how new organs of provincial government responsible to electorates can be brought into being. The first preliminary is to create these electorates, and also to provide an adequate supply of leaders competent to guide them and to translate their mandates into action and law.

With a view to providing men in some sort competent to act as members of popular legislatures and executives, there are improvements which might be made in the existing system. Executive Councils might be introduced in the United Provinces, the Punjab and the Central Provinces, and Indians, not exceeding in number half the members other than the head of the province, might be appointed to each. A second Indian Member might be added to the Executive Councils already in being. But these suggestions, if adopted, would add but half a dozen to the number of Indians in touch with administrative detail ; of greater importance therefore is the suggestion that the unofficial Members of Provincial Councils should be divided into committees, severally attached to the Members of Council, in much the same relation as the India Council is attached to the Secretary of State. In this capacity they would see and advise upon cases submitted to their opinion by their Member of Council, and thus gain an insight into administrative conditions. The most valuable of these changes can be made without legislation and might, therefore, be effected as quickly as possible. They will help to prepare legislators and ministers for the first experiments in responsible government.

On the other hand, they will do nothing to prepare electorates. Electoral figures have never been published ; but in parts of Northern India they are known scarcely to exceed one twothousandth part of the population. But electorates of an adequate strength and quality are the necessary foundation of responsible government. There must be an adequate number of citizens to whom Government is answerable, and from whom, therefore, Government can derive its authority ; and those citizens must be capable in some sort of understanding the questions submitted to their judgment, of placing the public interest before their own, of doing justice to each other, and, what is of even greater importance, to those outside the electorate, even at the sacrifice of their personal interests. The material for such electorates is sadly deficient, and must be created. To argue that this can be done merely by extending the type of education given in schools and colleges is a dangerous fallacy. On the contrary, as all experience shows, a general extension of education without a simultaneous extension of political responsibility ends by sapping the foundations of government. A great improvement and extension of education throughout India is urgently needed. But wisdom can only be learned from the teaching of experience itself, and all that education can do is to open a people's mind, and enable them to read the lessons of experience which the exercise of responsibility alone can bring.

In order to train voters for the task of government, some responsibilities for government must be laid upon them. Until this is done, the process of political education has not been started. The gradual extension of such responsibilities must go side by side with the extension of education. Nor do we consider that this can now be limited with safety to the sphere of Local Government, which, of necessity, deals with administrative details only. The time is at hand when some responsibility for considering and deciding questions of principle, some political responsibility, that is to say, ought to be placed on the shoulders of electorates. Thus, while we do not think it is possible at this stage to make such changes in the Government of India, we think that the time has passed when the principle of responsible government can be limited, as it now is, to the sphere of local administration. If genuine electorates are to be called into being, some responsibilities of a provincial nature must first be laid upon them, and afterwards increased, as the electorates can be strengthened and enlarged, and can demonstrate capacity for bearing the burden. To make that burden too heavy at the outset is to jeopardise the whole project. No prudent person, for

instance, would suggest that they should be made responsible for the maintenance of law and order to begin with. To do so, would be risking a break-down, which more than anything would delay progress towards complete responsible government. To begin with, the old experienced Government must stand by to maintain order, and discharge those functions upon which the immediate stability of the social fabric depends. The first powers to be transferred to electorates should be those connected with social reforms, with the future building up of society, like education and Local Government. As soon as electorates have proved themselves capable of discharging these functions, it will be time to transfer others, the neglect of which is more quickly felt. We think, as a general proposition, that an electorate may be deemed fit for the exercise of full responsible government whenever it has been entrusted with, and has proved its competence in the control of, Police and Justice.

In our opinion, therefore, a beginning should be made in training electorates by making them responsible for certain provincial functions. But the training will not be effective, unless the system is so simplified that electors can easily trace the effect of the votes they cast. The existing tangled and complicated system of election is destructive of all educational result so far as political responsibility is concerned. The ordinary voter cannot possibly foresee the result of his vote on the Provincial Council, still less on the Imperial body. Besides which the existing system is an incentive to corruption. If only to render corruption more difficult, the initial electorates should be as large as possible. They should include those whose pockets will be directly affected by the votes they cast, for it is thus that the connection of cause and effect is first brought home to electors.

Above all, the method of voting must be direct. Indirect election not only destroys the educational value of the system, but destroys responsibility itself. It is really a device for concealing the fact that adequate electorates do not exist and evades the difficult truth that they cannot be made a reality without giving some responsibilities to some electorates not yet ripe for them and taking inevitable risks.

II.—Outline of the Scheme proposed.

We now propose to outline a scheme of development such as we think would give effect to the principles upon which we have agreed. Having done so, we shall be in a position to suggest the special safe-

guards which should be accorded to Industrial and Commercial interests. We recognize that the scheme must be one capable of adaptation to suit the highly various conditions and levels of advancement in the different provinces of India. We shall, therefore, sketch the scheme as we think it might be applied to a particular province, taking as our example one, which is not so advanced as the old Presidencies, but perhaps more so than other parts of India. For this purpose we select the United Provinces, which has the advantage of being, not only central, but also the largest in India.

In this Province we suggest the old Kingdom of Oudh as an area suitable to form a Provincial State in the future self-governing Dominion. Another might be formed from the divisions surrounding Benares, a third from the Doab ; while those to the North-West might be grouped round Meerut. Primitive communities, like those of the hill districts of Kumaon and Bundelkhand and of Mirzapur, might, to begin with, be reserved to the present Government of the United Provinces. This Government, subject to certain changes, which we shall outline later, would remain in being, holding and exercising all powers which had not been transferred to the four Provincial States.

The first step would be to create the largest electorates which may be deemed possible under existing conditions, in accordance with the principles suggested above. Indian conditions are so various that these principles must be applied in harmony with the conditions of each Provincial State.

These electorates should elect assemblies consisting of from 45 to 75 members each. To these bodies should be transferred at least the present functions of the District Boards, coupled with the control now exercised by the Government over those functions. In order to simplify the electoral system, as far as possible at the outset, and avoid confusing the minds of inexperienced voters by numerous elections, those of the District Boards might be abolished for the present in backward provinces at any rate. The Boards might be appointed by the Government of the Provincial State until it sees fit to re-establish an electoral system for the districts.

The municipalities would, of course, remain as at present, but would be transferred to the control of the Provincial State. The creation of panchayats and other local authorities would also be included within its legislative powers.

By this scheme the new Governments would at once be vested with full control throughout their areas of—

Roads and Bridges. | Primary Education.
Local Government.

To these in the United Provinces we think that Agriculture, and in Bengal that higher education, should be added.

The administration of these functions would rest with a Ministry drawn from the assembly and responsible thereto. The Ministry would consist of five portfolios :—

A Minister of Public Works.
Ditto of Education.
Ditto of Local Government.
Ditto of Agriculture.
Ditto of Finance.

The Ministry would be called into being as follows. An officer, presumably the senior commissioner in each Provincial State, would be made the superior officer of the other Commissioner or Commissioners in that area. As Chief Commissioner he would thus control all the officers in charge of the reserved functions retained by the Government of the United Provinces. He would also act as the constitutional head of the Provincial State, that is to say in the capacity of the Governor of a Province like Quebec or Tasmania. In that capacity he would send for the Member of the newly elected assembly who, in his judgment, was best qualified to command the support of that body, and would ask him to form a Ministry.

The Ministry, when formed, would then proceed to design departmental machinery suitable for administering the various functions under their portfolios. Their new departments would be staffed from officers taken over from the services of the United Provinces, all existing rights of officers being strictly safeguarded by law. In this operation they would be assisted, not only by the Chief Commissioner, but also by a Civil Service Commission of three, with reference to which we have more to say hereafter. Ministers would not be expected to take over their functions from the old Government until the arrangements for the necessary departments were complete.

The relations of the Chief Commissioner to his Ministers are of great importance. An undivided responsibility would rest on Ministers, so far

as the functions transferred to them are concerned. They would be responsible to the assembly for their decisions, and, provided they were *intra vires*, the Chief Commissioner would have to give legal effect to those decisions by his signature. No responsibility would rest upon him in respect of the transferred powers. But before signing their decisions he would have every opportunity of giving his Ministers advice, and, if they were wise, they would avail themselves of his advice to the full. They would do so the more readily in that an undivided control of their own functions would rest with themselves. They would be responsible to the assembly, and the assembly to the electorate; and a chain of responsibility at once simple and clear, between the elector and the administrative officer, would thus be established.

The Chief Commissioner would thus be in a position to guide his Ministers in the execution of the transferred powers by his influence and advice. On the other hand, he would control all the officers of the United Provinces in charge of the reserved functions within the area of the Provincial State. He would thus be well situated to smooth away the causes of friction inevitable between the two authorities. In all federal systems at least two authorities must administer their different functions within the same area, and some friction always exists. Whether the system works or not, simply depends upon the efficacy of the means provided for reducing the friction and of disposing of questions at issue between the two organs of Government.

We agree that a share of the consolidated revenue of the Province should be handed over to the Provincial State Governments, proportionate to the cost of the functions transferred to them: in addition to which should be handed over certain specific powers of taxation, such as would fall on the Provincial State electorate itself.

This is essential to any genuine scheme of responsible government. The electors must learn from experience that, if they demand an extension of services placed under their control, the cost of the extension must also be met from their own resources. This condition is vital to their political training. The taxes imposed by them can still be collected by the existing Board of Revenue, as happens at present with the cesses imposed by District Boards. The taxes, however, imposed by the Provincial State Government should be collected from the tax-payer on separate and distinctive notes of demand so that he may clearly recognize that the charge is one imposed by his own representatives.

The finances of the Provincial States should be subject to the same audit as those of the United Provinces itself, that is to say of the Finance Department of the Government of India. The auditors should disallow any expenditure outside the powers of the Provincial State, and institute enquiries, when any trace of corruption is found. They should also disallow all unauthorized expenditure, but on this, and, generally, on all matters relating to financial administration, they should report direct to the Committee of Public Accounts of the State assembly.

The Government of the United Provinces might be empowered to make grants-in-aid of certain objects, subject to inspection, the payments to depend upon the Provincial State Government having carried out those objects to the satisfaction of the Inspectors. But otherwise checks and sanctions in detail should be studiously avoided, for two reasons. In the first place, they are the most fertile cause of friction. In the second place, they undermine the responsibility which ought to rest on the new Governments and their electorates. The Government of the Province will, of course, retain the usual power of veto over legislation passed by Provincial State assemblies ; and borrowing would be subject to Government control..

Otherwise, we believe, that the one sound and effective check will be found in a power of total suspension held in reserve. If the Government of a Provincial State prove its utter incompetence, the assembly should be dissolved, and the issue referred to the electors. If then the electors fail to establish a Government competent to put matters straight, and their area remains a scene of neglect, corruption or disorder, the system must be suspended for that area. The Provincial Government will be there to resume their functions and to set the Provincial State in order, just as is done in the case of Native States, continuing to administer until the time seems ripe for a fresh beginning of responsible government. In the case of civil disorders, brought about by the intolerance of a Provincial State Government, there must be powers of summary suspension. We return to this subject also later.

The initial experiment would be started for a definite period of, say, seven years. At the end of that period the whole system throughout India would be reviewed by a Commission reporting direct to the Secretary of State. The Commission should include men who had served as Governors of Crown and self-governing Colonies. After examining the conditions of each Provincial State on the spot, the Commissioners would report whether fresh powers should be granted such as the control

of irrigation and forests, of higher education, of local railways, of famine relief, and so forth. Or it might report that the Government had done so indifferently that the existing powers should merely be renewed. Lastly, in cases of total failure, it should have powers to report in favour of suspension : but, before the Secretary of State takes final action, the papers should be laid before both Houses of Parliament.

It must at the outset, be laid down that during the seven years' period no claim can be entertained for further administrative powers or a further share of the consolidated revenue of the province. This is essential in the interests of the new electoral bodies themselves. Their whole energies must be reserved for the task of justifying the powers already assigned to them and thus establishing their claim to further powers at the end of the period. If the attention of the electorates is continuously diverted from social reforms to agitation for political change, progress towards responsible government is foredoomed from the outset. The dates at which claims for further changes are to be considered should be fixed in advance, and the machinery whereby those claims are to be decided on the basis of fact and experience should be settled from the outset.

We agree that in the intervening periods no demand for further executive powers or for a further share of existing revenues should be entertained.

This does not apply, however, to legislative powers. Again we are keeping in mind the picture of India, as she will be when constitutional finality is attained, and all matters, domestic to India, are subject either to her Provincial State assemblies, or to an Indian Parliament. In the work of framing the final constitution, the task of apportioning the legislative powers between the National Government on the one hand and those of the Provincial States on the other, will be difficult indeed, unless, during the period of transition, the problem has been worked out and solved by the test of experience. To this end we suggest that Provincial State assemblies shall be encouraged to petition the Provincial Governments, from time to time, for legislative powers they desire to exercise. The petition would be cast into the form of an enabling Bill submitted to the Legislative Council of the Province. The Bill, after first and second reading would be referred to a committee upon which the Provincial Government would appoint a majority of members. The procedure of the committee would be exactly that of a Standing Committee of Parliament appointed to deal with Bills promoted by local authorities.

Counsel would be heard on behalf of the promoters, and of all interests affected by the Bill. The preamble would have to be proved. The clauses would then be considered, passed, negatived or amended ; and evidence for or against the contentions of those promoting the Bill would be heard. The enabling Bill, if passed into an Act, would then define with accuracy the limits within which the Provincial State assembly could legislate on the subject.

The same method is applicable to new sources of revenue. A Provincial State Government might desire to increase its revenues by a stamp on patent medicines sold within its area. It would then be open to it to embody the proposal in an enabling Bill and to bring it before the Legislative Council of the Province. Under the Bill, if passed, its assembly would then pass legislation imposing the new tax. Thus by means of experiment, appropriate sources of Provincial State revenue would be discovered.

At the close of each period of seven years, the Commissioners would review the results, and advise whether the powers so obtained by one Provincial State should be extended to all. The Government of India should be free, at any moment, to generalize such powers by legislation. In this way, whenever the time comes to create a government for India responsible to an Indian electorate, the legislative powers appropriate to the Provincial States will have been ascertained by the only trustworthy tests, those of trial and experience.

That time will have arrived whenever a sufficient number of Provincial States have acquired the control of justice, jails and police and have proved their competence for the fundamental task of Government, that of maintaining order. The confirmation of a Provincial State in those powers will amount to a final certificate of the fitness of its electorate for full responsible government. When a sufficient number of Provincial State electorates have acquired that certificate, the time will have come to summon their representatives to a National Convention to devise a constitution, under which the Government of India can be made responsible to an Indian Parliament and electorate ; and the constitution, like those framed by the representatives of the Canadian, Australian and South African Provinces, will acquire legal effect as a statute of the Imperial Parliament. In matters common to all India, responsible government cannot be introduced by stages. It must be introduced at one stroke, by one instrument of Government—the constitution of India, under which she will assume her final place in the Commonwealth of Nations. That can only take place when a sufficient number of Provincial States have

established and proved their competence for responsible government. The stones will then have been quarried and shaped from which the final edifice can be built.

The old Provincial Governments will, of course, vanish the moment their final powers have passed to their Provincial States. But the question of reforms, such as will fit them to fulfil their transitional functions, is of great importance. Their functions will be to hold and administer the reserved powers until the last final function, that of maintaining order, can be handed over. But another and even more important function will be that of supervising the acquisition by the Provincial States of new legislative powers and sources of revenue, which, of course, they will do subject to the direction of the Government of India.

As stated already, we assume that Executive Councils will be established in all but the minor provinces, one half of which will be Indian ; a majority being retained for the European members by the Governor's casting vote.

The Legislative Councils should be composed mainly of delegations from the assemblies of the Provincial States, together with some additional members appointed by Government to represent special interests. There is nothing to prevent the introduction of officials at any time who are required to discuss matters within their expert knowledge. But official voters should vanish. The existing system of official members voting by order, irrespective of their personal views, is derogatory to their own position, wasteful of their valuable time, fatal to principles which should govern public debate, and eminently calculated to create a feeling of antagonism between Indians and Europeans as such. It is also insincere. If Government cannot accept a motion of whatever kind, let the Governor say so, and let that suffice. A final difference of opinion between the Government responsible to the Secretary of State and the spokesmen of public opinion is not mended by the practice of annulling the votes of elected members by those of officials' cast, under orders of Government. Let the Councils consist entirely of non-official members, the members of the Executive Council and such other officials as they choose to bring with them appearing only for the purposes of debate. Let every detail of administration, of legislation and of the estimates be brought before the Council for discussion. Let the work of Government be exposed to unofficial criticism and influence from end to end. The onus of final decision in matters for which the executives are responsible to the Government of India and to the Secretary of State rests with them, subject, of course, to the provision that those superior authorities can always reverse

the decision of their agents, on petition from the Legislative Councils. Just as the responsibility of the Provincial State ministers to their assemblies and electorates must be unhampered and clear, so also must be that of the Provincial executives to the Government of India and the Secretary of State.

That the two principles are inseparable will be seen by reference to the procedure whereby the Legislative Councils will deal with enabling Bills promoted by Governments of Provincial States. The Legislative Councils will mainly consist of delegations from those bodies, one of which is promoting the Bill. An assembly so formed will be likely to voice every kind of opinion which may be held with regard to the new legislative powers sought therein. On second reading, on report stage and on third reading its members will have every opportunity of doing so. The assembly will send members to the Select Committee. Government will thus have access to every phase of public opinion on the subject, as well as to the views of the Government of India, which will hold a brief for the future federal Government of India. But clearly the power of final decision on any disputed point could not be left with the spokesmen of the Provincial State assemblies. The system will not work, unless the responsibility of either authority for the functions assigned it is real ; which cannot be, unless its power is equivalent to its responsibility. The most important of all the responsibilities reserved to the old Governments in the transitional stage is that 'of judging of the time and measure of each advance.'

We consider that the Imperial Legislative Council should be reformed on the same principles. The official votes should vanish and the members should be largely recruited by proportional representation from the Provincial State assemblies and other public bodies as at present.

As the transfer of officers is likely to prove more delicate and difficult than the transfer of powers, the subject has been left for separate treatment. Our view is that there should be attached to the Government of India and to the Government of each province a standing commission of three senior officers, one of whom should always be an Indian. These Commissioners should inspect and be cognizant of the work of every department, and of every officer in those departments. It should be their duty to bring to the notice of Government all cases of over or under employment, of overlapping and of all defects in organization. They would serve in fact as the Consulting Engineers of the administrative machine. They would have no powers but those of report. It would rest with Governments to give effect to their recommendations. A vast

human machine, which is always being changed and increased, requires continuous inspection of experts who stand outside it and view it as a whole. Government which is part of the mechanism has no time to do this; and, without the advice of such experts, the gradual adjustments required to keep it in gear, and to avoid overlapping and waste, are not perceived and made in time. When the whole structure has grown thoroughly obsolete and clearly unsuited to public needs, a Civil Service Commission is appointed, largely consisting of amateurs. An elaborate enquiry is undertaken at vast expense. Questions are put which are difficult for officials to answer with honesty in public. A great strain is put on their time and a great disturbance of the public mind is occasioned. Their recommendations involve changes so great that it is very difficult to carry them into effect, whereas those changes, if effected gradually, as the need had arisen, could easily have been made.

This is one aspect of the permanent Civil Service Commissions which exist in the Dominions. But there is another and even more important feature of the institution as it exists in Australia and New Zealand. Appointments and promotions are, of course, made by the Government, but on the advice of the Commissioners. Government is not bound to take their advice, but if it departs therefrom, it is bound to record its reasons for the information of the legislature. The plan has been devised to relieve Government of the demoralising burden of patronage, which consumes the time and energy of its members urgently needed for administrative work. In effecting this object, the permanent Advisory Commission has proved successful.

In India, we think that all appointments should be made on the advice of such Commissioners. Three should be attached to Government of India, and three to each of the provinces. Where the Government of India, or Provincial Governments depart from their advice, their reasons should be recorded for the information of the Secretary of State; where Provincial State ministers are unable to take their advice, their reasons should be recorded and submitted to their Legislative assemblies.

The Standing Commissions would play an important part in the transfer of officers to the departments of the new elective authorities. Such transfers would be voluntary so far as is possible. Ministers, with the advice and assistance of the Chief Commissioner, would arrange for the voluntary transfer of officers from the old departments to their own. But where voluntary arrangements failed, the transfer would be effected on the advice of the Commissioners, to which effect would be given by the Provincial Government, subject to the conditions specified above. The

organization of the new departments would also proceed subject to the expert advice of the Commissioners.

III—Safeguards.

We have outlined a scheme such as we think is capable of being adapted to varying conditions in the different provinces of British India. But wherever, as in Bengal, there exist commercial and industrial interests representing great investments of capital, we consider that special safeguards are necessary, less in the interests of the investors than of the people of India themselves. Responsible government cannot be initiated or advanced without an increase of public expenditure. A development of natural resources is essential in order to provide the additional revenue. But development requires a free investment of capital from without, and nothing could be more fatal to the prospects of such investment than to allow an impression, however unfounded, to take root at this juncture that existing investments of capital are not secure. Unless special safeguards are provided at the outset, fears will exist in the money markets of the world that existing interests may be subject to injury, either by reason of predatory or regulative legislation, or by reason of neglect of transportation and other facilities. It is wise to allay these fears at the outset.

In the first place, all legislation will be subject to the veto of the Indian and Provincial Governments subject to the Secretary of State. In Dominion constitutions, the Acts of Parliament, embodying the powers of the Dominion Governments, do not include most important constitutional provisions, those governing the relations of the Dominion to the Imperial Government. Such provisions will be found in the instructions issued to the Governors by the Imperial Government.

It is in instructions issued by the Imperial Government to the Government of India, that securities against legislation injurious to commercial and industrial interests can be given. In these instructions it should be laid down that legislation affecting commercial and industrial undertakings should be reserved for the sanction of the Secretary of State, and a limit of time should be laid down, within which representatives from the interests affected can be received by him.

We agree that instructions to this effect should be included in a schedule attached to the Act of Parliament in which the scheme of reforms is embodied.

This will not, however, allay the fears of those who have invested their capital in plantations and other industrial undertakings scattered

about the country, lest the value of their property may be ruined by neglect of transportation facilities, of protection from flood, water-supply and of other public utilities.

Where damage to industrial interests from such neglect can be proved, the provincial Government should have power to step in, and do the necessary work at the cost of the Provincial State Government in default. Throughout the period of transition the Provincial Government responsible to the Secretary of State will be in existence and in a position to provide the necessary remedy. That Government will vanish only when the Provincial State Governments within its jurisdiction have finally proved their capacity for efficient administration. The final certificate of efficiency would not be given to a Provincial State Government, so long as it shewed a tendency to neglect public utilities upon which the value of capital invested on productive undertakings in their area depends.

We agree that the Provincial Governments responsible to the Government of India and the Secretary of State shall have power to do or repair public works, upon which the value of invested capital depends, neglect of which is due to the default of Provincial State Governments, and to charge the cost thereof to the revenues assigned to the Government in default.

In this connection we return to the final remedy of recalling powers and of total suspension. It is, however, mainly with a view to the progress of responsible government itself, that we urge that these safeguards should be made real. If India is to move as quickly as possible towards the goal of complete responsible government, each part of India must, in the stage of transition, be enabled to move at its own pace. Government must be ready to reward proof of efficiency in administering powers already granted by a generous transfer of fresh powers. The whole system rests on the principle of placing responsible governments on trial, testing capacity, and making recorded experience the ground of future advance. Such advances should be bold ; but advances will not be bold, unless it is understood from the outset that, where steps in advance have clearly been premature, they can be retraced. Experiment is the only sound basis of policy ; but no experiment is real, unless Government is able to abide by negative as well as by positive results. Government will make experiments freely, only if it knows that it can and must give practical effect to lessons of failure as well as to those of success. If the right of recall be established, Government should be bold in adding to the powers of progressive electoral authorities. For the rapid advance towards full responsible government of some Provincial States will certainly react on their

backward neighbours. Nothing is more contagious than example, and it is to the forward States that we look to set the pace of progress. It should, therefore, be made as safe and easy as possible for Government at stated intervals to add to the powers.

For similar reasons the power of total suspension held in reserve is important. The existence of the power, in fact as well as in law, will largely operate to render its use unnecessary. If the Imperial veto on Colonial legislation is rarely exercised, it is largely because the power, unlike that of the Sovereign, is a real one. Colonial ministers refuse to accept amendments from their own supporters when they know that such amendments, if incorporated in a measure before the legislature, would oblige the Imperial Government to veto it.

In like manner the public disgrace, inseparable from suspension, will act as a spur to the ministers, assemblies and electorates of backward Provincial States, and prevent their allowing the standard of government from degenerating to the point when total suspension is obviously needed in the public interest. Neglect and corruption cannot continue to flourish unchecked in one Provincial State without reacting on the progress of the others. Positive anarchy is infectious and spreads to its neighbours. Just as a progressive State will stimulate progress in those behind it, so a total failure will impede the progress of those in advance of it. The best hope for such a community is the total suspension of its incapable regime as in the case of a Native State where anarchy is rampant Corruption must be weeded out, injustice must be redressed, public utilities must be restored, and a clean and efficient standard of government re-established, before the community is allowed to begin once more an attempt to do these things for itself. It is on the same principle that in the United Kingdom a constituency, provenly corrupt, is disenfranchised for a period of years.

We agree that the Government of India must have the right to recall powers which have been abused or neglected, and, in extreme cases, to suspend the Governments of Provincial States. Such powers shall always be subject to the sanction of the Secretary of State and of Parliament; but in cases of emergency the Government of India may exercise the power, subject to the subsequent sanction of the Secretary of State and of Parliament.

Lastly, it it necessary to consider how an adequate representation can be secured for those in charge of commercial and industrial undertakings. These are largely financed from capital outside India, and are mainly administered by Europeans. They are in number a mere handful, but, in

the interests of the new elective authorities, it is essential that they should be represented in some proportion to the magnitude of the interests they control. It would be a calamity to India if they drifted into the position of Uitlanders. Their assistance is needed in building up the fabric of responsible government. Provincial State ministries and assemblies will have everything to gain by an adequate infusion of a race to whom the working of responsible government is familiar.

We agree that, (a) wherever industrial and commercial interests are located, an adequate representation should be accorded; (b) adequate representation should be accorded to Mahomedans, Land-holders and minorities generally.

IV.—Procedure to be followed in giving effect to the scheme.

The question will naturally be raised how effect can be given to the provisions set out at the end of the last section. The same question arises with regard to a number of other provisions recommended in this note. Any scheme, which suggests at this juncture how India can start on her progress towards responsible government, is open to the same criticism. The new pronouncement was only made on the 20th of August last, and the Secretary of State has reached India within three months from that date. It is utterly beyond the power, even of skilled and experienced officials, to collect within that time the facts and figures necessary before the details of proposals can be worked out. Nor, we venture to predict, will the Secretary of State himself be able to do this, with all the assistance which the Government of India can give him. The short time at his disposal here will be more than occupied with the study of principles, and if any attempt is afterwards made to work these principles into a complete scheme in London, we believe that it will fail for lack of detailed information, which can only be obtained on the spot. Such failure will mean delay, and delay will not be understood in India. It will surely breed distrust and continued agitation. The greatest need of India is that prompt and unmistakable steps should be taken to give effect to the policy outlined in the recent pronouncements. The only way in which this can be done, is by the early enactment of a measure by Parliament such as will set in train the progress of India towards responsible government there foreshadowed.

The solution of the problem, we suggest, will be found in the precedent set by the Government of London Act of 1899. By this measure it was proposed to abolish more than forty Vestries, and establish in their place

a far smaller number of municipal bodies. The whole scheme, including the constitution of the new bodies, was firmly outlined in the measure. Yet the Parliamentary draughtsman, situated as he was in the middle of the subject dealt with by the measure, with all the forces of the Local Government Board, the Home Office, the London County Council, the City of London, and the Vestries at his disposal, was unable to cope with the innumerable details which had to be worked out before effect could be given to its provisions. In order to bring the new bodies into existence, it was necessary to delimit areas, fix the number of members on the various bodies, adjust their finances, and disentangle and re-arrange a multitude of details. All this was remitted to three Commissioners named and appointed under the Act. The moment the Act was passed the Commissioners got to work, and, as their arrangements were framed, legal effect was given to them by orders in the Council issued in terms of its provisions.

We believe that the adoption of this course is the only way to avoid a delay which will prove mischievous in the extreme to the peace and interests of India. It is not delay in bringing into being the new organs of Government that we fear. That of necessity is a task the details of which need time for their execution. Any attempt to burke those details will only end in further postponement. The delay, we fear, is in framing a measure which the Imperial Government can adopt for submission to Parliament, and in the passage of that measure into law. The trust of India in Parliament is unimpaired, and if once the scheme of reforms is firmly outlined in statutory form, and Commissioners are appointed to give effect to it, the people of India will not be found wanting in patience. Their energies will, we think, be devoted to aiding the Government and Commissioners in working out the details and carrying them into effect.

We agree, therefore, in advising that the specific points to which our agreement relates and the outlines of the scheme sketched in these proposals be laid down in an Act of Parliament: but that all questions, within those outlines relating to franchises, constitutions, powers, finances and such like details be remitted to not more than five Commissioners named under the Act, to be dealt with in India by the Commissioners, in consultation with Governments and People, the arrangements of the Commissioners, to be given the force of law by Orders in Council.

The goal of responsible government having now been declared, the scheme should, in our opinion, be one which initiates not only the immediate steps, but renders visible to the people of India the whole path to

the ultimate goal. We urge that the measures should be such as will leave no room for constitutional agitation, either now, or at any future time. It should set them free to devote their whole strength to social and political reform, by placing political as well as social reform within their reach. The situation we desire is one in which communities in all parts of British India can attain to new political powers, always, but only, by proving their fitness to exercise those they already possess, and will lead as quickly as those proofs can be given, to a complete and final attainment of their status as the greatest Dominion in the British Commonwealth. It is to that end that we, British and Indians, have framed these proposals. We desire that the foundations of responsible government in India should be laid in trust and amity between her people and those whose forefathers have given this system to the world, that our enemies may learn that we know how to realize its principles, as well as to defend them. We, therefore, unite to submit this scheme, believing that so, in the Providence of God, a cornerstone may be laid in this Commonwealth of Nations for the perpetual union of East and West.

With regard to the details of the scheme outlined above, we think that it is desirable that every one should reserve full liberty of judgment. Our agreement relates only to the following specific points :—

We agree—

(1) to accept the pronouncement of the 20th of August as common ground, within the limits of which the discussion can take place ;

(2) that, having accepted the pronouncement, we are not only free, but also bound to consider the new situation created thereby with open minds;

(3) that the existing provinces need not be assumed to be areas suitable as a basis for responsible government, but such areas must be settled at the moment when the first instalment of responsible government is granted ;

(4) that the first steps towards responsible government cannot be taken in the sphere of the central Government ;

(5) that, during the period of transition, governments of two types must co-exist, the one responsible to electorates for specific powers, the other to the Secretary of State for all other powers ; that the responsibility of each must in fact

be a real one, and their powers must be sufficient to enable them to discharge that responsibility efficiently ;

(6) that a share of the consolidated revenue of the province should be handed over to the Provincial State Governments, proportionate to the cost of the functions transferred to them ; in addition to which should be handed over certain specific powers of taxation, such as would fall on the Provincial State electorate itself ;

(7) that further additions to the powers of Provincial States, and to their share of existing provincial revenues should be considered by Commissioners reporting direct to Parliament, at intervals of, say, seven years, such interval to be specified at the outset ; and that in the intervening periods no demand for further executive powers, or for a further share of existing revenues, should be entertained ;

(8) that legislation passed by Provincial State Governments affecting commercial and industrial undertakings should be reserved for the sanction of the Secretary of State ; and a limit of time should be laid down, within which representations from the interests affected can be received by him ; and further, that instructions to this effect should be included in a schedule attached to the Act of Parliament in which the scheme of reforms is embodied ;

(9) that the Provincial Governments, responsible to the Government of India and the Secretary of State, shall have power to do or repair public works, upon which the value of invested capital depends, neglect of which is due to the default of Provincial State Governments, and to charge the cost thereof to the revenues assigned to the Government in default ;

(10) that the Government of India must have the right to recall powers which have been abused or neglected ; and in extreme cases to suspend the Governments of Provincial States. Such powers shall always be subject to the sanction of the Secretary of State and of Parliament ; but in cases of emergency the Government of India may exercise the

power, subject to subsequent sanction of the Secretary of State and of Parliament ;

(11) that (*a*) wherever industrial and commercial interests are located, adequate representation should be accorded ; (*b*) adequate representation should be accorded to Mahomedans, Land-holders, and minorities generally ;

(12) that the specific points to which our agreement relates and the outlines of the scheme sketched in these proposals be laid down in an Act of Parliament : but that all questions within those outlines, relating to franchises, constitutions, powers, finances, and such like details be remitted to not more than five Commissioners named under the Act, to be dealt with in India by the Commissioners, in consultation with Governments and People, the arrangements of the Commissioners to be given the force of law by Orders in Council.

APPENDIX C.

RESOLUTION adopted by the Thirty-First Session of the Indian National Congress held at Lucknow, on the 29th December, 1916, outlining a Scheme of Reforms as a Definite Step towards Self-Government. Also adopted by the All-India Muslim League at its Meeting held on the 31st December, 1916.

RESOLUTION.

(*a*) That having regard to the fact that the great communities of India are the inheritors of ancient civilisations and have shown great capacity for government and administration, and to the progress in education and public spirit made by them during a century of British Rule, and further having regard to the fact that the present system of Government does not satisfy the legitimate aspirations of the people and has become unsuited to existing conditions and requirements, the Congress is of opinion that the time has come when His Majesty the King-Emperor should be pleased to issue a Proclamation announcing that it is the aim and intention of British policy to confer Self-Government on India at an early date.

(*b*) That this Congress demands that a definite step should be taken towards Self-Government by granting the reforms contained in the scheme prepared by the All-India Congress Committee in concert with the Reform Committee appointed by the All-India Muslim League (*detailed below*).

(*c*) That in the reconstruction of the Empire, India shall be lifted from the position of a Dependency to that of an equal partner in the Empire with the self-governing Dominions.

REFORM SCHEME.

I.—Provincial Legislative Councils.

1. Provincial Legislative Councils shall consist of four-fifths elected and of one-fifth nominated members.

2. Their strength shall be not less than 125 members in the major provinces, and from 50 to 75 in the minor provinces.

3. The members of Councils should be elected directly by the people on as broad a franchise as possible.

4. Adequate provision should be made for the representation of important minorities by election, and the Mahomedans should be represented through special electorates on the Provincial Legislative Councils in the following proportions :—

Punjab—One-half of the elected	Indian	Members.
United Provinces—30 %	,,	,,
Bengal—40 %	,,	,,
Behar—25 %	,,	,,
Central Provinces—15 %	,,	,,
Madras—15 %	,,	,,
Bombay—One-third	,,	,,

Provided that no Mahomedan shall participate in any of the other elections to the Imperial or Provincial Legislative Councils, save and except those by electorates representing special interests.

Provided further that no bill, nor any clause thereof, nor a resolution introduced by a non-official member affecting one or the other community, which question is to be determined by the members of that community in the Legislative Council concerned, shall be proceeded with, if three-fourths of the members of that community in the particular Council, Imperial or Provincial, oppose the bill or any clause thereof or the resolution.

5. The head of the Provincial Government should not be the President of the Legislative Council, but the Council should have the right of electing its President.

6. The right of asking supplementary questions should not be restricted to the member putting the original question, but should be allowed to be exercised by any other member.

7. (*a*) Except customs, post, telegraph, mint, salt, opium, railways, army and navy, and tributes from Indian States, all other sources of revenue should be Provincial.

(*b*) There should be no divided heads of revenue. The Government of India should be provided with fixed contributions from the Provincial Governments, such fixed contributions being liable to revision when extraordinary and unforeseen contingencies render such revision necessary.

(*c*) The provincial Council should have full authority to deal with all matters affecting the internal administration of the province including the power to raise loans, to impose and alter taxation, and to vote on the Budget. All items of expenditure, and all proposals concerning ways and

means for raising the necessary revenue, should be embodied in Bills and submitted to the Provincial Council for adoption.

(*d*) Resolutions on all matters within the purview of the Provincial Government should be allowed for discussion in accordance with rules made in that behalf by the Council itself.

(*e*) A resolution passed by the Provincial Legislative Council shall be binding on the Executive Government, unless vetoed by the Governor in Council, provided however that if the resolution is again passed by the Council after an interval of not less than one year, it must be given effect to.

(*f*) A motion for adjournment may be brought forward for the discussion of a definite matter of urgent public importance, if supported by not less than one-eighth of the members present.

8. A special meeting of the Provincial Council may be summoned on a requisition by not less than one-eighth of the members.

9. A Bill, other than a Money Bill, may be introduced in Council in accordance with rules made in that behalf by the Council itself, and the consent of the Government should not be required therefor.

10. All Bills passed by Provincial Legislatures shall have to receive the assent of the Governor before they become law, but may be vetoed by the Governor-General.

11. The term of office of the members shall be five years.

II.—Provincial Governments.

1. The head of every Provincial Government shall be a Governor who shall not ordinarily belong to the Indian Civil Service or any of the permanent services.

2. There shall be in every Province an Executive Council which, with the Governor, shall constitute the Executive Government of the Province.

3. Members of the Indian Civil Service shall not ordinarily be appointed to the Executive Councils.

4. Not less than one-half of the members of the Executive Council shall consist of Indians to be elected by the elected members of the Provincial Legislative Council.

5. The term of office of the members shall be five years.

III.—Imperial Legislative Council.

1. The strength of the Imperial Legislative Council shall be 150.
2. Four-fifths of the members shall be elected.

3. The franchise for the Imperial Legislative Council should be widened as far as possible on the lines of electorates for Mahomedans for the Provincial Legislative Councils, *and the elected members of the Provincial Legislative Councils should also form an electorate for the return of members to the Imperial Legislative Council.*

4. One-third of the Indian elected members should be Mahomedans elected by separate Mahomedan electorates in the several Provinces, in the proportion, as nearly as may be, in which they are represented on the Provincial Legislative Councils by separate Mahomedan electorates.

Vide provisos to section I, clause 4.

5. The President of the Council shall be elected by the Council itself.

6. The right of asking supplementary questions shall not be restricted to the member putting the original question but should be allowed to be exercised by any other member.

7. A special meeting of the Council may be summoned on a requisition by not less than one-eighth of the members.

8. A Bill, other than a Money Bill, may be introduced in Council in accordance with rules made in that behalf by the Council itself, and the consent of the Executive Government should not be required therefor.

9. All Bills passed by the Council shall have to receive the assent of the Governor-General before they become law.

10. All financial proposals relating to sources of income and items of expenditure shall be embodied in Bills. Every such Bill and the Budget as a whole shall be submitted for the vote of the Imperial Legislative Council.

11. The term of office of members shall be five years.

12. The matters mentioned hereinbelow shall be exclusively under the control of the Imperial Legislative Council :

(*a*) Matters in regard to which uniform legislation for the whole of India is desirable.

(*b*) Provincial legislation in so far as it may affect inter-provincial fiscal relations.

(*c*) Questions affecting purely Imperial Revenue, excepting tributes from Indian States.

(*d*) Questions affecting purely Imperial expenditure, except that no resolution of the Imperial Legislative Council shall be binding on the Governor-General in Council in respect of military charges for the defence of the country.

(*e*) The right of revising Indian tariffs and customs-duties, of imposing, altering, or removing any tax or cess, modifying the

existing system of currency and banking, and granting any aids or bounties to any or all deserving and nascent industries of the country.

(*f*) Resolutions on all matters relating to the administration of the country as a whole.

13. A Resolution passed by the Legislative Council should be binding on the Executive Government, unless vetoed by the Governor-General in Council : provided however that if the resolution is again passed by the Council after an interval of not less than one year, it must be given effect to.

14. A motion for adjournment may be brought forward for the discussion of a definite matter of urgent public importance, if supported by not less than one-eighth of the members present.

15. When the Crown chooses to exercise its power of veto in regard to a Bill passed by a Provincial Legislative Council or by the Imperial Legislative Council, it should be exercised within twelve months from the date on which it is passed, and the Bill shall cease to have effect as from the date on which the fact of such veto is made known to the Legislative Council concerned.

16. The Imperial Legislative Council shall have no power to interfere with the Government of India's direction of the military affairs and the foreign and political relations of India, including the declaration of war, the making of peace and the entering into treaties.

IV.—The Government of India.

1. The Governor-General of India will be the head of the Government of India.

2. He will have an Executive Council, half of whom shall be Indians.

3. The Indian members should be elected by the elected members of the Imperial Legislative Council.

4. Members of the Indian Civil Service shall not ordinarily be appointed to the Executive Council of the Governor-General.

5. The power of making all appointments in the Imperial Civil Services shall vest in the Government of India, as constituted under this scheme, due regard being paid to existing interests, subject to any laws that may be made by the Imperial Legislative Council.

6. The Government of India shall not ordinarily interfere in the local affairs of a province, and powers not specially given to a Provincial Government, shall be deemed to be vested in the former. The authority of the Government of India will ordinarily be limited to general supervision and superintendence over the Provincial Governments.

7. In legislative and administrative matters the Government of India as constituted under this scheme, shall, as far as possible, be independent of the Secretary of State.

8. A system of independent audit of the accounts of the Government of India should be instituted.

V.—The Secretary of State in Council.

1. The Council of the Secretary of State for India should be abolished.

2. The salary of the Secretary of State should be placed on the British Estimates.

3. The Secretary of State should, as far as possible, occupy the same position in relation to the Government of India, as the Secretary of State for the Colonies does in relation to the Governments of the self-governing Dominions.

4. The Secretary of State for India should be assisted by two Permanent Under-Secretaries, one of whom should always be an Indian.

VI.—India and the Empire.

1. In any Council or other body which may be constituted or convened for the settlement or control of Imperial affairs, India shall be adequately represented in like manner with the Dominions and with equal rights.

2. Indians should be placed on a footing of equality in respect of status and rights of citizenship with other subjects of His Majesty the King throughout the Empire.

VII.—Military and other matters.

1. The military and naval services of His Majesty both in their commissioned and non-commissioned ranks, should be thrown open to Indians and adequate provision should be made for their selection, training and instruction in India.

2. Indians should be allowed to enlist as volunteers.

3. Executive Officers in India shall have no judicial powers entrusted to them and the judiciary in every province shall be placed under the highest Court of that province.

SYED MOHAMMED.
N. SUBBA RAU.
General Secretaries.

APPENDIX D.

Summary of Recommendations embodied in the Report on Indian Constitutional Reforms, 1918.

PARLIAMENT AND THE INDIA OFFICE.

1. The control of Parliament and the Secretary of State to be modified.

2. The salary of the Secretary of State for India to be transferred to the Home Estimates.

3. The House of Commons to be asked to appoint a select committee for Indian affairs.

4. A committee to be appointed to examine and report on the present constitution of the Council of India and on the India Office establishment.

THE GOVERNMENT OF INDIA.

5. The Government of India to preserve indisputable authority on matters adjudged by it to be essential in the discharge of its responsibilities for peace, order, and good government.

6. A Privy Council for India to be established.

The Executive.

7. To increase the Indian element in the Governor-General's Executive Council.

8. To abolish the present statutory maximum for the Executive Council and the statutory qualification for seats.

9. To take power to appoint a limited number of members of the legislature to a position analogous to that of parliamentary under-secretaries in Great Britain.

The Legislature.

10. To replace the present Legislative Council of the Governor General by a Council of State and a Legislative Assembly.

11. The Council of State to consist of 50 members (exclusive of the Governor General, who will be president, with power to nominate a vice-president). Of the members 21 to be elected and 29 nominated by the

Governor General. Of the nominated members 4 to be non-officials and not more than 25 (including the members of the Executive Council) to be officials.

The life of each Council of State to be 5 years.

The Governor General in Council to frame regulations as to the qualifications for membership of the Council of State.

12. The Legislative Assembly to consist of about 100 members, of whom two-thirds to be elected and one-third nominated. Of the nominated members not less than one-third to be non-officials.

The president of the aasembly to be nominated by the Governor General.

13. Official members of the Council of State to be eligible also for nomination to the Legislative Assembly.

14. The Governor General to have power to dissolve either the Council of State or the Legislative Assembly.

15. The following procedure to be adopted for legislation.

A. Government Bills : ordinarily to be introduced and carried through the usual stages in the assembly, and if passed by the assembly to be sent to the Council of State. If the Council of State amend the Bill in a manner which is unacceptable to the assembly, the Bill to be submitted to a joint session of both Houses, unless the Governor General in Council is prepared to certify that the amendments introduced by the council are essential to the interests of peace and order or good government (including in this term sound financial administration), in which case the assembly not to have power to reject or modify such amendments. But in the event of leave to introduce being refused or the Bill being thrown out at any stage the Governor General in Council to have the power, on certifying that the Bill is within the formula cited above, to refer it *de novo*, to the Council of State. The Governor General in Council also to have the power in cases of emergency so certified to introduce the Bill in the first instance in, and to pass it through, the Council of State, merely reporting it to the assembly.

B. Private Bills : to be introduced in the chamber of which the mover is a member and on being passed by that chamber to be submitted to the other. Differences of opinion between the chambers to be settled by means of joint sessions. If, however, a Bill emerge from the assembly in a form which

the Government think prejudicial to good administration, the Governor General in Council to have power to certify it in the terms already cited and to submit or resubmit it to the Council of State, the Bill only to become law in the form given it by the council.

16. Resolutions to have effect only as recommendations.

17. The Governor General and the Crown to retain their respective powers of assent, reservation, or disallowance.

18. The Governor General to retain his existing power of making Ordinances and the Governor General in Council his power of making Regulations.

19. Nominated official members of the Council of State or the Legislative Assembly to have freedom of speech and vote except when Government otherwise directs.

20. Any member of the Council of State or the Legislative Assembly to be entitled to ask supplementary questions. The Governor General not to disallow a question on the ground that it cannot be answered consistently with the public interest, but power to be retained to disallow a question on the ground that the putting of it is inconsistent with the public interest.

21. Rules governing the procedure for the transaction of business in the Council of State and the Legislative Assembly to be made in the first instance by the Governor General in Council. The Legislative Assembly and the Council of State to be entitled to modify their rules, subject to the sanction of the Governor General. In each case such modifications not to require the sanction of the Secretary of State in Council and not to be laid before Parliament.

22. Joint standing committees of the Council of State and the Legislative Assembly to be associated with as many departments of Government as possible. The Governor General in Council to decide with which departments standing committees can be associated, and the head of the department concerned to decide what matters shall be referred to the standing committee. Two-thirds of each standing committee to be elected by ballot by the non-official members of the Legislative Assembly and the Council of State, one-third to be nominated by the Governor General in Council.

THE PROVINCES.

23. The provincial Governments to be given the widest independence from superior control in legislative, administrative, and financial

matters which is compatible with the due discharge of their own responsibilities by the Government of India.

24. Responsible government in the provinces to be attained first by the devolution of responsibility in certain subjects called hereafter the transferred subjects (all other subjects being called reserved subjects), and then by gradually increasing this devolution by successive stages until complete responsibility is reached.

Provincial Executives.

25. The executive Government in a province to consist of a Governor and Executive Council, a minister or ministers nominated by the Governor from the elected members of the Legislative Council, and an additional member or members without portfolios.

26. The Executive Council to consist of two members, one of whom will be an Indian.

Reserved subjects to be in the charge of the Governor and the members of the Executive Council.

27. The minister or ministers to be appointed for the term of the Legislative Council, and to have charge of the transferred subjects.

28. The additional member or members to be appointed by the Governor from among his senior officials for purposes of consultation and advice only.

29. The Government thus constituted to deliberate generally as a whole, but the Governor to have power to summon either part of his Government to deliberate with him separately. Decisions on reserved subjects and on the supply for them in the provincial budget to rest with the Governor and his Executive Council ; decisions on transferred subjects and the supply for them with the Governor and the ministers.

30. Power to be taken to appoint a limited number of members of the Legislative Council to a position analogous to that of parliamentary under-secretaries in Great Britain.

Provincial Legislatures.

31. In each province an enlarged Legislative Council with a substantial elected majority to be established. The council to consist of (1) members elected on as broad a franchise as possible, (2) nominated, including (*a*) official, and (*b*) non-official, members, and (3) ex-officio members. The franchise and the composition of the Legislative Council to be determined by regulations to be made on the advice of the committee described in paragraph 53 by the Governor General in Council,

with the sanction of the Secretary of State, and laid before Parliament.

32. The Governor to be president of the Legislative Council, with power to appoint a vice-president.

33. The Governor to have power to dissolve the Legislative Council.

34. Resolutions (except on the budget) to have effect only as recommendations.

35. Nominated official members to have freedom of speech and vote, except when Government otherwise directs.

36. Any members of the Legislative Council to be entitled to ask supplementary questions.

37. The existing rules governing the procedure for the transaction of business to continue, but the Legislative Council to have power to modify them, with the sanction of the Governor.

38. Standing committees of the Legislative Council to be formed and attached to each department, or to groups of departments. These committees to consist of members elected by the Legislative Council, of the heads of the departments concerned, and the member or minister, who would preside.

39. Legislation on all subjects normally to be passed in the Legislative Council. Exceptional procedure is provided in the succeeding paragraphs.

40. The Governor to have power to certify that a Bill dealing with reserved subjects is essential either for the discharge of his responsibility for the peace or tranquillity of the province, or of any part thereof, or for the discharge of his responsibility for reserved subjects. The Bill will then, with this certificate, be published in the *Gazette*. It will be introduced and read in the Legislative Council, and, after discussion on its general principles, will be referred to a grand committee ; but the Legislative Council may require the Governor to refer to the Government of India, whose decision shall be final, the question whether he has rightly decided that the Bill which he has certified was concerned with a reserved subject.

The Governor not to certify a Bill if he is of opinion that the question of the enactment of the legislation may safely be left to the Legislative Council.

41. The grand committee (the composition of which may vary according to the subject matter of the Bill) to comprise from 40 to 50

per cent of the Legislative Council. The members to be chosen partly by election by ballot, partly by nomination. The Governor to have power to nominate a bare majority (in addition to himself) but not more than two-thirds of the nominated members to be officials.

42. The Bill as passed in grand committee to be reported to the Legislative Council, which may again discuss it generally within such time-limits as may be laid down, but may not amend it, except on the motion of a member of the Executive Council, or reject it. After such discussion the Bill to pass automatically, but during such discussion the Legislative Council may record by resolution any objection felt to the principle or details and any such resolution to be transmitted, with the Act, to the Governor General and the Secretary of State.

43. Any member of the Executive Council to have the right to challenge the whole, or any part, of a Bill on its introduction, or any amendment, when moved, on the ground that it trenches on the reserved field of legislation. The Governor to have the choice then either of allowing the Bill to proceed in the Legislative Council, or of certifying the Bill, clause, or amendment. If he certifies the Bill, clause, or amendment the Governor may either decline to allow it to be discussed, or suggest to the Legislative Council an amended Bill or clause, or at the request of the Legislative Council refer the Bill to a grand committee.

44. All provincial legislation to require the assent of the Governor and the Governor General and to be subject to disallowance by His Majesty.

45. The veto of the Governor to include power of return for amendment.

46. The Governor General to have power to reserve provincial Acts.

Finance.

47. A complete separation to be made between Indian and provincial heads of revenue.

48. Provincial contributions to the Government of India to be the first charge on provincial revenues.

49. Provincial Governments to have certain powers of taxation and of borrowing.

50. The budget to be laid before the Legislative Council. If the Legislative Council refuses to accept the budget proposals for reserved subjects the Governor in Council to have power to restore the whole, or

any part, of the original allotment on the Governor's certifying that, for reasons to be stated, such restoration is in his opinion essential either to the peace or tranquillity of the province, or any part thereof, or to the discharge of his responsibility for reserved subjects. Except in so far as he exercises this power, the budget to be altered so as to give effect to resolutions of the Legislative Council.

Local self-government.

51. Complete popular control in local bodies to be established as far as possible.

Modification of provincial constitutions.

52. Five years after the first meeting of the new councils the Government of India to consider any applications addressed to it by a provincial Government or a provincial Legislative Council for the modification of the list of reserved and transferred subjects. In such cases the Government of India, with the sanction of the Secretary of State to have power to transfer any reserved object, or in case of serious maladministration to remove to the reserved list any subjects already transferred and to have power also to order that the salary of the ministers shall be specifically voted each year by the Legislative Council. The Legislative Council to have the right of deciding at the same, or any subsequent, time by resolution that such salary be specifically voted yearly.

PRELIMINARY ACTION.

53. A committee to be appointed, consisting of a chairman appointed from England, an official, and an Indian non-official. This committee to advise on the question of the separation of Indian, from provincial, functions, and to recommend which of the functions assigned to the province should be transferred subjects. An official and an Indian non-official in each province which it is at the time examining to be added to the committee.

54. A second committee to be appointed, consisting of a chairman appointed from England, two officials, and two Indian non-officials, to examine constituencies, franchises, and the composition of the Legislative Council in each province, and of the Legislative Assembly. An official and an Indian non-official in each province which it is at the time examining to be added to the committee.

55. The two committees to have power to meet and confer.

Commission of Inquiry.

56. A commission to be appointed ten years after the first meeting of the new legislative bodies to review the constitutional position both as regards the Government of India and the provinces. The names of the commissioners to be submitted for the approval of Parliament. Similar commissions to be appointed at intervals of not more than twelve years.

The Native States.

57. To establish a Council of Princes.

58. The Council of Princes to appoint a standing committee.

59. The Viceroy in his discretion to appoint a commission, composed of a high court judge and one nominee of each of the parties, to advise in case of disputes between States, or between a State and a local Government or the Government of India.

60. Should the necessity arise of considering the question of depriving a Ruler of a State of any of his rights, dignities, or powers, or of debarring from succession any member of his family, the Viceroy to appoint a commission to advise, consisting of a high court judge, two Ruling Princes, and two persons of high standing nominated by him.

61. All States possessing full internal powers to have direct relations with the Government of India.

62. Relations with Native States to be excluded from transfer to the control of provincial Legislative Councils.

63. Arrangements to be made for joint deliberation and discussion between the Council of Princes and the Council of State on matters of common interest.

The Public Services.

64. Any racial bars that still exist in regulations for appointment to the public services to be abolished.

65. In addition to recruitment in England, where such exists, a system of appointment to all the public services to be established in India.

66. Percentages of recruitment in India, with definite rate of increase, to be fixed for all these services.

67. In the Indian Civil Service the percentage to be 33 per cent of the superior posts, increasing annually by 1½ per cent until the position is reviewed by the commission (paragraph 55).

68. Rates of pay to be reconsidered with reference to the rise in the cost of living and the need for maintaining the standard of recruitment. Incremental time-scales to be introduced generally and increments to continue until the superior grade is attained. The maximum of ordinary pension to be raised to ₨6,000, payable at the rate of 1*s.* 9*d.* to the rupee, with special pensions for certain high appointments. Indian Civil Service annuities to be made non-contributory but contributions to continue to be funded. Leave rules to be reconsidered with a view to greater elasticity, reduction of excessive amounts of leave admissible, and concession of reduced leave on full pay. The accumulation of privilege leave up to four months to be considered.

69. A rate of pay based on recruitment in India to be fixed for all public services, but a suitable allowance to be granted to persons recruited in Europe, or on account of qualifications obtained in Europe, and the converse principle to be applied to Indians employed in Europe.

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N.B.—Figures 1, 2 &c. indicate the pages of the body of the book, and figures i, ii &c. indicate those of the Introduction.

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