

INDIAN POLITICAL PRACTICE

C. L. TUPPER

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INDIAN POLITICAL PRACTICE.

A

COLLECTION

OF THE

DECISIONS OF THE GOVERNMENT OF INDIA

IN

POLITICAL CASES.

COMPILED BY

C. L. TUPPER,

INDIAN CIVIL SERVICE,

ON SPECIAL DUTY IN THE FOREIGN DEPARTMENT.

VOLUME II.



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CONTENTS.

CHAPTER VIII.

CESSIONS AND BOUNDARIES.

PAGE

- § 241. Introductory—§ 242. Native States cannot cede territory to each other except through the British Government—No authority below that of the Governor-General in Council is competent to decide questions of sovereignty as between one State and another—§ 243. Powers of the East India Company to cede territory—The Crown is competent to cede British Indian territory without the intervention of Parliament—§ 244. Practice of the Government of India in making cessions of territory in time of peace—§ 245. The Rampur Cession case, 1869—§ 246. The Bhaunagar Cession case, 1876—§ 247. The Rampur Cession case, 1878—§ 248. The French *pettas* case, 1884—§ 249. General orders of 1886 as to the procedure to be followed in making cessions of British Indian territory—§ 250. Circumstances under which legislation may be necessary in consequence of a cession—The Jhansi and Morar case, 1886—§ 251. The Idar Cession case, 1869-82—§ 252. Unimportant transfers of territory in which the sanction of Her Majesty's Government was not requested—§ 253. Objections to the transfer of British territory to Native Rule—Treaty of 1860 with Sindhia—Refusal to cede Kunch—§ 254. Orders of 1862-63 as to securing existing rights in cases of cession—§ 255. Ajmir and Kishangarh case, 1870-74—§ 256. Cession to and negotiations with Keonthal, 1865, 1872 and 1884—§ 257. The Periyar project case—Proposed cession of Tangacheri to Travancore, 1884—§ 258. The Porahât case, 1888—The Rampur case, 1894—§ 259. Summary—§ 260. River boundaries—Application of rules of International Law—Ferozepore and Kapurthala case, 1857—§ 261. The Kachi Kasror case, Sindh and Bahawalpur, 1859—§ 262. The Kachi Chuan case, Dera Ghazi Khan and Bahawalpur, 1860—§ 263. The Nepal and Oudh case, 1860—§ 264. Further orders on the Nepal and Oudh case, 1863 and 1871—§ 265. The island of Kitanur Gadda, Bellary and Hyderabad, 1872—§ 266. The Ellichpur-Hoshangabad case, 1889-90—§ 267. The Jabalpur and Rewa case, 1890—§ 267A. The Godavari Boundary case, Hyderabad, 1890-94—§ 268. Indian and European rules compared—§ 269. Summary—§ 270. Other boundaries—Rules of 1877 for Rajputana, Central India and the Punjab—§ 271. Boundary settlement rules extended to Baroda and adjoining States and districts § 271A. Boundaries of the Orissa Tributary Mahals 1

CHAPTER IX.

THE PRESERVATION OF NATIVE RULE.

- § 272. Introductory—§ 273. The Amnesty Proclamation, 1858—§ 274. The Delhi Assemblage, 1877—§ 275. The distribution of the Adoption *Sanads*, 1862—§ 276. The rendition of Mysore—The despatch of 1867—The despatches of 1879—§ 277. The value of the Mysore case as a precedent—§ 278. Analysis of the Instrument of Transfer—§ 279. Minor stipulations of the Instrument of Transfer considered in connection with established principles of Political Law—§ 280. The Baroda case considered in connection with the preservation of Native Rule—§ 281. Resolve to maintain a Native Administration, whatever charge might be proved against the Gaekwar—§ 282. The Proclamation of April 1875 deposing the Gaekwar—§ 283. Connection of the present chapter with successions, adoptions and the integrity of States—§ 284. Conditions affecting the selection of a successor to the deposed Gaekwar—§ 285. Tranquil acceptance of the choice of the Government of India—§ 286. Reasons given by Lord Lansdowne against the annexation of Manipur—§ 287. Conditions and circumstances of the selection of a Chief for the Manipur State—§ 288. Comparison of the cases of Mysore, Baroda, Manipur and Kalât—§ 289. Summary—§ 290. The integrity of States must be maintained—§ 291. The Kapurthala Will case, 1869—§ 292. The case of Jaswant Singh's Will, Ali Rajpur—§ 293. Supposed Will of the Maharaja of Kashmir, 1883-84—§ 294. The Will of the Nawab of Amb—§ 295. Summary—§ 296. Objections to the partition of States—§ 297. The Maler Kotla succession, 1872—§ 298. The Katosan succession case, 1884—§ 299. Summary—§ 300. Cases of the dismemberment of States—Kota and Jhalawar, 1838—§ 301. Tonk and Lawa, 1867—§ 302. Partitions of the Southern Mahratta *Jagirs*—§ 303. The Jabria Bhil Estate, 1888—§ 304. The support of Chiefs against rebellion or disaffection—§ 305. Reasons for taking precedents from Rajputana—§ 306. Jodhpur, 1868. The rebellion of the Thákurs—§ 307. Jodhpur, 1872. Zorawar Singh's rebellion—§ 308. Alwar affairs, 1870—§ 309. Dispute between Kishangarh and Fatehpur, 1874—§ 310. The Sidhs of Bikanir, 1875—§ 311. The Chamba succession case, 1870—§ 311A. Movement of Troops into Native States in emergencies—§ 312. Recapitulation of various cases affecting the question of supporting Chiefs against their subjects—Keonjhar, 1868 and 1891-05—Hanswara and Kusalgarh, 1869—Bikanir, 1870-72, 1880, 1883—Sanjira, 1870—Cambay, 1890—

Manipur, 1891—§ 313. The British Government will protect feudatories from encroachment on their rights by their Chiefs. The Koti and Keonthal case, 1884—§ 314. Summary—§ 315. The mediatised Chiefs of Central India 34

CHAPTER X.

THE WORKING OF THE POLICY OF THE ADOPTION SANADS.

§ 316. Introductory—§ 317. The Kashmir succession case, 1868—§ 318. The Shahpura succession case, 1870—§ 319. The adoption of an only son—§ 320. The Kolhapur succession, 1871—§ 321. Kalubha's case, Nawanagar, 1872—§ 322. The Nawanagar succession case, 1884—§ 323. The Dhar adoption, 1890—The Jhabua adoption, 1893—§ 324. The Udaipur succession case, 1874—§ 325. The Alwar succession, 1874-75—§ 326. First despatch of the Secretary of State in the Alwar case—§ 327. Reply of the Government of India—§ 328. Final despatch in the Alwar case—§ 329. The Orders of the Viceroy, Lord Northbrook—§ 330. The Pudukota case, 1877—§ 331. Comments on the Pudukota case—§ 332. Provisions on succession in the Mysore Instrument of Transfer, 1881—§ 333. Widow adoption. The Sandur case, 1879 and 1885—§ 334. Cases in which widow adoption has been expressly or tacitly permitted—§ 335. The Sarila case, 1871-73—§ 336. The Sarila case, 1882-83—§ 337. The Chhaliar case, 1888-90—§ 338. The Jath succession, 1892—The Naigawan Ribai adoption, 1893—§ 339. Summary 81

CHAPTER XI.

SUCCESSIONS IN MUHAMMADAN AND OTHER CHIEFSHIPS.

§ 340. Introductory—§ 341. Primogeniture the general rule in all Native States—§ 342. The Hyderabad succession, 1864—§ 343. The Hyderabad succession, 1876-77—§ 344. The Maler Kotla succession, 1872 and 1892—§ 345. The succession of females—The Peint State, 1840—Rampur, 1839—Bhopal—Naigawan Ribai, 1867—§ 346. The Kurwai case, 1874—§ 347. Applications of the rule of primogeniture. The Dugri succession, 1884—§ 348. The Rampur succession, 1887—§ 349. The Las Bela succession, 1888—§ 350. The Janjira succession, 1879—§ 351. The Savanur succession, 1884-85—§ 352. The Khairpur succession, 1893—§ 353. The Junagarh succession, 1892—§ 354. Summary—§ 355. Policy regarding States without Canning *Sanads*—Ruling in the case of the Bombay Chiefs, 1864—§ 356. Grant of additional *sanads* to Bombay Chiefs, 1889—§ 357. The Ali Rajpur succession, 1882—§ 358. The Sitaman adoption case, 1884-85—§ 359. The Sailana adoption, 1884—§ 360. The Ali Rajpur succession, 1890-91—§ 361. Summary—§ 362. Successions to Chiefships are not valid until they are confirmed by the Paramount Power—Shahpura, 1870—The circular of 1873—Janjira, 1879—Las Bela, 1889—Mysore, 1880—§ 363. The Nandgaon case, 1883-84—§ 364. The Kharsawan succession, 1884—§ 365. The Udaipur succession, 1884-85—The Sarangarh succession, 1888—§ 366. Duty of reporting deaths of Chiefs and successions to Chiefships—Travancore, 1885—Cochin, 1888—§ 367. Delegation of authority to the Bombay Government in successions to petty Chiefships—§ 368. The Manipur ruling, 1891—The Virsoda case, 1894—Summary—§ 369. The case of Sardar Lal Singh, Kalianwala, 1888—§ 370. Adoption *Sanads* for selected holders of perpetual *jagirs* in the Punjab 117

CHAPTER XII.

SOME CONSEQUENCES OF SUCCESSIONS.

§ 371. Introductory—§ 372. Duties of the Political Officer on the death of the Chief—The Udaipur case, 1874—The wishes of the Chief regarding his succession may, if possible, be ascertained—*Sati* must be prevented—§ 373. The Patiala case, 1876—Release of persons imprisoned without trial—Precautions for safety of jewels and treasure—§ 374. The Jaipur case, 1880—§ 375. Bikanir, 1887—§ 376. Partabgarh, 1890—§ 377. Jaisalmir, 1891—§ 378. Alwar, 1892—§ 379. Panna, 1893—§ 380. Bhartpur, 1893—§ 381. Khairpur, 1894—§ 382. Summary—§ 383. The *Nazarana* Rules of 1872—§ 384. History of the *Nazarana* Rules—§ 385. Communication of the *Nazarana* Rules to political authorities—§ 386. Provisions in existing engagements affecting the levy of *nazarana*—Sandur and Banganapalle—The Orissa Tributary Mahals—Kurundwar and other Southern Mahratta *Jagirs*—§ 387. Exemption of feudatories of Native States—§ 388. *Nazarana* in the case of mediatised Chiefs—Narwar and Jawasia, 1882 to 1884—Sitaman, 1885—Narsingarh, 1891—§ 389. The Kolhapur *nazarana* case, 1884—§ 390. Liability of the Dewas State, Junior Branch—§ 391. The Nandgaon case, 1884—§ 392. Exemption of Anghad on account of poverty, 1887—§ 393. Provisional exemption of the Dáng Chiefships, 1897—§ 394. Provisional exemption of the Chikhli Estate, 1888—§ 395. Exemption of Petty Estates in Rewa Kantha—§ 396. Orders regarding *nazarana* in Kathiawar—The Jetpur case, 1893—§ 397. Summary—§ 398. *Khilats* and *kharitas*—The Udaipur case, 1885—§ 399. Rules for bestowal of *khilats* proposed and abandoned, 1887 to 1890—§ 400. Installation or investiture *kharitas* from the Viceroy. 150

CHAPTER XIII.

MINORITIES OF RULING CHIEFS.

401. The Hyderabad minority—§ 402. The Resident's report, 1869—§ 403. The orders of the Government of India, March 1869—§ 404. Arrangements for the education of the young Nizam—§ 405. Summary—§ 406. Practice of the Government of India during minorities—§ 407. European

Superintendents during minorities—Maler Kotla, 1875 to 1885—§ 408. Dholpur, 1873-74—§ 409. Chamba, 1873—§ 410. Kapurthala, 1874 and 1877—§ 411. Jhalawar, 1875-76—§ 412. Rewa, 1880-83—§ 413. Summary—§ 414. Native Superintendents during minorities—Administration by real fathers of adopted sons—Charkhari, 1881-86—Kurwai, 1887—Sarila, 1882-83—§ 415. Native Superintendents, Ratlam, 1864 and 1893—§ 416. Jigni, 1870-71—§ 417. Administrative powers entrusted to females—Sarangarh, 1872—Nandgaon, 1883—§ 418. The Pudukota minority, 1886—§ 419. The case of Kalahandi, 1881 to 1887—§ 420. The Bastar minority, 1881—§ 421. The Ali Rajpur minority, 1891—§ 422. Councils of Regency—The Gwalior minority, 1886—§ 423. Councils of Regency in the Phulkian States—Patiala, 1862 and 1876—Jind, 1887—§ 424. The Kalsia Council, 1833—§ 425. Various Councils of Regency—Bhartpur, 1853—Tonk, 1868—Udaipur, 1875—Kutch, 1819, 1859 and 1876—Rampur, 1879—Jaisalmir, 1891—§ 426. The termination of minorities—Patiala, 1870 and 1889—Nandgaon, 1883-84—§ 427. Baroda, 1881—§ 428. Special control of Chiefs between the ages of eighteen and twenty-one—Maihar, 1863 to 1865—Bhartpur 1869 to 1871—Maler Kotla, 1875—§ 429. Udaipur restrictions, 1876—Alwar, 1877—Jaipur, 1882—Dholpur, 1883—Chhatarpur, 1887—Tehri, 1891—Charkhari, 1892—§ 430. Pudukota, 1892-93—§ 431. Restrictions of various types—Nandgaon, 1883—Chamba, 1884—Kota, 1892—Rampur, 1894—§ 432. Bahawalpur, 1879—§ 433. The prolongation of minorities—Dhar, 1864—§ 434. Tonk, 1869—Orchha, 1874—Nagod, 1874 and 1882—§ 435. Barwani, 1880 and 1884—Udaipur, 1885—Karauli, 1886—§ 436. Kurwai, 1892—Raigarh, 1893—Kalahandi, 1894—Bhartpur, 1893-94—§ 437. Sawantwari 1883 to 1885—§ 438. Summary 170
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CHAPTER VIII.

CESSIONS AND BOUNDARIES.

§ 241. Just as the Paramount Power is the authority which can determine what is State territory and what is part of British India, so the same Power is likewise the only authority by which cessions of British Indian territory can be made to Native States, by which questions of sovereignty can be decided as between one State and another, and by which boundaries can be fixed between two or more States or between a Native State and British territory. It is true that there is no statutory provision contained in any Act of Parliament expressly conferring upon the Executive Government of India power to declare whenever necessary whether any particular territory is or is not part of British India, and to make the declaration absolutely conclusive of the fact in all courts of justice. The Government of India has more than once asked for this power, in 1873 and again in 1876, in connection with a project for consolidating the Indian Constitutional Statutes; but, as will be seen when we come to the facts of the celebrated Rampur case, legislation on this point has not been undertaken by Parliament.¹ Hence on several occasions the power of the Government of India to make certain cessions of territory has been called in question; while on the other hand there is a long course of practice, partially described in the last chapter, and to be further exemplified now, which amply proves that, as a matter of fact, the Paramount Power does exercise those functions of suzerainty which we have just attributed to it. It is, of course, a separate question by what particular British authority, whether by the Crown, with or without the authority of Parliament, or by the Secretary of State or the Government of India, or any officer subordinate to the Government of India, cessions may be made or boundaries regulated. These questions also are amongst those which will be duly dealt with below.

§ 242. It is not necessary to add anything here in support of the proposition stated in paragraph § 19 above that Native States cannot cede territory to each other except through the British Government. That proposition is implied in the principles already fully discussed in Chapter II, that the British Government is the arbiter of interstate disputes and that exchanges of territory between Native States may be effected only through the British Government. The principle that no authority below that of the Governor-General in Council is competent to decide questions of sovereignty as between one State and another has been laid down quite recently.

No authority below that of the Governor-General in Council is competent to decide questions of sovereignty as between one State and another. The point arose in a dispute between the States of Hyderabad and Bikanir, regarding three villages surrounded by or situated in Hyderabad territory. These villages were granted in 1665 A.D. to Rao Karan Singh, Chief of Bikanir, by the Emperor Aurangzib, and the *sanad*, which is extant, confers a revenue-free tenure and makes no cession of sovereignty. In the course of an investigation of revenue-free grants the Hyderabad officials found that the Bikanir State had a right to possess these three villages in accordance with the terms of the *sanad* by which they were granted to Rao Karan. But the Bikanir Darbar claimed sovereignty over them and refused to accept the decision of the Nizam's Government upon its title. It was suggested to the two States concerned that the Bikanir rights might be bought out by the Nizam without any decision

¹ India Legislative despatches No. 9, dated October 9, 1873, paragraphs 17-21, and No. 1, dated February 4, 1876, paragraph 16.

being pronounced on the question of sovereignty; and the result of this suggestion is still (December 1894) awaited. When the case was before the Government of India it was argued that a subordinate State should not be a judge in its own cause in a matter of State right, such as sovereignty, and that as the Paramount Power may cede British Indian territory, so, *à fortiori*, that Power should determine claims to sovereignty between one State and another. It was further pointed out that one great object of the whole political system in India is the continuous pacification of the country, the maintenance of the general peace; but territorial claims, claims to sovereignty, are a prime source of war, and should be dealt with by that Power with which rests the right and the duty of maintaining the pacification. The Government of India did not commit themselves to these arguments, but merely gave the ruling mentioned above.² As a rider to what has here been said it is to be noted that in a boundary dispute between two States a question of sovereignty might be decided by a Boundary Officer appointed by the British authorities and acting under the rules which are fully explained in paragraph §270 below.

§ 243. Coming now to the power of the Government of India to cede Powers of the East India Company territory, we may refer to the Charter, to cede territory. dated January 14, 1758, granted by George II. in the 31st year of his reign to the East India Company. "The Letters Patent,"—we quote the decision of the Allahabad High Court in the Rampur Cession³ case,—“after reciting that the Company had been compelled to carry on war against the French and likewise against the Nawab of Bengal and other Princes and Governments in India, and that some of their territories and possessions had been taken by the Nawab and afterwards re-taken, empower the Company by *any treaty or treaties of peace* made or to be made between them and any of the Indian Princes or Governments to ‘cede, restore or dispose of any fortresses; districts or territories *acquired by conquest* from any of the said Indian Princes or Governments,’ or which should be acquired by conquest in time to come.” In the case of cessions of territory conquered from the subjects of any foreign European power it was provided that the special license of the Crown should be necessary. Up to 1858 the power of cession thus granted was exercised by the Company, subject to the control of the Board of Commissioners after that Board was established. But, says the Allahabad High Court, the power of cession granted by the Charter of George II. “was construed as extending not only to territories acquired directly by conquest, but also to territories ceded doubtless in many cases as a consequence of conquest: nor were these cessions made only for the purpose of concluding war or rectifying frontiers, but for the promotion of the policy⁴ of Government.” By the Act for the better Government of India, which was passed on August 2, 1858 (21 & 22 Vict., chap. 106), the government of India was transferred to Her Majesty, in whom became vested all territories in the possession or under the Government of the East India Company, and all rights vested in, or which, if the Act had not been passed, might have been exercised by, the Company “*in relation to any territories.*” “The rule of the Company,” so the judgment of the Allahabad High Court proceeds,⁵ “thus came to an end; and the privilege to exercise the prerogative of cession, which the Crown had conceded for the government and protection of the territories administered by the Company, expired when the occasion for it could no more arise. We find, then, that the Crown is competent to cede territory in its Indian dominions without the intervention of Parliament. The prerogative of the Crown is exercised with the advice and through the agency of the responsible ministers of the Crown.”

§ 244. In the Rampur and Bhaunagar cessions cases not less than 49 cases Practice of the Government of India in making cessions of territory in time of peace. were examined in which the Government of India, between the years 1782 and 1873, inclusive, had ceded territory to Native States. When the Bhaunagar cession case was before the Judicial Committee

² To Resident, Hyderabad, No. 159, dated January 17, 1894.

³ Luchmi Narayan *versus* Raja Partab Singh, Indian Law Reports, 2 Allahabad, p. 1.

⁴ Indian Law Reports, 2 Allahabad, p. 29.

⁵ Rampur cession case, I. L. R., 2 All., 32.

of the Privy Council it was argued that the early treaties making cessions had no weight as precedents touching the powers of the Indian Government, because the Act which transferred the government of India to the Crown (21 & 22 Vict., chap. 106) provides in section 67 that "all treaties made by the said (*i.e.*, the East India) Company, shall be binding on Her Majesty," and this provision, it was urged, showed that the treaties stood in need of confirmation by and derive their validity from Parliament. It was replied⁶ that this is "a very forced construction of the Act, in which no reference is made to the cession of territory, and the object of which is simply, so far as possible, to place the Government of India as administered by the Crown on the same footing as when administered by the Company." However this may be, of the 49 cases examined, 18 were of a date later than that of the passing of the Transfer Act, and in four of these 18 cases the cessions were made by treaty, those, namely, to the Nizam in 1861 of assigned territory which had not come under British legislation and of the recently confiscated territory of Shorapur; to Sindhia in 1860, likewise of assigned territory and of the recently confiscated territory of Amjhera, which had been feudatory to Sindhia; to Nepal in 1860, of all the lands which that State had lost in 1815 and we had ceded to Oudh, and which again became ours on the annexation of Oudh in 1856; and to Sindhia again in 1871, of certain villages in exchange for Morar and eleven villages in the Deccan. In the Bhaunagar case many instances were excluded from consideration "because, although the cessions were not made in the adjustment of a quarrel, but were grants to friendly powers in recognition of service, or the restoration of territories to old families," objection might be taken to them as precedents on the ground that the territories ceded were very recent conquests in which the authority of the British Government was never practically established. The thirty-six cases collected in the Bhaunagar case clearly established during the ninety years, 1782 to 1873, a continuous practice of ceding British territories in times of peace by the Executive Government without the intervention of Parliament, for reasons of convenience by way of exchange or in recognition of services.⁷ Of the thirteen cessions examined in the Rampur case, five, those to Rewa, Panna, Charkhari, Bikanir, and Rampur, were cessions of territory which had been under British legislation; six, those to Bhopal, Nagod, Jaipur, Patiala, Jind, and Nabha, were cessions of confiscated territory or, in the case of Jaipur only, of territory belonging to the ex-King of Delhi which had been under British management. The cessions to the Nizam and Sindhia included, as already mentioned, both previously assigned and confiscated territory, and were made under treaty. Of the 49 cases included in the two lists, in 20 cases the cessions were made by treaty; and in the residue, most frequently by *sanad*, as also by documents of various descriptions, by mere letter, by *kharita*, by "engagement" or "agreement" or "settlement" or "memorandum of agreement." Generally it may be said from an examination of these lists that the Government of India has habitually made cessions of territory by a variety of instruments to Native States; that the cessions have included both territory subject to British laws, and assigned or confiscated or recently acquired territory which has never been under British legislation; and that the cessions have been arranged in time of peace from motives of convenience or policy, and especially in reward for services, as in the distribution of confiscated lands which took place after the Mutiny.

§ 245. The Rampur cession case has two phases. The first ends with the orders of the Duke of Argyll passed in March 1869, and the second with the judgment of the Allahabad High Court in the case of Lachhmi Narayan *versus* Raja Partab Singh, passed on July 17, 1878. In point of time the Bhaunagar case is interposed between the two phases of the Rampur case. The judgment of the Judicial Committee of the Privy Council was delivered in the Bhaunagar case (Damodar Gordhan *versus* Deoram Kánji) on March 28, 1876.

The Nawab of Rampur was one of the Chiefs to whom grants of territory were made in recognition of their services during the Mutiny. In circumstances of peculiar difficulty he had proved himself conspicuously loyal. The warlike and turbulent Pathans of Rohilkhand, known to history as the Rohilla Afghans, were very ready to strike a blow for their lost power when in the Upper Provinces a

⁶ L. L. B., 1 Bom., 895.

⁷ See Mr. Aitchison's note of July 13, 1873, in the Bhaunagar case, *Proc., Political* 2, September 1873, No. 210.

rebellion of a distinctively Musalman character followed promptly on the mutiny of the sepoy. The Pathans looked to the Nawab as their natural leader in such a revolt, but he stood alone opposed to them, skilfully managed his own disaffected troops, assumed charge of the Moradabad District on behalf of the British authorities, diplomatically trimmed with the mutineers as they entered his part of the country and passed them on without conflict to Delhi, arranged for the provision of supplies from Naini Tal, and for the transit of our mails, protected Christian women and children, and rendered other important services; of which it may be said that had it not been for his loyalty, some united effort might have been made from Rohilkhand against the British forces, either in Oudh or before Delhi. For these services he was thanked in Darbar, and was awarded a *khilat* and an increase to his salute. On June 23, 1860, he received a *sanad* which said—"In further recognition of his services, the Government hereby bestows on him the villages in Bareilly and Moradabad as per separate schedules, assessed at Rs. 1,28,527-4-0, in perpetuity, from generation to generation. The above villages are now annexed to the old territory of the Nawab on the same conditions on which he holds that territory."

In paragraph § 213 we mentioned, in connection with the despatch proposing the repeal of Regulation XI of 1816, the opinion given by Mr. Cowie as to the power of the Crown to cede territory. This opinion was given to a private client in respect of the territory ceded by the Rampur *sanad*, and it was to the effect that the Government was not competent to do more than confer "a grant of the Government jama;" that, in point of fact, nothing more had been conferred upon the Nawab of Rampur; and that consequently suits in respect of property situated in the Bareilly and Moradabad villages which had been granted to the Nawab would still lie in the Courts of the Bareilly and Moradabad Districts. The Government of India explained to Mr. Cowie that the grant and cession to the Nawab of Rampur had been confirmed by Her Majesty's Government with the full knowledge that it involved a transfer of the sovereignty, though under certain stipulations, to the Nawab, and invited Mr. Cowie to reconsider his opinion. This he found himself unable to do; but he gave to the Government of India a statement of his views which, though by no means clear, probably amounted in substance to this,—that when once British territory has become the subject of legislation by Parliament, the power of the Crown, except as sanctioned by Parliamentary legislation, "can no longer extend to the creation of new tribunals, the introduction of new laws, or the transfer of any portion of such territory to a foreign State otherwise than as the result of public stipulation and treaty with such State." The officers of the Foreign Department pointed out the extremely serious consequences of this doctrine in connection with the numerous grants by *sanad* to Ruling Chiefs. Sir Henry Maine noted:—"I confess I do not gather clearly from the Advocate General's opinion whether he questions the right of Her Majesty to alienate portions of Her Majesty's Indian dominions in favour of Native Chiefs, or whether he simply denies that such alienations can be effectually made by means of a *sanad*. While I lean to the belief that Mr. Cowie means merely to deny the latter proposition, I think it right to say that, in my humble judgment, the power of the Crown to alienate portions of Indian territory cannot be questioned. Even as regards dominions of Her Majesty which are not in the peculiar position of British India, it is now too late to deny that the Crown may cede parts of them, subject to the risk of Parliamentary impeachment incurred by those who have advised an improper cession. But, in respect of Her Indian dominions, I venture to think the Queen has Parliamentary sanction for any alienation of territory she may think proper to make. In laying this down, I follow out the line of argument pursued in a famous Minute of the present Chief Justice of Bengal, which has had great influence on the public law of India. Sir Barnes Peacock, in contending that the Indian Government did not possess any inherent sovereign rights which entitled it to legislate for newly acquired territory otherwise than through the legislative machinery provided by Parliament, was pressed with the question how the Indian Government came on this principle to have power to acquire territory. His answer was that Parliament, in permitting the East India Company, through the Indian Government, to keep up an army and (at that time) a navy, independently of the Annual Mutiny Acts, must be taken to have contemplated war in India,

and the consequences of war, among which was acquisition of territory. If, however, this reasoning be sound, the consequences of unsuccessful war, or of wars of doubtful or balanced success, must be deemed to have been contemplated by Parliament also, and hence the Indian Government must be taken to have the power of ceding and exchanging territory, as well as of acquiring it. So also, as it appears to me, this Government must be regarded as having the right of strengthening the general political system of India by cessions, transfers and exchanges of territory in time of peace. It does not appear to me reasonable to limit their right, as, in one sentence, Mr. Cowie would seem to limit it, to arrangements which are the immediate sequel of a state of war. We assuredly do not transfer territory to Native Chiefs under any impression that we secure better government for the people inhabiting it. All such transfers may be said to have more or less relation to wars, past or future. They are either intended to reward proved loyalty, or to render the empire more compact and stronger for resistance, if not for aggression.

“The argument of Sir Barnes Peacock which I have cited appears to meet Mr. Cowie’s objection to the creation of new tribunals and the introduction of new laws in the ceded territory. If we have the implied sanction of Parliament to the acquisition of territory, whereby the sphere of Indian legislation is enlarged, and the power obtained of establishing new tribunals and introducing new laws, it seems to follow that we can go through the converse operation, and by cession of territory obliterate the courts and laws which are the creation of Indian legislative authority.”

Sir Henry Maine then proceeded to show by arguments to which we shall return when we come to speak of treaties and *sanads* and their interpretation, that such *sanads* as that given to the Nawab of Rampur are instruments which may be appropriately used in connection with the grant of territory to Ruling Chiefs. The case was reported to the Secretary of State, who obtained the opinion of the Law Officers. As to the form of the document of grant, the Attorney and Solicitor General, the Queen’s Advocate and Mr. Forsyth, the Standing Counsel of the Secretary of State in Council, were unanimous. They held that the form of document or *sanad* by which territory had been ceded to the Nawab of Rampur was immaterial; and that the document, whatever its form, had no efficacy except as evidence of cession. The three officers first named were also agreed that statutory power having been given to the Queen to govern India, she may alienate Indian territory whenever the public safety of her Indian dominions requires it, but not otherwise. Mr. Forsyth dissented, but as he had no adequate information regarding the numerous cessions which had been made by the Government of India in the time of peace, it is unnecessary to analyse his dissent. The Duke of Argyll transmitted these opinions to the Government of India with a despatch, No. 10, dated March 11, 1869, in which he made these remarks :—

“I look upon this question as one of constitutional principle. The Government of India has uniformly exercised the power referred to from the beginning of its history. That Government is the sole judge of the considerations of State policy by which grants of territory must be determined. Those considerations may be more or less pressing in an infinite variety of degrees. But every consideration of policy affecting our relation with Native States must, directly or indirectly, affect also the welfare of the Empire. It is indispensable for the good government of that Empire, and for its safety, that the Government should be free in this matter, and should allow no doubt to be thrown upon a power which it has always had, and which from time to time it has been in the continuous habit of exerting.

“On the considerations by which the Government of India ought to be determined in the exercise of this power, which is quite a distinct question, I propose to address you in a separate despatch.”

No separate despatch on the considerations by which the Government of India ought to be determined in making cessions of territory has ever been received. But, as we shall show presently, there are remarks in some scattered despatches on the policy or impolicy of ceding territory where British laws have been enforced. Practically the main point decided in the first phase of the Rampur cession case was that *when a cession of territory is made by the*

British Government to a Feudatory State, the form of the instrument which records the cession is immaterial.

§ 246. We have explained in paragraph § 196 how it came to be proposed in 1860 to restore to the Thákur of Bhaunagar certain territory of which he had been deprived for misconduct in 1815. For some years the restoration of territory could not be carried out because the status of Kathiawar was under consideration. As we have seen, it was decided in 1864 that Kathiawar is not British territory; and on May 31, 1865, the Government of India authorised the Government of Bombay to carry out the contemplated arrangement with the Thákur of Bhaunagar. Accordingly the following notification, dated January 29, 1866, signed by the Chief Secretary to the Government of Bombay, was published in the *Bombay Government Gazette* :—

“It is hereby notified that, in accordance with a convention made between His Excellency the Governor of Bombay and His Highness the Thákur of Bhaunagar, the under-mentioned villages belonging to the Thákur of Bhaunagar and situated in the *parganas* of Dhandhuka, Ranpur and Gogha, Zila Ahmadabad, are from and after the 1st February 1866, *Sambat* 1922, Mahavat 2nd, removed from the jurisdiction of the Revenue, Civil and Criminal Courts of the Bombay Presidency and transferred to the supervision of the Political Agency in Kathiawar on the same conditions as to jurisdiction as the villages of the Thákur of Bhaunagar heretofore in that Province.”

The original proposal to transfer ten villages having been modified, the list annexed to this notification included some 114 villages, and amongst them the village of Ghangli in the *pargana* of Gogha, part of the British District of Ahmadabad. The Bhaunagar cession case, Damodar Gordhan *versus* Deoram Kánji, was a suit to recover possession of land said to be mortgaged and situated in this village of Ghangli. On August 11, 1869, the Acting Judge of Ahmadabad gave a decree for the plaintiff. A special appeal was then filed in the Bombay High Court on the ground that in consequence of the above notification the Judge of Ahmadabad had no power to try the case. The High Court held that an enactment of some kind was necessary to enable the Government to cancel the jurisdiction of the Bombay Courts, that the notification of January 29, 1866, had no effect, and that the village of Ghangli had not been legally removed from the jurisdiction of the District Judge of Ahmadabad. They therefore upheld his decree.

This order was passed on December 2, 1870. In 1872 the Indian Evidence Act was enacted which provides in section 113 that “notification in the *Gazette of India* that any portion of British territory has been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.” The Government of India had become acquainted with the facts of the Bhaunagar case, and on January 4, 1873, issued a notification in these terms :—“The Governor-General of India in Council hereby notifies the fact that the villages mentioned in the schedule here below appended, were, on the 1st February 1866, ceded to the State of Bhaunagar.” The list attached to the Bombay notification of January 1866 was then repeated, including Ghangli as before. It was no doubt hoped and intended that this notification would cure any defect in the cession of the villages to Bhaunagar.

The notification, however, of January 4, 1873, entirely failed of its purpose. After its issue the Bombay High Court was asked to review its former decision and gave on March 24, 1873, a much more elaborate judgment. The Judges held that it is beyond the power of the British Crown, without the concurrence of the Imperial Parliament, to make any cession of territory within the jurisdiction of any of the British Courts in India, in time of peace, to a foreign power; and on this ground they confirmed their order of December 2, 1870. As to section 113 of the Evidence Act, they quoted section 22 of the Indian Councils Act, 1861 (24 & 25 Vict., chap. 67), which provides that the Governor-General in Council shall not have power to make any laws or regulations which may affect the authority of Parliament or any part of the unwritten laws or constitution of the United Kingdom whereon may depend in any decree the allegiance of any person to the Crown. If, as they held, the power

of cession could only be exercised by the Indian Government in time of peace with the authority of Parliament, the Legislative Council exceeded its power in passing section 113 of the Evidence Act, which, accordingly, the High Court declined to obey.

The Bombay Government then took steps to bring the case before the Privy Council and this was approved by the Government of India. The arguments before the Privy Council have been reported in great detail and well deserve the perusal of any who are interested in the constitutional question of the power of the British Crown to cede territory.⁸ After the arguments had been heard, the Clerk of the Council in a letter,⁹ dated December 3, 1875, intimated that, in the opinion of their Lordships of the Judicial Committee, the Bombay High Court was mistaken in holding that there was a want of power in the Crown to cede territory in full sovereignty to Native States and Rulers; but that as doubts had suggested themselves to the minds of their Lordships as to the nature of the particular transfer to which the appeal related, they were willing to hear further argument as to whether the cession to the Thákur of Bhaunagar was in fact a cession in full sovereignty by the Government of India. The case was further argued on this issue on February 16, 1866, Sir W. Harcourt, Q.C., and Mr. FitzJames Stephen, Q.C., appearing for the appellant, and Mr. Forsyth, Q.C., and Mr. J. D. Bell for the respondent. On the general question of the power of the Crown to cede British Indian territory the Judicial Committee thought it sufficient to state that they entertained "such grave doubts (to say no more) of the soundness of the general and abstract doctrine laid down by the High Court of Bombay as to be unable to advise Her Majesty to rest her decision on that ground." They found that in the particular case there was, as a matter of fact, no cession; and that the notification of January 1866 merely attempted a re-arrangement of jurisdiction within British territory which could not be carried out except by legislation. As to the Evidence Act and the effect of a valid cession, if made, they held that nothing turned upon section 113 of that enactment. "The Governor-General in Council," they said, "being precluded by the Act 24 & 25 Vict., chap. 67, section 22, from legislating directly as to the sovereignty or dominion of the Crown over any part of its territories in India, or as to the allegiance of British subjects, could not, by any legislative Act, purporting to make a notification in a Government Gazette conclusive evidence of a cession of territory, exclude inquiry as to the nature and lawfulness of that cession. And with respect to the competency of the Courts of the Bombay Presidency to proceed with the suits between these parties, if Ghangli had, by any valid cession, ceased to be British territory, their Lordships agree with the High Court, that the foundation of the jurisdiction of these Courts over the subject-matter of this suit, and the parties thereto, was territorial, and that it could no longer be exercised (whatever might be the stage or condition of the litigation at the time) after such a valid cession had been made."

The Government of India with the approval of the Secretary of State then did what it was bound to do in consequence of this decision. By a new notification, No. 156-I., dated December 5, 1876, it recited that the villages in the Bhaunagar list had not legally ceased to be British territory, and, with the sanction of the Secretary of State on behalf of Her Majesty, proceeded to "cede and grant to the said Thákur of Bhaunagar, his heirs and successors, the said scheduled villages, to hold the same unto the said Thákur, his heirs and successors, on the terms and subject to the rules on and subject to which he holds" his other Kathiawar villages. The ceded villages had been managed as Bhaunagar territory for upwards of ten years, so an Act was passed, No. XX of 1876, to validate what had been done during this period.¹⁰

§ 247. We can now take up again the thread of the Rampur cession case.

The Rampur Cession Case, 1878.

The shape in which that case reappeared in 1876 was due to a suit brought by a banker named Lachmi Narayan against one Raja Partab Singh, to whom he had

⁸ Indian Law Reports, 1 Bombay, 367.

⁹ *Ibid.*, page 450.

¹⁰ The following is a list of the principal papers in the Bhaunagar cession case: Pro, Political A, September

1877, Nos. 216-237; Pro., Political A, July 1874, Nos. 91-92; Pro., Political A, April 1874, No. 70; Pro., Political A, September 1873, Nos. 230-247; Pro., Political A, January 1873, Nos. 77-83.

lent Rs. 1,20,000 on a mortgage of certain villages. Of these villages nineteen were included in the schedules annexed to the *sanad* granted to the Nawab of Rampur in reward for his services in the Mutiny. The plaintiff sought to bring these villages to sale, and the defendant pleaded that they were not within British India but within the territory of a foreign prince, having been ceded to the Nawab of Rampur, and that the Court had no jurisdiction to order their sale. The Government of India in the despatches of 1873 and 1876 referred to in paragraph § 241 above, had cited the cases (fully detailed in the last chapter) of Kuch Behar and the Tributary Mahals of Orissa. They also quoted the case of the family domains of the Maharaja of Benares. If a case turned, like the Bhaunagar case, solely upon the power of the Crown to cede British Indian territory, it might be well enough decided by competent constitutional lawyers. But if it turned, like the other cases named, on the whole history of the territory, and on the political significance of a number of political transactions, it was eminently a matter for political and executive handling, not fitted for courts of law. The territorial question might arise in a petty private suit to which the Government was not a party and in which it could intervene only by convention with one of the parties and leave of the Court. If the Secretary of State were to decide one way and the law courts the other way, there would be grave political difficulty and the confidence of Ruling Chiefs would be shaken. For these reasons it was urged that the Executive should be empowered to make its decisions as to the status of territory binding on the Courts. On hearing of the suit brought by Lachhmi Narayan the Government of India addressed the Secretary of State,¹¹ pointing out that it illustrated the apprehensions and representations which were laid before Her Majesty's Government in the despatches of 1873 and 1876 and pressing for the adoption of their proposal. The Secretary of State in reply (No. 24, dated March 29, 1877) trusted that a compromise on the merits of the dispute might be effected "without raising the question of the right of the Government of India to cede territory:" but added—"I cannot hold out any hope, at least for the present, of being able to introduce a measure into Parliament to secure the object indicated by Your Excellency in Council. And as it may be collected from the discussions in the Privy Council that the Judicial Committee would have found no difficulty in deciding that the Government of India possessed the power of ceding territory, had such been the simple issue before it, I trust that there will eventually be no necessity for such an Act."

As we have already mentioned, the case ultimately came before the Allahabad High Court and was decided on July 19, 1878. After ruling (see paragraph § 243 above) that the Crown is competent to cede territory in its Indian dominions, the Judges went on to say—"In the case before us it is shown that the cession of territory to His Highness the Nawab of Rampur was effected by the Government of India; that it was accepted by the Secretary of State as fulfilling instructions conveyed to the Government of India; and that it was approved by Her Majesty's Government. We have then a sufficient evidence of a cession by the Crown: and when it is proved that a cession has been so made, it is not for this Court to inquire whether in the particular instance the exercise of the prerogative was called for."

No appeal was ever made from this decision.

§ 248. In 1884, it was proposed to negotiate with France for the exchange of two villages near Pondicherry for certain rights and privileges possessed and exercised by France in some parcels of land, "designated factories or loges" and known as *peltas*, at Masulipatam and Calicut in the Madras Presidency, at Surat in the Bombay Presidency, and at *mauzas* Balasor and Garpada in Bengal. The Law Officers were consulted as to the right of the Crown in time of peace to cede British territory to a foreign power without the consent of Parliament. Messrs. Henry James and Farrer Herschell advised that the cession, in time of peace, of territory subject to Parliamentary government, whether of a part of the United Kingdom or of a part of the sovereign's colonial possessions having a representative legislature, would be an unconstitutional act. But they were

¹¹ India despatch No. 199, dated October 12, 1876.

not prepared to say that the sovereign could not exercise such a power as regards her Indian possessions. There were precedents in support of such a course, and one in particular which was recognised by, and had received the implied sanction of, the Imperial Parliament.¹⁹ Dr. J. Parker Deane, however, took a different view. Referring to the opinion given by the Judicial Committee of the Privy Council in the Bhaunagar case (paragraph § 246 above), he pointed out that it was given in a case where the cession was made to a Native power and might not be extended to a cession to an absolutely foreign power like France. He conceived that it was not within the power of the Crown to take a part of the British territory in India, and cede such part to France, without the assent of Parliament. Relying on the opinion of the majority of the Law Officers, the Secretary of State for India informed the Secretary of State for Foreign Affairs that the negotiations with France might be proceeded with.

Sir Dennis Fitzpatrick in a memorandum on the Bhaunagar case, dated August 26, 1873, which was forwarded to the Secretary of State, remarked that there are not the same objections to a cession by the British Government in India as there are to a cession elsewhere,¹⁹ "for, in parting with territory, the British Government could and would always provide the most ample security for the inhabitants being well treated by the State to which the cession is made." We have shown that sovereignty is divided between the Ruling Chiefs and the Paramount Power, that allegiance is divided as sovereignty is, that the subjects of Native States are, therefore, to a certain extent and for certain purposes, subjects also of Her Majesty, and that the Paramount Power will not suffer the existence of gross misrule. In these circumstances there is, no doubt, a very great difference between a cession to a Native State and a cession to a foreign power. It is not necessary for us to express any opinion on the question of the power of the Crown to cede, without the assent of Parliament, British Indian territory to a foreign country like France. But even if it be supposed that the Crown has not that power, it cannot be doubted that the Crown can exclude territory from British India without excluding it from the British Empire; and to more than this a cession to a Native State does not amount.

§ 249. These remarks, however, go somewhat beyond the views which the Government of India have placed on record and which alone are authoritative. In a despatch, No. 178, dated October 4, 1886, the Government of India addressed the Secretary of State on the subject of the procedure which should be followed in making cessions of British Indian territory. An abstract was given of all the cessions cases so far discussed in this chapter,—that is, of the Rampur case in both phases, the Bhaunagar case, and the case of the French pettas. The despatch, after referring to the receipt of the opinions of Messrs. James and Herschell and Dr. Parker Deane, went on to say:—"No later correspondence between Her Majesty's Government and the Government of India appears to have taken place regarding either the prerogative of the Crown to cede territory in British India, or the mode in which such cessions should be carried out. After the decisions in the Bhaunagar and Rampur cases, we think that the power of the Government of India to cede territory is not likely to be again called in question in a court of law. It would perhaps be more satisfactory if, as recommended in 1873 and 1876, the existence of this power were authoritatively declared by Statute. At the same time we recognise the disadvantages that may arise from bringing the subject into open discussion; and, unless Your Lordship see cause to the contrary, we consider that the point may now be taken to be finally set at rest, and that no further action is at present required in the matter. With regard, however, to the mode in which such cessions should be effected, no definite ruling has yet been laid down. It is on this subject that we have now the honour more particularly to seek Your Lordship's instructions.

¹⁹ The reference here apparently is to the cession in 1824 of Bencoolen and the other English possessions in Sumatra to the Dutch in exchange for establishments on the continent of India and the town and fort of Malacca and its dependencies. The cession was made without Parliamentary authority, and shortly afterwards, on June 24,

1824, was passed 5 Geo. IV., Chapter 108, transferring to the East India Company Singapore and all the possessions ceded to us by the treaty with the Dutch.

²⁰ Despatch No. 167, dated September 22, 1873; Pro., Political A, September 1873, Nos. 245-247.

“On principle and in view of the judgment delivered in the Rampur case we consider that, generally speaking, no cession of the territory of our Indian possessions should be effected without the previous approval and sanction of the Secretary of State for India acting on behalf of Her Majesty’s Government. This course has during recent years been followed in all important cases, and we think that, for the future, it should be invariably pursued. But there are cases, of not infrequent occurrence, in which it seems to us doubtful whether a reference to the Secretary of State is essential. These cases arise mainly in connection with a revision of boundaries between British India and Native States, and either relate to the delimitation of a previously doubtful or disputed border, or carry out some comparatively trifling re-adjustment of frontier for purposes of administrative convenience. In the class of cases to which we refer the transfers of territory on either side are unimportant, and have hitherto been usually effected without obtaining the orders of Her Majesty’s Government. We think that, in similar circumstances, this practice may still be safely followed, the matter being treated as a modification or revision of boundaries, and not, which it strictly is, as a formal grant of British territory.”

The Secretary of State replied in a despatch,¹⁴ No. 58 of December 2, 1886, which we may quote in full :—

“Having considered in Council the letter of Your Excellency in Council, dated the 4th October last, regarding the procedure to be followed by the Government of India in making cessions of British Indian territory, I concur generally in the conclusions at which you have arrived, and I approve of the course which it is proposed to adopt in future, as indicated in the third and fourth paragraphs of your letter.

“With reference, however, to what fell from the Privy Council in dealing with the Bhaunagar cession case to which you refer, I think that, when legislation is necessary in consequence of the cession of territory, it is matter for very careful consideration whether it is not desirable to insert in the Bill a declaration expressly excluding the ceded territory from the jurisdiction of the British Courts, similar to that which is to be found in section 2 of Act XX of 1876, ‘The Bhaunagar Act.’

“I observe that no such declaration appears in the ‘Jhansi and Morar Act, 1886,’ recently passed; and I request that the attention of your Government may be directed to the question, although I have informed Your Lordship, by my despatch No. 44 ‘Legislative, of this day’s date, that that Act will be left to its operation.”

§ 250. The second section of the Bhaunagar Act of 1876 provided that the villages ceded to Bhaunagar should be deemed to have been, on and after February 1, 1866, excluded from the jurisdiction of the Revenue, Civil and Criminal Courts of the Bombay Presidency. February 1, 1866, was the date from which the notification of the Bombay Government purported to transfer the villages in question from the jurisdiction of the Bombay Courts to the supervision of the Political Agency in Kathiawar. As it had been held by the Privy Council that this notification did not effect a valid cession of territory, retrospective legislation was necessary to validate what had been done in the villages between the dates upon which a cession had been ineffectually attempted and upon which a valid cession had been actually arranged. During this period the villages, contrary to the intention of Government, had remained British territory. Hence legislation was needed to rectify the anomalous position in which they had come to be placed.

The Jhansi and Morar Case, 1886. But the circumstances of the Jhansi and Morar case were wholly different. The lands included within the limits of the British Cantonment at Morar were ceded to the British Government by treaty¹⁵ in December 1871. Years before that, in 1858, Sindhia’s army had revolted¹⁶ and the Maharaja had been compelled to seek

¹⁴ The whole correspondence is contained in Pro. Internal A, October 1886, No. 51, and January 1887, No. 184.

¹⁵ Aitchison, IV, page 88.

¹⁶ The account in the text is taken almost *verbatim* from India despatch No. 216 C. T., dated December 8, 1855.

British protection, leaving the fortress of Gwalior in the hands of the mutineers. It was soon afterwards recaptured by Sir Hugh Rose, and the Maharaja was reinstated in his capital; but a British force remained in occupation of the fortress and cantonment. In 1860 Lord Canning gave the Maharaja a conditional promise that the fortress should be restored to him, when this could be done with safety. Lord Elgin appears to have repeated this assurance three years later; but in 1864 Sindhia gave his assent by formal *kharita* to our retention of the fortress "so long as the Government of India may deem such to be advisable," on condition that his flag should continue to fly from the ramparts, that he should be saluted from our guns, and that if, at any future time, the fortress were evacuated by our troops, it should be restored to his possession. In 1871—the year in which the cantonment of Morar lying under the fortress was ceded to us—the restoration of the fortress to Sindhia was proposed by the Government of India, but the Secretary of State did not then agree. The circumstances, however, changed in course of time. The importance of Gwalior as a military position was in 1885 no longer what it had been in 1860. The high-road between Northern and Southern India was now the railway, and Gwalior was not on the main line. The fortress was incapable of resisting a force provided with siege artillery and Morar had proved an unhealthy station for troops. Jhansi, a central point upon which the railways of Northern India were converging, promised to be an important military position. In view of these and other considerations, it was arranged, with the sanction of the Secretary of State, to restore the fortress to Sindhia and to cede Morar to the Gwalior State, the town and fort of Jhansi being ceded to the British Government in exchange for Morar. Further conditions were that Sindhia should pay to the British Government 15 lakhs of rupees on account of the cost incurred on the fortifications and buildings in the fortress; and that the British garrison stationed in the fortress and at Morar should be withdrawn and maintained at such stations as might appear to the Government of India to be convenient, the obligation of the British Government to protect the dominions of the Maharaja from foreign invasion and to quell serious disturbances therein, remaining in force. On the other hand, the Governor-General in Council agreed that the Maharaja might raise, in addition to the infantry force which might be entertained by him under existing engagements, 3,000 drilled infantry soldiers, on the understanding that the regular cavalry in his service should not be increased beyond its then existing strength of 2,000 men. The *kharita*,¹⁷ in which these terms were expressed, was dated February 24, 1886. On March 10, 1886, the British troops evacuated Gwalior and Morar, and on the same date¹⁸ the town and fort of Jhansi were made over to the North-Western Provinces Government by the Gwalior authorities. On June 10, 1886, the Jhansi town and fort were annexed to the North-West Provinces by proclamation under 28 & 29 Vict., chap. 17, sec. 4. In carrying out the arrangements it was found that a rectification of the boundary between Gwalior and British territory in the neighbourhood of Jhansi was desirable, and the British border was made to coincide generally with the limits of the old Jhansi *pargana*. This plan involved the transfer to Gwalior of 30 British villages in exchange for 58 villages belonging to Sindhia. There were important military, strategical and administrative reasons for this measure which need not be detailed here.¹⁹ Effect was given to it by an exchange of *kharitas* (dated respectively June 13, 1888, and September 7, 1888) between the Viceroy, Lord Dufferin, and the Maharaja.²⁰

During the course of the discussions upon this exchange of villages Mr. Harvey James, the Secretary to the Government of India in the Legislative Department, referring to the judgment of the Allahabad High Court in the Rampur cession case, pointed out that the cession must be made by the Crown acting through the Secretary of State. This led to the issue of the despatch, dated October 4, 1886, of which paragraphs 3 and 4, approved by the Secretary of State, have been quoted above. The Jhansi and Morar Act was passed on September 17, 1886, and it was so drawn as to include in its operation the 58 Gwalior villages then proposed to be ceded but not yet ceded in fact. It dealt with what had actually become and with what was about to become British territory. It

¹⁷ Aitchison, IV, page 121.

¹⁸ *Ibid.*, page 30.

¹⁹ India despatch No. 160, dated September 30, 1886.

²⁰ Aitchison, IV, pages 122-124.

annexed the ceded lands to the Jhansi District, assimilated the law in force in the ceded lands to the law in force in that district and validated acts done in or with respect to the town and fort of Jhansi since the beginning of March 1886. It provided also for (amongst other matters) the execution of decrees of the Gwalior Courts and the continuance of suits which had been pending in them, and it made certain suits for debt formerly cognizable by Morar Courts, cognizable by British Courts at Jhansi, Agra and other places which might be appointed. It dealt entirely with what had happened or was to happen in British territory. No legislation was necessary in order that we might shake ourselves free of the territory ceded to Sindhia.

The despatch of December 2, 1886, which approved the proposals of the Government of India regarding the procedure which should be followed in making cessions of British Indian territory, was received after the Jhansi and Morar Act had been passed, and after the Secretary of State had been asked to sanction the cession of the 30 British villages to the Gwalior State, but before sanction to that cession had reached India. The needful sanction was given on December 16, 1886. Meanwhile Mr. Harvey James and Sir Andrew Scoble, Law Member of Council, had quoted,¹ in connection with the Secretary of State's allusion to the Bhaunagar Act, the judgment in the Bhaunagar cession case which shows that after a valid cession of territory by the British Government the jurisdiction of British Courts, which is territorial, ceases absolutely with respect to that territory. In the Bhaunagar case legislation was necessary because we had unwittingly retained for ten years territory which we meant to cede to a Native State. In the Jhansi and Morar case legislation was necessary to meet the circumstances of territory which we had ourselves acquired by cession. In neither case was any legislation necessary to effect a cession to a Native State. Sir Andrew Scoble noted:—"In Act XXII, as to Jhansi and Morar, a valid cession in full sovereignty is assumed to have been made, which itself operated the extinguishment of previous jurisdictions. The Rampur case (I. L. R., 2 All., 1) shows that a cession in full sovereignty may be made by the Crown to a feudatory prince in India, and Sindhia is one of them. It will be in cases where the cession is not in full sovereignty, but amounts only to a rearrangement of jurisdictions within British territory by the substitution of a native jurisdiction, under British supervision and control, for the ordinary jurisdiction of the Civil Court, that legislation will be necessary, and the Bhaunagar precedent should be followed."

§ 251. In the Idar cession case, which remained pending for many years and was not settled till the Bhaunagar and Rampur cases had cleared the way, no legislation was considered necessary, though some of the circumstances resembled, on a smaller scale, those of the Bhaunagar case. Since 1818 the British authorities had exercised complete jurisdiction over eleven villages which were *de facto* British territory. To a share in the revenues of these villages the Idar State had always been entitled, and that share it had always enjoyed. An annual sum of Rs. 1,600 was also payable to the Idar State as compensation for the loss of certain salt dues on its Marwar frontier which it had relinquished at the request of the British Government. In 1869, to compensate Idar for this loss and to get rid of the sharing of the revenues, it was proposed to divide the villages. Seven were to remain British, but Idar was to cease to receive any share of the revenue. Four were to be transferred to the Maharaja and our share in the revenue of these was to go to him. This arrangement gave him Rs. 672 per annum more than he was entitled to, and this amount was to be annually deducted from the Rs. 1,600 payable by us.

The four villages locally selected for transfer to Idar were Gábat, Wániád, Báyar and Choila. The Bombay Government, however, objected to the transfer of Báyar and Choila, and attempted to transfer two outlying British villages—Agiol and Gamri—instead. In these villages the Idar State had previously had no rights whatever. On September 19, 1870, the Bombay Government issued a notification which said:—"Whereas Her Majesty has sanctioned the transfer to the Maharaja of Idar of the Civil and Criminal jurisdiction over the villages of Agiol and Gamri it is hereby notified

¹ K.-W. of Pro., Internal A, January 1887, No. 184.

that the villages of Agiol and Gamri have ceased to be included in the jurisdiction of the Court of the 2nd class Subordinate Judge of Ahmadabad." No notification was published regarding Gábat and Wániád; and it appears that in 1872 our officers were still exercising jurisdiction in those villages. According to the Privy Council judgment in the Bhaunagar case the transfer of jurisdiction notified in respect to Agiol and Gamri obviously did not amount to a cession of territory. But there was another reason for holding that no cession had been effected. The Idar State did not accept the arrangement. The Maharaja died, and the Maharani, who apparently took some share in public business during the minority of her son, objected and appealed to the Secretary of State. Eventually it was settled that the original proposal should be carried out and Báyar and Choila ceded in lieu of Agiol and Gamri. As to those villages, "apparently," said the Government of India,² "the Idar Darbar refused to accept the cession, and consequently the sovereignty in the said villages must be held to have remained vested in the Crown." An agreement embodying the original proposals was offered to, and accepted by, the Idar State. It recited that the Secretary of State for India in Council had "by order of Her Majesty the Queen of Great Britain and Ireland and Empress of India sanctioned the cession of" Gábat, Wániád, Báyar and Choila. It was ratified on December 6, 1881, and in compliance with a suggestion of the Bombay Government, published in the *Gazette of India*³ on July 1, 1882. In consequence of the Bombay Government notification of September 19, 1870, the Assistant Political Agent in charge of the Idar State, during the minority of the Chief, assumed the civil and criminal jurisdiction of Agiol and Gamri; but supposing that action should be suspended on account of the Maharani's petition to the Secretary of State, he did not do so till February 1872. When our Political Officers actually began to exercise jurisdiction, they were soon afterwards stopped by the suggestion that the attempted cession should be legalised by a notification under section 113 of the Indian Evidence Act, which, as we have seen, could make no difference. Finally, in August 1876, the Bombay Government cancelled its notification of September 1870. In 1882, when inquiries were made with a view to legislation, if necessary, it was ascertained that ten years earlier for about five months Political Officers had exercised jurisdiction in these two villages to the extent of deciding five or six very petty criminal cases. In these circumstances it was not thought worth while to pass an Act to validate what they had done. It should be added that in the agreement accepted by the Idar State, the Maharaja promises for himself and his successors that he and they will respect and protect all existing rights in the ceded villages.

§ 252. In our summary below (paragraph § 259) we shall recapitulate, with due regard to the Bhaunagar, Jhansi and Morar and Idar cases, the circumstances in which legislation may be necessary in connection with cessions of territory. Meanwhile we may note as precedents two cases of unimportant

Unimportant transfers of territory in which the sanction of Her Majesty's Government was not requested.

transfers of territory which were, in certain different senses, cessions, but in which it was considered unnecessary to obtain the

sanction of Her Majesty's Government. The first of these occurred before the receipt of the general orders of 1886 quoted above in paragraph § 249. Bhutan

Cession to the Deb Raja of Bhutan in 1884.

is a State of Tibetan origin and the present form of government is said to be a

dual control by the clergy and laity, represented by the Dharma and Deb Rajas. The secular or Deb Raja is elected from time to time from among certain great functionaries of the State.⁴ In 1875 it was discovered that there was a double line of boundary pillars over a considerable length of the border between Bhutan and British territory. In 1876 it was proposed to give up the land between the two sets of pillars to the Bhutan State, but the Bengal Government decided that the northern set of pillars represented the proper boundary and that this boundary should be maintained. The Deb Raja in 1880 claimed

² To Bombay, No. 524 T.—P., dated June 28, 1881, para. 4.

³ Notification No. 387 T.—P., dated June 29, 1882. The papers in the Idar case will be found in Pro. Political A., June 1877, Nos. 206-208; September 1877 Nos. 236-239;

June 1881, Nos. 328-340; January 1882 Nos. 320-324; July 1882, Nos. 507-510; and December 1882, Nos. 1-71.

⁴ Aitchison, I, page 173.

a portion of the country which by the demarcation consequent upon this decision was brought within British territory. This portion was a waste and uninhabited tract of some 11 square miles in area and comprised a *devasthan* or shrine of local sanctity. At the time Bhutan had been evading our demands with regard to a raid committed by Bhutanese subjects on British villages. Five years later, however, the Deb Raja renewed his application, and he and the local Jangpen or chieftain represented that since the *devasthan* had been included in our jurisdiction Bhutan had become the seat of many diseases and that probably the deity would hereafter put our people to trouble as well. As our scores against Bhutan had been cleared, the concession was made as a favour, not in recognition of any right; and it was treated as a modification or revision of boundaries, not as a formal cession of British territory, no report being made to the Secretary of State.⁵

The case of the village of Lakhnaur belonging to the Umballa District was decided by the Government of India in 1890. It did not fall exactly within the letter of the exceptions made by the orders of 1886, but there was no report to the Secretary of State. In 1815, we permitted Patiala to exercise jurisdiction over 64 villages, including Lakhnaur, because we then had no territory in the vicinity and were not in a position to protect or control the petty chiefs by whom the villages were held. In 1860 the bulk of these villages, that is to say, 60 of them included in the *taluka* of Khamánun, were sold to Patiala in sovereignty in payment of interest due to that State on loans made to the British Government.⁶ In the adjustment of accounts then effected three out of the remaining four villages were surrendered to the British Government. At this time, whether by oversight or otherwise, nothing was said of Lakhnaur, which in 1890 had come to be one of an isolated block of three or four villages under Patiala jurisdiction but surrounded by British territory. And not long before in a *sanad* granted to Patiala on May 5, 1860, it had been noted that Lakhnaur with the other 63 villages was "at present under the jurisdiction for life of the Maharaja of Patiala, but paying commutation tax in lieu of service to the British Government." The commutation of Rs. 43 per annum was duly paid. We were entitled to lapses, but they were never reported. In point of fact the revenue, less the service commutation, was assigned to certain Sikh priests for the maintenance of a well-known shrine of Guru Gobind Singh situated in Lakhnaur itself, so that it was unlikely that our revenues would have benefited by any lapses if we had heard of them. In dealing with the case, the Punjab Lieutenant-Governor, Sir James Lyall, while fully alive to the objections which in general apply to the transfer of British territory to a Native State, remarked that the transfer of Lakhnaur would involve no change of laws or system of administration. The Patiala laws and jurisdiction, civil and criminal, had been in force in Lakhnaur for three quarters of a century. In the peculiar circumstances of the case the Government of India sanctioned the proposal of the Lieutenant-Governor that the village of Lakhnaur "be transferred to the Patiala State in plenary right upon payment of Rs. 1,560."

§ 253. As observed by the Duke of Argyll in 1869 (see paragraph § 245 above), the Government of India is the sole judge of the considerations of policy by which grants of territory should be determined; and these considerations may be more or less pressing in an infinite variety of degrees. Although the Secretary of State never addressed the Government of India, as he proposed to do, on the subject of these considerations, their general nature may be gathered in part from what has already been said, and in part from some precedents now about to be mentioned. It is manifest from the numerous cessions referred to in paragraph § 244, from the minute of Sir Henry Maine in the first phase of the Rampur cession case (paragraph § 245), and from the despatch of the Duke of Argyll just referred to, that

⁵ Pro., Internal A., October 1881, Nos. 232-236. . .
⁶ Aitchison, IX, page 53; Pro., Internal A., June 1860, Nos. 196-202. For two somewhat similar cases in which transfers of British territory to Native States were sanctioned by the Government of India see Pro., Internal A., December 1892, Nos. 65-69, an exchange with the Jind State of land on the Western

Jumna Canal, and Pro., Internal A., July 1893, Nos. 159-167, an exchange of the Raja of Bausda's village of Pibubari for certain lands in the Surat District. On the other hand when the Salogra estate, consisting of 24 villages, was restored to the Bhaghat State the sanction of the Secretary of State was obtained; Pro., Internal A., July 1891, Nos. 134-138, and October 1891, Nos. 109-101.

cessions made for the safety of the Empire or in relation to wars, past or future, to reward proved loyalty or to render the Empire stronger and more compact, will be held to have ample justification. But even in the case of cessions so justified; and probably still more in the case of cessions made, as they have been and can be made, rather from motives of administrative convenience than for the purpose of increasing or confirming the political or military strength of the Empire, there are, as implied in the last preceding paragraph, objections to the transfer of British territory to Native Rule, which, though not insuperable, must always be duly weighed. It will be necessary to cite a good many precedents in order to set out fully the meaning and limits of this proposition.

In 1860 a new treaty was negotiated with Maharaja Sindhia in super-session of the treaty of 1844. The objects of the Treaty of 1860 with Sindhia. Refusal in view were to reward the Maharaja to cede Kunch. for his services in the Mutiny by the grant of territory yielding a yearly revenue of three lakhs of rupees, to eliminate numerous scattered patches of territory and improve boundaries by effecting certain exchanges, to substitute a subsidiary force for the late Contingent, which had mutinied, and to vest in the British Government the full sovereignty of all the districts assigned for the support of the late Contingent, which would remain in our possession after the exchanges had been carried out. Some of the arrangements made by the treaty of 1860 have since been modified in connection with the Jhansi and Morar exchange, but that point is not here material. In arranging the cessions and exchanges with Sindhia it was a natural desire of the Government of India to leave or place in the hands of the Maharaja the territory that for any reasons he might prefer. But this was not possible in every particular. Sindhia's dominions included many outlying patches of territory surrounded on every side by our own, and situated principally to the south of the Nerbudda and in the Bombay Presidency. He offered to transfer unconditionally to us every possession of every sort in that quarter—lands, money payments, and perquisites enjoyed by himself or by others under his grants—if the territory which he was to receive were given wholly from Jhansi and Kunch. As we have seen, the town and fort of Jhansi, and some villages close by, then ceded to Sindhia, were subsequently restored to us. But between Jhansi and Kunch, which is a subdivision of the Jalaun District of the North-Western Provinces, Lord Canning drew a broad distinction. Jhansi, it will be remembered, had lapsed to us in 1854. As to Kunch, Lord Canning remarked⁷ that we had uninterruptedly governed and managed it since 1803; and, he said, "even if there had been no other objection to the arrangement, the orders of the late Court of Directors against the retrocession of territory applied with such cogent force to a district which had been more than half a century under our control, that I could not entertain the proposal so far as Kunch was concerned. To the transfer of Jhansi," he continued, "the same objection did not hold good. It is true that in the late Honourable Court's despatch, No. 12 of 1857, their previous assent to a proposal for the transfer of Jhansi to Sindhia was modified, in consequence of an unauthorised pledge given by Major Erskine in 1854 that the Jhansi State would not again be made over to a Native Ruler; and an opinion was expressed that in consideration of that pledge we would not be warranted in ceding Jhansi to any

⁷ Despatch No. 10, dated December 30, 1860. The previous assent of the Court of Directors to the cession of part of Jhansi appears to have been conveyed in paragraph 27 of their Political despatch No. 27 of 1855. In paragraph 26 of the same despatch the Court objected to the cession to Sindhia of certain portions of British districts many years under British rule without good reason to believe that the transfer would not be repugnant to the inclination of the inhabitants. The same objection, they implied, did not apply to newly-acquired territories such as Jhansi. A similar order was passed by the Court two years later in the despatch No. 12 of 1857 to which Lord Canning refers in the extract quoted in the text. After reciting certain proposals of Sindhia for the cession to him of various portions of British territory, the Court observed—"You declined these proposals in deference to our orders against the retrocession of territory once under British rule. These orders, however, do not apply to territory newly acquired and not understood to be yet permanently disposed of, and accordingly you recommend that the whole of Jhansi be made over to Sindhia in exchange for," etc., etc. Then follows the objection which Lord Canning states. An order twenty years earlier has also been traced which expressly prohibits cessions to Native States of any territory under British administration without the previous sanction of the home authorities. Certain territories had been restored to Sindhia which he had assigned to the British Government for the support of the contingent and which were under British administration. Referring to this the Court wrote in paragraph 4 of a despatch, dated July 28, 1857.—"When we consider how often we have expressed to you in the strongest terms our extreme reluctance to give up to the management of a Native State any population which has for some time enjoyed the security and advantage of living under the protection of our Government, we must express our deep regret," etc., etc. And in paragraph 6, the Court added—"We have in the first place to issue positive orders, that under no circumstances whatever shall any territories belonging to the British Government or administered by it on account of other states, without any condition expressed or implied for restoring them at a stated period, be delivered over to the management of any Native Government without our sanction previously obtained."

Native Power except at the unequivocally expressed desire of the people. Unhappily an opportunity soon occurred for a very unequivocal manifestation of their feeling towards British rule. Not many weeks after the receipt of the Court's despatch, the people of Jhansi rose in general and open rebellion, and espousing the cause of the Rani, within reach of whose authority every British subject who fell into the hands of the people was murdered, they resisted our troops to the utmost of their power. The resistance was most persistent, and it was not till twelve months later, and by Sir Hugh Gough's energetic operations in Central India, that Jhansi was coerced into submission." In these circumstances Lord Canning had no hesitation in authorising the transfer of lands in Jhansi to Sindhia as far as they would go towards carrying out the desired exchanges. The Secretary of State, Sir Charles Wood, approved of the decision not to give up Kunch, and added⁸—"The restoration of territory, in which rights have been acquired by individuals under the guarantee of the British Government, has, as a general principle, always been avoided. But in the case of the districts which formed the Jhansi State, no such objection could be maintained." By articles III, IV and V of the treaty each Government agreed, in regard to the lands transferred, to respect existing leases and to give its new subjects "*sanads* in perpetuity, for the rent-free lands, the *jagirs*, the perquisites, and the hereditary claims (*i.e.*, *haks* and *watans*)" which they had enjoyed under the other Government.⁹

§ 254. We have mentioned¹⁰ that a grant of territory was made to the Nawab of Rampur in recognition of his services during the rebellion. Lord Canning, in announcing this reward in a Darbar held at Fatehgarh on July 15, 1859, said that the British Government would grant to the Nawab the *pargana*

Orders of 1862-63 as to securing existing rights in cases of cession. of Kashipur in the Moradabad District. It afterwards appeared that this *pargana* included 150 square miles of very valuable forest land, that if the forest were excluded from the grant, the resulting boundary would be an exceedingly bad one, and that the Hindu population of Kashipur, who had been conspicuously loyal throughout the rebellion, had never been under the authority of the Rohillas, and would see in their transfer to those whom they regarded as their natural enemies a poor recompense for their fidelity to our cause.¹¹ For these and other similar reasons another grant was substituted, consisting of villages in the Bareilly and Moradabad Districts, yielding about Rs. 1,28,500 per annum. Commenting upon this solution of the difficulty the Secretary of State, Sir Charles Wood,¹² observed:—"Among the papers submitted with your despatch, is a memorial from some of the proprietors of the transferred estates, setting forth in temperate language, objections, which must be admitted to be far from unreasonable, to the arrangement you have made.

"The transfer to a Native State of villages which have long been under British administration and formed part of our Regulation Provinces, is always objectionable. I observe that all these villages which have been transferred to the Nawab of Rampur by the present arrangement, have, ever since our acquisition of Rohilkhand, belonged to the district either of Bareilly or Moradabad; they appear to be all held direct from Government, their respective proprietors being the *Sadr Malguzars* paying their revenue to the Collector without the intervention of any *Talukdar*.

"The Nawab must understand that in these villages all that he acquires by the transfer is the right to collect and appropriate the assessed revenue, the amount of which cannot be increased during the period of existing engagements; and that after the expiration of the present settlement, the proprietors will be entitled to a re-assessment with the Nawab, on the same principles as are accorded by our officers to the villages similarly circumstanced in the districts from which they are unwillingly transferred.

"I am glad to observe that you have directed that the Nawab be informed that you expect him to respect existing rights and tenures. I am of opinion that a stipulation to this effect should be inserted in the *sanad* of grant, which

⁸ Secretary of State's despatch No. 66, dated May 8, 1861, para. 5.

⁹ Aitchison, IV, pages 82-83.

¹⁰ See paragraph § 245 above.

¹¹ North-Western Provinces letter No. 64A., dated January 26, 1860; Pro., Political A., June 1877, Nos. 221-244 A.

¹² Despatch No. 17, Political, dated March 7, 1862.

I request may be done, and that a copy of the *sanad* may be forwarded for my information."

In reply the Government of India reported¹³ that the Nawab had faithfully promised in a *kharita* to respect existing rights at the expiration of the settlement. The Lieutenant-Governor, Mr. Edmonstone, deprecated the recall of the *sanad* as unnecessary for the object in view and derogatory to the Nawab, besides being highly impolitic with reference to the general mistrust which such an act might instil. The Government of India was of opinion that it would be better on the whole to rely on the *kharita* and not to alter the *sanad*. This view was practically accepted by Sir Charles Wood¹⁴ in a despatch of February 9, 1863. But referring both to this case and to certain cessions made to the Sikh Chiefs, he expressed the regret of Her Majesty's Government that in the original grants transferring the several tracts of country, no words were introduced to ensure the maintenance of existing rights in the land. Later on, in 1864, when a mistake due to similarity of names was rectified,¹⁵ two villages transferred to the Nawab on exchange were assigned in sovereignty "with only this stipulation, that existing rightful tenures were to be respected."

§ 255. Another case which shows the objection entertained to the cession of British villages to Native States, is that of the proposed transfer of certain Ajmir villages to Kishangarh in 1870. The facts were these. On the opening of the Rajputana Railway it was resolved to give the Chief of Kishangarh

Ajmir and Kishangarh case, 1870-74. Rs. 20,000 in compensation for the loss of transit dues; but the Viceroy, Lord Mayo,

wished to alter this arrangement, and the idea was to substitute a grant of villages for the money payment and, in the same transaction, to effect an exchange of certain intermixed territories, some Ajmir villages being surrounded by Kishangarh territory and some outlying Kishangarh villages being similarly situated with respect to our territory in Ajmir. Dealing with this proposal Mr. Aitchison, the Foreign Secretary, wrote in a demi-official letter dated December 29, 1870—"While it would be desirable to enter on negotiations for exchange with a view to remedy political and administrative difficulties arising from mixture of villages, irregular frontier and conflicting jurisdiction, it is very doubtful whether it would be proper merely in order to compensate the Maharaja for loss of transit duties to make over to him our villages and subjects who have long been under our rule and laws." It subsequently appeared that the proprietors of all the Ajmir villages concerned objected to be transferred to the Kishangarh State; and the project was eventually dropped in 1874, the then Chief Commissioner of Ajmir, Sir Lewis Pelly, having reported against it.

§ 256. Several incidents connected with the Keonthal State are to the point in the present discussion. The Keonthal State is one of the many petty States near Simla which we delivered early in the century from Gurkha rule or overlordship. When Sir David Ochterlony was settling the territories of the Simla

Cession to and negotiations with hills after the Gurkha war of 1814-15. Keonthal, 1865, 1872 and 1884.

Sabathu as a British possession. It had formerly belonged to the Keonthal State, and in 1860 the Raja claimed it unsuccessfully. In 1865 some land in Keonthal territory was required as a site for Bishop Cotton's School at Simla, and the Deputy Commissioner of Simla was informed by the Viceroy, Lord Lawrence, that an objection previously raised to obtaining this land by exchange would be waived if the Raja of Keonthal could procure the written assent of the villagers who would be transferred to his authority. The Raja

Cession of Wakna. got the assent in writing—a *razinama*—from the *Zamindars* of Wakna in the

Bharauli *pargana*, and that village was ceded to him in exchange for the land wanted for the school. The transaction was reported to and approved by the Secretary of State.¹⁶

¹³ Despatch No. 118, dated October 18, 1862.

¹⁴ No. 9, Political—*vide* paragraph 3.

¹⁵ Aitchison, II, pages 3, 26. In a despatch No. 22 of 1855 relating to a proposal of Maharaja Holkar to purchase the fort of Sindwa, the Court of Directors observed that in all such cases there is a third party whose interests require to be considered, the inhabitants of the territory

proposed to be ceded. They enjoined the Government of India to do whatever appeared necessary to prevent the inhabitants of the fort and its surrounding area from being sufferers by the change.

¹⁶ To Secretary of State, No. 1, dated January 8, 1866. From Secretary of State, No. 16, dated March 17, 1866. To Punjab Government, No. 152, dated May 3, 1866.

In 1869 the Raja again petitioned for the restoration of Bharauli. The Viceroy, Lord Mayo, was prepared to consider whether the *pargana* and some Simla villages might not be given back to the Raja in exchange for the valuable Cheog forest near Simla; but the Lieutenant-Governor of the Punjab, Sir Henry Durand, reported strongly against the proposal. He urged that the proposed exchange would involve the transfer of 4,349 British subjects in Bharauli and 619 in the Simla villages to Native rule; and Mr. Macnabb, the Superintendent of the Hill States, remarked in his report—"I should further wish to enter my protest against handing over our subjects to the tender mercies of the best of Native Princes. That such exchanges are most distasteful to our subjects is the opinion of all officers with whom I have conversed. It is my own opinion gathered in the frontier villages of the Sialkot district, and I know that when one of our villages was exchanged in 1865 for the Keonthal land on which Bishop Cotton's School is built, the consent of the villages (insisted on by Government) was only obtained by the Raja with great difficulty and reluctance when they found the exchange inevitable and feared to displease their future ruler. I am informed the same feeling exists in the Simla villages with regard to the exchange, and there will doubtless, if it is pressed, be the same result. As regards Bharauli I have made no inquiries, as doing so might foster a spirit of opposition to a course on which Government may probably have determined."

The letter of the Punjab Government¹⁷ then continued—"In almost every case in which such transfers have been made, great dissatisfaction has followed, and to this day complaints of such transfers are received—for example, from the residents of Kot Kapura, transferred to the Raja of Faridkot in 1846, of the Sirsa villages transferred at the same time to the Raja of Bikanir, and from those of the trans-Kurram villages on the Bannu frontier. It was on this ground that the Government declined to assign the *pargana* of Fatehabad in the Amritsar District in absolute sovereignty to the Raja of Kapurthala, and that the Chiefs of Patiala, Nabha and Jind were assigned, in 1858, portions of the confiscated estate of Jhajjar in preference to lands in the cis-Sutlej territory occupied by British subjects.

"The objection may in some degree be met, as it was met in the case of the Raja of Kapurthala, by assigning the lands, not in absolute sovereignty, but in *jagir*, and vesting the Raja with magisterial powers therein, but His Honour would be averse even to this measure, unless it could be carried into effect with the general assent of the inhabitants." There was a further objection, but not one of principle, in the fact that Bharauli was believed to be rich in minerals. Mr. Aitchison noted that there was strong objection to the transfer to the Raja's government of upwards of 4,500 persons who for 55 years had been under British rule. "This ought not," he said, "in my opinion to be done, except on grounds of great political convenience or necessity. The advantage of acquiring the Cheog forest is certainly not such as to justify such a measure, especially as the forest can, it is suggested, be acquired by lease." Under the orders of Lord Northbrook¹⁸ the proposed exchange was definitively abandoned in May 1872.

Seven years later negotiations were begun with the Keonthal Raja which ended in 1884 in a cession to the British Government. The cession was one of jurisdiction only without sovereignty in the suburb of Simla known as Kasumti

Negotiations regarding jurisdiction in Kasumti,

which is situated in Keonthal territory. While the negotiations were pending the late Raja died, and his son, the present Raja, pressed strongly for a grant of territory in exchange for what he had to give up. It is highly probable that he had his eye on the Bharauli *pargana*. The Lieutenant-Governor of the Punjab, Sir Charles Aitchison, in a letter to the Commissioner of the Umballa Division,¹⁹ said—"In former times no doubt exchanges of land with Native States were common enough, but ever since the decision of Her Majesty's Privy Council in the Bhaunagar case, although the power of the Crown to cede land is recognised, it is an imperative rule of policy not

¹⁷ No. 288-1057, dated September 8, 1870; Pro., Political A, June 1872, Nos. 62-65.

¹⁸ Foreign Department letter No. 1227-P., dated May 31, 1872.

¹⁹ No. 34, dated February 6, 1884.

to cede land to a Native State, except in the settlement of some overwhelming political crisis, such as the conclusion of a disastrous war or the like, or else with the full consent of the inhabitants." This remark was doubtless made from memory only; for the analysis of the records of the Foreign Department which we are making here shows conclusively that there is no such imperative rule of policy as Sir Charles Aitchison, long after he had left the Foreign Office, supposed to exist. In forwarding this letter with other correspondence to the Government of India he inquired whether they would be disposed to entertain the suggestion for an exchange of territory. Before the question had been fully worked out, a reply was sent on April 18, 1884, that this suggestion was still under the consideration of the Governor-General in Council. The only importance of the reply is that it shows that no imperative rule of policy, such as is mentioned above, could then be discovered. Had any such rule been known, the suggestion must have been rejected at once. The case ended without any ruling which is here material or conclusive. The Raja was just about to come to terms without an exchange of territory when by an unfortunate accident he became aware that the suggestion for an exchange was still being considered. He at once changed his tone and demanded an exchange. Thereupon, on the advice of the Punjab Government, the proposal for an exchange was promptly and finally negatived.²⁰

§ 257. This order was passed in 1884, and a better precedent is available in the records of the same year. Since 1867 a project had been under consideration for utilising the waters of the Periyar river in irrigating a part of the

The Periyar project case. Proposed
cession of Tangacheri to Travancore,
1884.

Madura District. The engineering features of the work were very bold, for the river was to be diverted from the western to the eastern side of the Ghauts by an enormous dam and a long subterranean aqueduct. Much benefit was anticipated because the scanty and uncertain rainfall of Madura east of the Ghauts laid the tract proposed to be irrigated open to famine. For the headworks to be constructed in accordance with this scheme eight thousand acres were required of land situated in Travancore territory; and it was in the first instance proposed to obtain this area by the payment of six lakhs of rupees and the cession of Tangacheri and four gardens. Tangacheri is a Christian settlement acquired by us from the Dutch in 1795 on the capture of Cochin. The boundaries of the settlement, which comprises an area of only 96 acres, are the sea and Travancore territory. In 1884 it contained a population of 1,665, of whom all but seven were Christians. It is leased on triennial leases to the Travancore Government, but the rights of the whole population to continue under the protection of the British Government in all civil and criminal cases are specially reserved. The four gardens contain about 57 acres and had, at the time, a population of 169. They also are bounded by the sea and by Travancore territory, but each garden lies both at a considerable distance from the other gardens and from the village of Tangacheri. The Travancore Darbar much wished to obtain Tangacheri, because the shore and roadstead of that place were wanted for the proper development of the harbour of Quilon, which was to be the terminus of a proposed railway from Tinnevely. The Christians of Tangacheri objected to the proposed cession, partly on the ground that their tenures, confirmed by the British Government, might not be respected by the Native administration, and partly from an apparent fear of danger to the quiet enjoyment of their religious rights and ceremonies. About half a million of the Travancore subjects were Christians, and it was believed that they enjoyed as complete liberty of action as members of the same community enjoy in British India. It seemed possible that the second objection raised to the proposed cession might be merely adduced in support of the argument regarding proprietary rights, which, however, the Madras Government intended to safeguard in arranging the conditions of the transfer. With remarks in this sense the Madras Government was asked to report on the real feelings of the Tangacheri people. It appeared that they were Roman Catholics and that a Roman Catholic Bishop lived not more than a mile away at Quilon and thus had good opportunities of knowing their affairs. The Bishop felt certain that the people of Tangacheri had no just reason to apprehend any interference with their religious liberties if transferred to Travancore;

²⁰ Pro. A, Political I., April 1884, Nos. 136-137.

Pro., Internal A, November 1884, Nos. 30-32.

and spoke highly of the tolerance and liberality of the Travancore Darbar. The Resident, Mr. Barlow, suggested that the dislike of the people to the transfer perhaps arose from their fear that their dealings in contraband liquor and tobacco would thereby be terminated. The Government of India in addressing the Madras Government had remarked that if the anxiety of the people of Tangacheri to preserve their religious rights and privileges were real, it was worthy of every consideration; but the Government—it was that of Lord Ripon—was satisfied by the assurances received from Madras that those rights and privileges would not be endangered, and recommended the Secretary of State to sanction the cession, mentioning that both the religious and the proprietary rights would be secured in the agreement of transfer. But the Secretary of State negatived the proposal, and requested that other means might be devised to compensate the Travancore State. “The inhabitants of Tangacheri,” he said, “object strongly to the proposed transfer, and although your Government have made inquiries and have apparently satisfied yourselves that they would suffer no substantial hardship thereby, I am unable, in the face of their distinct opposition, to assent to the measure proposed.” In the end the Travancore Government consented to lease the land required for an annual payment of forty thousand rupees.¹

§258. We need mention in this place only two more precedents* showing the reluctance of the British Government to place under Native rule persons who have long been in the position of its subjects. The case occurred in 1888, and some of the facts have already been stated. It will be remembered that in 1862 the Government of India (*vide* paragraph §226 above) promised that on the death of the Raja of Porahát, who had rebelled in 1857, such member of his family would be restored at Porahát as it might seem desirable to select as its representative. In 1888, when Raja Arjun Singh had died, the Bengal Government referred, amongst other questions, that of the interpretation to be placed on the pledge given in 1862. The Government of India held that the State was confiscated in 1858. The order passed by the Bengal Government on January 22, 1858, was that the State should be attached and held for the benefit of Government with a view to its ultimate confiscation if the Raja failed to surrender within a month. He remained in rebellion for more than a year. It was further held that the portions of Porahát granted to the Raja of Saraikala and the Thákur of Kharasawan must be deemed to be ceded territory. As regards the question of reinstating the family, the Government of India considered that two points were clearly established. “The first,” they said, “is that the restoration, if made, was to be only to the portion of the estate remaining unalienated and not to the whole estate, and the second that it was intended that it should operate more as a provision for the family of Arjun Singh than as a revival of Native rule. The whole concession was to be an act of grace in favour of some indeterminate unknown person to be selected by Government at some future time. It is not, therefore, open to any one to assert any right under such a concession, and the Government has full discretion to make such terms as it pleases with any person whom it may select. It appears, moreover, to the Government of India that apart from the fact that such a course would be beyond the powers of Government, the revival of the Native State and the making over to Native rule of persons who have been British subjects for more than thirty years would be altogether out of the question. For these reasons the Governor-General in Council considers it necessary that in the event of Porahát being in the future restored to the family of the ex-Raja, the person selected should be placed in possession of the property as a British subject on whom the British Government confers the proprietary right in such portions of the confiscated territory as remain to it, and that the Local Government should take complete measures for the protection and definition of all subordinate rights before the grant is made, and should further make the grant liable to resumption in the event of the Executive Government being satis-

¹ Pro., A, Political I, January 1884, Nos. 112-115. Pro., A, Political I, July 1884, Nos. 18-19. Pro., Internal A, November 1884, Nos. 138-139.

* For other precedents see the Mewar-Merwara case 1883, paragraph §742 below, and page 17 of K.-W. Pro., Secret I, August 1883, Nos. 14-27. See also Pro., Internal A, May 1892, Nos. 93-106 and back file, from which it appears that a proposed rectification of boundary between the Hyderabad State and the Bombay Presidency was abandoned, though it presented many administrative advantages, because it would have involved the cession to the Nizam of 195 British villages with 144,042 inhabitants.

fied at any time thereafter that the position² had been abused." This very emphatic rejection, in the particular case, of the policy of reviving Native rule in a confiscated State after the lapse of thirty years, is certainly important.

In 1894 the Lieutenant-Governor of the North-Western Provinces proposed the exchange of a tract known as Bijaipur Dhanpur, a portion of the Rampur State surrounded by British territory, for two British villages on the Rampur border. The proposal was made on administrative grounds and the Government of India,³ while recognising the administrative difficulties caused by the existing state of affairs, were "generally opposed to the transfer of British territory to Native States, except under special circumstances." They asked whether the possibility of purchasing Bijaipur Dhanpur from Rampur had been considered, and made certain inquiries about the tenures of the villagers in the patch of territory proposed to be transferred. "In any case" they continued, "the Government of India are of opinion that it would be undesirable to make the exchange of territory if it involves an assurance of protection. If a necessity for any such guarantee exists, they would prefer that the present holders of the villages should be offered such terms, in the shape of land in the adjoining portions of the Tarai, as would be a fair equivalent for their existing rights, leaving them, if they decline, the alternative of being transferred without any guarantee at all."

§ 259. A consideration of the precedents collected in the preceding paragraphs shows that a good many points connected with cessions of territory by or to Native States may now be regarded as settled. The more important points which appear to us to be clear may be thus stated:—

(1) *Native States cannot cede territory to one another except through the British Government.*

(2) *Except in certain boundary cases no authority below that of the Governor-General in Council is competent to decide questions of sovereignty as between one State and another.*

(3) *The Crown is competent, without the consent of Parliament, to cede British Indian territory in time of peace to any Feudatory State in India.*

(4) *This prerogative is exercised with the advice and through the agency of the responsible ministers of the Crown.*

(5) *The form of document, whether treaty, sanad, agreement, kharita, or the like, by which a cession purports to be made is immaterial. The document operates as evidence of the cession.*

(6) *No cession of British Indian territory may be made without the previous approval and sanction of the Secretary of State for India acting on behalf of Her Majesty's Government. But unimportant transfers of territory, such as relate to a delimitation of a previously doubtful or disputed border or carry out some comparatively trifling readjustment of frontier for purposes of administrative convenience, may, in accordance with past practice, be sanctioned by the Government of India.*

(7) *No legislation is necessary for the purpose of making a valid cession of British Indian territory to a Native State, nor is any notification in the Gazette of India required in order to give validity to such a cession.*

(8) *But a proposed cession does not become a valid cession unless the State to which it is proposed accepts it; and a re-arrangement of jurisdiction within British territory in India by the exclusion of a certain district from the regulations and codes there in force, and from the jurisdiction of all the High Courts with a view to the establishment therein of a Native jurisdiction under British supervision and control, does not amount to a cession.³*

(9) *Legislation may be necessary (1) in the case of such a re-arrangement*

² Government of India, Home Department, No. 74, dated January 25, 1889 Pro., Internal B, February 1889, Nos. 185-189.

³ Pro., Internal A, November 1894, Nos. 1-4.

³ We have here followed pretty closely but not exactly the wording of the head-note in the Bhaunagar case—*I. L. R., Bom. 1, 368.*

of jurisdiction⁴ as is mentioned in paragraph (8), or (2) where, in consequence of a supposed but really invalid cession, it is necessary to validate acts done in British territory without support of law, or (3) to assimilate the laws of territory ceded to the British Government to those of the district to which it is annexed.

(10) It is not for any Court of Justice to inquire whether in any particular instance the exercise of the prerogative of cession vested in the Crown was called for or not. The Government of India is the sole judge of the considerations of policy by which grants of British Indian territory to Native States must be determined.

(11) Where the foundation of the jurisdiction of a British Court is territorial and the territory by a valid cession ceases to be British, the jurisdiction of the Court can no longer be exercised.⁵

(12) The Governor-General in Council⁶ being precluded by Acts 24 & 25 Vict., chapter 67, section 22, from legislating directly as to the sovereignty or dominion of the Crown over any part of its territory in India, or as to the allegiance of British subjects, cannot by any legislative Act (e.g., by the Evidence Act of 1872, section 113), purporting to make a notification in the Government Gazette conclusive evidence of a cession of territory, exclude judicial inquiry as to the nature and lawfulness of that cession.

(13) In the case of a cession to a Native State the Crown is as competent to cede British Indian territory which has long been under British laws as it is to cede recently confiscated or other British Indian territory in which British laws have never been enforced or have been only partially enforced.

(14) There is no imperative rule of policy that British Indian territory which has long been under British laws must not be ceded except in some grave political emergency. But there are strong objections to the cession of such territory without the consent of the inhabitants, whose interests, if the cession be made, should be safeguarded in such way as the Government may deem proper.

(15) A guarantee, however, of protection to the inhabitants of transferred territory is embarrassing; and, at least in one case, it has been proposed to avoid it by the offer of lands elsewhere.

§ 260. It is interesting to note that in dealing with river boundaries as between British Indian and State territory, the Government of India have, to a great extent, followed International Law; and that International Law, so far as it relates to this subject, is derived directly from Roman Law. The rules of International Law upon which we have largely acted were very clearly and correctly stated by Mr. Aitchison in a note of October 17, 1871, recorded in connection with certain questions relating to the boundary of Oudh and Nepal.

“If the opposite banks of a river,” he said, “are in the possession of two nations, neither of which, as in the present case, has dominion over the entire river, the rule of boundary is that of the *Thalweg* or a line drawn along the greatest depth of the stream. Grotius and Vattel speak of the middle of the river as the line of jurisdiction; but Twiss (I, 287) says modern publicists and statesmen prefer the more accurate and equitable boundary of the *mid-channel*. If there be more than one channel, the deepest channel is the *mid-channel* and the boundary line will be the line drawn along the surface of the stream corresponding to the line of deepest depression of the bed.

“If a channel dries up suddenly this fact makes no difference in the jurisdiction. The ownership of the dry bed follows the ownership of the river when it runs in that bed, the line of jurisdiction being a line drawn along the deepest depression of the dry channel instead of an imaginary line on the surface of the water corresponding with the line of greatest depression.

⁴ It seems very improbable that any such re-arrangement will hereafter be proposed. We follow here the decision in the Bhaunagar case, but if it were desired to exclude any territory in British India from some particular jurisdiction, recourse would probably be had to 33 Vict., chapter 3.

⁵ Here again in two places we have adopted the language of the head-note in the Bhaunagar case.

“Accretion by alluvion belongs to the nation possessing the bank on which the gradual increment takes place;”⁶ but no change of jurisdiction takes place when land is suddenly cut off by a change in the course of a river and the land cut off is capable of identification.”

In order to show how far and with what modifications these rules have been applied, we propose to examine a good many cases which have occurred from 1857 inclusive up to date.

In 1857 it was reported that by a change in the course of the River Sutlej eight British villages forming part of the Ferozepore and Kapurthala Case, 1857. Ferozepore District which had previously been separated from the possessions of the Raja of Kapurthala by the deep stream, were now separated from those possessions merely by a dry channel and from the rest of the Ferozepore District by the Sutlej in its new course. The Raja claimed, on grounds of local custom, that these eight villages should be transferred to him. His claim was supported by Sir John Lawrence, then Chief Commissioner of the Punjab, who also recommended that it should be laid down authoritatively that the main stream of the Sutlej should form the boundary between British and Kapurthala territory. Sir John Lawrence further suggested that the same principle should be applied in all similar cases in which Ruling Chiefs might be concerned; but that in the case of *jagirdars* their rights should be maintained only if the land remained recognisable after the change in the course of the river. In reply the Government of India sanctioned the transfer of the eight villages in question to Kapurthala, but did not agree to the other proposals of Sir John Lawrence, preferring that in each case of the kind in question, whether a Ruling Chief or a *jagirdar* were concerned, a separate reference should be made for the orders of the Government of India.⁷

§ 261. Two years later Sir John Lawrence gave an opinion contrary to that which he had advanced in 1857; but this applied to the Indus as the boundary of Sindh, not to the Sutlej, as the boundary of Punjab territory, and in the case of the Punjab rivers the local custom varies, not only on different rivers, but on different parts of the same river; moreover, in the interval Sir John Lawrence had received the orders of the Government of India in the Ferozepore and Kapurthala case.

The case in which Sir John Lawrence gave his second opinion was that of The Kachi Kasmor Case, Sindh and Baháwalpur, 1859. Kachi Kasmor. In January 1859, the Commissioner in Sindh referred to the Punjab Lieutenant-Governor the case of an island in the Indus, opposite the Kasmor District of Upper Sindh, which, by a change in the course of the river, had become separated from that district by the deep stream. East of the Indus lay the territory of Baháwalpur, and the Nawab claimed the island in consequence of the alteration in the channel of the deep stream, though upon the island were three villages with 200 inhabitants and its revenue had always been paid to the authorities on the Kasmor side. Quoting the Government of India orders of 1857, Sir John Lawrence replied to the Commissioner in Sindh that, as the land claimed by the Nawab had “been transferred in its integrity from one side of the stream to the other,” and had formed “part of the old ground of the Kasmor District ever since the time of the Amirs of Sindh,” and was also recognisable, the claim of the Nawab should not be admitted.

§ 262. The next case is that of Kachi Chuan in the Mithankot *pargana* The Kachi Chuan Case, Dera Ghazi Khan and Baháwalpur, 1860. of the Dera Ghazi Khan District. A *kachi* in the Punjab is a piece of newly-formed alluvial land, whether it be an island or not, below the high bank or banks of a big erratic river. Here again the claim was made by Baháwalpur, and the case, though now an old one, is still authoritative and indeed the leading case on the subject. It is fully and clearly stated in a letter of the Government of India, No. 3631, dated August 24, 1860, which recited

⁶ On this subject see Hall's International Law, Sections 37, 38; Phillimore, i, section cxxxviii-ix; Vattel, Book i, Chapter xxii, sections 267-77; Twiss, i, Sections 143-4. The following references are also cited by Hall:—Grotius De Jure Belli et Pacis, Chapter ii, lib.

iii, sections 16, 17, 18; Halleck, i, 146; Calvo, section 294; Bluntschli, sections 295-39; Wolff, Jus Gentium, sections 106-7; De Martens, Précis, section 39.

⁷ Foreign Consultations, June 12, 1857, Nos. 310-317.

the facts of the Ferozepore and Kapurthala and Kachi Kasmor cases, and then continued in these terms:—

“The immediate occasion of the present reference is a change in the course of the main stream of the Indus, whereby Kachi Chuan, an island in the Indus, belonging to the proprietors of Masanpur in the Mithankot pargana, which used to lie on the left of the main stream, lies now on the right, and is claimed by the Nawab of Baháwalpur.

“The Deputy Commissioner of Leia maintains that the present case is precisely similar in all essential points to that of Kachi Kasmor, with reference to which the claim of the Nawab of Baháwalpur was rejected in 1859, the only difference being that this land had formerly, under the old rule which recognised the main stream as the boundary, been transferred to the Baháwalpur territory in 1851 and re-transferred in 1853, since which period it has remained British territory. The Commissioner of Leia strongly recommends that the case of the Kasmor Kachi be considered in the present instance and for the future a precedent; that each case be decided upon its merits; and that the main stream of the river be considered the boundary only in the case of fresh lands being thrown up which cannot be identified and owned.

“The Officiating Financial Commissioner does not agree with the Commissioner of Leia. He considers that Major Taylor is mixing up two separate and distinct questions, namely, the interests of the proprietors and the prerogatives of the two Governments. ‘Now, as betwixt sovereigns,’ he says, ‘there is no doubt that the only safe rule of practice is that the main river should be the boundary, irrespective of all other considerations. The proprietor may be able to recognise his lands, or he may not—that is a subordinate matter, and turns upon much intricate inquiry; but the positive fact of the main stream down which the steamers and heavy vessels go is a matter simple to determine and very important as regards police and the other duties of sovereignty.’ This principle he considers to be equitable and practicable, and he would deplore any deviation from it.

“The Lieutenant-Governor concurs in opinion with the Officiating Financial Commissioner. He does not think that the circumstance of the land being cut away bodily, and in a state capable of identification, should bar the operation of the simple rule by which the main channel is constituted the territorial boundary. This rule is plain, decisive, and thoroughly understood by the natives. The Lieutenant-Governor, therefore, solicits the orders of Government on the general question; or should there be any objection to declare one unvarying rule, he desires to know if the Governor-General in Council coincides with his views in the particular case, adding, that if the Governor-General in Council concurs with him, it may perhaps be necessary to review the decision given by the Commissioner of Sindh on Sir John Lawrence’s advice in regard to Kachi Kasmor.

“The Governor-General in Council directs me to observe that the Officiating Financial Commissioner is not correct in assuming that, as betwixt sovereigns, the only safe rule of practice is, that the main river should be the boundary irrespective of all other considerations. The rule is such only in cases of alluvion and not in those of avulsion; and the present case is of the latter kind. *When a boundary river suddenly quits its bed and cuts for itself a new channel, it ceases to be the boundary, and the Government which ruled over the territory cut off by the change in the river continues to rule it.*

“The above principle has been laid down in the case of the rivers which are in some places to form the new boundary between Nepal and Oudh. It has been ruled that these rivers shall continue to be the boundary if their encroachments on either side are only gradual and in the ordinary course of alluvion and diluvion, but not in the case of sudden changes in the bed of the deep stream, whereby land capable of identification is cut away.

“His Excellency in Council directs that the case of Kachi Chuan may be decided on this principle, with which the decision given in the case of Kachi Kasmor is consistent.

“The question of the proprietary right in the land, I am to add, is a totally different one and remains unaffected by the decision on the general

question. In either case the present proprietors of Kachi Chuan would continue to possess the island, but under the Lieutenant-Governor's proposal they would become subjects of the Nawab of Baháwalpur, whereas under the principle now laid down they will still continue subjects of the British Government."

§ 263. It had become necessary to lay down a new boundary between Nepal and Oudh because it was determined to acknowledge the recent services of the Maharaja of Nepal by a grant of territory. During the disturbances which followed the Mutiny he freely placed troops at the disposal of the British authorities for the preservation of order in the frontier districts and also sent a force to co-operate with the British army in the recapture of Lucknow and the final defeat of the rebels. On the conclusion of these operations the Viceroy, Lord Canning, declared his intention⁸ to restore to Nepal the land below the hills formerly in possession of the Gurkhas which they had ceded to us by the treaty of Segauli in 1815 and we had made over to Oudh in the following year. This low country, as already mentioned in paragraph § 244, again became a British possession on the annexation of Oudh in 1856. In 1860 the lands which were to form the subject of the grant were identified by Commissioners appointed for the purpose by the British Government, in the presence of Commissioners deputed by the Nepal Darbar; masonry pillars were erected to mark the future boundary; the demarcation was sanctioned in July 1860; the arrangements were ratified by a treaty of November 1st of the same year; and the lands were made over to Nepal in December 1862.⁹ The boundary so laid down was 174 miles in length and extended on the east from a place called Bagaura Tal, not far from Tulsipur in the Gonda District of Oudh, to the River Sarda on the west, by which the ceded lands were separated from the North-Western Provinces. In several places the boundary lay along rivers—the Sarda, the Rapti and the Mohan; and this part of the case was disposed of by the Government of India¹⁰ in these words: "In settling the boundary along the valley of the Rapti the Commissioners have assumed the river at its height in the rains to be the boundary, and they accordingly traced the boundary on the left bank of the river between the low ground which is periodically flooded, and the cultivated alluvial soil. But as the alluvial soil may be carried away by the floods, the Commissioners have erected a large pillar on the high forest belt in such a position that a straight line drawn from Mahtabia to Madban across the plain will equally divide it, and form the boundary line. Of these proceedings the Chief Commissioner approves.

"On the other hand, as regards the River Sarda, on the extreme west of the line, the Commissioners observe that the deep stream is the boundary and they recommend that it should be authoritatively declared to be so by the Government. The Chief Commissioner, however, only accepts the deep stream as the boundary, to a limited degree. If the river were suddenly to quit its present bed and cut for itself an entirely new channel it would cease to be the boundary, and the Government which ruled over the territory cut off by the change in the river would continue to rule it, although the deep stream had hitherto been the boundary. The deep stream would remain the boundary if its encroachments were only gradual and in the ordinary process of alluvion and diluvion, but not in the case of violent and sudden change.

"The Governor-General entirely agrees in the principle laid down by the Chief Commissioner as stated in the preceding paragraph, the test of the applicability of the rule being that the land should be capable of being identified as the same land as stood there before the river took its new channel. But His Excellency is of opinion that the very same principle should be applied to the Rapti and Mohan, where these rivers form the boundary, and that in both these cases the deep channel of the river in the dry weather should divide the two countries. This rule would be much more clear and distinct and less likely to give rise to disputes than the one proposed by the Boundary Commissioners: it would also be equally fair to both sides."

⁸ Aitchison, II, pages 190-191. Foreign Department to Chief Commissioner, Oudh, No. 4915, dated August 12, 1859.

⁹ Foreign Department No. 384, dated June 30, 1863, paragraph 2.

¹⁰ To Resident, Nepal, No. 2534, dated July 9, 1860.

§ 264. This decision was explained to and accepted by the Nepal Darbar.¹¹ In 1861, after the new boundary had been sanctioned, but before the territory had been formally made over to Nepal, the Rapti changed its course, and reverted to an old bed, leaving about 970 *bighas* on the British side. This land was dry throughout the year, and its identity had not been destroyed. It was claimed by Nepal, and the local officers and the Chief Commissioner correctly decided that, under the orders of July 9, 1860, the land belonged to Nepal.

Further orders in the Nepal and Oudh case, 1863 and 1871. But the question remained in what part of the old and now deserted bed was the

boundary. The Chief Commissioner and the Deputy Commissioner thought that the high bank on the British side of the old bed should be the boundary; but the Government of India did not accept this view. "The usual law," they said,¹² "in regard to boundary rivers is that the whole river in its entire breadth belongs to the nation who first had possession of the bank; and if it cannot be determined which nation had first possession, then it is presumed that the boundary meets in the middle. Now at the time of the cession to Nepal in 1860, the entire river was in British territory, and there might therefore be ground for presuming that the cession of territory to Nepal on the further side of the deep stream did not in any case carry with it the cession of the river in any part unless that cession had been made in express terms. The intention of the cession, however, was to restore the old boundary as it existed between Oudh and Nepal in 1816, and as, although the Muhammadan conquest of Oudh was prior to the Gurkha conquest of Nepal, it may nevertheless be impossible to determine whether Oudh or Nepal had priority of possession on either bank, the presumption in that view of the case would be that the boundary was in the middle of the deep stream." On the other hand, in the agreement which had been made with Nepal, there was no reservation of the claim of the British Government to the whole river bed. That Government might have asserted a right to the whole bed of the river if a line had to be drawn on the basis of the *status quo* of 1860 or of 1816; but the orders of July 1860 had been explained to and accepted by the Nepal Darbar, and it was therefore necessary to interpret them. The decision that the deep stream should be the boundary "had reference to the deep stream as distinguished from the shallower channels, and not to the deepest part of the deep stream, which, of course, it would be impossible to determine without an accurate survey of the river, and which, in most Indian rivers, never remains for two seasons the same." It was ruled that the meaning of the orders was that the boundary line should be drawn along the centre of the deep or main stream, and therefore that the boundary line of an abandoned channel should be drawn along its centre. A direction was given that this principle should be followed in the case under consideration, and that if difficulties should arise in carrying out the principle, they should be met by special agreement.

The principles thus laid down were again applied in 1871, when some further changes occurred in the course of the Rapti. On that occasion it was ruled that the fact that some British land, which by a sudden change in the course of the river had been left on the Nepal side, had at some previous time belonged to Nepal, did not affect the British claim to it. Land which becomes separated by a new channel of a river from the territory to which it appertains "remains with the Government which acquired it by gradual alluvion and to which it belonged at the time of the sudden change¹³ in the stream."

§ 265. The next precedent belongs to the year 1872. By the sixth article of the treaty¹⁴ of 1800 the Nizam ceded to the East India Company his territory, south of the River Tungabhadra, and the intention of the treaty was to make that river the boundary between the British possessions and the Hyderabad State. The Raichur Doab, north of the Tungabhadra, thus remained part of the Hyderabad State. That Doab was one of the districts assigned to the British Government by the treaty of 1853 as security for the payment of the Hyderabad

¹¹ From Resident, Nepal, No. 66, dated October 27, 1860, and enclosures. Pro., Foreign, November 1860, Nos. 598-602.

¹² To Resident, Nepal, No. 384, dated June 30, 1863.

¹³ To Officiating Chief Commissioner, Oudh, No. 2294-P., dated October 24, 1871. Pro., Political A, October 1871, Nos. 654-676.

¹⁴ Aitchison, VIII, p. 325.

Contingent ; but it was restored to the Nizam by the fifth article of the supplemental treaty¹⁵ of 1860. Thus in 1872 the position on the Tungabhadra was the same as it had been after the cession of the territory south of that river in 1800. The question arose whether the island of Kitanur Gadda, area 32 acres, belonged to the Bellary District, as part of the village of Kitanur, or to the Kopal District of the Hyderabad State in the Raichur Doab, as part of the village of Kondahoshalli. No revenue was paid to either Government in respect of the island, and the very slight documentary evidence produced calls for no notice. According to the report of the Madras Government, the island was situated 200 yards from the south or British and Kitanur bank and upwards of a mile from the Nizam's village. The northern channel was fordable ; the southern stream passable only by boats. The Kitanur people and the British officials had taken firewood and pasture from the island, and the Kondahoshalli people maintained that they had used its pasture and wood from time immemorial. The Governor-General in Council assigned the island to Hyderabad. After referring to the intention of the treaty of 1800, as stated above, the Government of India observed :—" It is admitted that the deep stream of the Tungabhadra flows on the south side of the island ; and it is a general rule subject to certain well-known exceptions, which do not appear to be applicable in the present instance, that in the case of a river boundary, the precise boundary is the deep stream of that river. The territorial jurisdiction having thus been settled, the question of the private rights of the villagers on both sides to the produce of the island should be left to the decision¹⁶ of the Nizam's Government."

§ 266. In 1889 the Resident at Hyderabad reported the settlement of the **The Ellichpur-Hoshangabad Case, 1889-90.** boundary common to the Ellichpur District of Berar on the one hand, and on the other hand, the districts of Betul, Hoshangabad, and Nimar of the Central Provinces. As Berar is assigned territory, and the demarcation therefore settled a boundary between British India and Foreign or State territory, the Resident considered that the sanction of the Government of India was required. The only part of the case with which we are concerned here is that which related to the boundary between the Hoshangabad District and Ellichpur. It appeared that there was no dispute at all, that the Tapti river had always been accepted as the boundary, and that in this locality the river runs through a rocky bed with very high banks on each side, and, except at one point, with little likelihood of a change of course. At a previous stage of the correspondence the Resident had held that the question whether the middle of the deep stream or the centre of the bed should be taken to mark the limit of either province was a matter regarding which no fixed rule could be laid down in the absence of a full description of local conditions, and that decision on the point must depend on the results of inquiry on the spot, and would doubtless be regulated either by local custom or existing rights in regard to ferries, irrigation, cultivation and the like, which might have accrued from time to time on either side, whether by prescription, the inroads of the stream or in some other manner. On receipt, however, of the above description of the local conditions the Resident agreed with the Chief Commissioner of the Central Provinces that a line midway between bank and bank of the Tapti should be recognised as the boundary. This proposal was accepted¹⁷ by the Government of India on February 1, 1890. It does not appear that on this occasion any reference was made to the precedents deciding that when a river is the boundary between British and State territory, the exact boundary is the deep or main stream, but the decision given was suitable to the local conditions and in accordance with the ruling in the Nepal and Oudh case of 1863 that in the abandoned channel of a boundary river the exact boundary is along the centre of the bed.

§ 267. Later on in 1890 another case was decided on the same principle and also without reference to precedents. **The Jabalpur and Rewa Case, 1890.** The Bhadar river running south of the British village of Amakol in the Jabalpur District was at that point the boundary between British territory and the Rewa State. The river gradually

¹⁵ Aitchison, VIII, p. 362.

¹⁶ Pro. General B, May 1872, Nos. 161-162.

¹⁷ Pro. Internal A, February 1890, Nos. 177-180.

changed its course to the north and some 20 acres of the British village of Amakol were added by alluvion to the Rewa village of Jholi south of the stream. These 20 acres were claimed by the *malguzar* of Amakol. To obviate the delay and expense of a special survey for a very small length of boundary the Chief Commissioner of the Central Provinces advised that the boundary between the Rewa State and that portion of the Jabalpur District, which is comprised within the village of Amakol, should be declared to be a line midway between bank and bank of the Bhadar river. The Government of India on June 16, 1890, sanctioned this proposal after having ascertained that the Agent to the Governor-General, Central India, had no objection to it. This decision was in accordance with precedent in so far as it regarded the river as continuing to be the boundary, notwithstanding the gradual change in its course adding land to the Rewa village by alluvion. The decision, however, went somewhat beyond the earlier precedents in fixing the boundary as a line midway between bank and bank.¹⁸

§ 267A. The treaty concluded by Lord Dalhousie with the Nizam in 1853 was revised in 1860 for several reasons. The Godavari Boundary Case, Hyderabad, 1890-94. The requirement that annual accounts of the Assigned Districts should be submitted to the Nizam led to embarrassing discussions; difficulties had arisen under the Commercial treaty of 1802; and it was desired to reward the Nizam for his services in 1857. Accordingly a new treaty was ratified on the last day of December 1860. "By this," says Aitchison,¹⁹ "the debt of fifty lakhs due by the Nizam was cancelled, the territory of Shorapur, which had been confiscated for the rebellion of the Raja,²⁰ was ceded to the Nizam, and the Districts of Dharaseo and the Raichur Doab²¹ were restored to him. On the other hand, the Nizam ceded certain districts on the left bank of the Godavari, freed the traffic on that river from all duties, and agreed that the remaining assigned districts in Berar should be held in trust by the British Government for the purposes specified in the treaty of 1853, but that no demand for the accounts of the receipts or expenditure of the districts should be made." We are here concerned with the cessions on the left bank of the Godavari, and we note that the material portions of the treaty of 1860 were thus expressed¹ :—

"Article 8.—His Highness the Nizam cedes to the British Government in full sovereignty all the possessions of His Highness on the left bank of the River Godavari and of the River Wainganga above the confluence of the two rivers, *viz.*, the *taluks* of Rekapalle, Bhadrachalam, Cherla, Albaka, Nagur, and Sironcha.

"Article 9.—The navigation of the River Godavari and its tributaries, so far as they form the boundary between the two States, shall be free, and no customs duties or other cesses shall be levied by either of the two contracting parties, or by the subjects of either, on goods passing up or down the aforesaid rivers."

The *taluks* ceded by these articles were annexed to the Central Provinces, but in 1874 Rekapalle and Bhadrachalam were transferred to the Presidency of Madras. At the settlement of these two *taluks*, which took place in 1867, areas of river-bed adjoining the left or British bank of the Godavari were entered in the records of certain river-side villages, and a clause was inserted in the village administration papers declaring the right of the proprietors to "everything which grows on the sandy land below the river bank." At the settlement of the four *taluks* which remained attached to the Chanda District of the Central Provinces, apparently one half only of the area of the river-bed, as ascertained by survey, was entered in the records and maps of the British villages. The *taluks* of Bhadrachalam and Rekapalle were surveyed by the Survey of India about 1880-81; and a map compiled by the Conservator of Forests from the Survey of India maps shows a distinct boundary along the left bank as though the whole of the river-bed were Hyderabad territory. On February 11, 1877, at a festival on an island called Motegedda, which was

¹⁸ Pro., Internal A., July 1890, Nos. 280-283.

¹⁹ Volume VIII, page 271.

²⁰ *Vide* paragraphs § 11 and § 244 above.

²¹ These had originally been assigned to the British Government together with Berar for the payment of the Auxiliary Force and other charges. See paragraph § 265, *supra*.

¹ Aitchison, VIII, page 362.

included in the settlement map of a British village, a man named Farid Khan was arrested by British police for opening a liquor shop without a license. The next day the Nizam's Tahsildar claimed jurisdiction; and on December 30, 1878, the Madras Government held that by the treaty of 1860 the Nizam ceded only certain *taluks* lying on the left bank of the river; and that the cession could not be deemed to include any island in the midstream. They therefore directed the Collector of the Godavari District to withdraw his claim to Motegedda. Seven years later the Madras Government, dealing in 1885 with a second settlement of the two Madras *taluks*, directed that the sum realised from the lands in the river-bed should be excluded from the assets on which the *peshkash* or revenue payable to Government was calculated. Their impression was that this was the proper consequence of their order of December 30, 1878. But the Collector subsequently argued that the treaty of 1860 did not exclude these lands from British territory; and the Madras Government in 1890 cancelled their order of 1885 and decided that the lands should be included in the settlement.

Intermediately the Hyderabad authorities, acting upon the orders of the Madras Government in the Motegedda case, were preparing in 1880 to assert sovereign rights generally over the whole of the Godavari from bank to bank opposite the two Madras *taluks*. In particular the Nizam's Tahsildar at Palavanha issued notices declaring that the contracts given by the Madras Government for the conveyance of passengers from the British to the Hyderabad bank were void, and that persons desiring to obtain these contracts should apply to his office. Of this the Madras Government informed the Resident at Hyderabad, who, in asking the Nizam's Minister for an explanation, wrote "that, under article 9 of the treaty of 1860, the passage of the river is free, and that *His Highness's Government has no claim or right of any sort beyond the midstream of the river, as universally recognised in the case of boundary rivers.*" The Minister did not notice this remark in his reply, but said that the exercise of authority on both banks arose from a misunderstanding on the part of the Tahsildar, who had been removed from his office for his irregular conduct.

Such were the material facts relating to the river boundary in this quarter when in 1889 or thereabouts disputes between villages, and in 1892, the desirability of defining the boundary of a coal-mining concession made in the Bhadrachalam *taluk* to Messrs. Binny & Co., of Madras, raised the whole question of the river boundary between British and Hyderabad territory along the whole line of the ceded *taluks*. There were two disputes between villages of the Chanda District and of the Hyderabad territory respectively, two villages being concerned in each dispute; and in both cases, when the British villagers, in pursuance of a claim to the whole river-bed, attempted to cultivate land beyond the deep stream, the Nizam's subjects resisted them. A coal concession was made to Messrs. Binny & Co., not only, as said above, in the Bhadrachalam *taluk*, but also in the Chherla *taluk* of the Chanda District. Writing in June 1893, this firm said that they had got down to a workable seam of coal, but did not think it advisable to push on the mining without a sound title from Government. Mr. Skinner, Officiating Deputy Commissioner of the Chanda District, who made a very full local inquiry, reported that the seam of coal which had been discovered in the bed of the river was on the British side both of the deep stream and of a central line; by which he appeared to mean a line drawn midway between high bank and high bank. He held that neither the Nizam nor the British villagers could rightfully claim the whole river-bed. The facts were that cultivation had been carried on in the river-bed on the British side of the deep stream by British villagers ever since the cession without any objection being raised or claim put forward by the Nizam's Government or subjects in respect of the same; that in the case of certain islands a division of disputed territory had been accepted by the Nizam's officials; and that on certain other islands on the British side of the deep stream were situated three settled villages which had always been regarded as belonging to the Nagur *taluk* and had come under British jurisdiction with the rest of that *taluk* at the time of the cession. He thought that the deep stream would be the best line of boundary. The Chief Commissioner of the Central Provinces proposed that a line drawn midway between bank and bank should be adopted as the boundary

in all cases of dispute, the prevailing practice being left undisturbed where there was no dispute.

A Madras Officer, Mr. Gillman, attended during Mr. Skinner's inquiry; and gave the opinion that in the case of the Godavari the deep stream would be the best boundary, as it is well marked and does not change much. Where changes, he said, "are feared which would affect our interests, *e.g.*, in the case of the Bhadrachalam coal-field, the present course of the stream may be mapped out and adhered to. A mid-bed boundary presents difficulties in the matter of demarcation. It would also lead to disputes about cultivation, as cases would occur in which lands on one side of the stream would belong partly to us and partly to the Nizam." The Madras Government agreed with Mr. Gillman that the question of territorial jurisdiction must be decided mainly with reference to the terms of the treaty of 1860, and deferred ordering a local inquiry in the Bhadrachalam and Rekapalle *taluks*, similar to that made in the Chanda *taluks* by Mr. Skinner, pending the orders of the Government of India. The Hyderabad Government, in an ambiguously-worded letter, claimed the left bank of the Godavari and the Wainganga rivers as their boundary. Mr. Plowden, the Resident at Hyderabad, thought that the decision of the question at issue turned upon the interpretation of articles 8 and 9 of the treaty of 1860. "They constitute," he said, "the title of the British Government to the territories on the left bank of the specified rivers, and the point is, how far does the left bank extend. I think it extends up to the margin of the deep stream of these rivers and no further."

The Government of India passed final orders on February 7, 1895. In the course of the correspondence they had proposed that the deep stream of the rivers Godavari and Pranhita should be recognised as the political boundary for purposes of jurisdiction and sovereignty between British territory and the territory of the Nizam. "A boundary," they said, "of this description does not determine questions of proprietary right in regard either to private property held by subjects of the two States or to proprietary rights derived by either State from their subjects, as by purchase. But rights to minerals, such as exist in the present case, are claimed by a State *as such*, and they should follow the boundary as laid down for the purpose of defining jurisdiction." The decision was that, subject to settlements already made, which were not to be disturbed, "the Godavari and any of its tributaries, which it might be necessary to name, form the boundary between Hyderabad territory and the ceded taluks, and that the present line of the middle of the deep stream of those rivers shall be finally regarded as the political boundary irrespective of any fluctuations to which the streams may hereafter be subject." A proposal of the Madras Government was accepted that the line taken at the time by the middle of the deep stream should be fixed by arbitration. In accordance with the suggestion of the same Government it was further arranged that for the purposes of the arbitration a Court should be formed consisting of two officers of whom the British Government and the Hyderabad Darbar should each nominate one, and that the decision of the two officers, or, if they should disagree, the decision of an umpire to be nominated by them, should be final, and be accepted by both Governments².

§ 268. It will have been noticed that, though the rules of International Law Indian and European rules compared. quoted in paragraph § 260 above have been borne in mind by the Government of India and have been applied with modifications when this course seemed convenient, they have by no means been treated as rigidly binding upon us without regard to local conditions. Thus in the first stage of the Nepal and Oudh case the principle laid down in 1860 was that the deep channel of the river in the dry weather should divide the two countries. This did not decide what part of the deep channel was to be the boundary; and in particular it did not refer to the *Thalweg* or line of deepest depression—a line which, in the absence of a survey and for other reasons, would be quite unsuitable on most of the big ever-changing rivers of India. The orders of 1863 removed the doubt by declaring the boundary to be a line drawn along the centre of the deep or main stream. In fact they affirmed the principle of the middle

² *Proc., Interval A., February 1895, Nos. 178-183.*

of the river as laid down by Grotius and Vattel, and not the principle of the *Thalweg*. They also affirmed the principle that if a channel dries up suddenly, this fact makes no difference in the jurisdiction, but ruled that the boundary in an abandoned channel should be drawn not along the deepest part but in the centre. All the precedents are in accordance with the principles that accretion by alluvion falls under the jurisdiction of the State possessing the bank upon which that gradual increment takes place; and that there is no change of jurisdiction over identifiable land cut off by a sudden change in the course of a river. Finally, the line may be drawn midway between bank and bank if this is convenient or may be determined once for all by arbitration.

§ 269. On the whole the principles which have been accepted by the Government of India appear to be these:—

Summary.

(1) *As a general rule, and in the absence of any special agreement or special local circumstances, when there is a river boundary between British and State territory, the deep or main stream is the boundary; and the precise line of demarcation is a line drawn along the centre of that stream. But it is quite permissible to fix the boundary as a line midway between bank and bank or to lay it down finally by arbitration.*

(2) *When a boundary river suddenly quits its bed and cuts for itself a new channel, it ceases to be the boundary, and the Government which ruled over the territory cut off by the change in the river, continues to rule over it. This principle applies when the land so cut off is capable of identification, but not otherwise.*

(3) *When a boundary river gradually encroaches on either side in the ordinary course of alluvion and diluvion, it continues to be the boundary, and the jurisdiction over the land thus gradually formed by alluvion follows the jurisdiction over the land to which it is attached.*

(4) *When it is necessary to fix a boundary in an abandoned channel, the boundary should ordinarily be drawn along its centre.*

(5) *These rules apply in questions of sovereignty and have no bearing, as between subjects, on questions of private right, which can be determined by the proper courts or authority when the territorial jurisdiction has been settled.*

It will be observed that if the boundary has been fixed once for all irrespective of the fluctuations of the river, as directed in the Godavari case, the river itself is no longer the boundary, and rules (2), (3) and (4) do not apply.

§ 270. Leaving river boundaries, we have now to consider boundaries of other kinds. In 1877, after considerable correspondence which it is unnecessary to epitomise, rules were sanctioned by the Government of India for the settlement of boundary disputes between Native States in Rajputana and Central India.³ The rules had been originally in force in Central India and, when they were extended to Rajputana, were revised in such manner as to make them suitable for both Agencies. With some slight alterations they were soon afterwards accepted by the Punjab Government.⁴ The main principle of the rules is that every opportunity shall be given to the parties to settle the dispute by agreement or arbitration or similar means before it is resolved to settle it by authority. The rules are so framed that they can be followed in the case of a dispute between any two States of the same Agency or of the Punjab, or between a Rajputana and a Central India State or a Rajputana and a Punjab State. There could not be a boundary dispute between a Punjab State and a Central India State, because the frontiers of these States nowhere adjoin each other. The rules provide that a *Motamid* or representative from each State concerned shall attend a Boundary Officer at the disputed boundary and mark out their respective claims. Time is then given them—one or two days, at most a week—to agree on the boundary to be adopted. If they agree, the Boundary Officer gives effect to the agreement, and there is, of course, no appeal. If they fail to agree, they may nevertheless assent in writing to the settlement of the case by *panchayat*, by a sole arbitrator, by men to whom both

³ Pro., Political A, March 1877, Nos. 593-604.

⁴ Pro., Political A, March 1877, No. 231; and January 1878, Nos. 156-160.

sides agree walking the boundary, or by any other method which may be customary in the locality. If the settlement is thus effected, there is no appeal except on the ground of corruption or misconduct on the part of one or more of the persons whose proceedings were material to the settlement. Failing a settlement of this nature, the Boundary Officer proceeds to determine the case on such evidence as is obtainable. If the parties accept his finding, there is no appeal. If one or both of the parties decline to accept the decision of the Boundary Officer an appeal lies to the Agent to the Governor-General or the Lieutenant-Governor of the Punjab, as the case may be. The course of appeal follows that of the official subordination of the Boundary Officer. If he is a Punjab officer the appeal lies to the Lieutenant-Governor; if a Rajputana officer, to the Agent to the Governor-General in Rajputana; if a Central India officer, to the Agent to the Governor-General in Central India. If the Lieutenant-Governor or the Agent to the Governor-General confirm the decision of the Boundary Officer, his order is final and there is no further appeal. But if he modify or reverse the decision of the Boundary Officer, a further appeal lies to the Governor-General in Council, whose order is final. When permanent pillars erected on a boundary settled under the rules have been destroyed or injured, the State, to the subjects of which the damage is traced, is liable, on the judgment of the Lieutenant-Governor or Agent to the Governor-General as the case may be, to a penalty not exceeding Rs. 1,000. The rules *mutatis mutandis* apply to cases in which the dispute is not regarding the actual boundary between one village and another, but whether a particular village or villages, the boundaries of which may or may not be disputed, belongs to one State or to another. As already noted, this constitutes a slight qualification of the proposition stated in paragraph § 242 above that no authority below that of the Governor-General in Council is competent to decide questions of sovereignty as between one State and another. The transfer of a village or group of villages from the possession of one State to the possession of another or a decision of the case confirming a State in the possession of a disputed village or villages, clearly involves the decision of a question of sovereignty. But here the acceptance of the decision of the Boundary Officer or the Lieutenant-Governor or the Agent to the Governor-General, as the case may be, is analogous to the acceptance of the decision of the Government of India in boundary cases or other cases of unimportant transfers of territory, which are held (*vide* paragraph § 249 above) not to require the sanction of Her Majesty's Government. There is no doubt that the Government of India are competent to sanction these petty adjustments of territory in boundary cases as between one State and another, and in practice they can and do delegate their authority, except where the Lieutenant-Governor or Agent to the Governor-General has modified or reversed the local decision. In cases affecting a whole village or a group of villages, possession at the time of the establishment of British supremacy determines the question whether the village or villages belong to the one State or to the other, unless subsequently the matter shall have been otherwise determined by competent authority, or unless uninterrupted and undisputed adverse possession for a period of twenty-five years be proved. On more than one occasion proposals have been made for the revision of these rules, but the Government of India have preferred to leave them to their operation. For instance, the Punjab Government in October 1877 represented that it was precisely in cases where all the Rajputana authorities might be agreed on a verdict unfavourable to a Punjab State, or when all the Punjab authorities might be similarly agreed against a Rajputana State, that a reference to some tribunal unconnected with either the Punjab or Rajputana would be most satisfactory to the State which had preferred the appeal. But it was thought that it would not be advisable to enter upon a revision of the rules merely on the plea that the Punjab States cannot trust the Agent to the Governor-General, and the Rajputana States cannot trust the Lieutenant-Governor.⁶ In 1884, however, a rule, not yet quoted, was somewhat relaxed in interpretation, though it was not formally amended. The rule requires a separate record for each village in cases where the boundary in dispute lies between one village or more than one village on the one side, and more than one village

⁶ *Proc. Political A*, January 1878, Nos. 156-160.

on the other. It appeared to the Government of India that in the event of the villages on one side being contiguous, one carefully-prepared record, which dealt separately with the dispute as it affected each village, would be sufficient. "The object of the rule," it was said,⁶ "is to enable each village on the disputed border to know precisely its limits upon that side which touches the adjoining State. It is not necessary in every case to make a separate record of every subdivision of a large boundary dispute. A single record arranged in convenient and self-contained paragraphs would ordinarily suffice, and thereafter an extract from such a record would constitute for each separate village the separate record required by the rules. Boundary Officers would use their own discretion in preparing an entirely distinct record in cases of difficulty or when the villages are not contiguous."

§ 271. Rules almost identical with those above abstracted were sanctioned in 1878, for the settlement of boundary disputes between the Baroda State and the other adjoining States and British districts. The only point connected with the Baroda rules that need be noticed is that the question of appeal gave rise to considerable discussion. In a series of resolutions bearing dates 1861, 1869, 1873 and 1874, the Bombay Government had held that the decisions of Boundary Settlement Officers are not open to appeal. The Baroda State persistently maintained that an appeal should be allowed. The point was conceded; but the Bombay Government then objected to the Agent to the Governor-General, Baroda, being recognised as the appellate authority. They argued⁷ with justice that the Agent in Rajputana is placed above several Political Agents and personally connected with no State in particular; so that, when hearing an appeal, he stands in the same relation to both contending States. But the Agent at Baroda is in effect the Political Agent for the one great State which would be plaintiff or defendant in every suit, and would therefore be disqualified by his position from deciding, certainly from *finally* deciding, any case between Baroda and another Native State. This point also was conceded; and in the Baroda rules the appellate authority is the Revenue Commissioner of the Northern Division of the Bombay Presidency, and after him, if he modifies or reverses the decision of the Boundary Officer, the Governor-General in Council.⁸

All sets of rules throughout assume that the Boundary Officer will be appointed by some British authority. The rules thus testify to the operation of the general principle that the British Government is the arbiter in interstatal disputes.

§ 271A. In the revised *sanads* issued to the Chiefs of the Orissa Tributary Mahals (see paragraphs §224 and §498) it is provided that all questions as to boundaries between the State concerned and British territory shall be dealt with by the Superintendent of the Mahals or other officer appointed by the Lieutenant-Governor, with two assessors, one to be appointed by the Chief and one by the Lieutenant-Governor, or by the Superintendent, or the officer alone if the Chief so prefers. This provision seems worth mentioning as it may be considered a good precedent if other *sanads* come under revision.⁹

⁶ Pro., Internal A, November 1884, Nos. 235-291.
⁷ From Bombay, No. 1569, dated March 14, 1877.

⁸ Pro., Political A, April 1878, Nos. 124-144.
⁹ Pro., Internal A, March 1895, Nos. 1-37.

CHAPTER IX.

THE PRESERVATION OF NATIVE RULE.

§ 272. That it is a part of the settled policy of the British Government to maintain and continue Native rule in the Protected States of India is a proposition that does not stand in need of any elaborate proof. Some evidence on the point has already been brought forward in Chapter III, where a review of a good many leading cases of intervention to prevent gross misrule indicated a fixed desire to restore a Native Government when this could be done with safety. We shall refer here to the solemn and public declarations of 1858 and 1877—the Amnesty Proclamation and the speech of Lord Lytton at the Delhi Assemblage; and to a few famous cases in which deliberate action has confirmed the declarations thus made—to the distribution of the Canning Adoption *Sanads*, the rendition of Mysore, the re-establishment of a Native Government at Baroda, and the more recent precedents of Manipur and Kalát. On Baroda, Manipur, and Kalát we have already remarked at some length: but something more remains to be said in the present connection.

§ 273. The Proclamation which notified that Her Majesty the Queen had taken upon herself the Government of the territories in India formerly administered in trust for Her Majesty by the Honourable East India Company bears date November 1, 1858. It is known as the Amnesty Proclamation because it extended clemency to all offenders in the disturbances except those who had directly taken part in the murder of British subjects.¹ The well-known passage which is material here was this:—“We hereby announce to the Native Princes of India that all treaties and engagements made with them by or under the authority of the Honourable East India Company are by us accepted and will be scrupulously observed; 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.”

§ 274. In announcing on January 1, 1877, the assumption by Her Majesty the Queen of the title of Empress of India, the Viceroy, Lord Lytton, referred to the Proclamation of 1858. “The promises,” he said, “then made by a sovereign, whose word has never been broken, need no confirmation from my lips. Eighteen years of progressive prosperity confirm them; and this great assemblage is the conspicuous evidence of their fulfilment. Undisturbed in the enjoyment of their hereditary honours, protected in the prosecution of their lawful interests, both the Princes and the people of this Empire have found a full security for the future in the generosity and justice of the past.” Elsewhere in his speech Lord Lytton observed:—“This Empire, acquired by Her ancestors, and consolidated by Herself, the Queen regards as a glorious inheritance to be maintained and transmitted intact to Her descendants, and

¹ To those who had willingly given asylum to murderers, knowing them to be such, or who had acted as leaders or instigators in revolt, their lives alone were guaranteed. By Government of India, Home Department, Notification No. 38-C, dated January 1, 1877, the exception from the amnesty of persons who were leaders in revolt was withdrawn; but the exception as to murderers and leaders of *mutiny* was maintained.

She recognises in the possession of it the most solemn obligations to use Her great power for the welfare of all its people, with scrupulous regard for the rights of Her Feudatory Princes. . . . Princes and Chiefs of this Empire — which finds in your loyalty a pledge of strength, in your prosperity a source of splendour, Her Majesty thanks you for your readiness, on which She reckons, if its interests be attacked or menaced, to assist Her Government in defence of them Her Majesty regards Her interests as identified with yours; and it is with a wish to confirm the confidence and perpetuate the intimacy of the relations now so happily uniting the British Crown and its feudatories and allies; that Her Majesty has been graciously pleased to assume the Imperial Title we proclaim to-day." To the Native subjects of the Queen-Empress Lord Lytton said:—"You must all adopt as your own that highest standard of public virtue which comprises loyalty, incorruptibility, impartiality, truth, and courage. The Government of Her Majesty will then cordially welcome your co-operation in the work of administration. For in every quarter of the globe over which its dominion is established, that Government trusts less to the strength of armies than to the willing allegiance of a contented and united people, who rally round the throne, because they recognise therein the stable condition of their permanent welfare. It is on the gradual and enlightened participation of Her Indian subjects in the undisturbed exercise of this mild and just authority, and not upon the conquest of weaker States, or the annexation of neighbouring territories, that Her Majesty relies for the development of Her Indian Empire."

§ 275. Thus the Proclamation of 1858 deliberately abjured a policy of annexation in regard to the Native States, and in 1877 an important political occasion was seized to confirm in an emphatic way the confidence of Ruling Chiefs in the intention of the Paramount Power to safeguard their interests.

The distribution of the Adoption Sanads, 1862. Upon the declarations of 1858 the distribution of the Canning Adoption *Sanads*

followed very naturally. The historic despatches which passed between Lord Canning and Sir Charles Wood on that subject must be read by every student of Indian Political Law. They are therefore printed at length in an Appendix.² In the Native States numerous cases had occurred of doubtful successions or adoptions and the deciding authorities were not agreed as to our rights, our duty or our policy in these matters; and in the mind of each Chief there appeared to be a haze of doubt and mistrust as to the course which the Government would take in regard to his State if he were to leave no natural heir. Lord Canning therefore proposed to show "at once, and for ever, that we are not lying in wait for opportunities of absorbing territory, and that we do deliberately desire to keep alive a feudal aristocracy where one still exists;" and to do this by giving a separate assurance to every Chief governing his own territory. The wording of the *sanads* was somewhat varied in different cases, but the usual form of the assurance, as subsequently settled, in the case of a Hindu or Sikh Chief was thus framed:—"Her Majesty being desirous that the governments of the several Princes and Chiefs in India who now govern their territories, should be perpetuated, and that the representation and dignity of their Houses should be continued, in fulfilment of this desire, this *Sanad* is given to you to convey to you the assurance that, on failure of natural heirs, the British Government will recognise and confirm any adoption of a successor made by yourself or by any future Chief of your State that may be in accordance with Hindu Law and the customs of your race.

"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 obligations to the British Government."

In the case of a Muhammadan Chief the expressions are the same except that the assurance is that, on failure of natural heirs, the British Government will recognise and confirm any succession to his State that may be legitimate according to Muhammadan Law. From the wording of these *sanads* and from

² Appendix A.

the terms of the despatches,³ it is clear that a State may become liable to confiscation if the Chief is guilty of a breach of loyalty or of recorded engagement to the Paramount Power. The despatches passed in 1860, but a good deal of correspondence followed, particularly with reference to the selection of the Chiefs to whom the *sanads* were to be granted; and most of the *sanads* bear date March 11, 1862, the day Lord Canning left India. In 1864 there was the decision of Her Majesty's Government that Kathiawar is not British territory;⁴ and in 1865 Canning Adoption *Sanads* were distributed to the Chiefs of the Central Provinces who were recognised as Feudatories.⁵ In later years there was a series of cases, fully detailed in Chapter VII—the cases of the Orissa and Chota Nagpur Mahals, of Kuch Behar, and of the Dángs in the Bombay Presidency—which clearly evince on the part of the Paramount Power a sustained tenderness for rights of sovereignty.

§ 276. It was in 1867 that Her Majesty's Government resolved upon the rendition of Mysore. The history of the affairs which led up to this resolution is

The rendition of Mysore.

well known and is briefly stated in Aitchison.⁶ In 1799, at the time of the partition of Mysore, Maharaja Krishna Raj Wadiar, with whom we made the subsidiary treaty of the same year, was a minor. The government was placed in his hands in 1812; and his misrule led to a rebellion and the assumption of the direct management of the State by the British authorities in 1831. His various applications for restoration to power were rejected, as was also his request made in 1864 for permission to adopt a son to inherit the State. But three years later this request was granted. In the despatch of April 16, 1867, which communi-

The despatch of 1867.

cated this decision to the Government of India, Sir Stafford Northcote, the Secretary of State, wrote:—“Without entering upon any minute examination of the terms of the treaties of 1799, Her Majesty's Government recognise in the policy which dictated that settlement, a desire to provide for the maintenance of an Indian dynasty on the throne of Mysore, upon terms which should at once afford a guarantee for the good government of the people, and for the security of British rights and interests. Her Majesty is animated by the same desire and shares the views to which I have referred. * *It is Her earnest wish that those portions of India which are not at present under Her immediate dominion may continue to flourish under Native Indian Rulers, co-operating with Her representatives in the promotion of the general prosperity of the country*; and in the present case more especially, having regard to the antiquity of the Maharaja's family, its long connexion with Mysore, and the personal loyalty and attachment to the British Government which His Highness has so conspicuously manifested, Her Majesty desires to maintain that family on the throne in the person of His Highness's adopted son, upon terms corresponding with those made in 1799, so far as the altered circumstances of the present time will allow.

“In considering the stipulations which will be necessary to give effect to this arrangement, I have, in the first place, to observe, that Her Majesty's Government cannot but feel a peculiar interest in the welfare of those who have now for so long a period been subject to their direct administration, and that they will feel it their duty, before replacing them under the rule of a Native Sovereign, to take all the pains they can with the education of that Sovereign, and also to enter into a distinct agreement with him as to the principles upon which he shall administer the country and to take sufficient securities for the observance of the agreement.”

Two points are particularly noticeable in this extract; first, the emphatic expression of a desire for the continuance of Native rule; and secondly, the necessity for special care in effecting the rendition—a necessity due to the length of time—nearly forty years—during which the State had been under British administration.

Maharaja Krishna Raj Wadiar died on March 27, 1868, at the age of seventy-four; and his adopted son Chamrajendra Wadiar, the late Maharaja, then a child, was installed on September 23 in the same year. When he

³ See paragraph 41 of Lord Canning's despatch, No. 43-A of April 30, 1860, and the general approval in paragraph 3 of Sir Charles Wood's reply, No. 59-P, dated July 26, 1860, both printed in Appendix A.

⁴ See paragraph § 201 above.

⁵ See paragraph § 206 above.

⁶ Vol. VIII, pages 433-437.

was approaching the age of eighteen years, which he attained on March 5, 1881, the conditions upon which the Government of the State should be transferred to him came under detailed consideration. The Government of India explained

The despatches of 1879. their views in a despatch of May 22, 1879, of which the gist is perhaps contained in the sentence—"All such fundamental axioms of Government as are recognised in British India, and have been for many years extended to Mysore, will, with the modifications rendered necessary by the transfer of jurisdiction, continue to be binding upon the administration of His Highness the Maharaja." They laid great stress on the importance of the case as a precedent. They contemplated that the principles which they discussed might "form the groundwork of a settled policy which will guide the Government of India in the general discharge of its responsibilities towards Feudatory States. A new and valuable precedent," they said, "will have been established, and this, with the experience which will have been gained in Mysore, may enable us in future to deal systematically with similar questions of reorganisation or reform." The Secretary of State replied on August 7, 1879. He said—"The experiment of thus placing the Maharaja of Mysore at the head of a Government to be conducted upon fixed and fundamental principles is, as you observe, a new departure in the policy of the Imperial Government towards the Native States of India. To determine the proper method of dealing with these States, and of discharging the responsibilities of the British Government towards them, has always been, and still is, as Your Excellency in Council observes, a problem of great difficulty. The absolute security against internal revolt, which is now enjoyed by Native rulers, entails upon them obligations towards their subjects which they cannot be allowed altogether to disregard. It is on the gradual and judicious extension in Native States of the general principles of government which are applied in British territory that their rulers will find the surest guarantee of their administrative independence, and the best safeguard against intervention on the part of the Paramount Power. Her Majesty's Government consider, therefore, that the present opportunity may be wisely used to assimilate, as far as possible, the executive and fiscal system of Mysore to that of British India, without, however, attempting an absolute uniformity which, whilst difficult to enforce, might, if practicable, be of doubtful expediency."

It is an inference from this extract that in desiring the preservation of Native rule, the British Government also desires that Native rule shall be conducted on civilised principles and with due regard to the obligations of Ruling Chiefs towards their subjects, but not that it shall be a mere copy of British administration. The importance of this proviso will be appreciated if we bear in mind what has been said in paragraph § 47 above where we quoted the remark that the Government of India had no desire to turn Kashmir into the semblance of a British district; and it is still more clearly manifest from a consideration of paragraphs 34 and 35 of Lord Canning's despatch (see Appendix A), No. 43 A, dated April 30, 1860, proposing the distribution of the Adoption *Sanads*. Absolute uniformity with the British Indian system would vastly diminish or destroy that severance between British and Native India to which Lord Canning pointed as a political security; it could hardly leave the hereditary authority of the Ruling Chiefs unimpaired; and it would close the outlet to those ever-moving elements of restlessness and personal ambition, the relics of the flood of adventure and turmoil formerly pouring over India in full tide, which still simmer here and there in our settled districts ready to acquire a dangerous force if too rigidly confined.

§ 277. Probably the best way of estimating the value of the Mysore case as a precedent is to analyse the document which placed on permanent record the results of all the deliberations, illustrating it by a commentary drawn in part from the Mysore correspondence and in part from portions of the present compilation. The Mysore Instrument of Transfer, like the correspondence regarding the Adoption *Sanads*, demands the particular attention of all who wish to understand the system of relations established between the British Government and the Indian Feudatory States. It is accessible in Aitchison,⁷ but

⁷ Volume VIII, pages 479-482.

for convenience of reference has been added to this compilation as Appendix B. Some of the Articles are necessarily special to the peculiar case of the rendition of a province which had been for fifty years under British rule. Such are the 19th, 20th and 21st articles which maintain the laws and system of administration in force before the transfer, and the title-deeds granted and settlements of land revenue made during the administration of Mysore by the British Government. The provisions for the subsidy (article 5) and for the retrocession of the Island of Seringapatam (article 6) are also closely connected with the history of the particular State. But putting aside these special stipulations, for the most part the conditions of the Instrument are not, as remarked by the Government of India,¹⁹ dissimilar in principle from those upon which the subordinate relations of all other Native States with the British Government are founded; and appear, as said by the Secretary of State,²⁰ to harmonise generally with stipulations contained in existing treaties and engagements between the Government of India and Native States.²¹

§ 278. Thus as regards political subordination to the Paramount Power (Chapter I above) article 4 requires the Maharaja at all times to remain faithful in allegiance and subordination to Her Majesty the Queen. Political isolation is secured by articles 5 and 11. The British Government undertakes to defend and protect Mysore against all external enemies, and the Maharaja is required to abstain from interference in the affairs of any other State or Power, and to have no communication or correspondence with any other State or Power, or the agents or officers of any other State or Power, except with the previous sanction and through the medium of the Governor-General in Council.

Analysis of the Mysore Instrument of Transfer.

As to the primary limitation of internal sovereignty—the prohibition of misrule—the terms of article 23 are very comprehensive. It prescribes that the Maharaja “shall at all times conform to such advice as the Governor-General in Council may offer him with a view to the management of his finances, the settlement and collection of his revenues, the imposition of taxes, the administration of justice, the extension of commerce, the encouragement of trade, agriculture and industry and any other objects connected with the advancement of His Highness’s interests, the happiness of his subjects, and his relations to the British Government.” The extent to which the Government of India, or any authority subordinate to it, would intervene in the internal affairs of any State, of course depends upon the nature of the engagements existing with that State, the history of its relations with the British Government, and the actual circumstances and necessities of the particular occasion. The detail of article 22 of the Mysore Instrument follows closely the detail of article 14 of the Mysore treaty of 1799.¹⁹ But in commenting upon the Instrument generally, the Government of India said:—“This Instrument not only prescribes the internal and external obligations of the Maharaja towards the British Government, but it also represents in itself the security which is held for the due observance of the conditions upon which the State will have been restored. In the event of failure by the Ruler to fulfil his financial or political engagement; if the constitution of Government is violated or neglected; and if the Maharaja disregards the advice or injunctions of the Governor-General in Council, then a clear and specific case arises for the intervention of the Governor-General in Council, who will then adopt such precautionary or remedial action as the circumstances of the case may render expedient. *This power of intervention, in such contingencies, is practically unlimited, and could at all times be exercised in Mysore, as in any other Native State, by virtue of the general supremacy and paramount authority of the British Government.* Throughout this despatch, however, we have assumed that it is expedient, on grounds of State policy and for the prevention of controversy, to expound and affirm the general authority possessed by the Supreme Government, and to place on record the circumstances and contingencies in which it will be exercised.

¹⁹ This cession was duly made by the Government of India with the previous sanction of Her Majesty’s Government. See paragraph § 249 above for the decision approving this procedure.

²⁰ Paragraph 16 of India despatch No. 26, dated March 3, 1880.

²¹ Paragraph 16 of despatch No. 67, dated August 12, 1880.

²² Aitchison, VIII, page 472.

The more clearly these contingencies are understood, the less likely, in our opinion, are they to occur. It was upon these and similar considerations, beyond question, that the subsidiary treaty of 1799 was concluded. Lord Mornington had resolved to reserve for his Government 'the most extensive and indisputable powers of interposition in the internal affairs of Mysore, as well as unlimited right of assuming, under certain conditions, the direct management of the country.' And it appeared then to the Governor-General 'a more candid and liberal, as well as a more wise, policy to apprise the Raja distinctly, at the moment of his accession, of the exact nature of his dependence on the British Government than to leave any matter for future doubt or discussion.' These views and arguments are, in our judgment, equally clear and cogent in their application to the present occasion of the reconstruction of our relations with Mysore. And since the treaty which in 1799 placed Mysore in the possession of a Native Ruler contained a distinct recital of the consequence which might follow a breach of that engagement, we are of opinion that the present Instrument should contain some corresponding provision of specific penalty." Accordingly article 23 runs:—"In the event of the breach or non-observance by the Maharaja of Mysore of any of the foregoing conditions, the Governor-General in Council may resume possession of the said territories and assume the direct management thereof, or make such other arrangements as he may think necessary to provide adequately for the good government of the people of Mysore, or for the security of British rights and interests within the Province." Article 24—the final article of the Instrument—provides that it "shall supersede all other documents by which the position of the British Government with reference to the said territories has been formally recorded," and that "if any question arise as to whether any of the above conditions has been faithfully performed, or as to whether any person is entitled to succeed, or is fit to succeed to the administration of the said territories, the decision thereon of the Governor-General in Council shall be final."

No doubt, the exceptionally explicit language of articles 22 and 23 of the Mysore Instrument was affected—as the above passage shows—by the history of the relations of the Mysore State with the British Government. It is one thing to create a Native State in political subordination to the Paramount Power, which was what Lord Mornington did when he gave Mysore to the late Maharaja in 1799; or to effect the rendition of a Native State on certain conditions, which was done by the Governments of Lord Lytton and Lord Ripon in 1880 and 1881. It is another thing to incorporate within the Indian Protectorate by treaties or other engagements, pre-existing principalities like those of the Nizam, the Gaekwar, Sindhia and Holkar, or the ancient States of Rajputana which preceded and have outlasted the Moghal Empire itself. The real importance of the Mysore rendition as a precedent consists in this, that it shows the direction which a legitimate revision of our relations with a State is likely to take when, by some fresh occurrence, history and the imperative conditions of good faith cease to oppose any obstacle.

§ 279. The minor stipulations of the Instrument may be more briefly reviewed. As already noted (paragraph § 81 above) the Maharaja may not, without sanction, employ in his service persons who are not natives of India. Article 13 provides that the separate coinage of the Mysore State, which had long been discontinued, shall not be revived. It is thus consistent with the general rule (paragraph § 121 above) prohibiting the revival of disused mints. In the matter of subordinate cooperation many well-known principles are expressly formulated. Article 8 places the importation and manufacture of arms, ammunition and military stores under the control of the Governor-General in Council. Article 7 prohibits the building or repair of fortresses without sanction. Article 9 requires the Maharaja to permit the location of British Cantonments in his territories; and article 10 empowers the Governor-General in Council to fix the strength of the military force to be employed in the Mysore State. The grant, free of charge, of lands required for railways and telegraphs is also provided for; and article 16 deals with the subject of extradition. It is worthy of note that article 14 declares that all lines of telegraph in Mysore shall form part of the British telegraph system and shall, save in cases to be specially excepted, be worked

by the British Telegraph Department in accordance with the laws and rules in force in British India. On the provisions of the Instrument regarding succession it will be most convenient to remark in the next chapter. No separate Adoption *Sanad* was granted to the Maharaja. Its place was taken by part of article 24, transcribed above, and by article 3, which will be transcribed later on.

§ 280. We shall return below to the case of the Alwar succession, 1875, and shall also notice the cases in which doubts arose as to the construction of the Canning Adoption *Sanads*. They were those of Kashmir, Hyderabad and Pudukota. We have here to revert to some parts of the Baroda case which we

The Baroda case considered in connection with the preservation of Native rule.

refrained from noticing in detail in paragraphs § 39 to § 42 above. In the Mysore case the opportunity was taken to reconstruct our relations with one of the most important States in India; and an important lesson is to be learnt from the character of the reconstruction. In the Baroda case it was expressly stated in the Proclamation which announced the deposition of Malhar Rao that in conferring the sovereignty upon some member of the Gaekwar House no alteration would be made in the treaty engagements which existed between the British Government and the Gaekwars of Baroda, and that the new Gaekwar would enjoy all the privileges and advantages which were conveyed to the Gaekwar of Baroda by the Canning Adoption *Sanad* which was granted to him in 1862. The interest of the Baroda precedent, so far as it is here to the point, thus turns upon the testimony to the desire for the preservation of Native rule afforded by the grant of the State notwithstanding the deposition of the Ruler, and upon the principles observed by the Government of India in selecting a successor under the exceptional circumstances of the case. It may be added that some at least of these principles are such as would at any rate be borne in mind, if not necessarily followed, in almost any choice of a successor made without reference to distinct hereditary claims, as for instance on failure of heirs, natural or adopted.

§ 281. In Chapter III we said that the second and third phases of the Baroda case would be noticed so far as necessary in this chapter. The second phase included the attempt to poison Colonel Phayre and the trial and deposition of the Gaekwar; and the third phase was concerned with the selection of the new Chief and the restoration of Native rule.

When the Government of India came to the conclusion that the Gaekwar must be arrested, the Proclamation which was issued declared that evidence had been adduced to the effect that Malhar Rao had instigated the attempt to poison Colonel Phayre, and that to instigate such an attempt "would be a high crime against Her Majesty the Queen, and a breach of the condition of loyalty to the Crown under which Malhar Rao Gaekwar is recognised as Ruler of the Baroda State" and "an act of hostility against the British Government." The peculiar atrocity of such a crime impressed itself in a remarkable degree upon the Government of India. "The sanctity," they said, "attached to the lives of Ambassadors extends, in our opinion, if possible in a greater degree to British Residents at the Courts of Native States, and no offence could be greater than an attempt upon the life of a British Resident instigated by the Ruler of a Native State."

In approving the course taken by the Government of India in causing the arrest of the Gaekwar the Secretary of State observed:—

"It would have been a scandal to continue relations of friendliness and apparent cordiality with a Prince lying under a charge so horrible, made by those who professed to be his instruments; and it would not have been just to the able servants of the Crown, who perform delicate political duties, often under circumstances of difficulty and peril, to announce to the world that you held their lives so cheaply." Nevertheless, in spite of the possibility, or even the probability, that the Gaekwar might be convicted of so atrocious an offence, there was no thought of annexation; and the Proclamation asserted that "in accordance with the gracious intimation made to the Princes and Chiefs of India, that it is the desire of Her Majesty the Queen that their

Governments should be perpetuated, and the representation and dignity of their Houses should be continued," a Native Administration would be established in such manner as might be determined upon "after the conclusion of the inquiry and after consideration of the results which such inquiry might elicit."

The repetition here of the language of the Adoption *Sanads* was appropriate and significant. The explanation of the motives which induced the Government of India to confer the sovereignty upon another Gaekwar and to abstain from effecting any change in the relations between the Baroda State and the British Government, had best be given in their own words. "In making public," they said, "the action taken by the Government in suspending the Gaekwar, we announced that it was our intention, whatever the results of the inquiry might be, to re-establish a Native Administration at Baroda. We are aware that some distrust prevailed of the motives of the British Government in dealing with the case, and that, notwithstanding the solemn announcements that had been made from time to time, that there was no desire to extend the British possessions in India, all our proceedings with respect to Native States were watched with a jealousy which indicated that these declarations were hardly yet accepted as expressing the real intentions of the British Government. It was, therefore, our view that, while it was essential to deal strongly with the attempt to poison the British Resident, it was equally essential to announce that, in doing so, we had no intention of annexing the territory of Baroda. . . . It is to be noticed that the suspension of the Ruler of one of the principal Native States in India, the assumption for a time of the administration of his dominions, and the inquiry into his conduct by means of a Commission appointed by the British Government, involved the exercise of an authority by the Paramount Power in India of the widest possible nature. It cannot but be regarded with satisfaction that the Maharajas of Gwalior and Jaipur by serving on the Commission identified themselves with the policy of Government, and that the course taken received the concurrence of Maharaja Holkar." It will be remembered (see paragraph § 39 above) that Malhar Rao was charged with instigating the attempt to poison the Resident and with holding secret communications with and bribing some of the Residency servants; that the European members of the Commission and the Government of India believed him to be guilty on both counts; but that the Native members of the Commission acquitted him of the graver charge. "Although," said the Government India, "so atrocious an offence as the attempt on the part of the Ruler of a Native State to murder the British Resident would justify the revision and re-adjustment of the relations subsisting between the British Government and that State, we are decidedly of opinion that, in consequence of the divided report and for other weighty reasons, it would be inexpedient to make any alteration in the relations between the British Government and the State of Baroda in consequence of recent events."

§ 282. In accordance with the decision of Her Majesty's Government, The Proclamation of April 1875, deposing the Gaekwar. the Proclamation of April 19, 1875, by which the Gaekwar was deposed, omitted all reference to his complicity in the attempt to poison Colonel Phayre. After a brief recital stating the question whether Malhar Rao should be restored to sovereign power, the Proclamation proceeded :—

"The Commissioners being divided in opinion, Her Majesty's Government have not based their decision on the inquiry or report of the Commission, nor have they assumed that the result of the inquiry has been to prove the truth of the imputations against His Highness.

"Having regard, however, to all the circumstances relating to the affairs of Baroda from the accession of His Highness Malhar Rao Gaekwar to the present time, his notorious misconduct, his gross misgovernment of the State, and his evident incapacity to carry into effect the necessary reforms; having also considered the opinion of the Government of India that it would be detrimental to the interests of the people of Baroda and inconsistent with the maintenance of the relations which ought to subsist between the British Government and the Baroda State that His Highness should be restored to power, Her Majesty's Government have decided that His Highness Malhar Rao Gaekwar shall be deposed from the Sovereignty of Baroda, and that he and his issue

shall be hereafter precluded from all rights, honours, and privileges thereto appertaining.

“Accordingly His Excellency the Viceroy and Governor-General in Council hereby declares that His Highness Malhar Rao Gaekwar is deposed from the Sovereignty of the Baroda State, and that he and his issue are precluded from all rights, honours, and privileges thereto appertaining.

“Malhar Rao will be permitted to select some place in British India, which may be approved by the Government of India, where he and his family shall reside with a suitable establishment and allowances to be provided from the revenues of the Baroda State.

“Her Most Gracious Majesty the Queen, in re-establishing a Native Administration in the Baroda State, being desirous to mark her sense of the loyal services of His Highness Khandi Rao Gaekwar in 1857, has been pleased to accede to the request of his widow, Her Highness Jamna Bai, that she may be allowed to adopt some member of the Gaekwar House whom the Government of India may select as the most suitable person upon whom to confer the Sovereignty of the Baroda State.

“The necessary steps will accordingly be immediately taken to carry into effect Her Majesty’s commands. In the meantime, with the consent of His Highness the Maharaja of Indore, Sir Madhava Rao, K.C.S.I., will at once proceed to Baroda and conduct the administration of the State as Prime Minister, under instructions which he will receive from the Governor-General’s Agent and Special Commissioner at Baroda.

“In conferring the Sovereignty of the Baroda State, no alteration will be made in the treaty engagements which exist between the British Government and the Gaekwars of Baroda, and the new Gaekwar will enjoy all the privileges and advantages which were conveyed to the Gaekwar of Baroda in the *sanad* of Earl Canning, dated the 11th of March 1862.”

§ 283. In explaining the policy of the preservation of Native rule we have to bear in mind the conditions which must be fulfilled by a Ruling Chief if his administration is to be a benefit to the Empire, and the principles of Political Law which apply when Native rule, whether upon the death of a Chief or upon his deposition, is continued by some deliberate act of the Government. In this way we have here to review the whole subject of succession, whether of natural or of adopted heirs, to Chiefships vacated either in the ordinary course of nature or in consequence of misgovernment or crime; and we must also touch on the principle of maintaining the integrity of States, in default of which either the territory would be threatened with anarchy or the Native sovereignty with virtual extinction. [In determining the measures to be taken for the selection of a successor to Malhar Rao, no mere question of municipal law or claim of right was involved. The deposition of Malhar Rao and the selection of his successor were equally acts of State. The questions for consideration were questions of policy or political expediency, of which Courts of Law had no cognisance. The obligation imposed upon Government in deciding the matter was the moral obligation to do what seemed best for the interests of the Baroda State and the Empire.

§ 284. [Besides this general obligation, it will be seen from the Proclamation of April 19, 1875, that the Government voluntarily imposed upon itself three conditions. These were that the person chosen (1) must not be lineally descended from Malhar Rao, (2) must be a member of the Gaekwar House, and (3) must be one whom Her Highness Jamna Bai could with propriety adopt. Government had therefore to weigh the qualifications of the several claimants with regard to those self-imposed conditions. The first condition at once excluded the grandson of Malhar Rao by his daughter Kama Bai, and would have excluded Lakshmi Bai’s child, supposing the marriage of the mother and the legitimacy of the son to have been recognised. With regard to the second condition, it happened that the legitimacy of an important branch of the family was then in dispute. This branch, generally known as the Khandesh claimants, alleged their descent from Pilaji Gaekwar, the founder of the Gaekwar dynasty in Baroda, through Partab Rao, a son of Pilaji. Their legitimate

descent from Partab Rao was not contested, but the legitimacy of Partab Rao was doubtful. Before the claims of this branch of the family could be taken into consideration, it was necessary that reasonable evidence of the legitimacy of Partab Rao should be produced. It would be superfluous to enter here into any investigation of the means by which this fact was established to the satisfaction of the Government of India. The legitimacy of Partab Rao was not conclusively proved, but after a careful examination of the evidence brought forward, Government came to the conclusion that the members of this family should not be excluded from the number of candidates amongst whom the final selection was to be made. This conclusion taken, it appeared to the Government of India that, setting aside those who claimed descent from the Gaekwar House through females, there were, besides the Khandesh family, three other candidates, who satisfied the second and third of the conditions enumerated above. All were members of the Gaekwar House, and all were eligible for adoption by Jamna Bai. In making a final selection from among these, there were certain considerations to which the Government of India determined¹² to give weight, "with reference to the future interests of the Baroda State and the smooth working of the administration to be established in the person of the candidate selected."

[These considerations were —

- (I) Relationship of the several claimants to Khandi Rao Gaekwar.
- (II) Personal fitness for rule if an adult were to be chosen; general intelligence and capability for education if a minor were to be chosen.
- (III) Acceptability of the person selected to the leading nobles and people.

[Judged by the first consideration, Sadasheo Rao, cousin by adoption of Khandi Rao, had undoubtedly the best claim. Judged by the second his claim was bad. He was thirty years of age, and had nothing to recommend him on the score of personal fitness. Under these circumstances the Government of India had no hesitation in setting him aside.

[This decision was explained in the following words, which involve an important principle: "It seemed to us that under no circumstances should we have been justified in selecting for the succession a person who, whatever might be his other claims, was lacking in the primary requisite of personal fitness for rule."

[Of the remaining candidates, the Khandesh family had, if legitimate, the best claim by relationship, the only other claimants being two brothers named Ganpat Rao and Khandi Rao, who were descended from an uncle of Partab Rao, the founder of the Khandesh family. The claims of these candidates with regard to other considerations and the reasons which led to the final decision may be stated in the words of the Government of India:—"Of the brothers Ganpat Rao and Khandi Rao little was known. They are aged respectively 26 and 22, and we had no reason to believe that they were either of them qualified to fulfil the duties of Ruler of the State. Of the personal qualifications of the Khandesh claimants we were equally ignorant, except for the fact that there were among them boys of an age admitting of education. With respect to the popular estimation of the candidates, there seemed little to choose between them. The principal Sardars professed themselves, in a general way, in favour of one or other of the three Baroda candidates.¹³ The Khandesh family had no party in Baroda. But, on the other hand, Her Highness Jamna Bai was very much averse from adopting any of the Baroda candidates, and the Sardars had expressed their readiness to abide by whatever decision Government might choose to pass.

["Under these circumstances, there being no very decided considerations to guide our judgment, and no probability of further information of importance respecting the various candidates being procured, and moreover as the great importance of an early settlement of the question of succession had been pressed upon Sir Richard Meade by the Sardars, we requested Sir Richard Meade to give his opinion which of the claimants he recommended with refer-

¹² Despatch to Secretary of State, No. 111-P., dated May 27, 1875.

¹³ *Viz.*, Sadasheo Rao and the two brothers.

place to local considerations, in regard to which he was in the best position to form an opinion. Sir Richard Meade and Sir Madhava Rao concurred in recommending the selection of one of the three boys of the Partab Rao branch. Her Highness Jamna Bai also wished to be allowed to adopt one of them, and expressed the strongest repugnance to adopt any of the three Baroda claimants. We considered that it would be more to the advantage of the Baroda State that a youth should be selected who could be carefully trained for his future duties than an adult brought up in the atmosphere of the Baroda Court, who had no expectation of being raised to power and no special qualifications. For these reasons, accordingly, our selection fell on the Partab Rao line, and we left it to Sir Richard Meade, in communication with Jamna Bai, to choose from the three boys, Gopal, Sampat, and Dada, the one whom on general considerations he deemed most eligible."

[It had been understood from the first that if the choice fell on the Khandesh family at all, it would lie between these three boys, and the fact is worthy of notice. None of the three would have had any claim if the succession had gone by ordinary rules. Dada would have been excluded by the other two, who were his cousins in the elder line, and these would have been excluded in their turn by several more direct representatives of Partab Rao. But the three were all of tender years, and were therefore preferred. In announcing this decision to the various claimants and the Baroda Sardars, Sir Richard Meade, who had succeeded Sir Lewis Pelly at Baroda, gave some explanation of the reasons which had weighed with the Government of India in determining the selection. He informed them that the right of the new Gaekwar depended solely upon the selection by the British Government, and that no dispute or question of that right would thereafter be permitted either on account of any doubts as to the legitimacy of Partab Rao or his descendants, or for any other reason whatsoever.]

§ 285. The choice eventually fell on Gopal, the eldest of the three boys, whom Jamna Bai preferred to the other two. The ceremonies of adoption and installation were duly performed without demur on the part of the influential classes in the State or trouble of any kind. Two days before the installation General Daly telegraphed from Indore—"Holkar, in consultation with me, has deputed Sardar to Baroda with *khilat* for new Gaekwar." The Maharaja's previous concurrence in the measures adopted by the Government of India¹⁴ was thus supplemented by an immediate recognition of the selected Ruler. The case ended with an interchange of *kharitas* between the new Gaekwar and the Viceroy, the Gaekwar expressing his reliance on the protection of the British Government and the friendly advice which might from time to time be tendered to him in the interests of himself, his people and the Empire; and the Viceroy congratulating the Gaekwar and promising to convey to Her Majesty the Queen the respectful acknowledgments of Jamna Bai for the conspicuous favour conferred upon her.

§ 286. Another illustration of the policy of maintaining Native rule is afforded by the Manipur case, of which the main facts have been stated in the first chapter. In discussing the question whether the Manipur State should be annexed, the Viceroy Lord Lansdowne, wrote as follows¹⁵ :—

"The questions which we have to answer are, I think, two—

(a) Have we a moral right to annex the State?

(b) If we have such a right, is it desirable, upon grounds of broad policy, to exercise it?

"The answer to the first of these questions must, I think, be in the affirmative. At the same time it might, I think, be contended with some show of reason that the Manipur rebellion was the work of one man, and not a deliberate attempt on the part of the State to shake off our yoke. Be this, however, as it may, we cannot allow ourselves to forget that the lawful Ruler of Manipur—a Ruler whom we had recognised—was forcibly deposed; that the nominal Ruler, by whom he was replaced, has been properly convicted of

¹⁴ See above, paragraph § 41.

¹⁵ Pro. Secret. E., October 1891, Nos. 123-147, K. W., dated August 10, 1891.

waging war against the Queen; and that the virtual Ruler of the State, from the time of the conspiracy of September 1890, up to the date of the occupation of the State by a British force, was the turbulent and disloyal ruffian who, supported by the whole of the Manipur army, and, as far as we know, by the people of Manipur generally, has been implicated in an open rebellion, the ultimate consequence of which was the murder, under circumstances of exceptional horror and treachery, of a high official of the Government of India and the officers with him. The savage hounding down of the telegraph officials, who were in no way connected with the political or military proceedings, and the barbarous murder of Mr. Melville, the entire destruction of the telegraph line, and the desecration of graves in remote localities, have incidentally shown that orders must have been issued for the extirpation of all traces of British supremacy.

“We are, therefore, justified in holding that the State, as a whole, has been guilty of rebellion, and that it has, consequently, forfeited its right to exist as a State.

“It remains then to consider whether we are to insist upon such forfeiture or not. In arriving at a decision, we have, I think, to determine one point only. Are we, or are we not, satisfied that it is possible to inflict upon Manipur and the Manipuris a punishment sufficiently significant and exemplary without annexation? If such a punishment has been, or can be, inflicted without annexation, I think we should certainly not annex. I am on principle strongly opposed to needless annexations, and I would have a scrupulous regard for the independence of the Native States in subordinate alliance with us, so long as they remain loyal, and do nothing to forfeit their right to our protection. The *onus* should, I think, always be upon those who advocate annexation, and it lies with them to show that no other course will satisfy the claims of justice and public policy. We have then to consider what punishment has already been inflicted upon the Manipur State, and what punishment, supposing us to stop short of annexation, can, or ought, yet to be inflicted upon it, and we have to decide whether, when all has been done that can be done without actually annexing, it will be possible for any one to contend that the offence of the State has not been sufficiently purged.

“As regards, then, the punishment which has been already inflicted, we have to remember—

- (1) that the rebellion was promptly suppressed by the display of overwhelming force; that in the only engagements which took place, considerable loss of life was sustained by the Manipuris; and that their capital has been occupied during the last few months by British troops:
- (2) in the next place, we have to consider the fact that, of the persons most conspicuously concerned in the rebellion, the Senapati and the Tongal General will be put to death, the Regent and one of his brothers transported and their possessions forfeited, and that suitable punishment has been inflicted upon the other offenders. Upon the assumption that the Senapati was the person most responsible for the rebellion, and for the murder of the prisoners, his execution, and that of the Tongal, must be regarded as of first-rate importance in respect of the exemplary character of the punishment.

“As to the future, assuming that we are to stop short of annexation, I hold strongly that we should deal with the State in such a manner as to make it clear that, just as some of the persons tried before the Manipur Court were properly held to have forfeited their lives, although we did not exact the death penalty, so the State, as a whole, has forfeited its right to exist as a State, although, as a matter of clemency, we may determine not to insist upon such forfeiture. I would, therefore, in the contingency which we are supposing, pass sentence of extinction upon the Manipur State in the most solemn manner. I would revoke all existing *Sanads*, and I would re-grant to a new Ruler whom we shall select a carefully limited amount of authority under conditions which would for all time render it impossible for any Manipuri to contend, as Mr. Ghose has contended, that the State is one enjoying sovereign rights,

and therefore not owing any allegiance to Her Majesty. The new *sanad* should, on the contrary, place Manipur in a position of distinct subordination, and any privileges conceded should be made to continue only during the good behaviour of the Ruler, and the pleasure of the Government of India."

§ 287. With regard to the selection of a Ruler, Lord Lansdowne did not think it would be desirable to restore the deposed Maharaja; and eventually the choice fell upon a minor collateral relative of the Maharaja, a boy aged five, named Chura Chand, the great-grandson of a former Manipur Chief. The Viceroy was of opinion that the new *sanad* should put an end to the succession of brother by brother—a system which had been fraught with trouble to the State, and His Excellency was inclined to adopt a suggestion made by Sir Mortimer Durand that to the new Ruler should be given the title of Raja instead of Maharaja.

The views thus expressed by His Excellency were carried into effect by a Proclamation, dated August 21, 1891, and a Notification dated September 18, 1891, both of which are here transcribed:—

Proclamation.—"Whereas the State of Manipur has recently been in armed rebellion against the authority of Her Majesty the Queen, Empress of India; and whereas, during such rebellion, Her Majesty's Representative and other officers were murdered at Imphal on the 24th of March last; and whereas by a Proclamation bearing date the 19th April 1891 the authority of the Regent, Kula Chandra Singh, was declared to be at an end, and the administration of the State was assumed by the General Officer Commanding Her Majesty's forces in Manipur territory;

"It is hereby notified that the Manipur State has become liable to the penalty of annexation, and is now at the disposal of the Crown:

"It is further notified that Her Majesty the Queen, Empress of India, has been pleased to forego Her right to annex to Her Indian Dominions the territories of the Manipur State; and has graciously assented to the re-establishment of Native rule under such conditions as the Governor-General in Council may consider desirable, and in the person of such ruler as the Governor-General in Council may select.

"Her Majesty has been moved to this act of clemency by the belief that the punishment inflicted upon the leaders of the revolt, together with the imposition upon the State of suitable conditions of re-grant, will afford an adequate vindication of Her authority.

"The Governor-General in Council will make known hereafter the name of the person selected to rule the State, and the conditions under which he will be invested with power."

Notification (No. 1862-E., dated the 18th September 1891).—"With reference to the notification in the *Gazette of India*, No. 1700-E., dated the 21st August 1891, regarding the re-grant of the Manipur State, it is hereby notified that the Governor-General in Council has selected Chura Chand, son of Chowbi Yaima, and great-grandson of Raja Nar Singh of Manipur, to be Raja of Manipur.

"The *Sanad* given to Chura Chand is published for general information.

Sanad.

"The Governor-General in Council has been pleased to select you, Chura Chand, son of Chowbi Yaima, to be Chief of the Manipur State; and you are hereby granted the title of Raja of Manipur, and a salute of eleven guns.

"The Chiefship of the Manipur State and the title and salute will be hereditary in your family, and will descend in the direct line by primogeniture, provided that in each case the succession is approved by the Government of India.

"An annual tribute, the amount of which will be determined hereafter, will be paid by you and your successors to the British Government.

"Further you are informed that the permanence of the grant conveyed by this *Sanad* will depend upon the ready fulfilment by you and your successors of all orders given by the British Government with regard to the administration

of your territories, the control of the hill tribes dependent upon Manipur, the composition of the armed forces of the State, and any other matters in which the British Government may be pleased to intervene. Be assured that so long as your House is loyal to the Crown and faithful to the conditions of this *Sanad*, you and your successors will enjoy the favour and protection of the British Government."

§ 288. The cases of Mysore, Baroda, Manipur and, we may add, Kalát¹⁶ are all leading cases of great importance and therefore the subject of frequent reference and comment in these volumes in connection with several topics of political policy and law. The Baroda and Kalát cases are alike in this, that in both the Chief was actually or virtually deposed (for the Khan of Kalát merited deposition, and it seems certain that he must have been deposed if he had not abdicated), while in both the relations of the State with the British Government were allowed to remain unchanged. In both of these cases intervention was necessitated solely by the personal misconduct of the Chief himself; the Sardars and other people of the States were sinned against, not sinning against us; they had suffered from the oppression or cruelty of the Chief; and the Sardars of Baluchistan were urgent in their appeals to the British Government to set them free from the tyranny of their ruler. The case of Manipur differed essentially in this, that, as Lord Lansdowne said, we were justified in holding that the State as a whole had been guilty of rebellion and had forfeited its right to exist as a State. Advantage was then very naturally taken of the opportunity to get rid of a bad law of succession which had led again and again to disorders in the past; and, in re-granting the State, to remove all ambiguity as to the nature of its dependence on the Paramount Power. If by force of arms we conquer a State in open rebellion, it is obvious that the conquest must sweep away the former system of relations existing between the suzerain and the feudatory; and the facts in the Manipur case were clearly those of the conquest of a rebel State. The future system of relations must in such a case depend entirely on the will and pleasure of the conqueror. But if what we have to do is not to put down a rebellion against our authority but to remove a tyrannical Chief or sanction his abdication, then, though his breach of engagement may set us free to make new conditions with his successor, it is probable enough that the expediency of making new conditions may, if any such are desirable, be outweighed by the expediency of exhibiting political self-control.

The Mysore case, again, differed materially from the other three. It is true that our interposition in 1831 was due to the misrule of the Maharaja. But it was not merely the misconduct of the Chief or people at that time which put it in the power of the Government of Lord Lytton to design what may be called a model constitution for a Protected Indian State, and of the Governments of Lord Lytton and Lord Ripon to apply that design in the particular instance. It was a long course of history, dating from the last years of the last century when the foundations of the Indian Protectorate were being laid by Lord Wellesley, that gave us in 1879-80 an entirely free hand with Mysore; and in that long course of history the misrule of the former Maharaja and the rebellion of his people formed only a part. Moreover, in the frank use we made of the occasion, we were doubtless largely influenced by the fact that the expectations due to half a century of British administration imposed corresponding obligations upon us. It is right to add that the comments in this paragraph are those of one of the compilers only and have not the authority of the Government of India.

§ 289. In condensing the purport of the preceding paragraphs of this Chapter, we shall, in order to avoid going beyond what has actually been decided, confine ourselves on certain points to mere statements of fact, believing that they will here suffice to suggest proper inferences on future occasions. The facts and principles, then, to which we would in this place call special attention are these:—

- (1) *The British Government does not desire the annexation of Native States.*
- (2) *It will respect the rights, dignity and honour of Ruling Chiefs as its own.*

¹⁶ For the particulars of the Kalát case see above, paragraph § 59.

(3) *It desires that the Governments of Ruling Chiefs shall be perpetuated, and that the representation and dignity of their houses shall be continued.*

(4) *In fulfilment of this desire it will recognise adoptions and successions in accordance with the terms of the Adoption Sanads distributed to Chiefs governing their territories.*

(5) *But a State may become liable to confiscation, if it is guilty of rebellion or if the Chief is guilty of a breach of loyalty or of recorded engagement with the Paramount Power.*

(6) *In desiring the continuance of Native Rule, the British Government desires also that Native Rule shall be conducted on civilised principles and with due regard to the obligations of Ruling Chiefs towards their subjects.*

(7) *It is not, however, expedient that Native Rule should be a mere copy of British administration. Absolute uniformity was not sought even in the case of Mysore, though the Mysore territories, long in the possession of the British Government, were entrusted to an Indian dynasty under such restrictions and conditions as were considered necessary for ensuring the maintenance of the improved system of administration which had been introduced.¹⁷*

(8) *The restrictions and conditions imposed in the case of Mysore deserve consideration when it is necessary to revise the system of relations existing with any other State.*

(9) *An attempt on the part of a Ruling Chief to murder a British Resident would justify the revision and readjustment of the relations subsisting between the British Government and the State of that Chief. But in the case of Baroda, the late ex-Gaekwar was deposed without the assumption being made that he had been implicated in such an attempt; and the subsisting system of relations was not revised.*

(10) *So also although the conduct of the Khan of Kalát, whose abdication was accepted, was such as would have justified his deposition, the position of the Kalát State towards the Paramount Power was not affected by the transfer of its government to his son.*

(11) *On the other hand, the Manipur State having been guilty of armed rebellion, became liable to the penalty of annexation. In re-granting the State to a person selected by the British Government, the system of succession and the system of relations with the Paramount Power were alike revised.*

(12) *[The deposition of a Ruling Chief on the ground of general misrule—or for any other reason—is an act of State of which the Courts of Law have no cognisance; and in regard to subsequent arrangements, the obligation imposed upon the British Government is the moral obligation of doing what is best for the interests of the State and the Empire.]*

(13) *[The selection of a successor to a deposed Chief rests solely with the British Government. The issue of the deposed Chief may be excluded from the succession.]*

(14) *[It is to be inferred from the Baroda case that in the selection of a successor, the British Government will, as a rule, adhere to certain definite principles :—*

[(a) The primary requisite in a candidate for selection is personal fitness for rule. No other claims can compensate for the conspicuous lack of this requisite.]

[(b) Where the candidate is a minor, intelligence and capability of education represent personal fitness; and in the absence of any special qualifications on either side, a minor will, as a rule, be preferred to an adult.]

[(c) Other considerations will be family relationship, acceptability of the candidate to the leading nobles and people of the State, and the like.]

§ 290. While the authority of Ruling Houses is upheld by the policy and power of the British Government, it is manifestly necessary that the integrity of States must be maintained.

¹⁷ See the preamble of the Instrument of Transfer, Appendix B.

States should also be maintained. We have seen in paragraphs § 192 to § 201 above how Kathiawar, under a system of partition of States which we did not stop in time, was hastening, as Sir Henry Maine said (paragraph § 200), to utter anarchy; and the like fate (see paragraph § 239) would in all likelihood have overtaken Bundelkhand had we not there opportunely stayed its advance. A Ruling Chief has obligations alike to the British Government and to his own subjects which preclude him from dealing with his sovereign powers as though they were private rights of property; and if a State might be broken into fragments by the testamentary dispositions of a Chief, by voluntary partition, by rebellion, or in any other way, its character in relation to the Paramount Power would be changed, the former system of relations might cease to be suitable, and indeed a situation might be reached in which the exercise of political power might be a farce or an impossibility. The policy of the British Government is thus generally opposed to Wills made by Chiefs which purport to dispose of rights of sovereignty, and to the partition of the States by these or other means; and subject to certain conditions, the British Government will support the authority of a Chief against unjustifiable rebellion.

§ 291. Taken merely by itself the case of the Will of Raja Nihal Singh of Kapurthala would not bear out the above account of the policy of the Government of India. Raja Nihal Singh died on September 13, 1852, leaving by his first wife Kunwar Randhir Singh, his eldest son, who succeeded him, and by his second wife two sons, Kunwar Bikrama Singh and Kunwar Suchet Singh. On July 11, 1852, the Raja made a Will which, after reciting the enmity borne against him by his brother Amar Singh, and his desire that his three sons should live in peace and friendship, proceeded to assign to each of the two sons by the second wife, an estate of one lakh of rupees, the particulars not being specified. The Will also declared that the rest of the country should remain in the possession of the eldest son, Randhir Singh. It further appeared to be the Raja's intention that Randhir Singh should govern the whole State; but that if the two younger sons were dissatisfied with his administration of criminal justice in their estates "the management of *Paujdari* affairs in their *jagirs*" should be transferred to the British Government. On the death of the Raja it was reported that the three brothers did not wish to divide the State, and that the two younger brothers agreed to obey the eldest brother in everything. The Government of India, however, on receipt of this report in 1853 were prepared to give effect to the Will in a certain contingency. They ruled¹⁹ that the *Ráj* or State should remain undivided in the hands of the Raja, so long as the brothers should remain in concord. They added—"If discord should arise among them hereafter, as is very probable, the Will of the late Raja should have effect given to it. In that case the shares of the two younger brothers, thus broken off from the Raja's share, would become ordinary *jagirs* into which our administration would enter." It will be observed that this ruling was given more than forty years ago, before the Mutiny, and before the policy of the Government of India in its dealings with Native States had become as clear and as consistent as it is at present.

The anticipations of the Government of India in the particular case were speedily fulfilled. Suchet Singh demanded his share, and in April 1854 the *talukas* of Wayan and Bunga were separated from the Kapurthala State and made over to him, Bunga being annexed to the Hoshiarpur and Wayan to the Jullundur District. Some years later, on January 7, 1860, the Punjab Government reported a reconciliation between the brothers, and proposed that Suchet Singh, while remaining in possession of the lands made over to him, should become dependent on his brother, the Raja, instead of being an ordinary *jagirdar* of the British Government. The Government of India agreed on January 28, 1860; and on January 31, 1860, Lord Canning in Darbar at Phagwara, a town in Kapurthala territory, after thanking the Raja for his good services in the field during the rebellion, said:—"In consideration of these loyal and faithful services, we have given you in perpetuity your ancient territory, the Ilaka Bari Doab. The Will of your late father has been annulled, and your dominion has in all respects been restored to you in your principality,

¹⁹ India letter No. 907, dated February 21, 1853.

including Wayan and Bunga, on the same footing as it existed in former times."

In 1866 dissensions again occurred between the brothers. Bikrama Singh asked for the enforcement of the terms of the Will, and Suchet Singh that his *jagir*, which had been reunited to the Kapurthala State, should again be separated. The Government of India held that the announcement made by Lord Canning in 1860 related only to a fact, namely, that the execution of the Will was held in abeyance and conveyed no promise that the Will would never be carried out. They also considered that a formal act of the late Raja conferring rights and sanctioned by the British Government could not be set aside on any ground of mere policy; and that each brother had, under the Will, the right to come under the suzerainty of the British Government. The Secretary of State, however, took a different view. He pointed out, in a despatch of February 12, 1869, that the announcement made by Lord Canning in January 1860 clearly related to a reward for the political services of the Raja. If it had been the mere intimation of an existing arrangement, which depended, and was to continue to depend, upon the pleasure of younger brothers of the Raja, there would have been no reward. The Will of the late Raja Nihal Singh had involved the danger of the dismemberment of the State. The present Raja, Randhir Singh, dreaded this as a calamity; and the reward given to him for his services was the removal of the fear of this calamity for ever from his mind. The Secretary of State, therefore, directed that the Raja should remain in full possession of the sovereignty of the entire State, and that if the shares of the younger brothers were assigned in lands in the Kapurthala State, they should hold them in subordination to the Raja. This they would not agree to do, and eventually they were granted cash allowances of Rs. 60,000 a year each, this being considered equivalent, at British rates of assessment, to the annual value of lands worth a lakh a year in the Kapurthala State. The decision in this case, it will be observed, did not directly proceed upon an objection in principle to the dismemberment of a State or to the assumption of authority on the part of a Chief to deal with rights of sovereignty by Will. No doubt the strong objection entertained by the Chief to the dismemberment of his State contributed to the decision; but it was actually based upon the promise which had been made to him. Moreover, in the first instance, the provisions of the Will were conditionally upheld by the Government of India, and it was set aside, not because it was held that the Chief had no power to make it, but because Lord Canning had promised as a reward for political services that it should be set aside. Indeed, the only point of constitutional importance that appears to be established by the case is that it was assumed throughout that the Supreme Government was competent to affirm the Will, to interpret or modify its provisions, or, if it saw fit to do so, to annul it: for that which the Government of Sir John Lawrence held in 1868 could not be set aside on grounds of mere policy, was the act of the Raja, as sanctioned by the British Government; and the cancellation of the Will, announced by Lord Canning, was affirmed by the Secretary of State. As the power of annulling the Will was, in the sequel, actually exercised, the case cannot be regarded as a precedent for the dismemberment of States.¹⁰ In point of fact, it tells the other way. For there is no doubt that the change of policy which followed the Mutiny affected the action of Lord Canning in 1860.

§ 292. The decision in the case of Jaswant Singh's Will, Ali Rajpur, The case of Jaswant Singh's Will, Ali Rajpur, accords much more nearly with the views now held by the Government of India. Ali Rajpur is a small State of Central India. It has an area of 836 square miles and a population of some 70,000. [Jaswant Singh, who had been installed by Sir John Malcolm in 1818 as Chief of Ali Rajpur, died on the 17th March 1861. He left two sons,—Gangadeo, aged 19, and Rupdeo, aged 15. By a Will in the form of letters to his sons he divided the State between them. To the younger son Rupdeo he assigned three districts and one-third of the State property, on condition that he should pay a share of the tribute and accept one-third of the liabilities of the State. The remainder of the State lands and property was left absolutely to the elder son Gangadeo, who was

¹⁰ There is a full abstract of the Kapurthala case at pages 551-576 of Sir Lepel Griffin's *Punjab Rajas*. There is also a brief abstract in Aitchison, II, page 163.

specially enjoined not to interfere in any way with the districts devised to his brother. Sir R. Shakespear, then Agent to the Governor-General for Central India, considered the arrangement a most objectionable one, and was of opinion that the adoption of such a precedent in petty Chiefships like Ali Rajpur would result in their ultimate extinction by means of constant subdivisions. He therefore wished the opinions of the neighbouring Chiefs to be taken and the previous custom of the State itself to be inquired into before anything was done towards carrying out the wishes of the late Raja. The inquiry was entrusted to Major Cumming, the Bhil Agent in Political charge of Ali Rajpur. The result of Major Cumming's inquiry was inconclusive. Some of the neighbouring Chiefs who were consulted expressed themselves against a division of the State, while others were in favour of adhering to the terms of the Will. The practice formerly prevailing on the occasion of succession to the Chiefship could not be ascertained. The records of the State had been burnt. Major Meade, who succeeded Sir R. Shakespear, was opposed to the partition. He thought the attempt to carry out Jaswant Singh's wishes would be productive of much future inconvenience and trouble in Ali Rajpur, and would establish a precedent which might be turned to very mischievous account by other Chiefs. This view was upheld by Government. It was decided that Gangadeo should at once be acknowledged as heir to the Chiefship, on condition of his making a suitable provision for his younger brother.] The Will was accordingly set aside and a grant of five villages with a cash allowance of Rs. 2,500 per annum was made to the younger son.²⁰

§ 293. The case just quoted is one of those included in the Leading Cases of 1875, and the head-note passed by Sir Charles Aitchison goes so far as to say that the Ruler of a Native State has only a vested interest in the lands and property of the State; that any testamentary document left by a Native Chief which purports to alienate State lands or dispose of any State property is invalid, and that it is not the policy of the British Government to allow the partition of petty States. It may be doubted whether all these points are sufficiently established by the Ali Rajpur case taken alone. But some observations left on record by Lord Ripon in the case of the last succession in Kashmir and the correspondence which then passed between the Government of India and the Secretary of State, read with the cases of Kapurthala, Ali Rajpur and the Nawab of Amb, and with what has already been said regarding Kathiawar and Bundelkhand, will suffice to confirm all that is stated in the summary given below (paragraph § 295).

In August 1883 Sir Oliver St. John, the officer on special duty in Kashmir, reported demi-officially a rumour, for the accuracy of which he could not vouch, that the late Maharaja had made a Will leaving to his second son Kishitwar and Badhrawar; to his youngest son, Bhimbar, Naoshera, and Rajaori; and to his eldest son, Mian Partab Singh (now the Maharaja), Jammu, with all outlying dependencies, including Kashmir proper, Ladakh and Gilgit.¹ On this the Viceroy, Lord Ripon, noted—"As regards the supposed Will, it must be borne in mind that political power is not a private property to be transmitted by individual caprice, and that, if I mistake not, the whole tendency of the policy of the Government of India for a long series of years has been opposed to the dismemberment of Native States. If the Maharaja by his Will attempts to dismember his State, the instrument will in that respect be altogether inoperative without the sanction of the Supreme Government; and that sanction I should not give; for it would, in my judgment, be contrary to our true interests on our north-west frontier to split up Kashmir into a congeries of petty States; while such an arrangement would not be likely to conduce to the happiness of the people of the country. That happiness might be promoted if the Muhammadans of the Kashmir Valley were ruled by a Muhammadan Chief, but this would not be effected by any division of the Maharaja's territories among his sons, and such a division would be more likely to lead to internal quarrels and disturbances than to improve the administration of the country.

²⁰ Pro., Political A, April 1862, Nos. 38-91 and 258-260. | ¹ Pro., Secret E, May 1884, No. 353.

"If the Will merely makes provision by way of *jagir* for the younger sons, the eldest son being acknowledged as sovereign of the entire territories, no interference on our part would be necessary. How long such a partition would last may be a question; the new Maharaja might carry out his father's wishes or he might not; but the matter would be one of internal administration on which we need not do more than give such advice as we might think right.

"I should like to have the papers with me on my approaching visit to Kashmir, when I will discuss the whole subject with Sir Oliver St. John."

No answer was sent to Sir Oliver's letter of August 6, 1883, but, as proposed, the Viceroy spoke to him on the subject of the supposed Will. No Will was ever produced, but at a subsequent date it appeared that the late Maharaja really did entertain a project of creating two subordinate Chiefships for his younger sons, which would have borne the same relation to the Kashmir State as is borne by its small dependency, the Chiefship of Punch. The Maharaja also had serious thoughts of setting aside his eldest and second sons in favour of his third son. We have already referred in paragraph § 47 above to the despatch of April 7, 1884, in which the Government of India proposed the appointment of a Resident in Kashmir to take the place of the officer on special duty. At that time the late Maharaja, who died on September 12 in the same year, was suffering from a mortal disease, and the despatch dealt with the question of the succession. "For the general interests," said the Government of India, "of peace and good order among the Native States, no encouragement should be given to the idea that an eldest son can be set aside at the will of his father; and we hold that in practice nothing but the clearest evidence of actual incapacity to rule should be allowed to stand in the way of a regular succession by order of primogeniture. Further, we are entirely opposed to permitting any partition of the Kashmir State, by Will or otherwise, among the three sons of the present Chief. Feeling confident that our opinions upon these points are in accord with established policy, we have anticipated Your Lordship's orders by issuing the instructions necessary for the guidance of the officer on special duty in case of an emergency arising. In the meanwhile we do not think it desirable to formally announce to the Maharaja that a Will affecting the succession could not be recognised, because this course might raise unpleasant discussions. But the officer on special duty will avail himself of any good opportunity for intimating to His Highness that such a Will would not be expedient."

The Secretary of State agreed³ with the Government of India that in the case of Kashmir there should be no deviation from the regular succession by order of primogeniture, or any partition of the State, by Will or otherwise, among the three sons of the late Maharaja. On his death the succession of Maharaja Partab Singh was at once proclaimed accordingly.

§ 294. The case of the Will of the Nawab of Amb, which is the next we have to mention, is in several respects exceptional and is chiefly valuable for the clear enunciation of policy which the facts elicited from the Government of India. Not only has the Nawab a treble status of a very peculiar kind, but he is also a Frontier Chief on our immediate border. His possessions adjoin the Black Mountain on the north-west of the Hazara District where we have had so many troubles, and it does not at all follow that we should deal with the Chief of a State in the middle or south of India in precisely the same way that we dealt with him. There might be reasons for humouring his wishes which would not apply elsewhere. These remarks seem necessary because a certain recognition was actually accorded to his Will, although the objection to any Will purporting to regulate the devolution of a State was asserted very explicitly.

The Nawab has a tiny Chiefship known as Amb, which is just across the Indus and quite outside British territory. He also owns and administers a tract called Feudal Tanawal, comprising 204 square miles and a population of 24,000 inhabitants. This tract lies between the River Siran and the Black Mountain; and it is technically regarded as British territory within the Hazara District, though the Nawab manages it without interference. In addition the

³ Despatch No. 11 (Secret) dated May 23, 1884. For another precedent showing that a Ruling Chief is not competent to bar the succession of his eldest son, see the Bhartpur succession, Pro., Internal A, May 1894, Nos. 185-213. The case is briefly stated in paragraph § 436 below.

Nawab holds in the Haripur Tahsil of the Hazara District a perpetual *jagir* assessed at Rs. 8,963 per annum. This *jagir* is subject to the Hazara settlement rules of 1873. These rules prescribe that the *jagir* "shall devolve integrally, ordinarily to the eldest son, unless the immediate heir be devoid of merit or deficient in the necessary qualifications of character, influence, control over his family or tribe, or good disposition towards the British Government." The Government, however, reserved to itself the right of dividing the *jagir* among the sons.

On March 18, 1889, the Nawab forwarded to the Deputy Commissioner, Hazara, a Will by which the eldest son, Khan-i-Zaman Khan, a boy of twelve, was recognised as heir to the Chiefship and *jagir* and all villages and income, the property of the Nawab, with the exception of twenty-two villages left to the six younger sons to be administered by them without interference by Khan-i-Zaman Khan, whom they were to help in trans-border quarrels and in giving assistance to the British Government. The Punjab Lieutenant-Governor, Sir James Lyall, reported the case to the Government of India, who replied in these terms³ :—

"Sir James Lyall proposes to accept the Will as expressing the Nawab's present wishes, and to authorise you to endorse it, also to inform Sir Muhammad Akram Khan that the choice of his eldest son as his successor, and the arrangements made for the maintenance of the younger sons, so far as an opinion can be formed at present, seem proper and reasonable. But His Honour proposes at the same time to add that no Will which the Nawab writes to-day can be taken as final.

"In reply I am to state that there appear to be objections to the recognition in any form of the Will submitted by the Nawab. Such a proceeding would be unusual and may prove embarrassing. *It is not the practice, or the policy, of the Government of India to recognise as binding any Wills made by Native Chiefs in respect to the devolution of their States*, and it seems to the Government of India that unless some clear warning to this effect be conveyed to the Nawab, he may regard the Will as formally accepted by the British Government—a result which might prove highly inconvenient if it were found necessary in the public interest to set aside the Nawab's nominee. As Chief of Feudal Tanawal the Nawab of Amb is a British feudatory, and it is for the British Government, not for him, to choose a successor to the Chiefship when the proper time arrives.

"These objections appear to the Government of India to deserve consideration, and I am to request that they may be laid before the Lieutenant-Governor. If, however, Sir James Lyall does not consider them to be serious, or if, in his opinion, they are outweighed by the advantages he expects from the course proposed in your letter, I am to say that the Government of India will not interfere with his decision."

Thereupon Sir James Lyall issued the following orders to the Commissioner of Peshawar :—

"I am to request that you will inform the Nawab that the Lieutenant-Governor has perused his letter of the 18th March last to the address of the Deputy Commissioner of Hazara, and the deed enclosed with it, and has kept a copy of both for reference. His Honour understands what the Nawab's present wishes are as expressed in these papers, but hopes that he has still a long life before him, and is aware that in such case it is possible that his intentions may in some respects change. But the Lieutenant-Governor thinks that the Nawab may rest assured that his selection of his eldest son, Khan-i-Zaman Khan, as his successor will be confirmed by the Government of India at the proper time, provided that when Khan-i-Zaman Khan arrives at the years of discretion he turns out not unfit to receive the *Dastár* or Chiefship, of which, looking to his present good disposition and intelligence, there is little doubt.

"In returning the original deed to the Nawab the Lieutenant-Governor wishes you to certify on it that it was received from the Nawab and that a copy was forwarded to the Punjab Government and that the original is now returned to the Nawab for safe custody."

³ No 1424-F, dated September 12, 1889; Pro., Frontier A, August 1890, Nos. 13-25.

The Commissioner communicated these orders to the Nawab and endorsed a certificate as above on the Will. The Nawab made no further representation. In reporting the action taken to the Government of India Sir James Lyall gave the opinion that his orders would have no embarrassing effect and would leave the Government free; that the Nawab himself would see this, and that they would to some extent relieve the Nawab's anxieties, while a letter bluntly refusing to, in any degree, recognise a Will would have been misunderstood by the Nawab or people around him and would have produced some evil consequences.

§ 295. We will limit our summary here to the question of Wills made by Ruling Chiefs, more particularly such as purport to dispose of rights of sovereignty.

Summary.

We shall deal later on with the question of primogeniture, and in the next few paragraphs with that of the objections to the partition of States. It appears to be established that—

(1) *Political power in Native States cannot be transmitted like private property. It is not the practice or the policy of the Government of India to recognise Wills made by Ruling Chiefs in respect to the devolution of their States.*

(2) *It is accordingly inexpedient that a Ruling Chief should make a Will purporting to dispose of rights of sovereignty, but if he makes such a Will it will be inoperative without the sanction of the Supreme Government, which is competent either to confirm the Will, or set it aside, or modify or interpret its provisions.*

(3) *The Will of a Ruling Chief merely making provision by way of jagir for younger sons might call for no interference.*

(4) *A Ruling Chief is not competent to bar, by Will or otherwise, the succession of his eldest son.*

Some further remarks on Wills made by Ruling Chiefs will be found in paragraph § 354 below.

§ 296. In paragraph § 293 we mentioned that the Government of India and the Secretary of State were alike opposed to any partition of the Kashmir State amongst the three sons of the late Maharaja. We have seen (paragraphs § 195 and § 198) the evils of the partition of States exemplified at large in the case of Kathiawar; and we have observed (paragraph § 239) that the process of disintegration which had gone too far to be stopped in Kathiawar, was arrested in Bundelkhand by the action of the Supreme Government. We have here to notice two leading cases—the Maler Kotla succession case, 1872, and the Katqsan succession case, 1884—which show the objection entertained by the Government of India and Her Majesty's Government at least to the partition of small States except under special circumstances; and two other cases, those of Jhalawar and Kota, and Tonk and Lawa, respectively, which indicate that though there is a strong presumption that the partition of a State is inexpedient, peculiar circumstances have arisen, and might again arise, to make such a partition politically advisable.

§ 297. The case of the Maler Kotla succession, 1872, has some bearing on the questions of successions in Muhammadan Chiefships, and the interpretation which should be placed on the Canning *Sanads* granted to Muhammadan Rulers, but to these points we shall return below. We are concerned here only with so much of the case as affords an illustration of the policy of preventing the disruption of States by their division amongst a number of heirs. The Maler Kotla family are Sherwani Afghans and came from Kabul in the latter half of the fifteenth century. They appear to have served as officials of the Delhi Empire and thus to have obtained the grant of lands, which in troubled times they lost or recovered and supplemented by the warlike methods of the day. In the confusions of the eighteenth century they attained independence; and it is clear that a principle of succession which might have been suitable enough in the case of a *zamindari* held by Pathans, survived the acquisition of rights of sovereignty.⁴ Though an exceptional position and certain privileges

⁴ See Aitchison, IX, p. 62, and Massy's "Chiefs and Families of Note in the Punjab," pages 68-72. The text is taken mainly from *Pro., Political A.*, April 1872, Nos. 329-350.

belonged to the Chief as such, the State or estate was originally divided amongst the brotherhood in certain varying shares. As regards the Chiefship itself, the Government of India held in 1810 that the succession to it had not been practically subject to any fixed principle. It had "followed the influence of power and talents" and had been "yielded at one time to the right of primogeniture and at another to the claims of seniority among the members of the family." The orders passed in 1810 decided that the Chiefship should devolve on "the principle of lineal descent in the elder branch from the common ancestor or founder of the house." And for the purpose of these orders the founder was practically assumed to be Jamál Khan, a Chief who had been in possession in the latter half of the eighteenth century and had, by his power and influence, revived the fallen fortunes of his house. Jamál Khan left five sons. He was succeeded as Chief by his eldest son, Nawab Bhikam Khan, who in his turn was succeeded as Chief by his next brother, Nawab Bahadur Khan. The Chief in possession when we took the cis-Sutlej States, including Maler Kotla, under protection was Nawab Ata-ulla Khan, the fifth or youngest son of Jamál Khan. On the death of Nawab Ata-ulla Khan in 1810, the Government of India conferred the Chiefship on Wazír Khan, who was the son of Nawab Bhikam Khan and thus the eldest representative of the eldest line. The claim of Rahmat Ali Khan, the son of the deceased Nawab Ata-ulla Khan, was rejected. In 1848 a paper, called the Maler Kotla *Dastur-ul-Amal*, was drawn up, which was at once a sort of constitution of the State, and a record of the family custom of succession, which did not follow the Muhammadan law. This document declared that the Chiefship, in accordance with the orders of 1810, was hereditary in the line of Wazír Khan. In other respects the document maintained and formulated, possibly with some novel precision, the traditional practice of the family. It made the revenues of the State divisible as private property, or, to be more exact, divisible in *jagir* on the customary system of sharing; and it authorised the several representatives of the extant branches of Jamál Khan's family to exercise certain rights of sovereignty in their respective holdings.

On July 16, 1871, Nawab Sikandar Ali Khan, the last representative of the line of Wazír Khan, died without male issue. The representative of the line of Nawab Bahadur Khan, the second son of Jamál Khan, was Ghulam Muhammad Khan, and he claimed the Chiefship. The representatives of Nawab Ata-ulla Khan, the fifth son of Jamál Khan, were Ibrahim Ali Khan, also a claimant of the Chiefship, and his younger brother, Inayat Ali Khan. The lines of the other two sons of Jamál Khan were extinct. The Lieutenant-Governor, Sir Henry Davies, recommended that Ibrahim Ali Khan, then a minor, should be accepted as successor to the Chiefship; and this proposal was adopted by the Government of India and approved by the Secretary of State.⁵ The system of sharing the revenues, with a modification which need not be described here, was allowed to continue; but the opportunity was taken to gradually obliterate the severance of rights of sovereignty which had accompanied it. "According to an ancient usage," said the Punjab Government, "and the provisions of the Code of Rules of 1848, the territories of Maler Kotla were held by the descendants of Jamál Khan according to their respective shares, each having authority within his share to collect the revenue, and settle colonies of the people, except in the town of Maler Kotla separately provided for. Any dispute of a civil nature was decided by the Khan in whose jurisdiction the parties resided. If the plaintiff resided in the jurisdiction of one Khan and the defendant in that of another, the dispute was adjudicated by that Khan in whose territory the defendant resided. If justice was not done to the plaintiff, the Khan in whose jurisdiction he resided appealed to the Nawab. In criminal matters the Khans had jurisdiction in the respective shares over their own subjects, with the same procedure as in civil cases when the complainant and accused belonged to different jurisdictions; the Nawab himself adjudicating in heinous offences, such as murder, robbery or riot. The result of this system may be easily imagined. The several Khans, nearly equal in wealth and power to the Nawab, have disputed his authority and remained in a state of constant

⁵ Despatch No. 60, dated June 13, 1872.

hostility, while the Nawab on his side has taken every opportunity to diminish the power of his relatives and increase his own. Since the proclamation of 1809 the State of Maler Kotla has been tormented by family feuds and dissensions; the people have been unable to obtain justice, and the Court of the Agent at Umballa has been flooded with complaints which, in most cases, he was unable to redress; a system such as that in force in the Maler Kotla State could only result in failure of justice, constant dissension, and administrative weakness.

"The Honourable the Lieutenant-Governor is strongly of opinion that the time has come to put an end to this state of things. He would therefore, accepting generally the proposals of the Agent, cis-Sutlej States, propose that Inayat Ali Khan, the younger brother of Ibrahim Ali Khan, and now a boy of about 12 years of age, be allowed within his share no independent powers, but that the Chief invest him with such police or civil powers as may seem appropriate, subordinate to himself; that Ghulam Muhammad Khan hold the powers that he now enjoys for life, but that at his death his son possess no powers independent of the Chief and not conferred by him. The Lieutenant-Governor would further propose that all the collections of revenue, customs, tolls, etc., be made by the Chief alone, who should pay to each co-sharer according to his acknowledged rights, and that the entire jurisdiction of the town of Maler Kotla remain in his hands."

These proposals were accepted by the Government of India; and referring to them the Secretary of State wrote:—"The results aimed at are most desirable, and the arrangement is entirely approved by Her Majesty's Government."

It remains to notice the fact that though the Maler Kotla case might at first sight be supposed to be a precedent in favour of recognising the Will of a Chief intended to dispose of rights of sovereignty, that is not in reality any part of its significance. It is true that Nawab Sikandar Ali Khan executed a Will appointing Ibrahim Ali Khan his successor and a deed of gift conferring upon him everything that was in his, the Nawab's, possession. But Mr. Macnabb, the Agent, cis-Sutlej States, held that these documents were not valid even according to the Muhammadan law; that the Muhammadan law did not apply; and that they were contrary to the custom of the family. The Punjab Government likewise set them aside, except as corroborative evidence of the wish and intention of the late Nawab that Ibrahim Ali Khan should succeed him. The Government of India deliberately refrained from giving any reasons for preferring Ibrahim Ali Khan to the rival candidate, and in regulating the disposition of the revenues of the State ignored the deed of gift completely. The notes on record show that the wishes of the late Nawab were probably taken as a factor, but not as a determining factor, in the case; and that the decision, though it coincided with these wishes, was reached on independent grounds.

§ 298. The value of the Maler Kotla case, as a precedent, lies in the recognition by the Government of India and the Secretary of State of the evils which may easily arise from the partition of a State amongst a brotherhood, as though it were so much private property; a recognition evinced by the action taken to put the evils to an end. As a precedent upon this point the case is particularly interesting, because it was really the survival of a system of succession applicable to private property at a period when rights of sovereignty had been acquired that led to the administrative confusion and family feuds described by the Punjab Government. The value of the Katosan case lies not so much in the facts, which may be more briefly stated, as in the clear enunciation of a principle by the Secretary of State. The Mahi Kantha or "Bank of the Mahi" to which Katosan pertains consists of fifty-nine territorial divisions, of which the Idar State is the most important. Of the rest, according to

The Katosan Succession Case, 1884. The petty Chiefship of Bombay Gazetteer, eleven are States of some consequence with an average population of 8,000 souls and a yearly revenue of about Rs. 20,000; and forty-seven are small States or estates, with on an average a population of about 3,000 souls and a revenue of about Rs. 10,000.⁶

⁶ Bombay Gazetteer, Volume V, page 355.

Katosan has an area of 20 square miles, a population of 7,426 and a revenue of Rs. 21,190.⁷ In history and political circumstances this part of the country considerably resembles Kathiawar. The earliest known settlers were Bhils and Kolis. In the eleventh, twelfth and thirteenth centuries the advance of Musalman power in Sindh and elsewhere drove many Rajputs to seek refuge in the Mahi Kantha hills. Many of these Rajputs lost caste by inter-marriage with the Kolis, but retained the names of the old Rajput tribes—Makwána, Dábi and Báriya. Many of them obtained by service reward-grants of lands from the Ahmadabad Kings; and as the Ahmadabad dynasty declined, the local Chiefships gathered strength, so that the Moghal hold here was slight and apparently for not much more than half a century close enough to maintain the levy of a regular tribute. In the eighteenth century, however, the Mahrattas imposed tribute upon all but a few of the poorest and most out-of-the-way Chiefships. Upon the tributaries Baroda enforced, as in Kathiawar, its *mulkgiri* collections, its system, that is to say, of levying tribute by the periodical advance of a military force. Here as in Kathiawar, but a little later in 1811 or 1812 instead of in 1807-8, we arranged to collect the tribute and pay it over to the Gaekwar; and here as in Kathiawar the British Government alone has been the paramount power since the Gaekwar agreed in 1820 not to send troops to this country or prefer any claim against its inhabitants except through our arbitration. In 1839 a Court of criminal justice was established in Mahi Kantha similar to that which had been established in Kathiawar in 1831; and here again as in Kathiawar the Chiefs who had previously exercised undefined judicial powers were in 1876-77 arranged in seven classes with varying civil and criminal jurisdiction.⁸ The Katosan Chief has been placed in the 4th class; his possessions, according to his own account, consists of thirteen villages; and he claims descent from a Jhala Makwána Rajput family which had intermarried with Kolis. These particulars have been given to show what sort of a State Katosan is. The rest of the material facts of the case will sufficiently appear from the Secretary of State's Despatch⁹ No. 57, dated July 10, 1884, which is in these terms:—

“I have received and considered in Council Political letter of Your Excellency's Government, No. 43, dated 28th April last, forwarding a memorial to my address from Thákur Karan Singhji of Katosan, who appeals against orders passed by your Government, which awarded a one-third share of his estate to his younger brother, Bhupát Singhji.

“In 1831 the judgment of a Court composed of the Acting Political Agent in Mahi Kantha, with two Native Assessors, was to the effect that the younger brother was not entitled to a share in the estate, but only to a *jivak* in maintenance. This view was adopted by the Bombay Government, but Your Excellency's Government in September 1882 reversed the terms of this decision, and awarded a one-third share of the estate to Bhupát Singhji.

“Such a decision appears to me to be rather a compromise between conflicting claims than based on local custom. *I am strongly impressed with the inexpediency, and political disadvantage, of the division of such States as Katosan, except in certain special circumstances,* and it appears to me that, in the present case, there are no such circumstances, but that the weight of the evidence shows that the custom of succession in the Katosan family favours the rule of primogeniture, with a maintenance allowance to the younger brothers, rather than that of partition. The arguments on this head, advanced by the memorialist, confirmed, as they are, by the various Political officers, who have been, since May 1880, concerned in the case, *viz.*, that the Makwána family of Katosan traces its origin to the Jhala Rajputs, and that amongst the Rajputs generally, and the Jhala Makwánas in particular, primogeniture obtains in the ruling branches, while it is only amongst the Bhayads, or families of Cadets, that partition prevails, appear to me to be substantially sound.

⁷ Aitchison, VI, page 334.

⁸ These historical particulars are taken partly from the Bombay Gazetteer, Volume V, pages 381, 382, 388, and partly from Aitchison, VI, pages 325-330.

⁹ Pro., A, Political I, August 1884, Nos. 260-261. Another precedent against the dismemberment of a small State is the case of the Aundh succession—Pro., Internal A, June 1893, Nos. 462-470.

"I therefore agree with the Bombay Government, that the assignment of a *jiwak* or maintenance of the value of Rs. 4,000 gross revenue to Bhupat Singhji, as ruled in 1881, is both just and politically expedient, and I request that my decision in the matter may be communicated to that Government, in any form you may think proper."

§ 299. The Maler Kotla State has an area of 162 square miles, a population of 75,755 and an estimated revenue of the portion belonging to the Nawab amounting to Rs. 2,84,000. It is

Summary.

therefore quite a small State. The cases of Ali Rajpur, Maler Kotla and Katosan taken together are quite sufficient to show that in the opinion of the British Government *the dismemberment of small States is, in the absence of special circumstances, politically inexpedient.* It is hardly necessary to repeat that the same inference is to be drawn from the history of Bundelkhand and Kathiawar. In the case of Kashmir the idea of dismembering a large State was repudiated with some emphasis. We have to add a few cases in which partition was allowed or the formation of a new State out of the territory of a pre-existing one was arranged on political grounds.

§ 300. Amongst these we will first notice the cases of Kota and Jhalawar, 1838, and of Tonk and Lawa, 1867. The

Cases of the dismemberment of States.

particulars are given in Aitchison, but are repeated here with little alteration for facility of reference and as being essential to the present argument. When Kota like other Rajput States was being despoiled

Kota and Jhalawar, 1838.

by the Mahrattas it was saved from absolute ruin by the Minister, Raj Rana Zalim Singh, to whom the Chief surrendered all power. On taking the Kota State under protection as a preliminary to the Pindari war we recognised the Maharao and his heirs as "absolute Rulers of their country," but very shortly afterwards stipulated that the entire administration of the affairs of the principality should be vested in Raj Rana Zalim Singh and his heirs in regular succession and perpetuity. This agreement was made with the Chief, Maharao Umed Singh, in 1817, and worked well till his death in 1820. Thereupon his successor in the Chiefship, Kishor Singh, attempted to forcibly oust the Minister from the administration, but was defeated by a British force. He accepted the situation. But it proved to be an impossible one, for in fact, though the engagement with the Chief had been made with the assent of the Minister, the several promises to the two were inconsistent with each other. In 1834, after Kishor Singh had been succeeded by his nephew Ram Singh, the quarrel between Chief and Minister, then Madan Singh, broke out afresh. "There was danger" (we quote from Aitchison¹⁰) "of a popular rising for the expulsion of the Minister, and it was therefore resolved with the consent of the Chief of Kota to dismember the State and to create the new principality of Jhalawar as a separate provision for the descendants of Zalim Singh. Seventeen *parganas*, yielding a revenue of Rs. 12,00,000, were made over to Madan Singh; this arrangement formed the basis of a new treaty (No. CXXXIII) concluded with Kota in 1838. The Maharao's tribute was reduced by Rs. 80,000, which sum was to be paid by Jhalawar." On April 8, 1838, a treaty of the usual type was concluded with Madan Singh, placing him in the position of a protected and tributary Ruling Chief. The title of Maharaj Rana was conferred upon him, and Jhalawar has since been dealt with in every respect as a separate State.

§ 301. This was a case of making two fairly large States out of one of considerable size. Taking present figures, if Jhalawar had now been still a part of Kota, then Kota thus retaining its integrity would have had an area of 6,491 square miles, a population of 869,573 and a revenue of Rs. 49,50,000. Jhalawar as separately constituted has an area of 2,694 square miles, a population of 343,310 and a revenue of 15 lakhs. The later case of Tonk and Lawa

Tonk and Lawa, 1867.

was a case of separating a tiny feudatory Chiefship from the suzerain State in consequence of the complicity of the Chief of that State in an atrocious crime against his dependent. Lawa was a tributary of Tonk; the Thákur,

¹⁰ Aitchison, III, page 318.

Dhirat Singh, was young, weak and inexperienced; and the Nawab of Tonk, Muhammad Ali Khan, probably intended either to seize upon Lawa or at any rate to reduce it to further subjection. The uncle of the Thákur, one Rewat Singh, was a stalwart old soldier employed in the Alwar State as a Commandant of cavalry. In 1865, when the Nawab threatened the young Thákur, Rewat Singh resigned service in Alwar, went to Lawa, and there supported the rights of the young Thákur with vigour and ability. A man who instigated the Nawab to oppress Lawa was one Hakím Sarwar Shah, originally a medical practitioner, who had risen to great power in the State. The Thákur, several of the chief people of Lawa, and the Thákur's uncle, Rewat Singh, were inveigled to Tonk on a pretence that the Nawab wished to honour the Thákur and adjust pending claims; for disputes had long existed between the Nawab and his feudatory. Shortly after the Thákur had arrived at Tonk, the Hakím, on the night of August 1867, sent a mace-bearer to call the Thákur to his house, and the latter sent his uncle thither with a party of fifteen men including a cousin of the Thákur and two Kamdars or officials. On reaching Hakím Sarwar Shah's house the uncle, and the cousin and the Kamdars were called upstairs, the attendants remaining below. The Lawa men who went up the stairs were never seen alive again. After about half an hour the attendants who had remained below were suddenly set upon and cut down or shot by a party of Wiláyatis, and all were killed there and then except one Megh Singh, whose life appears to have been spared because the Wiláyatis took him for a fellow-Pathan, his turban being tied in Pathan fashion. Apparently the object of this treacherous outrage was to sweep away all the Lawa men of sufficient influence to offer any opposition to the designs of the Tonk Darbar. Whether the original intention was to seize the party, or, as is far more probable, to murder them, there was no doubt that the Nawab was implicated in the crime and he did all he could to disguise the truth and shield the offenders. He was deposed and placed under surveillance at Benares and Hakím Sarwar Shah was immured as a State prisoner in Chunar. "Lawa," says Aitchison, "was declared a separate Chiefship under the protection of the British Government, and the heirs of the murdered men received maintenance through the British Government out of the revenues of Tonk. The Chiefship consists of one town only and its surroundings." The deposition of the Nawab and the separation of Lawa from Tonk were approved by the Secretary of State, Sir Stafford Northcote. Lawa has a revenue of about Rs. 4,500, an area of 18 square miles, and a population of 3,360. For the Tonk State the figures are—area 2,933 square miles, population 379,944, and revenue about 14 lakhs.¹¹

§ 302. The case of Tonk and Lawa is, it is believed, the only important case since the Mutiny in which the British Government has sanctioned the partition of an Indian State. A few earlier cases of such partitions may be mentioned, some from the Southern Mahratta Country and one from Central

Partitions of the Southern Mahratta India. In the Southern Mahratta Country Jagirs. the Peshwas dealt very freely with the estates of the great families of the Patwardhans, the Bhawas, and the Ghorpades,—dividing and distributing the holdings, as they saw fit, to members of the several houses. In part, at any rate, these estates were official grants for services rendered or in consideration for services to be performed; and in making the grants the Peshwas were influenced by the personal character and conduct of the recipients.¹² The Patwardhans now hold six States—Sangli, Miraj (senior and junior branches), Jamkhandi, and Kurundwar, also, like Miraj, severed into two parts. Every one of these States has been formed by partition effected either by the Peshwa's orders or by our own. Sangli was formed out of Miraj as it originally existed in 1782, by a partition which took place under the sanction of the Peshwa¹³ in 1808-9 A. D. In 1820, at the solicitation of the family and with the object of terminating their long-pending disputes, the remainder of Miraj was divided into four portions. This arrangement was

¹¹ The passages in Aitchison on which the text is founded will be found in Volume III, pages 92, 210, 224, 225, 317, 318, 343, 347. The correspondence is contained in the file ending with the Secretary of State's despatch No. 136 (Political), dated November 15, 1867.

¹² See Bombay Government Resolution No. 1610, dated March 16, 1872, paragraph 8; and Aitchison, VII, pages 186-189.

¹³ From Commissioner in the Deccan to Secretary to Government, Bombay, No. 23, dated April 26, 1821, paragraph 2.

sanctioned by the Government of India¹⁴ on August 4, 1821. Of the four shares thus formed two lapsed in 1842 and 1845, from failure of male issue,¹⁵ and two are still held by the senior and junior branches above referred to. Jamkhandi was separated by the Peshwa from Tasgaon in 1811, and what was left of Tasgaon lapsed in 1845. Kurundwar was first divided in 1812, and the half share then separated from it, known as Shedbal, after having once been continued by adoption in 1820, lapsed in 1857. When the Southern Mahratta Country came under British supremacy in 1819, Kurundwar as then constituted was held by Keshav Rao, who died in 1827 leaving four sons, Raghunath Rao, the eldest, Harihar Rao (who died in 1851 leaving a son, Ganpat Rao), Vinayak Rao, and Trimbak Rao, who died in 1869. The sons were minors and the estate was managed by their mother till 1837. For some time the brothers lived on friendly terms, but dissensions arose between them, and in 1850 the three younger brothers petitioned the Government for an equal division of the estate. Writing on this subject in a despatch No. 10 of April 5, 1854, the Court of Directors said—"It is acknowledged that division, whenever claimed by the younger branches, has been the custom of the Patwardhan estates from the time of Baji Rao, that such a division has been in three instances granted, and in none refused by our Government." They added—"Though we admit . . . that the younger brothers cannot claim partition as an absolute right, we continue to think that the reasons preponderate in favour of following the course of precedents." The partition was not finally arranged till 1856; and then, out of the *Saranjám* or service lands, territory was assigned to Raghunath Rao, first, yielding Rs. 10,000, in consideration of his being the eldest son; secondly, yielding Rs. 12,000, because he remained liable to pay the commutation for service in respect of the whole of Kurundwar; and thirdly, yielding Rs. 15,250 (in round numbers), being the fourth of the remaining revenues. The residue was equally shared amongst the three younger sons. The *inam* lands remained with Raghunath Rao, subject to an annual payment of Rs. 3,000 to each of the others. The moveable property was divided into five parts, and two-fifths were allotted to the eldest son and one-fifth each to his three younger brothers. It will be observed that the Government of the day dealt with this case politically, and paid no regard in it to the Hindu law. The shares of the three younger brothers were managed jointly in the name of one of their number; the civil and criminal jurisdiction was, at their request, entrusted to one of them; and they jointly signed all documents relating to the *Saranjám*.¹⁶

When Trimbak Rao died in 1869 his share was claimed on the one hand by Raghunath Rao, the senior Chief, and on the other hand by Ganpat Rao, and Vinayak Rao, the representatives of the junior branch. Trimbak Rao had expressed his desire that his whole estate should go to the younger Chiefs, and had set this forth in a Will dated August 4, 1865, which was taken into consideration by the Bombay Government. The decision was in favour of the younger Chiefs whose State is shown separately in Aitchison. The moveable property was divided amongst them in accordance with the Will and subject to its conditions. In the consultations of the Government of India Mr. Aitchison, the Foreign Secretary, expressed great doubt of the propriety of this decision, but Sir Barrow Ellis, Member of Council, supported it, and the Viceroy, Lord Northbrook, decided that he would not interfere. The orders of the Bombay Government were upheld by the Secretary of State, except that the elder Chief was relieved of the annual payment of Rs. 3,000 which he had made to Trimbak Rao.

The case of the Southern Mahratta *jagirs* has been stated pretty fully, because here, as in many other parts of the country, we inherited the principles

¹⁴ Consultations, Political Department, August 4, 1821, No. 9.

¹⁵ Aitchison, VII, page 188.

¹⁶ "Under the Mahrattas a *Saranjám* was not a hereditary estate, but an official grant for services rendered; and the Peshwas exercised a very wide discretion in dividing or renewing these holdings"—Bombay Government Resolution No. 1610, dated March 16, 1872, paragraph 8; and *Saranjám* is thus defined in Wilson's Glossary: "Apparatus, provisions, furniture, materials, what is essential to any undertaking; amongst the Marathas it was applied especially to a temporary assignment of revenue from villages or lands for the support of troops or for

personal military service, usually for the life of the grantee; also to grants made to persons appointed to civil offices of the State to enable them to maintain their dignity, and to grants for charitable purposes; these were neither transferable nor hereditary, and were held at the pleasure of the sovereign." The principal papers in the case are the following despatches:—

From Bombay to Secretary of State, No. 15, dated March 17, 1873, and enclosures.

From Secretary of State to Bombay, No. 66 (Political), dated December 31, 1873.

Bombay reply No. 7, dated February 28, 1874.

and practices of our predecessors; and some explanation was necessary in order to show the true bearing of these precedents. The old service grants have become States of the Indian system; and the old *jagirdars* Ruling Chiefs with certain rights of sovereignty. The Mahratta freedom of partition, practised by ourselves, would probably, in these days, be considered an anachronism; and with the example of Kathiawar before our eyes, it seems unlikely that we should perpetuate it.

§ 303. The case of the Jabria Bhil Estate in Central India is peculiar.

The Jabria Bhil Estate, 1886. In 1826 a *jagir* of three villages and an *istamrari* lease of two villages in the Shujawalpur *pargana* were granted for life to Rajan Khan, Pindari, brother of the notorious Chitu. In 1831 the *pargana* was ceded to Sindhia in exchange for other territory, and Rajan Khan dying at this time, the lands were continued to his family, Sindhia being required to abstain from arbitrary resumption. Succession questions relating to this *jagir* are settled by the British Government, Sindhia being informed. The villages were divided amongst Rajan Khan's five sons; Jabria Bhil and Jabri fell to Raj Bakhsh, Khajuria to Hahi Bakhsh, Dugri to Madar Bakhsh, and Piplianagar to Makhdum Bakhsh and Rahim Bakhsh. This division was made in accordance with Rajan Khan's wishes *as expressed in his Will*; but even supposing that it would be held that the *jagirdar* of this small holding had rights of sovereignty at the time of this partition,—a very doubtful supposition in the face of an original grant for life and seeing that the family in 1833 was to be given “clearly to understand that their tenure depended upon the pleasure of the British Government,”—the case would hardly be regarded as a precedent at the present day. At all events, when it came up in recent years the decision was against both resumption and partition. To the share of Raj Bakhsh, Jamál Bakhsh succeeded, and he died on May 17, 1886, leaving a widow and daughter. Colonel Bannerman, Agent to the Governor-General, Central India, proposed either that the estate should be divided amongst other members of the family, or that it should be resumed, suitable allowances being made in either case to the widow and daughter. But though it was doubtful whether the custom of adoption prevailed in Pindari families, the Government of India permitted the widow to adopt her nephew, Yusaf Muhammad, then a minor, for the purpose of the succession, and directed that the estate should be managed by an *Amin* till the nephew came of age. In 1894 it was held that Yusaf Muhammad did not, by this adoption, forfeit his right to succeed to the half share of Piplianagar on his father's death.¹⁷

As a summary of this paragraph and of paragraphs § 300, § 301, and 302, it is only necessary to say that *notwithstanding the general objections which exist to the partition certainly of small and probably of any States, circumstances may arise to make the partition of a State politically expedient.*

§ 304. We have promised in paragraph § 45 above to discuss in its proper

The support of Chiefs against rebellion or disaffection. place the question under what circumstances the Paramount Power will interpose to protect or support a Ruling Chief against the rebellion or opposition of his subjects or dependents. We may appropriately consider this question here as being one connected with the preservation of Native rule and with the maintenance of the integrity of Native States. In much that has gone before, in the language held by Lord Hardinge to Kashmir (paragraph § 38) and by Lord Northbrook to Baroda (paragraph § 40), in the principle (paragraph § 45) that civil war is not permitted in Native States, in the accounts given of the Janjira,¹⁸ Jodhpur,¹⁹ Cambay²⁰ and Banswára and Kusalgarh¹ cases, this at least has been implied that, at any rate in the last resort, a Chief will be supported against unjustifiable rebellion which he is himself unable to put down. On this

¹⁷ Pro., Internal A, May 1888, Nos. 124-128; Aitchison, IV, pages 18 and 292-293. Pro., Internal A, April 1894, Nos. 64-69. In connection with the present subject the cases of Jaso (1816), the Hasht-Bhaya *jagirs* (1821-23), and Khaniadhana (1862), have been considered. But it is not necessary to abstract them, for they are cases of the recognition of States, not cases of partitions effected by the British Government. See Aitchison, IV, p. 133; and V, pp. 27 and 45. In the case of Kurwai the Government of India suggested in 1841 and sanctioned in 1843 a partition of the State between two brothers. But eventually

other orders were passed and a single Chiefship was maintained, though the property of the deceased Chief was divided between his two sons. See the following letters of the Government of India, *viz.*, No. 1385, dated May 31, 1841, No. 830, dated October 5, 1843, and No. 1723, dated August 20, 1846.

¹⁸ Paragraph § 44.

¹⁹ Paragraph § 49.

²⁰ Paragraph § 51.

²¹ Paragraph § 62.

point there is no doubt; but when rebellion has been provoked and is justified by misrule, it may be, as we have already shown, our duty to set the Chief aside or restrict his powers. Some doubtful predicaments remain in which guidance will necessarily be sought from the past practice of the Government of India. For instance, when disturbance is imminent or already exists, and the Chief, if left to himself, may be able to overcome it, are we to allow him to deal with it unaided, or with the aid only of our moral support, or are we, with or without the use of military force, to intervene as arbitrators to settle the dispute? And if intervention seems probably unavoidable, what sort of events will precipitate interference and upon what conditions are we to intervene? These, it may be admitted, are problems immersed in matter, and general rules, so far as they are possible, must be no more than presumptions which particular circumstances may rebut. Still a consideration of precedents will have its use; and we shall take our precedents first from Rajputana and then from other parts of India, and we shall state the Rajputana cases at some length because their usefulness depends less upon the principles enunciated than upon the examples afforded by the particular facts and the action taken upon them.

§ 305. And there are good reasons why we should go for our precedents

Reasons for taking precedents from Rajputana. to Rajputana first of all. From the nature of the relations between the Chiefs

and the Thákurs, Rajputana is more likely to supply the precedents we want than other parts of India; and intervention which was considered necessary in States of an archaic political type would *a fortiori* be necessary in States of a more familiar description. For the history of Rajputana and the political constitution of its States, particularly of the Western States which have preserved their tribal organisation and have not been transmuted by the pressure and chemistry of events into territorial despotisms of the usual style and composition, combine to keep alive in the tribal baronage a martial spirit, easily breaking out into turbulence, and traditions of local lordship limiting the powers of the Chief and making the Thákurs themselves prompt to resent any usurpation of their lands or disregard of their privileges. The history and the constitution are alike well known; and the reader who wishes to study either will find abundance of matter to inform and interest him in Sir Alfred Lyall's *Asiatic Studies*² and the *Rajputana Gazetteer*.³ Beaten back into the wild country on the fringe of the desert, or into the desert itself, by the ever-advancing strength of Muhammadan invasion, the great Rajput tribes, Chiefs and Thákurs alike, the Rathors, the Chauhans, the Sisodias and others, passed the centuries in fighting,—with the Ghazni conquerors, the Delhi Kings or the Musalman Kings of Malwa and Guzerat, or with the latest foreign Asiatic invader, as with Babar at Fatehpur Sikri or Ahmad Shah, Abdali, at Panipat. They fought also freely with each other or under the standards of the Delhi Empire or in the battles of the competitors for its throne. Established outside the rim of the Empire in strongholds made hardly accessible by deserts or woods and hills, the Rajput Chiefs and their brotherhoods parcelled out the overlordship of the lands in tribal fashion, the Thákurs imitating in their own possessions the status and authority of the Chief in his domains. From this origin and history resulted a sort of balance of power, an equilibrium of conflicting forces, the Chief seeking always to extend his direct dominion and consolidate his strength, the Thákurs to maintain inviolate their traditional rights and position. To quote the *Gazetteer*⁴—“it may be said that all the internal disorders of Rajputana since 1818, which were serious and widespread up to recent years, have been caused entirely by disputes between the Ruling Chiefs and their nobles; the Chiefs striving to always depress and break down the power of their great kinsmen, the nobles being determined to restrict the strength of their Ruler.” Nor must it be forgotten that until Sindh and the Punjab were annexed in 1843, 1845 and 1848, Rajputana had been since 1818 a Frontier Protectorate; and therefore, though we had to interfere strongly in Jaipur⁵ in 1835 and in Jodhpur⁶ in 1839, it is probable that, as a rule, we left the States of Rajputana more to themselves than States of the internal Protectorate. Indeed, it is well known to Political Officers that, probably from all the causes which have here been slightly indi-

² Pages 181-227.

³ Vol. I, pages 37-40, 54-65.

⁴ Vol. I, page 63.

⁵ *Gazetteer*, Vol. I, page 49; Aitchison, III, page 85.

⁶ Aitchison, III, page 132.

cated, there has often been a difference between our treatment of the States of Rajputana, which still retain their præfeudal and tribal constitution, and States in other parts of the country where there is no baronage ever ready with the ultimatum of outlawry to restrict the autocracy of the Chief. It will be enough to quote some remarks of Colonel Keatinge, the Agent to the Governor-General, Rajputana, made in 1870 when he was discussing Sirohi affairs.⁷ The condition, he said, of Sirohi was not seriously worse than that of its neighbours, but still was such that it would not be tolerated for a week in the midst of well-regulated States. The Thákurs were steeped in ignorance, holding it to be a point of honour to maintain fully their position of semi-independence of the Darbar. Many of them, if the Darbar were to attempt large reforms, would probably go into outlawry; and the rugged nature of the country, and the sympathy which in such a State as Sirohi an outlaw always commands, would make their punishment by the unaided authority of the State almost impossible. Sirohi, he added, was so far better governed than some of its neighbours that no large bands were in the habit of issuing from it to plunder in other countries, and that neither the Chief nor any of his officers would knowingly shelter or protect plunderers or share in their spoils.

§ 306. The State of Marwar or Jodhpur has retained its primitive organisation; and the Chief is the head of the great Rathor tribe, from which arose several separate States—Jodhpur, Bikanir and Kishangarh in Rajputana, and

Jodhpur, 1868. The rebellion of the Idar and Ahmadnagar in Guzerat.⁸ Thákurs.

Jodhpur is a "tribal suzerainty rapidly passing into the feudal stage." The Thákurs exercise hereditary authority in their estates and owing military service to the Chief and exacting the same from their brethren to whom assignments of land have been made, take with them the Government share of the crop from the actual cultivator. The lands in the possession of the Chief amount to hardly a fifth of those in the possession of these Thákurs and *jagirdars*.⁹ The state of affairs in 1868 has already been briefly described in paragraph § 49; but it remains to show that at that time the Government would certainly have interfered more drastically if the land had not been suffering from famine, and that notwithstanding the famine, they were prepared to despatch troops to Jodhpur had war broken out between the Chief and his Thákurs. When we adduced the case before, we did so with reference to the duty of the Paramount Power to prevent misrule; and it must be admitted that the precedent has most point in that connection. Still it is important here as showing that a Chief cannot claim our protection against rebellion which he has himself provoked, and as confirming the principle that civil war will not be permitted in a Native State. It also bears directly on the practical question how far the disputants may be allowed to go before we interfere with the strong hand to stop the quarrel.

In support of these observations we may give some further extracts from the letter of the Government of India, No. 1395, dated December 3, 1868, from which we have already quoted the remark that the Maharaja of Jodhpur had, under treaty provisions, no right to claim our protection against rebellion or disaffection provoked by his own acts. Twenty-six of the Thákurs had submitted a joint petition and a series of draft articles to which they wished the Maharaja to agree. They complained that five Thákurs had been forcibly deprived of their estates without fault and that one hundred and seventy-five villages belonging to other *jagirdars* had been unjustly confiscated by the Darbar. They demanded measures to prevent robberies committed by or with the countenance of the Maharaja's sons, Ránis and concubines and to stop the interference of slave-girls in State affairs. They asked for the cancellation of an order of the Chief prohibiting adoptions without his permission and for the proper regulation of the fees payable by themselves on successions and other occasions. They referred also to many other abuses which the orders of the Government of India sufficiently describe. "There is some risk," said the Foreign Secretary, writing under the instructions of the Government of Sir John Lawrence, "of open and immediate rebellion in Jodhpur, unless some steps can be devised to put an end to the existing discord. For many years past, the Government of

⁷ *Pro.*, Political A, August 1870, No. 93.
⁸ *Gazetteer*, Vol. II, page 230.

⁹ *Gazetteer*, Vol. II, pages 236-237.

India has had to lament the gradual disorganisation of this principality. The demands of the nobles, who have always been somewhat disposed to threats and turbulence, and who are not inclined to acquiesce in persistent and unreasonable opposition to their wishes, have been systematically disregarded. The Ruler has gradually withdrawn from all attempts at administration, and has given himself up to habitual indulgence and gross debauchery. Power has been delegated to unworthy favourites by whom, as might have been expected, it has been scandalously abused. Court intrigues of the vilest sort have been countenanced; deeds of violence have been perpetrated by relations of the Maharaja and persons connected with the Court, and have been passed over without notice, and almost without inquiry, and neither the person nor the property of individuals has been safe from attack, though the perpetrators are perfectly well known.

"Justice has been practically denied, trade and agriculture have been obstructed and paralysed, and the country is in consequence steadily deteriorating, while it is at this moment suffering from the want of supplies to a degree far beyond what need be expected even under the pressure of the prevailing scarcity. . . . Without pronouncing absolutely that the complaints of the nobles are, in every respect, well grounded, or that all the concessions which they ask for ought to be at once granted to them, His Excellency in Council is compelled to declare his conviction that the Maharaja is chiefly to blame for the present crisis, and that it is to his obstinacy, incapacity, and resolute abnegation of his duties as a Ruler, that the state of affairs depicted in your communication is to be mainly ascribed.

"This being a state of things, the reality of which admits unhappily of no question, and which the attitude now assumed by the nobles cannot justify or palliate, it remains for the Government of India to decide on the steps which ought to be taken by the Paramount Power as bound to prevent the existence of anarchy and the spread of confusion and disorder. His Excellency in Council holds that the Maharaja could have no just reason to complain, if he were now to be set aside, and his son, who is described as orderly and of a good disposition, were installed on the throne in his stead, with a Council to advise him, of which the British Agent should be the President." Reasons were then given why this course would not be adopted, the actually deterring obstacle being the prevalence of famine in the land. "One main object," said the Government of India, "is, you will readily perceive, to avoid the march of troops into Jodhpur during the present unpropitious season, and nothing short of actual war and bloodshed between the sovereign and his discontented nobles would lead the Government of India to order the despatch of a body of troops to that quarter." Colonel Keatinge, the Agent to the Governor-General, was accordingly instructed to attempt a settlement by negotiation, but he was equipped for this difficult task with as much moral support as could be given him. "You should point out," so he was told, "to the Maharaja, in the clearest manner, that the Government of India absolutely refuses to give him any aid towards coercing or domineering over his feudatories, and that if His Highness wishes to continue to retain the substance of authority as Ruler of the principality, he must be guided by your advice and that of Colonel Brooke, and must agree to such terms as you may consider expedient or indispensable.

"If he is unable or unwilling to follow this policy and to listen to your good counsel, you are authorised to intimate to him in plain language that he will be left for a twelvemonth to abide by the consequences of his infatuation, and that eventually he will have to submit to the forcible intervention of the British Government, which will then, in disregard of his wishes or convenience, take decisive steps for the interests of his subjects, and the good of the country. In the latter event, he must be prepared to sacrifice his independence, to be deprived of all authority, and to be reduced to the state of a pensioner on his own revenues; while he can never expect to be restored, at any period of his life, to the exercise of the sovereign power for which he has shown himself totally unfitted."

As we already know, Colonel Keatinge and Colonel Brooke, armed with this forcible expression of the views of the Government of India, were able to bring the Maharaja and his Thákurs to terms without resort to military force or the extreme measure of a deposition.

§ 307. But the troubles of the Jodhpur State were by no means over. Jodhpur, 1872. Zorawar Singh's rebellion. Four years later there was renewed disturbance; and this time the leading spirit in rebellion was a son of the Chief. We have mentioned that the States of Idar and Ahmadnagar in Guzerat owed their origin, like Jodhpur, to the Rathor tribe. On September 5, 1843, Maharaja Mán Singh of Jodhpur died without sons of the body and without adopting a son.¹⁰ The succession lay between the Chiefs of Idar and Ahmadnagar, and the widows, nobles and State officials declared in favour of Maharaja Takht Singh, whose unfortunate relations with his Thákurs have just been described. Takht Singh at first left his son Jaswant Singh (who is now Maharaja, Takht Singh having died in 1873) at Ahmadnagar and claimed to keep that State in the family on the ground that the widow of the former Ruler, his brother Pirthi Singh, had adopted Jaswant Singh, and that he, Takht Singh, had been only Regent on behalf of Jaswant Singh and not actual Ruler of Ahmadnagar. It was found, however, that Takht Singh had been acknowledged and treated by the British authorities not as Regent but as Raja of Ahmadnagar for two years during which the alleged adoption had never been heard of by them, and that it had certainly never taken place till after his election to Jodhpur. His pretension was therefore disallowed.¹¹ Ahmadnagar lapsed to the Idar State and Takht Singh was required to remove his family to Jodhpur and abstain from all interference in Ahmadnagar affairs.

In July 1872 events occurred which were closely connected with Takht Singh's theory that his son Jaswant Singh was by adoption entitled to the Chiefship of Ahmadnagar. It was [reported by telegram¹² that Zorawar Singh, the second son of the Maharaja, had suddenly left the capital with a considerable following, and had seized Nagar, one of the chief towns of Marwar. A few days later the Political Agent, Marwar, reported that Zorawar Singh was collecting money and followers, victualling the town, and repairing the fortifications. The Agent to the Governor-General was directed to "use all necessary means to prevent the spread of hostilities," and the Government of India intimated that as the Maharaja of Jodhpur contributed to the maintenance of the Erinpura Irregular Force, he was entitled to the co-operation of a detachment from that body should such assistance be deemed necessary. Meanwhile, Colonel Brooke had supplemented his telegram by a letter giving particulars as to Zorawar Singh's rebellion and the general state of affairs. The young man was said to be levying troops and contributions, and as the fort of Nagar was a strong place with a good ditch and glacis, and the *Ráj* forces were bad, the matter was beginning to look serious. However, the Maharaja was acting with vigour, and Colonel Brooke thought Zorawar Singh would probably submit if this vigorous action were maintained. The Maharaja had been given clearly to understand that he was expected to put down the disturbance himself, if possible. He was very anxious that the Political Agent should accompany him to Nagar. But when he expressed this wish Colonel Brooke refused his sanction, on the ground that if Zorawar Singh resisted, the British Government might be compromised. Colonel Brooke added that the Maharaja was entitled to—and would receive—whatever support the Political Agent could give him without being led into hostilities; but it was pointed out "that the disturbance was one for his own Government to settle, and if he could not do it, and it was requisite for the British Government to interfere, it would make its own arrangements both with regard to the insurrection and for the settlement of the country afterwards."

[On receipt of Colonel Brooke's letter the Government of India replied in the following words:—

["His Excellency in Council deems it to be of great importance that the present disturbances should not be permitted to spread, and all the means at your disposal will be therefore employed to prevent such a contingency. Should there be, in your opinion, any doubt as to the ability of the Darbar troops to put down the rebellion, you are empowered to support them by a detachment of the Erinpura force.

¹⁰ The particulars here are taken from Aitchison, III, page 132. | ¹² Pro., Political A, July 1872, Nos. 375-380.

¹¹ Despatch of the Court of Directors, No. 30, of August 16, 1843. See Pro., Political A, December 1872, No. 483.

["It will be expedient that the Political Agent should accompany the Maharaja to Nagar. There appears to His Excellency in Council to be no necessity for holding aloof in the present crisis for fear of compromising the British Government; on the contrary, His Excellency in Council believes it to be imperatively necessary to extend all due support to the Maharaja and to preserve the peace at all hazards, reserving, until the suppression of the present outbreak, inquiry as to the causes of the disturbance and consideration of the steps which it may be necessary to take to remedy the causes from which they have sprung."]

[These orders provided for the tender to the Maharaja of a more direct support than the Agent to the Governor-General had contemplated. But it will be observed that military aid was only to be given in case of doubt as to the ability of the Darbar troops to put down the disturbance.]

[Shortly afterwards the true meaning of Zorawar Singh's rebellion came out. On the 30th July he telegraphed direct to the Government of India, intimating that he was the heir to the Jodhpur *gaddi*. He asked for a *panchayat* to settle his claims. Government, in reply, desired the Agent to the Governor-General to inform Zorawar Singh that the Viceroy declined all communication with him, and would give no consideration to his case until he surrendered unconditionally. This decisive proof that the whole power of the British Government was against him seemed to have an immediate effect. Before the middle of August Zorawar Singh came in and the rebellion collapsed. When the causes of the rebellion came to be considered it was found that Zorawar Singh's claim to succeed was based—*first*, on the statement that his elder brother had been adopted as heir to the Ahmadnagar State, and, *secondly*, on the fact that he himself was the first son born after his father's accession to the Jodhpur *gaddi*.

[The adoption story, as already explained, had been examined and declared to be untrue by the Court of Directors.]

The right of succession of Takht Singh's family in Ahmadnagar was cancelled by his acceptance of the Chiefship of Jodhpur. Zorawar Singh was, therefore, informed that his claim to supersede his elder brother Jaswant Singh could not be admitted. [Jaswant Singh had been recognised as heir-apparent by the British Government, which would visit with its severe displeasure any attempt to disturb the regular succession of the recognised heir. Adverting to an apprehension said to be entertained by Zorawar Singh that Jaswant Singh, who was without sons, might adopt one of his younger brothers in preference to one of Zorawar Singh's children, the Government of India expressed its inability to take into consideration the question of an adoption to a Native State by one who was not the Ruler of the State. Government further expressed its opinion¹³ that by his open rebellion Zorawar Singh had forfeited any claims which he might formerly have had as of right, and that his considerate treatment and the provision to be made for him were matters of grace and favour on the part of the Maharaja. He was finally permitted to retire to Ajmir, on the understanding that any attempt to make British territory a basis of intrigue or disturbance would expose him to the penalties of British laws.]

[After the disturbance was over it became necessary to make arrangements for the future administration of the Jodhpur State, which the divisions among the ruling family and the Maharaja's long-standing disputes with his Thákurs had thoroughly disorganised. At this juncture the Maharaja came forward with a proposal which seemed likely to simplify matters. He expressed himself desirous of abdicating in favour of his eldest son, Jaswant Singh. But the letter in which this proposal was made contained a clause which seemed somewhat suspicious. Jaswant Singh was to manage the affairs of the State "subject to the control of the Darbar." Before according sanction to the arrangement the Government of India intimated that the Maharaja's intentions must be made quite clear. His Excellency in Council declined to pass final orders without a distinct understanding that, in case Jaswant Singh assumed the control of public affairs, there would be no attempt on the Maharaja's part to

¹³ *Pro.*, Political A, December 1872, No. 497.

limit his powers or to interfere with the plenary authority with which he must necessarily be vested if his administration was to have a fair prospect of success.¹⁴ The course of events made it unnecessary to arrive at any decision on this point. Takht Singh died in the beginning of the following year, and Jaswant Singh was installed in his stead. But in the meanwhile the Secretary of State had noticed the matter in the following words:—"Her Majesty's Government trust that the influence of your Agent, judiciously exerted, may suffice to procure from the present Ruler the necessary assurance that, in a matter so entirely within his own competency and of such importance to his State, he has no intention of acting otherwise than in accordance with his own avowed wishes, and of making any reserve in handing over his own authority to his son."

[Jaswant Singh's accession and the provision made for the family of the late Maharaja were not acquiesced in by all concerned. Zorawar Singh continued to urge his claims, and one Jawán Singh, a natural son of Takht Singh, openly defied the authority of the Darbar, declining to agree to the provision allotted to him, or to give up a village which had till then formed part of his allowance. Jawán Singh was joined by some of his brothers, and the Maharaja, under the advice of the Political Agent, sent a force against them.

[These complications lasted for some time. Zorawar Singh did not give in his submission until nearly a year after his brother's accession, and two of the other malcontent brothers took refuge in Kishangarh, where they continued to intrigue against the Maharaja's authority.¹⁵ The Kishangarh Chief was thereupon informed that he would be held responsible if these intrigues went on while the young men remained in his territory.]

§ 308. Meanwhile those events had occurred in Alwar to which we have already alluded in showing (paragraphs § 45 and § 52) that the British Government does not tolerate civil war in Native States and in explaining (paragraphs § 76 and § 80) the neutral position which it necessarily occupies in religious quarrels. As promised we have to state the facts more fully in this place.

From 1815 to 1857 the Alwar Chief was Banni Singh, "an excellent type of a good Native Chief of the past generation."¹⁶ About 1838 he took into his service and appointed to be Dewans one Ammuján, and his two brothers,¹⁷ able Musalman gentlemen of Delhi. When he died in August 1857 his only surviving son, Sheodan Singh, a boy of twelve, succeeded him. This youth fell under the influence of the Delhi Dewans and adopted a Muhammadan style in dress and speech. The Rajputs, bitterly incensed against the Dewans, rose in 1858, and the Dewans had to fly for their lives. Then followed an Agency in the State and successive Councils of Regency till the Chief was entrusted with power in 1863.

In 1870, a serious quarrel broke out between him and his Thákurs. They were "out" in considerable force. He was apprehensive of armed resistance to his authority. The Thákurs complained of the dismissal of a body of *jagirdar* horse and of about 150 of the Chief's personal guard, all Rajputs, known as the *Khás Rajput Chauki*; of the confiscation of a number of freeholds for services of horsemen; of a general disregard of, and contempt for, Rajputs and their religion; and of the too free employment of foreign Muhammadans.¹⁸ On the representation of Captain Blair, the Officiating Political Agent for the Eastern States, the Chief agreed to reinstate the *Khás Chauki* and the *jagirdar* horse, and to give back some freeholds and confiscated villages. [But it seemed very doubtful whether the Thákurs would disperse. The numbers swelled rapidly, and they openly expressed their distrust of the Maharao Raja's fair words. Captain Blair thought there were faults on both sides. "If," he said, "the Chief is hard and unyielding, the Thákurs are obstinate and stupid, magnifying small or imaginary grievances. Indeed, it is more from anger at the disdain with which the Chief regards them and their customs, and fear as to how this dislike of them may affect their prospects in the future, than

¹⁴ Pro., Political A, December 1872, No. 501.

¹⁵ Pro., Political A, March 1873, Nos. 270-274.

¹⁶ Gazetteer, Vol. III, page 187.

¹⁷ Gazetteer, Vol. III, page 186.

¹⁸ Pro., Political A, May 1870, No. 144.

gaining strength by delay, and that their distrust of the Maharao Raja seemed to preclude the possibility of a satisfactory agreement without the interference of Government. Interference would be a difficult, invidious and thankless task, but if Government left matters to decide themselves much mischief would be done, the cultivators would suffer as usual, and in all probability intervention would in the end become necessary. Dr. Harvey doubted whether the Thákurs would be worsted in case of open hostilities. Paragraph 16 of his letter showed the actual condition of affairs. "I have pledged Government," he said, "to no action in the matter, but have impressed on both parties the absolute necessity for abstaining from all acts of violence or anything likely to lead to such until the wishes of Government shall be known; and both parties have promised that they will so abstain. Still as any moment may lead to some fresh complication or new difficulty which may render compromise impossible, I would urge on Government (if interference is resolved upon) to send an experienced officer as soon as possible with full powers to settle all disputes." On the 13th May Government informed Colonel Keatinge by telegram that instructions would be issued in a few days. Meanwhile Captain Cadell, Political Agent for the Eastern States, was to be ready to go to Alwar on receipt of orders, and Dr. Harvey was to be instructed that no hostilities should be permitted.

[Three days later the orders of Government were transmitted.³ The following extracts from the Government letter will show the views held by His Excellency in Council:—

["Your letter No. 101-P., dated 31st March, reporting a serious rising of the Thákurs of Alwar against the Maharao Raja, was received by His Excellency the Viceroy at Hoti Mardan on the 25th April. By His Excellency's orders I telegraphed to you the same day to send a Political Officer immediately to Alwar with instructions to report fully by telegraph on the present state of affairs. Your telegram of the 6th May has been received, also a written report from Dr. Harvey dated 5th May. The Thákurs of Alwar have also sent a petition to His Excellency, begging the immediate intervention of Government. Your own views are recorded in your letter of 31st March and in your demi-official letter of 28th April. I am now directed by His Excellency in Council to communicate to you the orders of Government on the whole case as set forth in the papers above quoted. In the meantime you were desired by telegraph, on the 13th instant, to instruct Captain Cadell, the Political Agent of the Eastern States of Rajputana, to hold himself in readiness to go to Alwar on receipt of orders, and to instruct Dr. Harvey, who is now at Alwar, that no hostilities are to be permitted.

["The grievances of which the Thákurs complain are numerous, but they resolve themselves into two classes,—*1st*, the confiscation of their estates and interference with their rights and privileges, culminating in the disbandment of a large body of Rajput troops; *2nd*, the Muhammadan proclivities of the Maharao Raja exhibiting itself in disregard and contempt for the Rajputs and their customs, and in the appointment of Muhammadan strangers to offices of trust and emolument in the State. As reported, both by the late Captain Blair and by Dr. Harvey, there are, no doubt, grave and serious faults on both sides; but in perusing these papers, His Excellency in Council cannot avoid the conclusion that the Thákurs have many and just causes of complaint as regards the policy and administration of the Maharao Raja.

["Your own views are opposed to the interference or mediation of the British Government without a formal demand from the Chief, and you consider that in the present condition of many States in Rajputana, nothing would do more good than the example of a successful revolt."]

The Government of India then proceeded to state the reasons which made them unable to concur in the view. They admitted ["that *it is the duty of the British Government to support the authority and power of a well-disposed Chief when he is opposed in his endeavours to establish good government by insubordinate petty nobles, or seditious classes of his subjects;*"] and then went on to explain our duty of interference for purposes of reform in terms which we have already quoted in paragraph § 45.

³ Pro., Political A, May 1870, No. 153.

["In the present instance," they continued, "hostilities have already occurred and several lives have been lost on both sides. Dr. Harvey reports that it is impossible any satisfactory agreement can be made without the interference of the British Government; that if matters are left to themselves, much mischief will be done: the unfortunate cultivators will, as usual, be the sufferers, and the probabilities of a settlement are so remote, that the intervention of Government is almost certain to become a matter of ultimate necessity.

["The Thákurs have appealed directly to the Viceroy himself, earnestly praying for the interference of Government. The Maharao Raja also, though desirous that cases settled before his accession and confiscations for grievous crime should not be re-investigated, is reported both by Captain Blair and Dr. Harvey as having exhibited the utmost anxiety for the decided interference of Government. The general policy, therefore, on which His Excellency in Council is prepared to act in the case of all feudatory States, is, in the present instance, supported by the wishes and requests both of the Maharao Raja and the Thákurs; and His Excellency in Council has therefore the less hesitation in directing that immediate steps be taken to inquire into the causes of the present quarrel, and adjust the differences between the Maharao Raja and his nobles.—

["I am therefore directed to request that you will instruct Captain Cadell to proceed immediately to Alwar, and, with the help of such information as Dr. Harvey may be able to afford him, and such evidence as may be obtainable from all sources at his command, to inquire into and adjust the disputes between the Chief and the Thákurs. The latter have already formally requested the intervention of Government. Captain Cadell should call upon the Maharao Raja on his part to submit, in writing, his acceptance of our arbitration, and his agreement to abide by the award of His Excellency in Council, and the leading Thákurs should be informed that the British Government has, with the consent of His Highness, accepted the task which they desired it should undertake. *Intervention having now been decided upon, the arbitration of Captain Cadell must be accepted unconditionally and without limitation.* It will be his duty to inquire fully and minutely into all the existing causes of differences; to hear everything that the Maharao Raja has to say; to listen patiently and carefully to every statement he may make; and to receive, investigate, and decide every grievance which the Thákurs may bring forward. His inquiries and investigations will extend as well to acts done during the minority of the Chief as to grievances alleged to have arisen since his accession to power. In short, whatever may be brought forward by the Maharao Raja on the one hand, and the Thákurs on the other, as a matter of complaint, will form a proper subject for Captain Cadell's inquiry. For this purpose he is invested with full powers and discretion to inquire into, and pass decision upon, each case, and his decision will be binding upon both parties pending the orders of Government, which, when passed, on receipt of Captain Cadell's report and your own comments and opinion thereon, will be final, and will, if necessary, be enforced. You will impress upon Captain Cadell the necessity of adopting the most conciliatory demeanour to both parties during the whole inquiry. The success of our arbitration will much depend on the thoroughness of his investigation, and the tact, temper, patience, and intelligence with which he may conduct the inquiry, and, by securing the confidence both of the Chief and his nobles, elicit all the information requisite for a satisfactory and final adjustment of these unfortunate quarrels. . . .

["His aim generally will be to show that, while, on the one hand, we are prepared to put down by force, if necessary, rebellion and revolt, we are prepared to remedy all just and proved grievances, and to insist on substantial justice being done between the Chief and his people."] Here followed some remarks already quoted in paragraph § 76, on the case in its aspect as a religious quarrel. The Government of India then went on to say—

["In regard to appointment to offices of State, His Excellency in Council is not prepared to place any restrictions, either of race or religion, upon the selection of the persons best qualified for office. At the same time Captain Cadell should point out to the Maharao Raja that he cannot hope to carry on his government or administration successfully when the high offices of

State are filled by aliens, and when he gives his confidence to strangers who are hated by his Thákurs, and withholds it from those who, by their position as his own subjects, or their influence with the people, entitle them (*sic*) to a share in His Highness's administration. . . .

[“Above all, Captain Cadell will give his earnest attention, not merely to patch up differences, but to bring about such a reconciliation between the Chief and his nobles as shall enlist the sympathies and efforts of the Thákurs in supporting the Chief in the reform of the Government and the introduction of a good, efficient, and acceptable system of administration in all departments. It is not desirable that any general agreement should be mediated between the Chief and his Thákurs. Experience in other States of Rajputana has shown that these are of little or no value. But His Excellency in Council will be prepared to enforce the proper execution of such measures as, after full inquiry and consideration, may be finally determined upon as best suited to establish a firm, just, and progressive Native Government in Alwar, and to sanction, if necessary, the appointment of a special officer at Alwar to advise and help the administration that may be organised. . . .

[“Captain Cadell should be accompanied to Alwar by such escort as you may consider suitable for his dignity and protection, and sufficient to give weight to the large authority and wide discretion with which he is invested. He should be instructed to prevent, by all means in his power, recourse to hostilities; and if unfortunately hostilities should be threatened or actually break out, and if his authority should be disregarded, His Excellency in Council empowers you to call in such military aid as may be necessary to ensure the execution of these instructions, and, above all, to maintain intact the peace of the State.”

[The measures taken by the Government of India were approved by the Secretary of State. After a brief recapitulation of the circumstances, His Grace's despatch⁴ thus ended:—“Her Majesty's Government approve your determination to require the assent both of the Chief of Alwar and of his nobles to an authoritative investigation by you of the causes of difference between them.

[“This difficult and delicate inquiry you have entrusted to Captain Cadell, in whose ability and discretion you express your entire confidence, and I anxiously await the full reports he has been directed to furnish. Meanwhile I have to express my full approval of your intimation that you will insist on the due carrying out of such measures as may tend to the establishment of a ‘firm, just and progressive Native Government at Alwar.’”

[It will have been noticed that Colonel Keatinge had been empowered by the letter conveying the orders of Government to call in such military aid as might be necessary to ensure the execution of his instructions, and to maintain the peace of the State in case hostilities should be threatened and Captain Cadell's authority disregarded. The day after the despatch of this letter, Colonel Keatinge was demi-officially⁵ addressed as follows:—

[“With reference to the movement of troops . . . although you are authorised to call them out under the contingency referred to in the official letter, yet should the necessity for calling out the troops arise, you should telegraph before making any actual requisition for military aid. . . . Lord Mayo would like to be consulted before troops are actually moved. This of course does not apply to Cadell's escort, but to the necessity of sending troops to Alwar to put down hostilities.”

[Colonel Keatinge accordingly applied direct to Division Head-quarters, Meerut, for an escort of 150 bayonets, Native Infantry. The party left Agra on the 25th May.] Captain Cadell was not able to effect a reconciliation between the Chief and the Thákurs and was eventually appointed Political Agent at Alwar, and President of a Council for the administration of the State on which the Chief had a place, though with powers greatly curtailed.⁶ In the orders directing these arrangements the Government of India observed:—“The duty of the Viceroy is to support and strengthen, by all lawful means, the authority of every Chief or Prince who labours to promote the welfare of his

⁴ Pro., Political A, September 1870, No. 203.
⁵ K.-W., Pro., Political A, June 1870, No. 6.

⁶ Gazetteer, Vol. III, page 190; Pro., Political A, November 1870, Nos. 130-137.

subjects and to establish in his State public justice and public safety. The Maharao Raja has failed to effect any one object for which governments are established. In this case, therefore, intervention can no longer be delayed." The Chief, however, continued to oppose measures of reform and to foment dissension amongst the Thákurs; and it became necessary to warn him that if any disturbance took place he would be removed from Alwar. He was not again entrusted with the management of the State and died in October 1874. We shall return to Alwar affairs later on when we discuss the very important case of the Alwar succession.

§ 309. Another Rajputana case in point in the present connection is that of the dispute between Kishangarh and Fatehgarh, which was brought to an end in 1874. The Kishangarh family is of the Rathor stock, and the State was founded in the last decade of the sixteenth century by a son of the Maharaja of Jodhpur. About 1770 A.D. the estate of Fatehgarh was given to Raja Bagh Singh, the original grantee, during the lifetime of his father, the then Chief of Kishangarh. It is believed that the Chief feared that the Shaikhawati tenure of equal partition might be applied to his State after his death, and consequently provided during his own lifetime for his second son. It will be seen from the narrative given in Aitchison⁷ that in the first half of the present century quarrels between the Chief and his Thákurs, and in particular between the Chief and the Thákur of Fatehgarh, were of frequent occurrence, and that at one time when the Thákurs had proclaimed the heir-apparent as Maharaja and had laid siege to the town of Kishangarh and were on the point of capturing it, the Maharaja, Kalian Singh, accepted the mediation of the Political Agent, through whom terms were arranged. For some years previous to 1873 the Fatehgarh Thákur, notwithstanding his relationship to the Kishangarh Chief and unquestionable subordination to him as a grantee and a feudatory, [had refused to perform any feudal services, or to attend when summoned by his suzerain. He asserted his right to be treated as an equal in every respect, and behaved to the Maharaja's Vakíl "with much *hauteur* and insolence." Under these circumstances the Maharaja wished to enforce submission, but being apprehensive that such a course would entail some disturbance in the country, he was anxious to obtain the assistance of the British Government in order that his object might be gained in the most peaceable manner. The Agent to the Governor-General thought that he was fairly entitled to our assistance. The relative position of the two Chiefs had already been decided by Government so long ago as 1827, when the Thákur's claim to independence was distinctly overruled. Since then Fatehgarh had maintained its pretensions simply by persistent disobedience, and it seemed unjust to the suzerain that he should now be forbidden to coerce his feudatory if he had the power to do so. The Government of India⁸ accordingly intimated to the Fatehgarh Thákur that he must perform the acts of allegiance required of him in accordance with Rajput custom. The grounds for the decision of 1827 and the reasons why it must be maintained were to be explained to him, and he was to be warned that if he failed to comply within six months, the Maharaja of Kishangarh would not only be left free to take such steps as he might think fit to enforce obedience, but would be supported by the British Government, and, if necessary, by British troops, in pursuing his legitimate demands. Meanwhile the Agent to the Governor-General was to do his best to make the Thákur submit peaceably. But he was to ascertain whether, in the event of resistance, the Maharaja could make sure of reducing Fatehgarh single-handed. If not, the Agent to the Governor-General was to collect information as to the strength of the place, and arrange definite measures for the co-operation of a British force. The letter in which these instructions were conveyed ended as follows:—"His Excellency in Council is of opinion that negotiations should not be set on foot for any settlement between the two Chiefs in the shape of definite terms. The relations between them should be left on the footing of Rajput custom between suzerain and subject. So long as the demands of the suzerain are in the main reasonable and fair, he will receive the support of the British Government." After some delay, finding that Government was determined to allow no further recusancy, the Thákur submitted.]

⁷ Aitchison, III, page 286. ⁸ Aitchison, III, page 90. | ⁹ Pro., Political A., July 1873, No. 655.

§ 310. We have now fully illustrated the contests of Rajput Chiefs with refractory Thákurs; but they may also have difficulties with other troublesome

The Sidhs of Bikanir, 1875. subjects, such, for example, as the Sidhs of Bikanir. Here the occurrences of 1875

are in point. On April 15 in that year the Bikanir Vakíl presented himself to Captain Burton, Assistant to the Governor-General's Agent, Rajputana, and informed him that three of the *mahants* or headmen among the Sidhs intended to commit *samádih*, or suicide by burial, next day, with the view of intimidating the Darbar. [It appeared that there was some dispute on money matters between these Sidhs, who were originally a set of Hindu *fakirs*, and the officials of the Bikanir *Ráj*. Considering themselves oppressed, the Sidhs had made up their minds to coerce the *Ráj* by committing *samádih*. Having satisfied himself of the danger, Captain Burton took measures to meet it. After judiciously warning the Darbar that he would not allow his interference to be made use of as a means of coercing the Sidhs, he despatched a *chaprasi* to the scene of action with orders to inform all present that any person assisting or abetting *samádih* would eventually be severely punished. The message was duly delivered and the *mahants* replied that they would obey the orders of the Supreme Government for the present, but that they were suffering under the oppression of the Darbar and must have recourse to *samádih* in the end unless they obtained redress. Having put a stop to the proposed sacrifice, Captain Burton then addressed himself to the Darbar and seriously urged the necessity of an equitable settlement. He pointed out that the outbreak of suicidal tendencies among the Sidhs reflected discredit on the Bikanir administration. The action taken by the Political Agent was approved, and Government called upon the Agent to the Governor-General, Rajputana, for an expression of opinion as to the causes of the affair.

[Mr. Lyall in reply forwarded copy of a communication from the Bikanir Vakíl which gave the Darbar version of the story. According to this account the Sidhs had abandoned every trace of their former mendicant mode of life except the dress, and had become well-to-do *zamindars*, cultivating "thousands of *bighas*" of land in Bikanir. On the accession of the late Maharaja the Sidhs had been called upon to pay *nazarana* and had done so. Acting on this precedent Maharaja Dungar Singh had on his accession demanded from them a *nazarana* of Rs. 7,000. This the Sidhs refused to pay, and they followed up their refusal by impertinence to the Darbar officials and preparations for suicide, "which was extremely unbecoming." The Vakíl added that they were "in the habit of committing suicide with a view of intimidating the *Ráj*," and that two men had already died from self-inflicted stabs. Finally the Sidhs had agreed to pay up Rs. 5,000, and the present difficulty had arisen from an attempt on the part of the Darbar to realise the promised sum. Mr. Lyall observed on this letter that the Sidhs gave another version of the story, and that it was very difficult to decide which party was most in the wrong. But he was inclined to suspect that the Sidhs were very refractory subjects of the Darbar.

[The orders of Government¹⁰ were conveyed in the following words:—"So long as the Bikanir Darbar feel themselves capable of dealing with the case which has been brought to notice, no interference on the part of British officers is necessary. But if through inability to cope with it the Bikanir Darbar ask for assistance, or if public disturbances are threatened, or *samádih* is committed, showing that the Darbar are in point of fact unable to deal with the matter, it will then become our duty to interfere. In the event of such interference being deemed necessary, and if you are satisfied that the Sidhs have substantial grievances, you should, after having first caused them to submit, call upon the Darbar to redress their grievances and satisfy yourself that your orders are carried out.

[" If, on the other hand, you are satisfied that the Sidhs have no substantial cause of complaint, you should support the Darbar in coercing them, and if necessary offer assistance in suppressing the rebellion.

[" I am to add that while it is the duty of the British Government to protect the subjects of Native States from gross oppression, *it is equally its duty*

¹⁰ No. 1441-G., dated July 26, 1875.

to protect Native Chiefs against causeless rebellion and general contempt of the lawful authority of the State.”]

§ 311. As we have seen in paragraph § 308, when Colonel Keatinge was authorised to call in military aid, if necessary, to support Captain Cadell in dealing with the Alwar Thákurs, an intimation was given that a previous reference should be made by telegraph if it appeared that military support would actually be required. There is a leading case on this point which lays down very clearly that, except in very special and urgent circumstances, military aid must not be afforded to a Native State without the specific authority of Government. The occasion for the repetition of this ruling, which was an old one, occurred in connection with the Chamba State in 1870. On the death of the Chamba Raja, Sri Singh, in October 1870, the succession was claimed by his two brothers, Gopal Singh and Suchet Singh. Gopal Singh was the eldest surviving brother and the *sanad*¹¹ of April 6, 1848, declared that “in the event of the Raja leaving no male heirs, his next brother, who may be the eldest of the surviving brothers, will succeed him.” Suchet Singh claimed on the ground that he was the full brother of the late Raja, whereas Gopal Singh was the half-brother. The Punjab Government recommended the recognition of the elder brother, Gopal Singh. [Meanwhile, the Political Superintendent at Chamba, Lieutenant-Colonel Reid, became apprehensive that the younger brother might raise a disturbance, and applied to the Commissioner of Amritsar for a temporary increase to his guard, which consisted of only 40 men. The Commissioner, Major-General Taylor, immediately called upon the officer commanding the 4th Gurkhas to send up without delay a full company under a European officer. As the matter seemed urgent, the application was complied with at once without previous reference to division head-quarters. His Excellency in Council on receiving information of the movement through the Military Department, gave orders for the immediate return of the company to its former quarters, with the observation that the despatch of the troops was very objectionable. The Punjab Government was informed of the order and of His Excellency’s views.

[That Government, in reply, forwarded copy of correspondence with the Commissioner of Amritsar. General Taylor explained that he could not have counted upon receiving an answer, even by telegram, had he applied for Government sanction, in less than five days. The movement of the troops would have taken two days more, and the apprehended disturbance would perhaps have happened in the interval. Under these circumstances he thought it best to call for the troops on his own responsibility. The Punjab Government was of opinion that General Taylor’s action had probably had the beneficial effect of preventing the younger brother, Suchet Singh, from more serious attempts to subvert the elder. As it was, some disturbance had taken place, and Colonel Reid attributed it to Suchet Singh’s influence. In reply the Government of India said :—“His Excellency in Council is still unable to perceive that any necessity existed for the extreme measure of sending troops to Chamba. *It is a standing rule that military aid shall not be afforded to a Native State for the suppression of disturbances without the specific authority of the Government, unless under very special and urgent circumstances. . . .* Moreover, even if the circumstances were so emergent as to justify the step, a report should have been at once made by telegram for the information of His Excellency in Council.”]

§ 311 A. On this question of the conditions under which troops may be moved into Native States general orders were issued in September 1894. It is to be regarded as a standing rule that no Civil or Political Officer may require troops to move into a Native State for the suppression of internal disturbances or in any other emergency “except under the specific authority of the Governor-General in Council, or, where the State is under the control of a Local Government or Administration, of that authority. If under very special and urgent circumstances an officer of Government should take upon himself the responsibility of deviating from this rule, immediate report must be made to the Government of India, or, in the case last put, to the Local Government or Administration, if possible, by telegraph. In all cases where Local Governments or Administrations sanction the requisition for troops, or receive a report

¹¹ Aitchison, IX, page 171.

that an officer of Government has anticipated their sanction, an immediate report of the fact should be made by telegraph to the Government of India* in the Foreign Department."

§ 312. It will not have escaped notice that the question of supporting a Chief against his feudatories or other subjects is one with which the Government of India had to deal in many of the cases already referred to in some different connection in these volumes. From those cases we will briefly recapitulate the material facts with such few additions as may be necessary, before we proceed, in the usual way, to summarise our conclusions. In Keonjhar in 1868 (paragraph § 212) the case was one, as in Chamba in 1870, of a disputed succession. The High Court had decreed the succession to the present Maharaja, Dhanurjai Narayan Bhanj, and Brindaban of the Morbhanj family, said to have been adopted by the late Chief, was supported by the Rani and largely by the Bhuiyas, a hill tribe claiming descent from the original clearers of the soil and the privilege of installing the Chief by peculiar ceremonies and of exacting from him promises of just and merciful rule. The Superintendent of the Tributary Mahals did his best to induce the Rani and the people generally to acknowledge the approved candidate; and they apparently did so, even the Bhuiyas renouncing further opposition and installing Dhanurjai. But in April 1868 the Bhuiyas,¹² a body of whom had previously been dispersed, rose again. They plundered the Keonjhar Bazaar; carried off the Chief's Minister, Nandu Dhal, and one hundred of his partisans; disarmed his constables and dismounted his guns; their pretext being that, as they alleged, the Minister had promised to put Brindaban on the *gaddi* in three months' time, if, in the interval they would consent to recognise Dhanurjai. They had other reasons for their dislike of the Minister. He had found in power partisans of the Morbhanj family, to which the pretender Brindaban belonged, and had turned them all out in favour of his own relations. When once in arms, the Bhuiyas were joined by other wild tribes of the neighbourhood. In May 1868 the Government of India approved the Lieutenant-Governor's views as to the necessity of supporting Dhanurjai, and authorised His Honour to call for aid from the nearest military station. On June 1, 1868, it was suggested to the Lieutenant-Governor to issue proclamations assuring the people of Keonjhar of the firm intention of Government to support Dhanurjai, and to punish all who, after due warning, resisted his authority; and on June 9, 1868, the Lieutenant-Governor was empowered to despatch, if necessary, the whole of the Native Regiment at Cuttack to the scene of the operations. It is unnecessary to pursue the narrative of that time; for what we have here to consider is under what circumstances will the Government support a Chief against his subjects by military force if required? It is obvious that when in the case of a disputed succession we have recognised one of the candidates, we must take such steps as may be necessary to enforce our decision.

And such an obligation may compel interference years after it has been first incurred. In Keonjhar peace was restored and the country was for some time under British superintendence, which was withdrawn in 1878. Of late it has been necessary to interfere again in support of the Maharaja. The Bhuiyas, notwithstanding their submission, maintained their dislike of a Chief who was not of their choice, and had various grievances against him, connected chiefly with taxation, compulsory supplies and forced labour. The arrest of some of their number was the signal for a rising in May 1891. The Chief fled to Cuttack, and though he was soon restored by a small force, he was again removed to British territory and then presently re-established, with a statutory civilian as Agent, whose advice he promised to follow. The Bhuiyas, however, rebelled again; took to the forests and hills and committed many depredations; attacked servants of the State; burnt the villages of people who would not join them; and caused or committed many murders in cold blood. Desultory police operations, in the course of which there was some bloodshed, were conducted against them in the summer of 1893. Eventually they were pacified

* Circular to all Chief Political authorities, No. 3152 I, dated September 5, 1894.—Pro., Internal A, September 1894, No. 228.

¹² This narrative is taken from a note by Mr. H. LeP. Wynne, Foreign Under-Secretary. Pro., Political A, July 1868, No. 308.

by the personal influence of Mr. Wylly and the principal men formally submitted to the Chief. Those convicted on trial of participation in the murders and some other outrages were sentenced to various terms of imprisonment¹³.

In the Banswára case of 1869 (paragraph § 63) the Government of India, while under the impression that an outrage had been committed by the Rao of Banswára and Kusalgarh, 1869. Kusalgarh, a feudatory of the Banswára Chief, incidentally held that it was not our duty to fight the Chief's battles, but nevertheless accorded him support. For convenience of reference we may repeat here their remark that "while deprecating any unnecessary breach of the peace or gratuitous harshness on the part of the suzerain, *the Government of India will always be prepared to support any Chief in the assertion by force of his just rights when that course may be manifestly justified by violence or outrage on the part of the subordinate.*"

In the Bikanir case of 1870-72 (paragraph § 46), though eight Thákurs took refuge in British territory, Her Majesty's Government was "averse from a direct and authoritative interference in the affairs of the State, regarding such interference as being, except in extreme cases, inexpedient, especially where, as in the case of Bikanir, it is not provided in our treaty with the Chief." As we have already noted, the orders of the Government of India in 1872 said—"The Thákurs and nobles will be required to look to the Maharaja and submit to him as the head of the State, and *he will be assisted in restraining those who, like Megh Singh, engage in unjustifiable intrigues and rebellion.*" We may add that in 1830, when the Resident at Delhi made preparations to send a force to Bikanir to assist the Chief in reducing some rebellious nobles, it was held that he had acted under a misapprehension of the meaning of the sixth and seventh articles of the treaty of 1818. The articles¹⁴ promised the Maharaja assistance if he were unable to suppress certain highway robbers and banditti, and declared that the British Government would, on his application, "reduce to subjection the Thákurs and other inhabitants of his principality who have revolted and thrown off his authority." But these articles—we quote from Aitchison¹⁵—"referred to temporary circumstances and effect was given to their provisions at the time. They gave the Chief of Bikanir no right to call on the British Government for military aid against his disaffected subjects at any future period. *Government* was of opinion that the case was not one in which they were called upon to interfere, and *reminded the Resident that military aid should never be given to Native States for the suppression of internal disturbances except under the specific authority of Government.*" In 1883 the Thákurs rose in open rebellion and it was necessary "to support the authority of the Chief by marching a small British force into the country, when the Thákurs quietly submitted¹⁶. A resident Political Agent was appointed to Bikanir, and the Maharaja was required to conform to certain conditions so as to ensure to the Political Officer the power of removing abuses and controlling the administration." In approving these measures the Secretary of State¹⁷ trusted that they would "clearly demonstrate to the Maharaja and others that although the British Government is at all times reluctant to interfere with its feudatory Chiefs, it cannot, with the responsibility attaching to its position as Paramount Power, permit in any Native State a condition of affairs which is a discredit to the Ruler and destructive of the prosperity and well-being of the people."

In the case of Janjira, 1870 (paragraph § 44), although we had assumed the criminal jurisdiction of the Nawab in his State, it was held that even this in no way bound us to defend him against rebellion due to his own misconduct; and we ultimately restored him on certain conditions. In the case of Cambay, 1890 (paragraph § 51), the Bombay Government insisted that its intervention must be accepted unconditionally by the Darbar; and when the Nawab was

¹³ Aitchison, I, page 118. Pro., Internal A, July 1891, Nos. 81-89; October 1891, Nos. 29-34; June 1892, Nos. 227-234; June 1893, Nos. 122-132; September 1893, Nos. 121-144; February 1895, Nos. 282-313; May 1895, Nos. 149-176.

¹⁴ Aitchison, III, pages 305-306.

¹⁵ Volume III, page 302.

¹⁶ Aitchison, III, page 303.

¹⁷ Despatch No. 52, dated February 23, 1834.

restored his powers were greatly restricted. Finally, in the Manipur case, 1891 (paragraph § 8), the Government of India declared—"It is our right and duty to uphold Native Chiefs, recognised by us, except in case of gross misrule, and to punish unlawful revolt against their authority. We have accordingly more than once upheld Manipur Chiefs by force, and punished rebels against their authority."

Manipur, 1891.

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to uphold Native Chiefs, recognised by us, except in case of gross misrule, and to punish unlawful revolt against their authority. We have accordingly more than once upheld Manipur Chiefs by force, and punished rebels against their authority."

§ 313. But if the British Government is prepared in case of necessity to support a worthy and capable Chief in the enforcement of his just rights against

The British Government will protect feudatories from encroachment on their rights by their Chiefs.

The Koti and Keonthal case, 1884.

rebellious or disaffected feudatories, it is also determined to hold the balance evenly when it is obliged to interfere, and it will scrupulously guard the rights of the feudatories against unwarrantable encroachments on the part of the Chief. This principle, which is sufficiently obvious from considerations of justice, was expressed in a correspondence of 1884 relating to a dispute between the Rana of Koti and his feudal superior the Raja of Keonthal.

Subordinate to the Raja of Keonthal are four Thákurs or Zaildars whose position before the Gurkha invasion, and the expulsion of the Gurkhas from the Simla Hills by Sir David Ochterlony, is not exactly known. It is enough to say that in former times the dependence of Thákurs on neighbouring Ranas or Rajas for purposes of mutual support and protection was a usual political arrangement in the hills north of the Punjab; and that in 1878 the Keonthal Vakíl, when arguing the question of the status of the Rana of Koti before the Commissioner of the Umballa Division, contended that the position of the Raja with regard to his Thákurs was precisely that of the British Government with regard to the Raja himself.

On the expulsion of the Gurkhas a *sanad*¹⁸ dated September 11, 1815, was granted to the Chief of Keonthal which declared that the *Thákuráís* or subordinate Chiefships now known as Theog, Koti, Ghund and Madhan had "been from of old comprehended within and subject to the *Ráj* of Keonthal" and fixed the amount of tribute annually payable to the Keonthal Chief by each. The *sanad* then required the Rana of Keonthal—his present title of Raja is an honour subsequently bestowed—to promote the welfare of the *raiyats*, to protect the Thákurs, on requisition from the British authorities to furnish *begáris* and sepoy from each *Thákurái*, to distribute justice to all, and to oblige the Thákurs to keep the roads in repair. "The Thákurs," it was said, "will consider the Rana aforesaid to be their rightful lord, and will obey him accordingly, and pay their *nazarana*" (tribute) "according to the amount above stated, or, failing in the performance of these duties, they will be ejected. Let them therefore conform to these injunctions and not encroach on the possessions of others."

The *sanad*, it will be observed, was silent in regard to many incidents of feudal subordination which would be pretty sure to require clear definition should the relations between the Chief and his Thákurs become strained and either side or should both sides appeal to superior authority. By a number of orders passed by various authorities in 1861, 1871, 1872, 1878, 1879, 1884, 1889, and 1893 the points which have at different times been in dispute have been settled. The Thákurs exercise within their *Thákuráís* powers similar to those which the Raja of Keonthal exercises in other parts of his State, but they are subject to his general control to be exercised in cases of mismanagement or disobedience with the sanction of the Superintendent of Hill States. Over and above the tribute, they are required to pay certain dues on occasions of sorrow or rejoicing, and they must either receive installation at the Raja's hands or pay a fine on succession. The Rajas of Keonthal appear, as a rule, to have allowed the Thákurs to do pretty much what they pleased. But from motives of despatch a practice sprang up of direct correspondence between them and the Superintendent of Hill States; the Thákurs certainly sought an independence of the Raja to which they were not entitled; and the Raja claimed greater powers of controlling them than were in the end conceded to him. In this way occasions arose for the various orders which have established the position just explained.

¹⁸ Aitchison, IX, pages 143-144.

In 1884 the particular questions for decision were whether the Rana of Koti—he was formerly a Thákur, but, like his Chief, he has been granted a higher title—should pay certain fixed dues to the Chief on occasions of sorrow or rejoicing, and whether he should maintain a Vakil at the Court of the Raja. These points had been decided against the Rana by Sir Robert Egerton, the Lieutenant-Governor of the Punjab, in 1878 and 1879; and in 1883, when the Rana appealed to the Government of India, Sir Charles Aitchison, who had succeeded Sir Robert Egerton, concurred with his predecessor, remarking that the recusancy of the Rana had made necessary a clearer definition of the incidents of his tenure than would otherwise have been required. The Government of India declined to interfere with the orders of the Punjab Government.¹⁹ At the same time they observed “that the interests of petty Chiefs in the position of the Rana of Koti should always be very carefully guarded by the officers under whose political charge they may be placed. The maintenance of their position and rights is a matter in which the Government of India is deeply concerned, and any tendency to encroachment in this respect on the part of the stronger Chiefs should be steadily discouraged.” There was no evidence of such a tendency on the part of the Raja of Keonthal in the case before Government, but having regard to the importance of the principle involved, the Governor-General in Council took the opportunity to express his opinion on the question.

§ 314. It is time now to state as briefly as possible the conclusions to which we are led by the above lengthy review. No doubt it may reasonably be held that when a Government has to face sedition or insurrection, it does not want to be hampered by any general rules, and, rules or no rules, must and will deal with

Summary.

the circumstances of the time according to its exigencies. There is so much truth in this view, that the propositions which follow must be regarded rather in the light of generalisations from the past practice of the Government of India, than as an epitome of precedents which, in the vast variety of possible events when Native States are plunged in turbulence, would always be binding on Political Officers. The rule, however, against the employment of military force without sanction is, with the qualifications stated below, imperative. We have included in a previous summary (paragraph § 52) the principles that the existence of civil war cannot be permitted in any State in India, and that when the British Government intervenes to help a Chief who is in difficulties with his people, he must accept the intervention unconditionally. The new matter may be thus stated:—

(1) *Except in cases of gross misrule, it is the right and duty of the British Government to uphold the authority of Chiefs whom it has recognised and to punish unlawful revolt against them.*

(2) *For instance if, in the case of a disputed succession, the British Government has recognised one of the candidates, it must take such steps as may be necessary to enforce its decision.*

(3) *But, as a general rule, [the duty of coercing the rebellious feudatories or subjects of a Native State devolves, in the first instance, on the Native Government; and the aid of British troops will not be granted unless the Native Government is unable to enforce obedience single-handed.*

(4) *[When hostilities are imminent in a Native State, British officers should not stand aloof, but should use their influence on the side of established authorities, and, if necessary, interfere directly to preserve peace, reserving inquiry into the rights of the affair till the risk of hostilities is over.]*

(5) *There will be no hesitation in affording material support to the authority of a well-disposed Chief, when in his proper endeavours to govern well or to enforce his just rights, he is opposed by insubordinate nobles or feudatories, mutinous troops, or seditious classes of his subjects; and when he is himself unable without such aid to deal with the difficulty.*

(6) *On the other hand, Ruling Chiefs who have petty Chiefs subordinate to them must not be suffered to encroach on the position and rights of their feudatories.*

(7) *If the disturbance appears to be due to the fault of the Chief, and the case is not such that the movement of troops is necessary, the Chief may be*

¹⁹ The Keonthal paper are in Pro. A, Political I, January 1884, Nos. 69-85, and Pro., Internal A, July 1893, Nos. 171-180.

compelled to come to terms with his feudatories or people by the threat of deposition if he fail to do so.

(8) *If the disturbance appears to be due to the fault of the Chief, the Government may nevertheless be induced by the actual outbreak of hostilities to move troops to the spot.*

(9) *[The assumption by the British Government of criminal jurisdiction in a Native State does not bind that Government to support the Chief of that State against rebellion provoked by his own misrule.]*

(10) *If a rebellion results in the flight or deposition of a Chief and the British Government sees fit to restore him, security will be taken for the future good government of the State either by restricting the powers of the Chief, or exacting from him appropriate conditions, or by such other means as may be thought necessary.*

(11) *[Subjects of Native States will not be allowed to make use of a refuge in British territory for the purpose of fomenting intrigues or disturbances against their own Government.]*

(12) *[A Ruling Chief in whose territory malcontent subjects of another Native State may be residing will be held responsible for the prevention of intrigue or disturbance.]*

(13) *No Civil or Political Officer may require troops to move into a Native State for the suppression of internal disturbances or in any other emergency except under the specific authority of the Governor-General in Council, or, where the State is under the control of a Local Government or Administration, of that authority.*

(14) *If under very special and urgent circumstances an officer of Government should take upon himself the responsibility of deviating from this rule, immediate report must be made to the Government of India, or, in the case last put, to the Local Government or Administration, if possible, by telegraph.*

(15) *In all cases where Local Governments or Administrations sanction the requisition for troops, or receive a report that an officer of Government has anticipated their sanction, an immediate report of the fact should be made by telegraph to the Government of India in the Foreign Department.*

§ 315. The very important case of the Mediatised Chiefs of Central India

The Mediatised Chiefs of Central India. has not yet been mentioned in this Chapter, because it stands by itself and does not fall with precision under any of the separate heads selected for discussion. The case is fully stated in Aitchison; but there are good reasons for repeating it here, and the orders of 1864, on which the rules given in Aitchison, with one exception, are based, are printed as an Appendix to this volume.²⁰ Indeed, in relation to the Mediatised Chiefs the orders of 1864 are extremely important, for they practically take the place of the distribution of the Adoption *Sanads* to Chiefs of a different status; and in 1864 it was thought that the time was opportune to promulgate them, seeing that the bigger Chiefs had lately received many honours and rewards.

Before the Pindari war the Mahrattas had subjugated some of the petty Rajput Chiefs of Central India and made them tributary. Others they had forced into outlawry; and these dispossessed Chieftains plundered at large in common with the mere leaders of robber bands. The larger States, unable to deal with these plunderers, paid them black-mail in the shape of assignments or allowances now known as *tankhás*. The pacification of 1818 stereotyped possession, defined the position of the tributaries, and gave the robber chiefs means of subsistence, in territory or *tankhás* or both, under a British guarantee. The right of lapse—the right, that is, to the escheat of the Mediatised Chiefships—remained, in certain circumstances, with the larger States. It was an object to hold the stronger Chiefs in check, to restrain them from aggression on their weaker neighbours, and to break the continuity of Mahratta influence by stretching across Malwa a chain of Mediatised Muhammadan and Rajput Chiefs, who would look for preservation to that power which had accomplished their deliverance.

²⁰ See Aitchison, IV, pages 2-7. The exception is the rule that Mediatised Chiefs must submit all trials for heinous crimes and all sentences of death or transportation or imprisonment for life to the local officers of the British Government. For the orders of 1864 see Appendix C.

The reference which led to the general orders of 1864 was made in the case of Kachhi-Baroda, a Mediatised Chiefship of sixteen villages under the Bhopáwar Agency and tributary to the Dhar State. In 1856 the Thákur of Kachhi-Baroda died leaving no heirs of his body; and Major Hutchinson, the Bhil Agent, acting, it is believed, under instructions from the Agent to the Governor-General, Central India, informed the Dhar Darbar that the Chiefship had become vacant and that the British guarantee had ceased. It is probable that this intimation was sent because in January of the same year the Government of India had decided that under similar circumstances the British guarantee had determined in the case of Subhag Singh, the guaranteed Girasia Chief of Dhabla Dhir in Shujawalpur, a district belonging to Sindhia. This decision, however, was afterwards reversed by the Court of Directors. In December 1863, Major Meade, the Agent to the Governor-General, reported the case of Kachhi-Baroda and asked for general instructions.

The general instructions which were given illustrate some of the main points indicated in this Chapter. The smaller States and stipendiary Chieftains were to be maintained; the tendency of the larger States to absorb the smaller and resume the allowances was to be resisted. The Central India system of guarantee was no more obsolete than is the general political system of India, and for like reasons; for the pacification had not destroyed the hardly penetrable jungle retreat nor altered hereditary character. If the pressure of the strong hand maintaining order were removed, there would be a fresh outburst of plunder and aggression. It would be as unsafe as it would be unjust to ignore the rights guarded, and the expectations raised, by the prescription of half a century. On these grounds it was manifest that the guarantees of 1818 did not terminate with the lives of the persons who received them, but were and ought to be continued to their heirs.

The Suzerain Chiefs, however, had reversionary claims on the domains and the *tankhás*. These claims were so regulated that their exercise should not imperil the stability or defeat the objects of the system. If the interference of the feudal superior in the affairs of the subordinate Chiefship was excluded by the express terms of the guarantee, the decision in questions of succession would rest with the British Government exclusively. In other cases also it would rest with them, but the Suzerain Chief, who would have the benefit of the lapse if there were no heirs direct or adopted, would be entitled to a hearing. When the claim was made by reason of direct descent from the original grantee, the Suzerain Chief might be heard touching the directness or legitimacy of the descent, if disputed. He might also be heard in cases of proposed adoption; but only the British Government could judge whether policy and the maintenance of the peace of the country required the continuance of the guarantee in favour of an adopted heir; nor could the Suzerain Chief be allowed to bind the British Government to accept his nominee for an adoption.

In the particular case of Kachhi-Baroda, consistently with the policy above explained, the guarantee was restored. Here we have entered upon the somewhat complicated case of the Mediatised Chiefs only so far as was necessary to complete the subject of this Chapter. For further details we may refer the reader²¹ to Aitchison and Appendix C.

²¹ If it is at any time necessary to go deeply into the case of the Mediatised Chiefs, the following papers, all of which have been examined for the purposes of this compilation, will be found to be useful:—(1) The Kachhi-Baroda case (which is the leading one abstracted in the text)—Pro., Political A, April 1864, Nos. 95-100. (2) The Bagli succession case, 1868-69, in which the Thákur succeeding by adoption paid *nazarana* to Sindhia, but Sindhia's claim to sanction the adoption was repudiated—Pro., Political A, October 1866, Nos. 34-36; ditto, December 1866, No. 16; January 1868, Nos. 268-273; January 1869, Nos. 274-275, April 1869, No. 261. (3) The Dhabla Dhir succession—Pro. A, Political I., September 1832, in which Sir Lepel Griffin, Agent to the Governor-General, Central India, circulated the orders of 1864. This case contains a note by Sir Mortimer Durand, dated September 30, 1882, which well deserves perusal.

CHAPTER X.

THE WORKING OF THE POLICY OF THE ADOPTION SANADS

§ 316. More than thirty years have now elapsed since the original distribution of the Canning Adoption *Sanads*, and in that interval many important discussions have taken place on their application and meaning and on the scope of the policy which dictated them. In this chapter we shall bring together some of the leading cases in which these discussions have occurred; and in order to complete in one place the subject of adoption, we shall give instances in which the alleged right of the widow of a Chief to adopt for the purpose of the succession has been expressly denied, and other instances in which widows have been allowed, as a matter of policy and grace, to make an adoption for that purpose. And we shall further show that an adoption duly made may be set aside by the subsequent birth of a son.

§ 317. As we reserve the question of Muhammadan succession for the next chapter, we must pass by for the moment a discussion which arose in 1864 in connection with Hyderabad; and we take first the case of the Kashmir succession, 1868. In paragraph § 46A above, we have already alluded to two requests preferred by Dewan Kirpa Ram on behalf of the Kashmir Maharaja in July of that year. We there dealt with the request of the Maharaja to be put on the Phulkian footing with respect to complaints and petitions of his subjects, and we have here to notice his first and perhaps more important request, which was that a *sanad* should be issued expressly granting succession in favour of collaterals in the event of the decease of his direct issue without children, or without appointing an adopted heir. On this matter the Council was unable to agree, and a despatch¹ of August 8, 1868, to the Secretary of State, explained the view taken by the Viceroy, Sir John Lawrence, and those of his colleagues who concurred with him, "At Sialkot" it was said, "March 1860, [Lord Canning took the opportunity of a visit to the Maharaja, to repeat, in the Maharaja's own Darbar and before his own Court, the thanks of Government for the good service rendered by His Highness to the Queen's armies during the troubles of 1857; to assure the Maharaja that it is the sincere desire of Her Majesty's Government that his illustrious house may be perpetuated and continued to hold its possessions in peace and prosperity; and that if, unfortunately, a direct lineal successor to the Maharaja should fail, the British Government would willingly recognise the adoption of an heir into his house, according to its usage and traditions. A similar assurance was afterwards given to the Maharaja by *sanad*,² dated March 5, 1862.

["The sovereign house of Kashmir dates only from Maharaja Golab Singh with whom the treaty of 1846 was concluded. The present Maharaja has a son, who is in very delicate health; and should he die, there will remain no male issue of Maharaja Golab Singh to succeed to the territories of Kashmir and Jammu. Only one son of Dhian Singh, the brother of Maharaja Golab Singh, is alive, or had male issue. This son is Moti Singh, and it is probable that the present Maharaja, on failure of male issue, would adopt the son of Moti Singh, and this adoption would be highly popular among the Hill Rajputs generally. These, however, are the only near relatives of Maharaja Golab Singh, whose immediate family is threatened with extinction.

"But in speaking of Maharaja Golab Singh's house, 'its usage and traditions,' the Maharaja no doubt understood Lord Canning to mean the Rajput

Pro., Political A, August 1868, Nos. 98-111.
" " November " " 167-168.

² Aitchison, IX, pages 356-357.

family of Throv Deo, from which he was descended; and under the Adoption *Sanad* granted in 1862, the Maharaja would undoubtedly have the power to adopt any collateral relative descended from Throv Deo in accordance with the usages and traditions of the family.

[“The Maharaja now asks that an assurance be given him that, in the event of his death without leaving natural issue and without adopting an heir, the British Government will recognise the succession of collaterals; in other words, that, for the purposes of succession, Throv Deo, and not the late Maharaja Golab Singh, be considered the founder of the sovereign family.

[“The Viceroy, in whose views the Hon’ble Mr. Taylor and Sir Richard Temple concur, would grant this request without hesitation, subject to the condition that, in the event of an unadopted collateral succeeding, a *nazarana* of a year’s revenue of the State shall be paid to the British Government.

[“The concession now asked is, in reality, no great extension of the boon conferred in 1860. The Maharaja has now the right of adopting any descendant of Throv Deo, and while it is but a small matter to promise to recognise, under all circumstances, as a right what the Maharaja or his successors can at any time secure by adopting an heir, the concession would be most agreeable to the feelings of the Maharaja, who, like most Native Chiefs, has an aversion to adopt until the last hour; and it would be an assurance to him that under no circumstances have the British Government any desire for the annexation of his territories.

[“The mind of the Maharaja has of late been much disturbed, partly by misapprehension of the object of the deputation of a British officer to Ladak, partly by the somewhat arbitrary measures adopted last year with respect to Central Asian trade, and partly by the persistent attacks made upon his government by some of the leading English newspapers in this country. If we are desirous of removing from the mind of the Maharaja any doubt as to the sincerity of the promise which Lord Canning gave him of the perpetuation of his dynasty, and the desire of the British Government that his family should continue to hold its possessions in peace and prosperity, there could be no more fitting opportunity of doing so than now by a concession to the Maharaja’s request. On the other hand, the Maharaja will never be able to understand the refusal of it, and will not fail to attribute such refusal to the lingering desire of the British Government to absorb the valley of Kashmir in their own dominions. Whether considered with reference to the assurances already given to the Maharaja, or to the advantage of maintaining a Native dynasty on our frontier, in view to the possibility of complications in Central Asia, the annexation of Kashmir is not to be contemplated by us as a possible event; and there can be no advantage in allowing doubts of our good faith to linger in the Maharaja’s mind when they can be so easily removed by a concession which costs us nothing, while it would attach a powerful ally more securely to our interests.

[“The services rendered by the Maharaja in 1857 make it incumbent on us to comply with so moderate a request. These services were rendered willingly and ungrudgingly in the hour of our greatest need, when it was doubtful whether the British troops could longer maintain their position before Delhi, and when the slightest symptoms of wavering or disloyalty on the part of the Government of Kashmir would have produced most disastrous results in the Punjab. For these services, which are personally known to the Viceroy, and the value of which at the time it is difficult to over-estimate, the Maharaja has received no reward, beyond the assurance of the succession of adopted sons—a boon which lost all its value as a personal distinction by the subsequent concession of it to all Chiefs, great and small, in accordance with a change of policy. To refuse the concession now asked would, therefore, in our opinion, be illiberal and ungracious: at the same time in granting it there would be no danger of the concession being made an inconvenient precedent on which to support similar claims by other Chiefs. The position of Kashmir in its political relations both with the British Government and Central Asia, the circumstances of the family, and the unrewarded services of the Maharaja and his late father, make the case so special, that what it might be wrong to concede to other States, it would be wrong to refuse to the Maharaja.

[“In granting the Maharaja’s request, we should, of course, make it distinctly understood that the collateral heir would succeed by the selection and approval of the British Government. It might possibly lead to disputes in the family if we were to leave the question to be determined at the time on purely legal grounds, as between the eldest collateral or the nearest collateral, or any other. To prevent this, while assuring the Maharaja of the perpetuation of his house by the recognition of collaterals—which is in reality the gist of his request—we would add that the collateral to be put in power would be the one whom the Government of the day might select as the most fit.”]

[Appended to this despatch were several minutes, the following summaries of which will explain the other views taken of the question.

[Sir Henry Durand completely dissented from the opinions of the Governor-General and Sir Richard Temple. He held that the proposed concession would, “instead of costing us nothing, cost us a great deal.” It would be a most inconvenient precedent. Either all Hindu Chiefs holding Adoption *Sanads* must be granted the same concession, or their fears of annexation would be excited by its refusal. And putting aside the inconvenience of the precedent, Sir Henry maintained that the concession was in itself a most baneful boon. He pointed out that the rivalry of collaterals had given rise to numberless wars and troubles both in Europe and in the East. And if a Native Chief were encouraged to neglect the privilege of adoption, the rivalry of collaterals would be the obvious consequence. The British Government could no doubt suppress conflict between the rival claimants and decide where the right of succession lay. But decision was not always easy, and might be opposed to the sense of the family and the people. And the very fact that the succession remained for decision after the Chief’s death had the inevitable result of splitting up the State into parties and breeding turmoil and confusion. The only security against these evils was a timely adoption by the Chief during his lifetime. “If,” Sir Henry Durand wrote, “I were an advocate for the policy of slow but certain annexation, I should support the proposed concession to Kashmir, and, as would be then inevitable, in due course to all other Hindu Chiefs. It undermines the permanence of their dynasties by humouring one of their weaknesses.

[“On the contrary, ‘if the Maharaja wishes the Kashmir dynasty to be perpetuated, he and his successors have power to do so by adopting. And as Government never insist on the performance of all the Hindu ceremonies, adoption becomes practically little more than nomination, which, unless under very exceptional circumstances, the Ruling Chief can do even *in articulo mortis*.’

[“It must be remembered that the Maharaja has no doubt the right to adopt collaterals who may be lineally descended from Golab Singh, or adopted within the ordinary degrees in unison with Hindu law and family custom.

[“Under these circumstances I think it extremely inexpedient to issue a *sanad* which practically sanctions the evasion of a duty which the Maharaja, if he comprehended the true interests of his State and dynasty, ought to consider sacred. By thus evading his duty he parts with the security which Lord Canning conferred against British interference; he invokes it, and casts on the Government of India the delicate duty of selection from collaterals and of *maintaining* our selection if questioned by rival collaterals supported by strong parties in the State.

[“A further and material objection is, that this obligation of our own creation would be opposed in spirit to treaty stipulations.

[“It is also worthy of consideration whether the proposed concession is in accordance with either Hindu law or Sikh and Hindu practice. It violates some essential principles of Hindu law, namely, among others, widow rights. The British Government has repeatedly had to decide on the adoption made by a widow of a Chief who died heirless, the widow claiming the right of adoption as successor to the indivisible property of her husband, namely, the *Bāj* or Chiefship, and the concomitant right of adoption. Sometimes the claim has been allowed, sometimes it has been contested and set aside; but, whether for good or whether for evil, widow Ranis have often a strong party in the State, and manage to assert their claims with more or less of success according to

circumstances. Here again adoption by the Chief himself prevents all the evils which may arise from widow rights and widow rule or adoptions."

[The views of Sir William Mansfield were thus expressed :—

["After a very careful consideration of the matter of the despatch, I continue to adhere to the view that it is inexpedient to make the concession desired by the Maharaja for the reasons stated by Sir Henry Durand. Out of deference to the Governor-General, I have, however, said that I would not oppose the concession in the case of the Maharaja himself, while denying the privilege to the family coming after him."

[In this Minute Mr. Strachey concurred.

[Mr. Maine's opinion was as follows :—

["While I think that the opinion of His Excellency the Viceroy as to the services of the Kashmir House ought to be regarded as conclusive, and while I consider it most expedient to take some step which may reassure the present Maharaja after the persistent attacks made on his government,—I feel myself compelled to agree on the question of principle with Sir Henry Durand. I cannot doubt that this concession, if made, will almost immediately become known to the other Native Chiefs of India, and will be made the foundation of universal demands for similar indulgence. If it be true that the minutest distinction accorded at a Viceregal Darbar makes its way to every Court in India, and is cited as a precedent or a grievance on the next available occasion,—how can we possibly suppose that the establishment of a new principle of succession in a Hindu house will be regarded as exceptional and as affecting that house alone? The Kashmir dynasty rules a wealthy and powerful State, but the claim to consideration appears among Native Chiefs to rest not more on extent of dominion than on antiquity and splendour of family descent. How can we deny to families whose antiquity inspires an almost religious reverence that which we concede to a dynasty whose origin is extremely modern and viewed, I believe, with anything but respect? The existing system of succession among *quasi*-sovereign Hindu Princes in India has the advantage of extreme simplicity. The right of adoption in default of heirs of the body, now firmly secured to them, amounts to a power vested in the reigning Chief of selecting a successor from among his collaterals. To take a very famous illustration, it is the rule of succession which practically obtained in the early Roman Empire, though in that case the power of selection could be exercised not only by adoption, but by will. If we once depart from this simple principle, I own that, from a purely legal point of view, I cannot look forward without dismay to the sea of doubt in which we shall be launched. What is the rule of succession to a Hindu sovereignty among unselected collaterals? The answer is, that nobody knows. Not only does the general Hindu law of succession to private property give us little help in solving the question, but it rather confounds our ideas, because (putting aside some unimportant exceptions) it is essentially a system of class succession, excluding primogeniture. In successions to a Hindu sovereignty, does the collateral who is nearer to the founder of the house, exclude the collateral who is nearest to the last reigning Chief? Does a nearer collateral connected through females only exclude a more remote collateral connected through males? A man may, of course, have an opinion on these two points founded on supposed analogies in Hindu or even in English law; but, in truth, nobody can give a reply with confidence or certainty. It happens, however, that out of the two questions above suggested grew the longest and bloodiest wars, or rather series of wars, in which the English monarchy has been involved. The fact is, that nothing is more arbitrary in itself, and nothing has been more gradually settled, than the system of collateral succession to European sovereignties; and it is no slight thing to propound the same set of problems for decision in India.

["I am informed that in Oudh, where the property of certain families claiming a '*gaddi*,' and probably older than most of the reigning houses of India, descends individually, there is no pretence whatever of the existence of any general rule of collateral successions applicable to such a case; but each family professes to have a complete set of provable family usages governing its own successions. It is extremely improbable that the reigning Hindu houses can produce proof of any such customs, partly because of the virtual universality of

the system of adoption, partly on account of the recent accession of several of them to sovereign power and their previous obscurity.

["It may be said that the British Government will decide between the conflicting claims of collaterals. But, unless it be distinctly stated that no collateral is to succeed as of right, the promise to allow collateral succession will be regarded as a promise to respect the rights of collaterals to succeed, and each collateral will be practically invited to make preparations for pressing his own claims. I venture to assert, too, that, in ninety-nine cases out of a hundred, the future British Government of India, having no reason *à priori* for preferring one collateral to another, will select the one whom it supposes to be legally entitled to succeed, and the question of legal right will be raised after all. But, if any other candidate seems to a portion of the people to have a better claim than the nominee of the British Government, what security have we against an outbreak of partisanship, similar to that which, in spite of all the influence of the British power, has just plunged a miserable little Cuttack State³ in war ?

["One very unfortunate result of diminishing the inducement to Hindu Princes to adopt will be, that minorities will obviously become much rarer. An adopted successor is almost invariably a child; a collateral successor will almost invariably be a grown man. It seems to be generally admitted that there is no happier episode in the modern history of Native States than the minority of the Chief. The British Government, temporarily assuming the administration in a tutelary capacity, secures for the young Prince the best education available, and for the people the best possible combination of Native and British institutions, without exposing itself to the suspicion of intended annexation, and without placing itself under the temptation to go too far in anglicising the country. Nobody denies that the best-governed Native States owe their superiority to a minority wisely dealt with.

["I cannot help believing that the just claims of the Maharaja of Kashmir might be met in a simpler manner. Advantage might be taken of the policy so conspicuously inaugurated in Mysore. His attention might be directed to what has taken place in Mysore,⁴ as a proof of the earnest wish of the British Government to maintain Native States. And he might be assured in decided language of the strong sense which the British Government entertains of the services of his family. Putting the two together, he could scarcely fail to draw the conclusion, which would certainly be a sound one, that if he should fail to adopt, he would be succeeded by one of his family. But the inconvenience of a precedent would be avoided."

[In the following November the Secretary of State telegraphed :—

["The Maharaja of Kashmir may be assured that, if he die without a natural born or an adopted heir, the succession of a collateral will be recognised; he should, however, be advised to adopt an heir for the sake of preventing dispute in his family."

[The decision of Her Majesty's Government was communicated to the Punjab Government in the following words :—

["The Secretary of State has intimated by telegraph that the Maharaja of Kashmir may rest assured that, if he die without an heir, natural born or adopted, the succession of a collateral will be recognised. But it will be well if he adopt an heir. On receipt of despatch from Secretary of State, further instructions will be issued."

[A few weeks later the views of Her Majesty's Government were more fully expressed in a despatch from the Secretary of State, which ran as follows :—

["I have fully considered in Council the question submitted to Her Majesty's Government in Your Excellency's letter of the 8th of August (No. 131), 1868, relating to the succession to the Government of Kashmir.

["It appears from the enclosed correspondence that the Maharaja Ranbir Singh has requested that a *sanad* may be issued to him 'especially granting

³ The reference here is to the rising in favour of Brindaban against the successor nominated by the Calcutta High Court in Keonjhar—see paragraph § 212 above.

⁴ The decision of Her Majesty's Government not to reinstate the Maharaja of Mysore, but to maintain the

Chiefship in the person of His Highness's adopted son, was communicated to the Government of India in the Secretary of State's despatch No. 69-P., dated April 16, 1867—see above, paragraph § 276.

succession in favour of collaterals in the event of the decease of his direct issue without children, or without appointing an adopted heir.'

["The request, as thus stated, suggests two questions for consideration: firstly, whether the right of adoption, which has been guaranteed by *sanad* from Lord Canning to the Maharaja, is to be considered as limiting the selection to the descendants of Golab Singh,—that is, to members of the Kashmir line,—or whether the 'family usages and traditions,' to be respected in such a case, are those of the old Rajput line of Jammu Chiefs: and secondly, whether the British Government will pledge itself to continue the succession in the family in the event of the Maharaja dying without heirs of the body and without adopting an heir.

["With respect to the first of these questions, I have to observe that, although in the treaty of 1846 the British Government transferred the territory of Kashmir, on certain conditions, 'to the Maharaja Golab Singh and the heirs male of his body,' Her Majesty's Government have no desire to limit the assurance given to the Maharaja Ranbír Singh by Her Majesty's Viceroy in 1860, and again by *sanad* in 1862, with respect to 'the adoption of an heir into His Highness's house, according to its usages and traditions,' to the descendants of Golab Singh, but will recognise the adoption of a collateral relative descended from Throv Deo, in accordance with the usages and traditions of the family.

["In regard to the second question, I have fully considered in Council all that has been advanced by Your Excellency and by the several members of your Government. Adverting to the peculiar circumstances under which the family of Golab Singh became possessed of their principality, and to the eminent services performed and the unvarying good feeling displayed by the late and present Maharaja towards the British Government, I have no hesitation in according my sanction to the amplest possible assurance being given to His Highness that Her Majesty's Government desire to perpetuate his dynasty. But it might be advantageously pointed out to him at the same time that it was with a view to the perpetuation of the Hindu dynasties and to the peaceful undisputed transfer of authority to a properly-appointed successor on the death of a reigning Prince, that the power of adoption in default of heirs of the body, by the Native Princes of India, has been formally recognised by Her Majesty's Government; and that it is their object that the wishes of the Chief himself may be made known to them during his lifetime, in accordance with the religious and social usages of the country. But, in the present instance, as a wholly exceptional case, Her Majesty's Government, in the event of the failure of natural heirs, and of the formal adoption of a successor, will be prepared to consider the wishes of the Maharaja with respect to the question of adoption in the manner best calculated to prevent future embarrassment.

["In according their sanction to these concessions, Her Majesty's Government believe that they grant all that has been requested by the Maharaja, so far at least as His Highness's requests are set forth in the statement of the Secretary to the Punjab Government, who received them from the Maharaja's Minister. Her Majesty's Government do not consider it desirable to go beyond them, by taking upon themselves, in the event of the Maharaja dying without heir, to select a successor. A pledge to this effect might give additional assurance to Ranbír Singh himself, but might be considered by others an act of interference on our part, designed to bring the principality more immediately under British influence, and it might involve our Government in very embarrassing complications, in the event either of the Chief of our selection mismanaging his territory or becoming unpopular with the people. It is true that, ultimately, if there should be a disputed succession, the British Government might have to become the arbitrators, but this appears to me to be very different from an original selection, and it would not, to the same extent, identify us with the measures of the *de facto* ruler."

[This despatch⁵ was forwarded to the Punjab Government with the request that the chief points in the document might be communicated to the Maharaja.]

⁵ No. 181, dated November 30, 1868.

§ 318. The perpetuation of Native dynasties by undisputed successions was thus affirmed to be a part of Lord Canning's policy, and the prayer for a boon which went beyond the letter of the Adoption *Sanads* was granted as an exceptional favour in recognition of exceptional services which had not been specially rewarded. At the same time the moral to be drawn from the Kashmir succession case of 1868 is that it is not desirable to encourage Ruling Chiefs to defer adoption—timely adoption being the safeguard against divisions in the State, and against the interference of the British Government to settle disputed successions.

In the next leading case which we have to notice, the same point—the importance of a timely adoption—is very clearly brought out. The Shahpura succession case, 1870, also bears upon several other principles which will be duly mentioned when we come to summarise the results of many separate trains of correspondence on the adoption policy.

[On December 4, 1869, the Governor-General's Agent in Rajputana reported the death of the Chief of Shahpura, and intimated that there was a dispute about the succession. It appeared that during the latter part of the Chief's illness he was closely attended by the Kamdar Fauj Mal and some other persons. The Thákurs were all assembled at Shahpura for the Dasahra holidays, but neither any of these nor any of the ladies of the Chief's family were permitted to see him. On November 5, three days after the Chief's death, the Thákurs were sent for by the Rani, and informed that the Chief had adopted one Ram Singh, a child of four years of age, belonging to a distant branch of the family. After some attempt at remonstrance, the Thákurs paid their *nazars* to the young Chief. But when the Political Agent arrived on the scene, the principal Thákurs, with one exception, declared that the adoption had not been the Chief's. They looked upon it as the work of the Faujdar and other interested persons, and maintained that the Danop family, as next of kin, were the rightful heirs. On November 28, Colonel Keatinge himself came to Shahpura and assembled the principal Thákurs in Darbar. He found that fifteen of them supported Nahar Singh, the son of the Thákur of Danop, two were in favour of Ram Singh, and two were doubtful. The Rani did not deny that the right of succession lay with the Danop family, but insisted that it was her duty to carry out what she believed to be her lord's dying wishes. Colonel Keatinge supported the claim of Nahar Singh, on the ground that the adoption of the boy to the exclusion of the nearer kinsfolk was, if made, illegal, and that the Kamdar and the late Chief's foster-brother were deeply interested in keeping the Danop family out of the succession. As a large portion—about one quarter—of Shahpura lies within Mewar, Colonel Keatinge communicated his views to the Mewar Darbar, and the Maharana expressed his concurrence. His Highness observed, however, that the Shahpura Chief was a feudatory of Mewar, and as a minor had been selected, he desired that a Darbar official might be associated in the government of the estate to look after Mewar interests.

[In forwarding his report of the circumstances attending the alleged adoption, the Political Agent had quoted several authorities to show the value generally attributed to the opinion of the Thákurs in matters of succession. Amongst others Lieutenant Muir quoted an extract from Sir Henry Lawrence's despatch on the Karauli succession case, which ran as follows:—

["I have referred to one undeviating rule in which all authorities agree, and without which the adoption would be invalid, namely, that every step in the affairs should be taken with the concurrence of the chief members of the family, 'the Chief of the State, and the councillors of the deceased Prince;' that 'the ceremonies should be performed in public with rejoicings similar to those at the celebration of a marriage, so that the fact may be proclaimed to the whole world.' Great stress is very properly laid on these points as the only means of counteracting the designs of any scheming woman, eunuch, or minister, who otherwise might sacrifice the interests of the State to his or her own ambitious ends. . . .

["The records of my office also show that in every case of succession since the year 1818 the Government of the day and my predecessors have in their

several orders and recommendations invariably been influenced by, and have dwelt on the wishes of, the widow, the Chiefs and the Councillors of the Principality. On several occasions also of disputed succession, as at Jaipur in 1819, Banswara in 1838, Karauli in 1839, and Dungarpur in 1846, the orders eventually given after much discussion and correspondence appear to have been mainly, if not entirely, influenced by public opinion and the wishes of the Thákurs and others concerned."

[Contrasting the picture by Sir H. Lawrence of adoption as it ought to be with the underhand proceedings in the present case, the Political Agent recommended the recognition of Nahar Singh, and the punishment of the Kamidar and others with him for taking on themselves to instal the child Ram Singh without first obtaining the confirmation and authority of the Suzerain.

[When the case came up for the consideration of the Government of India, the importance of the principles involved was fully brought out. The following extract is from the note of the Secretary, Mr. Aitchison :—

["This is a very difficult case in which very perplexing questions might be raised. We have first to consider the general question of the effect of Lord Canning's Adoption *Sanads*, and then its applicability to the case of Shahpura.

["Lord Canning's *Sanads* in general terms promise that the British Government will recognise and confirm any adoption made in accordance with Hindu law, and the customs of the house to which the Chiefs belong. This must not be construed as *requiring* adoptions to be in accordance with Hindu law and family customs, but merely as binding the Government to recognise and confirm the adoption when it is so. As a matter of fact not one adoption in a hundred is ever made in accordance with law or custom. Chiefs have a natural dislike to give evidence that there is no hope of heirs of the body, and to tie their hands by adoption of a successor. As a rule, the adoption is put off till the last moment, and then performed hurriedly and irregularly. On these occasions we have always claimed the freest and fullest right to act according to the expediency of the case. While, on the one hand, we have no option if the adoption is regular and complete, but must recognise the adopted heir, and while there is a natural disposition in favour of the Chief's nominee, even when the adoption is informal or actually invalid, still in the latter case we hold ourselves free to act as we may think best. In short, when there is no valid *adoption*, we fall back upon *selection*; that is the principle of the *sanad*, and a very essential one it is, for it in the first place holds out inducements to Chiefs to make proper arrangements for the succession; and it enables us to counteract *zanana* influence and death-bed pressure in the selection of incompetent or improper heirs when adoption has been too long neglected, and to give to the State a Chief qualified to rule and acceptable to the people.

["Between the extreme cases of a perfectly valid adoption on the one hand, which we must recognise, and a case on the other hand so bad that there can be no hesitation in setting it aside, there is an almost infinite variety of cases in which the choice between recognising the alleged adopted son and selecting another heir must be determined by a variety of considerations, having greater or less weight. As a rule, the more closely law and custom are adhered to in making the adoption, the greater will be the presumption in favour of the nominee being recognised. Next to that, perhaps, come considerations of nearness of relationship, but where there are no very strong determining considerations one way or the other, Government have generally been guided by the popular wish of the influential Sardars of the State and of the relatives of the Chief, and the opinion of neighbouring Chiefs of the same class. There is no absolute rule, however, and the precedents are most conflicting and may be quoted in favour of almost any course. In the famous Karauli case, for instance, when the popular voice declared in favour of the nearest of kin, we even went so far as to set aside the heir whom the Maharaja adopted on his deathbed a year after we had recognised the adopted heir and installed him; and the ground on which we set him aside was the invalidity of the adoption in Hindu law, inasmuch as the Maharaja was a minor at the time of his death and could not legally adopt. Then, again, in the equally famous Ahmadnagar case, we allowed the junior line to succeed to Jodhpur in preference

to the elder, on ground of popular election by the Ranis and Chiefs. Instances can be quoted to which no possible consideration of law is applicable. We have allowed (in Chhatarpur) the grandson of a younger brother to pass over the son of an elder; we have allowed a foundling (Datia) to supersede collateral heirs; and have done many other things equally inadmissible from the Hindu point of view.

["As formerly observed, when the adoption is not valid in Hindu law, we select an heir on the considerations which we think best for the interests of the State. The object of Lord Canning's *Sanads* in referring to Hindu law and family custom was so to restrict the power of Chiefs as to prevent arbitrary, unfair and unpopular adoptions, and not to fetter the discretion of the British Government in cases in which law and custom may have been disregarded. The real value of the *sanads* lies not in the reference they make to adoption, but in the guarantee which they give for the perpetuation of the State, and the abandonment of the old theory of 'lapse.'

| "Applying this theory then to the present case, we clear away many of the difficulties that surround it. I agree with Colonel Keatinge that the balance of the evidence is in favour of the opinion that no adoption was made by the late Chief of Shahpura. But if Ram Singh had been adopted, it would really have made no difference, for Ram Singh being an only son could not by Hindu law be adopted by any one. This is the keystone of the whole law of adoption. A Hindu must have a son for the salvation of his soul; when he has no son of his body, he therefore adopts; but the law will not allow him to save his own soul at the expense of another by depriving him of his only son. Ram Singh therefore cannot be legally adopted. No more, for that part of it, could the other candidate, Nahar Singh, for he is an only son also. The case then is not one of *adoption* at all, but of *selection*, in which Government should be guided not by considerations of Hindu law, but the wishes of the people and the good of the State, all of which, as fully set forth in these papers, point to Nahar Singh as the one on whom the selection should fall, and who should be recognised by the British Government. . . .

["In regard to the claim of Mewar to a voice in the selection, the question had better not be mooted unless officially raised by the Mewar Darbar. But so far as I can see, if mooted at all, the claim can only meet with instant rejection. The *pargana* Phulia or Shahpura was a grant from the Emperor of Delhi, and is now held directly by *sanad* or grant from the British Government. The fact that the Chief also holds estates in Mewar gives the Mewar Darbar no more voice in the succession than the fact that Holkar holds a village in Barwani gives the Chief of that petty State a voice in the succession to Holkar's territories, or the fact that until last year Sindhia held ten villages in Hyderabad entitled the Nizam to be consulted as to who should succeed to Gwalior."

[The case was sent to Sir H. Durand for opinion, and the following note put up by him was concurred in by the Governor-General, Lord Mayo:—

["One object of Lord Canning's *Sanad* of adoption was to induce Hindu Chiefs to make timely and formal adoptions so as to preclude the possibility of such conflicts as arise when, as in the present case, the adoption is neither timely nor formal. Hence the wording of the *sanad* 'the adoption by *yourself*. . . .' The *sanad* conveys, strictly speaking, no sanction for adoptions made otherwise.

["Considering that the Thákurs were all present at the place, there was every facility for the formal execution of an act of adoption on the part of the Chief that could not have been open to any question. On the contrary, not only were the Thákurs all carefully excluded from approach to the Chief, but when the Maji, the Rani Kangarotji, sent her own Kamdar to inquire, he was not admitted. The evidence of this lady is remarkable, and bears throughout the impression of verisimilitude. From her position she had an indubitable right to expect that her Kamdar should be admitted.

["The indecorous haste to put Ram Singh on the *gaddi* without reference to Government, or awaiting the arrival of the Political Agent, who was so close at hand, is indicative of the desire to cover a fraudulent adoption by a

hasty act of installation which might embarrass the putting aside of proceedings which bear no stamp of having a claim to *bona fides*. Under such circumstances I agree with Colonel Keatinge and Lieutenant Muir that the adoption of Ram Singh must be held invalid.

[“For the part he has taken the ex-Kamdar should be pronounced incapable of again serving the Chiefship, and should be banished. It is politically of importance that the Ministers of dying Chiefs should be made to feel that they will be responsible that all pretended adoptions made *in articulo mortis*, so to speak, bear daylight and scrutiny as transactions above suspicion.

[“Politically it is of importance that Native Chiefs should have the fact brought home to them that a timely and formal adoption is to the interests of the Chiefship and family. Therefore in putting aside the adoption of Ram Singh, the reasons should not only be fully stated, but also there should be an expression of regret that the Chief of Shahpura by shrinking from a timely and formal exposition of his views, and by leaving to others what the *sanad* expects from a Chief himself, has pusillanimously thrown upon the Government the necessity of intervention. . . .

[“I think the voice of the Thákurs should, in this case, be accepted, and the son of Dhirat Singh succeed to the Chiefship of Shahpura.”

[Before orders could be issued in accordance with these views, Colonel Keatinge reported the birth of a posthumous son of one Kishan Singh, Jagirdar of Kharer. Colonel Keatinge intimated that this event would probably change the succession, and forwarded a letter from the Political Agent requesting the postponement of the Government decision pending receipt of a further report. On receipt of this report it appeared that the child in question was by ties of nature the next of kin to the late Chief. But it was shown that the child's great-great-grandfather had been adopted into a distant family, and that he was thus by Hindu law further removed from the succession than the House of Danop.

[The decision of His Excellency in Council was then declared in the following words:—

[“His Excellency in Council concurs with you in holding that the balance of evidence goes to show that no adoption was really made by the deceased Chief. And, even if there had been ground for judging differently, and for believing that the alleged adoption of Ram Singh had taken place, there are circumstances which would invalidate the act, not the least of which is the fact that the father of Ram Singh could not, according to Hindu law, be deprived of his only son by his adoption into another family.

[“Thus, then, in default of proof of a real and valid adoption, the recognition of a successor to the deceased Chief must be based on the principle of selection from among the nearest of kin and those best qualified for the administration of the affairs of the State.

[“In the present case the wishes of the Thákurs and the interests of the State seem to point clearly to Nahar Singh as the proper successor to the Chiefship.

[“The announcement of this decision was for a time postponed in consequence of your representation that the posthumous son of Kishan Singh of Kharer might be proved to be the nearest of kin, and have possible claims to succeed the late Chief. But this doubt is dispelled by the investigation made by Lieutenant Muir, which shows that Kishor Singh, the ancestor of the said Kishan Singh, had been removed by adoption into a more distant branch of the family, and that, therefore, by Hindu law and custom, Kishan Singh's children can have no claim to inheritance in the family from which Kishor Singh was by adoption removed. Any rights which the son of Kishan Singh may possess are in the Sangria branch; he is, therefore, more distant of kin to the late Chief than Nahar Singh, on whom the choice of the Thákurs had fallen.

[“The pretensions advanced by the Maharana of Mewar in the matter of this succession, as reported in Colonel Nixon's address to you, No. 157-26P., dated 15th December last, appear to His Excellency in Council to be entirely destitute of foundation. The *pargana* Phulia or Shahpura was a grant

from the Emperors of Delhi, and is now held directly by *sanad* or grant from the British Government. The fact that the Chief also holds estates in Mewar gives the Mewar Darbar no more voice in the succession to Shahpura than the fact that Holkar holds a village in Barwani gives the Chief of that petty State a voice in the succession to Holkar's territories, or the fact that until last year Sindhia held ten villages in Hyderabad entitled the Nizam to be consulted as to who should succeed to Gwalior.

["It was recommended by Lieutenant Muir that the Kamdar, Fauj Mal, should be punished for the part he took in the proceedings which it has now been necessary to disallow. And it is, in the opinion of the Governor-General in Council, politically important that the Ministers of dying Chiefs should be made to feel that they will be responsible that all alleged adoptions made *in articulo mortis*, so to speak, bear daylight and scrutiny as transactions above suspicion.

["I am therefore to communicate the desire of His Excellency in Council that Fauj Mal should be removed from Shahpura and pronounced incapable of again serving the Chiefship."

[The measures taken by the Government of India were approved by the Secretary of State.⁶]

§ 319. Some further correspondence followed on the question of the adoption of an only son. Colonel Keatinge, the Agent to the Governor-General, represented that adoptions of only sons were frequent in Rajputana, and that we should acknowledge such deviations from Hindu law as had become established by long usage. The question having thus been raised whether the adoption of an only son into another family, though opposed to Hindu law, should be recognised by Government as being in accordance with the customs of Rajputana, the Government of India replied—"In the opinion of His Excellency the Viceroy and Governor-General in Council, the obligation of the Supreme Government in the matter of recognising adoption is as follows:—

"It is bound by the tenor of Lord Canning's *Sanad* to accord recognition in the case of an adoption according to Hindu law and the customs of the race to which the Chief belongs. But if the adoption is an irregular one, Government is not so bound, and may accord or refuse recognition, as, from general consideration, may appear most expedient.

"This latter was the position of Government in the case of the Shahpura succession. Holding that no adoption did in fact take place, and that, even if it had, the selection of an only son would have invalidated the act, Government considered itself at liberty to guide its decision by other considerations, such as nearness of kin, the clear expression of their desire by the Nobles of the State, and so forth; and in conveying this decision, Government by no means precluded itself from recognising the adoption of an only son, if, with regard to the circumstances of the particular case, it should, on any other occasion, see cause for doing so.

"There is not, I am to observe, apparently any such definite sanction for the adoption of an only son in the custom of Rajputana as to make such an adoption in all respects regular, and its recognition obligatory. Many instances of irregular adoptions can no doubt be cited, but these cannot be said to constitute custom. A custom means an established course of proceeding parallel to, but different from, the ordinary law; and His Excellency in Council sees no evidence whatever of the existence of such an established custom in Rajputana, although there is plentiful evidence that the observance of Hindu law is exceedingly lax." In answer to further inquiries the Government of India explained that irregularities in the adoption—such, for instance, as contravention of Hindu law or, when custom has modified the law, of custom as above defined—would leave Government free to accord recognition of the adoption, or to look for a successor in other quarters with due regard to the merits of the case.

⁶ Pro., Political A., August 1870, No. 310. See also Pro., Political A., March 1870, Nos. 65-69; and May 1870, Nos. 275-286.

⁷ No. 1284-P., dated July 21, 1870. Pro., Political A., August 1870, Nos. 87-92. See also Nos. 298-299 of the same Proceedings.

§ 320. About a year later the question of the adoption of an only son arose again, this time on a reference from the Government of Bombay. In November 1870 the Raja of Kolhapur, who was making a tour through Europe, died at Florence without issue. He left no near blood relation eligible for adoption, but Government "declared its willingness to recognise as his successor any person who might be selected as most fitting and acceptable to the family and the principal persons of the State, even though he might not fulfil all the conditions required by Hindu law" and the family custom.⁹ All concerned were unanimous in selecting Narayan Rao Bhonsle, aged eight years, son of Dinkar Rao, the head of the Khánvat Bhonsles, and next of kin to the Kolhapur family. In supporting this choice the Bombay Government forwarded a minute by the Hon'ble Mr. Tucker, a Member of the Bombay Council, in which he pointed out that Narayan Rao was an only son, and that to give an only son in adoption, except to a brother, is sinful according to the Hindu Shastras, though on the principle of *factum valet* the adoption of an only son once made with the proper ceremonies would not be invalid. With reference to this, Colonel Anderson, the Political Agent, Kolhapur, brought to notice that the adoption of an only son was not opposed to the customs of the country. He gave instances and quoted Steele on the law and custom of Hindu castes in the Deccan, by whom it is mentioned that an only son may be adopted with the consent of both parties. "Those interpreters of Hindu law," said Colonel Anderson, "who consider that there are objections to the adoption of an only son (although it appears to be admitted that such an adoption would to every legal purpose be good), also consider that the same objections exist to the adoption of an eldest son, but it is a curious fact, both as exemplifying the customs of the country in the matter, and as bearing very pertinently on the present case, that of the only two adoptions that have hitherto taken place in the Kolhapur family, one was that of an eldest and the other that of an only son." As regards Hindu law he added—"I do not think we would be justified in imposing more of it on the people of any particular part of India than they themselves are willing to accept and recognise. It appears to me that Hindu religious precepts and ordinances can only be considered to have the force of law in those parts of India where they are fully sanctioned by custom, and are in accordance with the feelings and observances of the inhabitants." It was proposed in the case that the senior widow of the late Chief should be permitted to adopt Narayan Rao; and Sir Barrow Ellis, a Bombay Civil Servant and a Member of the Executive Council of the Governor-General, to whom the papers were sent, noted—"The real character of adoption has been modified greatly in modern practice. The original religious element has now become quite secondary to the main object of improving the fortunes of the family, and not unfrequently securing thereby something which might otherwise have lapsed to Government." Mr. Aitchison, the Foreign Secretary, remarked—"The discussion on the Hindu law does not in the least affect the question with which we have to deal. Whatever Colonel Anderson may say, an adoption, perfectly valid in accordance with Hindu law and family custom, as these words are used in the Adoption *Sanads*, is, under present circumstances in Kolhapur, impossible. What we have to do with is the selection and recognition of a suitable successor to the State. Such a person has been found to the entire satisfaction of all concerned. It is immaterial to us whether he is an only son or an eldest son, or whether he can or cannot be adopted with perfect legality. The adoption is a question for the family in regard to which they can please themselves. For us it is sufficient to recognise the succession of the boy Narayan Rao Bhonsle, and direct that proper arrangements be made for his education in a manner calculated to fit him for the future responsibilities of government."

The orders were framed in accordance with Mr. Aitchison's note. Nothing at all was said about the adoption; the succession of Narayan Rao was formally sanctioned and inquiries were made as to his education.⁹

The coincidence in testimony from Rajputana and the Southern Marhatta Country that the adoption of an only son is not opposed to local custom

⁹ Aitchison, VII, page 184.

| ⁹ Pro., Political A, October 1871, Nos. 623-640.

is remarkable and should not be overlooked. We may at least infer from the Shahpura and Kolhapur cases read together that if the proposed successor to a vacant Chiefship is a fit person and chosen by those entitled to be consulted in the matter, the Government will not refuse to sanction his succession merely on the grounds that he is an only son, that an only son ought not, under Hindu law, to be adopted, and that the successor ought, by custom, to be adopted into the family of the late Chief.

§ 321. This view is, to some extent, confirmed by a remark made by Mr. Aitchison in his note on our next leading case—that of Kalubha, the son of the Jam of Nawanagar. “The Government,” said Mr. Aitchison, “have never to my knowledge refused assent to a successor, when there was, as in this case, no rival claimant, merely on the ground that the selection was not made in accordance with law or custom;” and all the cases we have collected affirm his further observation in the same note that in the construction of the Adoption *Sanads* Government have always taken the most liberal views—the views, that is, most favourable alike to the perpetuation of Native dynasties and the security of the inhabitants of Native States.

In Kalubha's case the question related to the succession to the Kathiawar State of Nawanagar. [It appeared that the Jam of Nawanagar, head of the Jareja Rajputs of Kathiawar, desired the recognition as his successor of his son Bhim Singhji, otherwise called Kalubha. This son was the issue of the Jam by a Muhammadan lady named Dhani Bai. The Jam asserted that his marriage with Dhani Bai was legal according to the custom of his tribe. The Bombay Government in referring the question for orders, after a preliminary explanation of the reasons which called for its settlement before the death of the ruling Jam, stated that the points for consideration were—(1) The *facts* as to Kalubha's birth and Dhani Bai's marriage with the Jam; (2) the *law* as to the legitimacy of a son born of such a marriage; and (3) the *policy* of recognising Kalubha as heir to the *gaddi*.] The conclusion, however, at which the Bombay Government arrived was expressed with considerable uncertainty. They observed—[“His Excellency in Council is unable to say that as regards any one of these three considerations he feels himself in a position to negative the claims put forward by His Highness on behalf of his son, but after giving to the matter much anxious consideration, he is not prepared to recommend to the Right Hon'ble the Viceroy and Governor-General in Council that Kalubha should be recognised as the successor to His Highness Jam Vibhaji.”

[As regards the facts of the case, it was established that Kalubha was born in the Chief's palace, and had always been recognised as a legitimate son and the heir presumptive, while the boy's mother Dhani Bai had been publicly acknowledged, and had always received not only the treatment and status of a lawful wife, but even some marks of exceptional favour. Kalubha was the *de facto* son of a *de facto* marriage. As regards the validity of the marriage there was a difference of opinion. On the one hand, it was maintained that the Jam's family was under general Hindu law; that if the Jam chose openly to become a Muhammadan he might regulate the succession by Muhammadan usage, but that he could not pick and choose between the customs of two religions. On the other hand, the Jam contended that he and his family were, and had been for centuries, on the border between two religions. He urged that he ought to be judged by the customs and traditions of his family and tribe, according to which the marriage of a Jareja Rajput with a Muhammadan was allowable. It was not disputed that such marriages had frequently taken place and been recognised by the tribe. There was indeed a strong party who objected to these marriages, from a desire apparently to introduce rigid Hindu customs among the Jarejas. But curiously enough the leader of this party, the Rao of Kutch, was himself descended from a Musalmani slave-girl. And moreover the Jam's views were by no means without support. Amongst those who favoured Kalubha's succession were many influential Jareja Chiefs, and all the next of kin who would have had a claim to the succession if Kalubha had been set aside. Judged by the customs and traditions of the tribe the marriage was held to be lawful. As regards the policy of recognising Kalubha there was one serious objection. The boy was dull, and his education had

been neglected. But there was no reason to believe that in these respects any other candidate or eligible successor was better qualified. In other respects the advantages and disadvantages of the step were pretty evenly balanced.

[After a full consideration of the difficulties brought to notice by the Government of Bombay and the Political Officers, the Government of India decided that Kalubha should be recognised. His Excellency in Council was not disposed to attach much importance to the objections of the Rao of Kutch and his party. Nor was it "the policy of Government to impose restrictions upon the freedom which the ancient tribal customs or recognised practices of the Jarejas" might permit in the matter of the choice of a wife.

[The despatch containing the decision ended as follows :—

["His Excellency in Council concurs with the Bombay Government in opinion that the question of the future succession to the Nawanagar State should be settled without delay. The present uncertainty is absorbing all the Jam's thoughts and introducing disorder into his affairs. It is in every respect desirable that the Nawanagar State should be relieved from the uncertainty and intrigues which invariably attend a disputed succession. His Excellency in Council therefore desires that an intimation be made to the Jam that if his family circumstances remain as at present, the British Government will recognise Kalubha *alias* Bhim Singhji as his successor."]

It will be observed that this case has several points of contact with the Kashmir, Shahpura, and Kolhapur succession cases abstracted above. If timely adoptions are desirable to prevent disputes and intervention, so also, especially when intrigue and excitement have already gathered round the question of succession, it may, on occasions, be very proper for the British Government, during the lifetime of a Ruling Chief, to extend a provisional guarantee of recognition to some particular candidate for the Chiefship when the vacancy occurs. Here, as is implied in the Shahpura case, it is more distinctly evident that when a custom is proved to exist, it supersedes the general law. The dictum of the Judicial Committee of the Privy Council to this effect was, indeed, quoted in the report of the Bombay Government; and the quotation was to the point because the case in which the dictum occurs was one of a disputed succession involving the right to a *Ráj* or Chiefship. It was the case of the Raja of Tippera, whose title in Hill Tippera is in practice determined by British Courts because those Courts have jurisdiction over the extensive *zamindaris* of the Chief situated in British Indian territory.¹⁰ If the British Government will hold itself free to recognise the succession of an only son when cognisant of the fact that he is about to be adopted into the family of the late Chief, so also it will refrain from imposing any restrictions upon the freedom which ancient tribal customs or recognised practices may permit in the matter of marriage, and in the determination of a disputed succession, practices or customs of that kind will be duly regarded. In fact the suitability of a candidate for a Hindu Chiefship, so far as it is confirmed by the voice and clear custom of the ruling family, is, at least to that extent, untrammelled by the strict requirements of the Hindu Law.¹¹

§ 322. We shall here pursue somewhat further the history of Nawanagar affairs; for though in so doing we shall depart from the order of time in our general review of important succession cases, we shall by this arrangement affirm in this place a principle closely connected with the recognition of successors during the lifetime of Ruling Chiefs—the principle that the recognition of a successor by the British Government may be subsequently set aside by the birth of a son of the body to the Chief of the State. The guarantee of 1872 in the Nawanagar case was, as already said, provisional. It was an intimation to the Jam that if his family circumstances remained as they were Kalubha would be recognised as his successor. The family circumstances and the political circumstances alike changed. In 1877 Kalubha and his issue were excluded from the

¹⁰ Neel Kisto Deb, Burmono, *versus* Beer Chunder Thakoor and others, 12 Moore's Indian Appeals, p. 523. In the same case their Lordships of the Privy Council referred to the Indian Government as the "paramount arbiters in a case of disputed succession" to a *Ráj*. As to the peculiar position of the Raja of Tippera, see above paragraph § 220 and Aitchison, I, p. 109, there quoted in the foot-note.

¹¹ Pro., Political A, April 1872, Nos. 567-623; and August 1872, Nos. 205-211.

succession. This was due to misconduct on the part of Kalubha and to his demonstrated unfitness to succeed. The Jam then proposed to adopt a successor, but the Government of India pointed out that under Hindu law he could not do this because he had legitimate male issue capable of performing his funeral ceremonies. He was therefore told to designate a successor. He designated one Umed Singhji; his choice was approved; he adopted the boy in March 1878, but in September 1878 the boy died. The Government of India then recognised the selection of another successor, Ranjit Singhji, but on terms which implied that he might be displaced by a legitimate heir if subsequently born. Ranjit Singhji was not actually adopted by the Chief. On August 10, 1882, a son was born to the Jam by Jan Bai, a Muhammadan lady, the sister of Dhani Bai, the mother of Kalubha. Kalubha had a son named Lakhubha; and the Jam now proposed that Jaswant Singh, the son of Jan Bai, should be recognised as the successor, in preference to the designated successor, Ranjit Singhji, and Lakhubha, his grandson by his legitimate but disinherited son, Kalubha. Jaswant Singh was legitimate if Kalubha was, for Jan Bai was married to the Jam.

Commenting on these facts Mr. Durand, then Foreign Under-Secretary, observed that as in Baroda we had barred Malhar Rao Gaekwar and his issue, so in Nawanagar we had without doubt barred from the succession Kalubha and his issue. In both cases the thing done was an act of State. Kalubha had been set aside, and he and his son had been removed from Nawanagar on grounds of general policy for the welfare of the State. "There was no question," said Mr. Durand, referring to the wish of the Chief to adopt a successor other than Lakhubha, "of Lord Canning's *Sanad*, under which, on failure of natural heirs, we should have been bound to recognise and confirm any adoption made according to Hindu law and the customs of the Chief's race. There had been no such failure of natural heirs as that contemplated in the *sanad*. For reasons of State and at the desire of the Chief, we had removed the Chief's natural heir and his issue, but we were not therefore bound to recognise and confirm any adoption made by the Chief. To begin with, it was at least doubtful whether he *could* adopt 'according to Hindu law and to the customs of his race.' Anyhow, whether he could or not, we were not bound to recognise such adoption. There was not a failure of natural heirs such as would have tied us down; and we accordingly called upon the Chief to nominate a successor, not as of right, but for our 'approval.'

"The Chief nominated one Umed Singhji, but contested the position that he could not legally adopt during his son's life. He was very anxious to do so in order to sever all connection with Kalubha; and he said he could do so under Hindu law, that a son could be 'disinherited for vice' and another adopted. The Bombay Government supported this contention as a point of law, and advised compliance with the Chief's wish.

"The point of law had nothing to do with the succession. Lord Canning's *Sanad* never contemplated that Native Chiefs should be able to create a failure of natural heirs by disinheriting their sons for vice, and that we should then be bound to recognise and confirm their adoption of another successor. Manifestly we should be in an absurd position if such a course were possible. Any Native Chief could at pleasure set aside his eldest son, or his only son, and then his adopted sons to any number, the British Government being forced in each case to let him have his own way, and to recognise and confirm his action. For the purposes of the Adoption *Sanad* such disinheriting for vice was clearly inadmissible. Failure of natural heirs could only be caused by death or non-existence.

"But the *sanad* aside, and the adoption carrying with it no right of succession, the point of law was one with which we were in no way concerned. If the Chief liked to adopt a son in the lifetime of other sons, that was his affair. We had in fact no right to interfere. If the adoption had carried a right of succession, then we should have been bound to see whether it was according to Hindu law and the customs of the race before recognising and confirming it. As the adoption carried no right of succession, it was no object with us to dispute with the Chief about his legal powers. We pushed our complaisance rather far, I think, in saying we 'would recognise and confirm' the

adoption. It would have been enough to say that we had no objection to his going through any religious ceremonies he pleased. But if the Chief wished us to recognise and confirm the adoption, there was, under the circumstances, no very strong reason why we should not.

"Similarly, there was no very strong reason why we should not recognise the adoption of Ranjit Singh, though it might have been better to recognise the succession, and let the Chief adopt if he pleased, as a matter of entire indifference to us.

"The Chief now says that he has never gone through the ceremony of adoption, and that a son has been born to him by a Musalman wife. He therefore wishes to get rid of Ranjit Singh, and to secure the succession for his son.

"The question whether he has gone through the ceremony of adopting Ranjit Singh has nothing to do with it. The essential point with regard to Ranjit Singh's succession is not the adoption, which anyhow would only have been a supplementary religious ceremony, but our approval and recognition. As the matter now stands, Ranjit Singh is unquestionably the heir designate; and without the approval of the British Government he cannot be set aside.

"On the other hand, the birth of a son seems to me to make all the difference. Jaswant Singh is apparently just as much a legitimate son as Kalubha was, and the adopted son would naturally lose his claim on the birth of a legitimate son of the body." Mr. Durand advised that the hands of Government were free, and that the proper course was to recognise Jaswant Singh. The case was circulated to all Members of Council, who unanimously took this view. The decision of the Government of India was thus expressed¹²:—

"In regard to the claims of Lakhubha, the son of Kalubha, I am to observe that his title was fully considered in 1877, and was then deliberately set aside. This decision is final and cannot now be reconsidered.

"In his despatch, dated February 20, 1879, the Secretary of State approved the proceedings of the Government of India in selecting Ranjit Singh to be His Highness's heir and successor. The Government of India concur with the Government of Bombay in thinking that this formal recognition is not in any way prejudiced by the omission of the Jam to perform the ceremony of adoption. They further agree that such a recognition is an act of State, which should not be lightly cancelled. The only question is whether the circumstances now reported by the Bombay Government are such as to render a fresh decision right and expedient.

"It appears that in August 1882, one of the recognised wives of the Jam gave birth to a boy named Jaswant Singh, whom His Highness recognises as his legitimate son. The Jam requests that the recognition given to Ranjit Singh at the time when His Highness had no legitimate son living, except Kalubha who had been disinherited, may now be withdrawn in favour of the son of his wife Jan Bai. The Governor-General in Council considers that the birth of a legitimate son is a sufficient and proper cause for withdrawing a recognition, which from the nature of the case was conditional, and was understood to be such by the Government of India. I am accordingly to request that the Jam may be informed that his son Jaswant Singh is recognised as the heir and successor to the State of Nawanagar. I am to add that a suitable provision should be made for the maintenance of Ranjit Singh, whose position under the altered circumstances constitutes a strong claim upon the generosity of His Highness."

§ 323. As in the case of a recognised successor, so also in the case of an adopted son, the claim may be lost in consequence of the subsequent birth of a legitimate son of the body to the Chief of the State. In this connection we may cite here the recent precedents of the Dhar adoption, 1890, and the Jhabua adoption, 1893.

¹² Pro., Internal A, November 1884, Nos. 35-113. In connection with this case see the Kashmir case, 1883-84, paragraph § 293, and the Bhartpur case, 1893-94, paragraph § 436, in which the probable or actually expressed wish of the Chief to set aside the first-born son was disregarded. The remarks of Sir Mortimer Durand in the Dugri case, paragraph § 347, may also be referred to.

In 1869 the Chief of Dhar was assured that the Government of India would sanction any adoption which he might make in accordance with Hindu law and the customs of his race, with the reservation that the adoption should not be regarded as final if a lawful son were subsequently born. Till 1890 the Chief made no adoption, but in that year he proposed to adopt one Udaji Rao, the younger son of his half-brother, subject to the same condition. The Chief had lately lost his wife, but proposed to marry again. The Government of India agreed¹³ to the adoption with the remark that in the event "of a lawful son being hereafter born to His Highness, he will be entitled to succeed to the *gaddi* in preference to Udaji Rao."

The Jhabua case of 1893 was a very similar one, and the final order was expressed in almost identical terms. In August 1893, it was reported that the Raja of Jhabua wished to adopt Udai Singh, a near collateral relation, aged 17, the second son of Ragnath Singh, Thákur of Khawasa, in the Jhabua State. It was stated that the proposed adoption was in accordance with family custom and had met with the approval of the Jhabua nobles. Himmat Singh, the eldest son of Ragnath Singh, whom the Raja had four years previously intended to adopt, was suffering from a chronic disease and did not think he had any right to object to being set aside in favour of his younger brother. A stipulation made by the Raja with Ragnath Singh was that Udai Singh should succeed to the State if the Raja should have no natural heirs, but that if a son should be born to any of the Ranis, Udai Singh should have only a *jagir* of ₹3,500 per annum. The Government of India sanctioned the adoption, adding that in the event of a lawful son being hereafter born to the Raja, that son would be entitled to succeed to the Chiefship in preference to Udai Singh.¹⁴

§ 324. The Udaipur succession case, 1874, is the next for consideration, as we will now again follow the order of time in our review of the working of the adoption policy. In that case, however, there was no express reference to the Adoption *Sanad* of the Chief or to the policy of Lord Canning. But the precedent is valuable as showing the customary procedure in a State of Rajputana when a Chief dies leaving no lineal heir by blood or adoption, and as illustrating the position of the British Government as the arbiter of disputed successions. The precedent also derives importance from the peculiar eminence of the Udaipur house. "The Udaipur family"—we quote from Aitchison¹⁵—"is the highest in rank and dignity among the Chiefs of India. The ruling Chief is considered by Hindus to be the representative of Rama, the ancient King of Ajodhya, by one of whose descendants, Kanak Sen, the present family was founded about A.D. 144. The States of Dungarpur, Banskára, Partabgarh, and Sirohi are offshoots from it. The Bhonsla family and Sivaji, the founder of the Mahratta power, were also descended from the house of Udaipur. No State in India made a more noble and a more desperate resistance to the Muhammadans. It is the boast of the family that they never gave a daughter in marriage to any of the Muhammadan Emperors; and for many years they ceased to intermarry with the other Rajput families who had formed such alliances."

On October 7, 1874, Maharana Sambhu Singh, a very promising Chief, beloved by his people in a remarkable degree, died of abscess of the liver at the early age of twenty-seven. He left no lineal heir and, though he held an Adoption *Sanad*, made no adoption. The candidates for the Chiefship were his first cousin, Sajjan Singh, a youth of 16 or 17, and his uncle, Sohan Singh. On October 9, 1874, Colonel Wright, the Officiating Political Agent, Udaipur, reported [that a council of eight nobles in concurrence with the Maharani had unanimously nominated Sajjan Singh as successor, and that he had been proclaimed heir according to the form of the country. The Government telegram replying to the announcement was in the following words:—

["If Sajjan Singh, son of Sakht Singh, has strongest claims and is qualified, his succession will be recognised: but Viceroy awaits written report before giving formal sanction."]

Pro., Internal A, June 1890, Nos. 14-16.

" " " September 1893, Nos. 145-152.

Udai Singh succeeded in 1895. Pro., Internal A, May 1895, Nos. 100-108.

¹⁵ Vol. III, page 8.

[Government inquired at the same time whether the late Maharana had expressed any wishes as to the succession.

[The answer was that no wishes had been expressed by the late Maharana,—that Sajjan Singh was considered to have the strongest claim, and that except for the want of education he possessed the necessary qualifications. The Agent to the Governor-General, Rajputana, further reported that Sajjan Singh's father was alive, but that the Mewar nobles were opposed to his succession on the ground that he was the uncle of the late Maharana, and that it was against their custom to "go back from nephew to uncle." Colonel Pelly pointed out the advantage of having a minor on the *gaddi* and supported the nomination of Sajjan Singh.

[The Government of India accepted the nomination and recognised Sajjan Singh as Ruler of the Udaipur State on the grounds that he had been "unanimously selected by the Maharani and the council as the rightful heir and the fittest successor," and that his selection was stated to be popular.

[At the same time Government intimated¹⁶ that, as Sajjan Singh was not of full age or educated, he could not be at once entrusted with full powers of administration. The Agent to the Governor-General was directed to make arrangements, in conjunction with the Council, to carry on the administration "in the manner most consistent with the usages of the country and calculated to promote the welfare of the State and people."]

The other candidate, Sohan Singh, refused to tender his allegiance; and, as he persisted in his recalcitrancy, "a small"¹⁷ force of Udaipur troops, aided by a detachment of the Mewar Bhil Corps, was sent to reduce his fort of Bagor. Sohan Singh surrendered without firing a shot and was removed as a State prisoner to Benares. He was, however, allowed to return to Udaipur on certain conditions in 1880."

It is worthy of note that when the nobles came in a body to Colonel Wright and informed him that the Maharani and themselves had unanimously agreed that Sajjan Singh was the rightful heir, and begged Colonel Wright to go with them to the Assembly Hall to witness their recognition of the Chief whom they had selected, Colonel Wright declined to do so or to acknowledge the election officially until he had received the orders of Government. Only the Viceroy, he pointed out, could sanction the succession.

The case shows that while the British Government, in determining a doubtful succession in a Native State, is prepared to pay regard as far as possible to the general feeling in the State, and to the wishes, if known, of the late Ruler, it will not sanction any succession until it has satisfied itself as to the claims of the particular candidate and his personal fitness for rule.

§ 325. We said in paragraph § 308 that we should return to Alwar affairs

The Alwar Succession, 1874-75.

when considering the case of the Alwar succession. Maharao Raja Sheodan Singh, whose Muhammadan proclivities and quarrels with his Thákurs fill so large a space in Alwar chronicles between 1857 and 1870, died childless on October 11, 1874. He held an Adoption *Sanad*, but made no adoption and expressed no wishes in regard to the succession. There was no living legitimate descendant of Partab Singh, the first Chief of Alwar. The relatives of the late Sheodan Singh all belonged to branches of the family descended from ancestors who were not amongst the Ruling Chiefs. The Alwar Chief is of the Naruka clan of the Kachhwáha tribe of Rajputs of which the acknowledged head is the Maharaja of Jaipur¹⁸; and the independence of Partab Singh, who first threw off allegiance to the Jaipur Chief and established for himself a separate principality, dates from about 1775 A.D. Naru, the eponymous founder of the Alwar Chief's clan, appears to have lived in the first half of the sixteenth century. He had five sons,—amongst them Lála, ancestor of the Laláwat Narukas, to whom the Alwar family belongs, and Dása, ancestor of the Dasáwat Narukas, the branch of the Chiefs of Uníára and Láwa. The first of the Laláwat Narukas to settle in the present Alwar territory was Rao Kalian Singh, who in 1671, and previously, was established at Macheri in the service

¹⁶ Pro., Political A, November 1874, Nos. 95-118.

¹⁷ Aitchison, III, page 15.

¹⁸ The account of the clan and family in the text is taken mainly from the Rajputana Gazetteer, Vol. III, pages 178-191.

of the Jaipur Chief. Rao Kalian Singh had six sons; of whom five had issue. They are said to have furnished 84 horse to the service of Jaipur, the service grant allowed for each horse being 200 cultivated acres. The five sons of Rao Kalian Singh, who had issue, founded five estates—Macheri, Pára, Pai, Khora, and Palwa. The Macheri family, which was that of the eldest son of Rao Kalian Singh, split into two branches; the elder branch is that of the Chiefs of Alwar, the younger that of the Thákurs of Bijwar. These Thákurs are therefore more nearly related to the Chief than any members of the other four families. These other four families—Pára, Pai, Khora, and Palwa—with the Macheri family in its two branches are known as the *pánch thikánas*, and they and their offshoots are described as the *bára kothris*, a term borrowed from Jaipur, where it is applied to some families related to the Chief. At the time of the death of Sheodan Singh the *bára kothris* comprised twenty-five families, so that the number *bára* or twelve was merely part of a name, not an indication of the number of the families connected with the ruling house. Like the Macheri, also called the Rajgarh, family, the Pára family became divided into two branches, and the junior branch of this family is the Thana branch to which the Chief, whose selection was approved by the British Government, by birth belonged. It is a rule of custom that, whoever the Chief may be, he must be a member of one of the *bára kothri* families.

Partab Singh died in 1791, leaving no sons of his body, but having selected and adopted an heir. He considered that any boy of the *bára kothris*—that is, any descendant of Rao Kalian Singh—was eligible; and he assembled his young kinsfolk, probably eliminating those whose horoscopes were not promising, and, as the story goes, selected one of them by a method which is also ascribed to Haidar Ali when he was selecting a successor to the far-distant house of Mysore. The principal Thákurs with their sons were brought into a room on the floor of which toys of various descriptions were laid out, and the boys were told to choose the toys they liked best. Bakhtawar Singh, son of the Thákur of Thana, chose a toy sword and shield, and of his own accord seated himself in the Chief's lap, who at once declared him to be his heir. Bakhtawar Singh, who died in 1815, like his adoptive father, had no legitimate sons. He did not assemble the boys of the *bára kothris*, but sent for a lad named Banni Singh of his own original house of Thana, with the intention of adopting him. Bakhtawar Singh, however, died before the ceremony took place. The succession was disputed by an illegitimate son of the late Chief named Balwant Singh, but we need not enter here on the curious details of that part of the story,—curious, because a compromise was attempted assigning the title to Banni Singh and the authority to Balwant Singh, and the Resident at Delhi sent *khilats* to both. In the end the power of Banni Singh was established, and he held the Chiefship till his death in 1857 after the outbreak of the Mutiny. Sheodan Singh was his son, and thus in the history of the family since it acquired a State there had been two selections from the house of Thana and none from any other house.

The Government of India, in 1874, considering that the choice lay between two candidates, referred to the vote of the *bára kothris* the question which of these two should be selected. A memorandum was prepared of the terms in which the Political Agent was to make the reference to the *kothris*, and this document, after reciting some of the facts stated above and declaring that there was no one who had a claim of right to succeed to the State, proceeded thus:—

“It therefore devolves upon the British Government to arrange for the future administration of the State of Alwar. In accordance, therefore, with the gracious intimation conveyed to the late Chief in 1862 that Her Majesty the Queen desires that the Governments of the Princes and Chiefs of India should be perpetuated, and that the representation and dignity of their houses should be continued, His Excellency in Council desires that notwithstanding no heir has been adopted according to Hindu law and the customs of the race to which the late Chief belonged, a Ruler of the Alwar State should be selected from the collateral branches of the family.

“There are among the collateral relations two candidates to whom general considerations point as the persons most suitable for selection, *viz.*, Thákur Lakhdhir Singh of the Bijwar family, aged 56, and Mangal Singh of the Thana

family, aged 16. It is understood that Surtan Singh, elder brother of Mangal Singh, would not, under ordinary circumstances, be eligible, he having already succeeded to the estate of his father, the late Hardeo Singh. Moreover, he makes no claim.

“Of the two candidates Lakhdhir Singh is the one most closely related to the late Chief. It appears from the genealogical tree furnished by the Political Agent that Lakhdhir Singh's branch is descended from the great-grandfather of the first Chief of Alwar, whereas the branch to which Mangal Singh belongs is descended from an ancestor two generations further removed, and that Lakhdhir Singh is related to the late Chief in the 11th degree and Mangal Singh in the 16th. The Political Agent also reports that Lakhdhir Singh is the nearest of kin of all eligible members of the family. Lakhdhir Singh is reported to be a man of ripe experience and administrative ability. If, therefore, he were selected, the British Government would be able to withdraw at once to a great extent from the interference in the affairs of the Alwar State which circumstances have of late years compelled it to exercise.

“On the other hand, His Excellency in Council gathers from the papers under consideration that there is a strong feeling in the family, in the Council, and in the State generally in favour of a selection from the Thana family on the ground, among others, that Lakhdhir Singh's branch has been twice passed over in favour of the Thana branch, once by the first Ruling Chief of Alwar, Partab Singh, who adopted Bakhtawar Singh, from the Thana branch, and again on the death of Bakhtawar Singh, when Banni Singh, the father of the late Chief, was selected from the same branch. It may be assumed that Mangal Singh gives fair promise of fitness for rule. But if he were selected, the control of the British Government over the Alwar administration could not for some years to come be withdrawn to the same extent as if Lakhdhir Singh were chosen.

“The possibility of a third course has been suggested, *viz.*, the selection from the collateral members of the family or the twelve *kothris* generally. But His Excellency in Council is not in favour of this course. If in the twelve *kothris* there were any one candidate, besides the two already mentioned, distinguished by pre-eminent fitness, who combined with other qualifications the general support of the family and nobles, His Excellency in Council would take his claims into consideration. But there is none such, and under these circumstances to widen the field of selection would only be to raise groundless hopes in many quarters and add to the elements of discontent and disorder. His Excellency in Council has, therefore, determined that the question as between Lakhdhir Singh and Mangal Singh should be decided by the voice of the twelve *kothris*.

“Until the selection is made it would be premature to discuss the details of the future administration. For the present His Excellency in Council contents himself with expressing his general concurrence with the Agent to the Governor-General as to the principle to be observed, *viz.*, that of withdrawal from minute interference with the internal affairs of the Alwar State, so soon as this can possibly be done consistently with our obligations to the people.”

The question was referred to the *kothris* accordingly, and Mangal Singh of Thana was chosen by a small majority. He was recognised and confirmed as Ruler of the Alwar State on December 12, 1874, and was installed on the 18th idem. The claimant Thákur Lakhdhir Singh and his partisans refused to tender their allegiance and continued to give trouble, but we need not pursue that part of the case. Arrangements were made for the administration of the State and the education of the young Chief, the management of affairs being entrusted to a Council of which the Political Agent was President. In December 1877 the Chief was invested with full governing powers, which he exercised till his death on May 22, 1892. He was succeeded by his only son, Maharaja Jai Singh.

Such being the facts of the case, its importance for our purposes here is due to the discussion between the Secretary of State and the Government of India to which the facts and the action of the latter gave rise. On

November 12, 1874, the Viceroy, Lord Northbrook, telegraphed to the Secretary of State:—

“There being no living descendant of first Alwar Chief and no heir lineal or adopted, I have sanctioned selection from remote collateral branches. I propose to publish resolution setting forth that as it devolves on British Government to arrange for future administration of the Alwar State, I have sanctioned such selection in accordance with Queen’s gracious intimation made to the Princes of India that Her Majesty desires perpetuation of their government. Please telegraph whether you have any objection to publication.”

Two days later the Secretary of State replied:—

“Your telegram of 12th. I do not object selection, but I entertain objections to proposed resolution. It goes considerably further than Queen’s Proclamation of 1858, and will be treated as a pledge in every similar case, which may be inconvenient.”

§ 326. The Secretary of State explained his objections in a despatch¹⁹ of February 11, 1875. Referring to the memorandum of which nearly the whole has been quoted above, he said:—“I regret that Lord Canning’s *Sanad* should have been alluded to in a manner which seems calculated to cause some misapprehension of its scope and meaning and might possibly lead to future embarrassment.” He pointed out that the manner in which the Government of Alwar was to be continued was, in the Alwar Adoption *Sanad*, clearly defined to be the adoption by the Chief, on failure of natural heirs, of a successor according to Hindu law or the customs of his race; and that the *sanad* contained no provision for the selection of a successor in the event of the Chief failing to avail himself of the privilege of adoption. The Secretary of State then went on to say:—“Lord Canning’s views upon the subject were clearly laid down in his letter No. 9, dated the 28th January 1860, in which, when discussing the propriety of granting to the Rajas of Patiala, Jind, and Nabha the power of electing a successor to any one of them dying without male issue, and without having nominated an heir by adoption, he expressed his opinion that, if a Chief was so little careful to provide a successor of his own choice as to neglect to adopt one during his life, it appeared to him quite reasonable and in accordance with the established relations between the Paramount Power and Native States, that the succession should lapse to the British Government, although in most cases that Government would probably act wisely in re-establishing the Chieftainship and forbearing to take the territory itself.

“Notwithstanding this expression of Lord Canning’s views, the *sanads* given to the Rulers of Patiala, Jind, and Nabha provided that, on the occurrence in either of these States of the contingency contemplated above, the selection of a successor should be made by the surviving Chiefs in concert with the Commissioner or Political Agent of the British Government; but no similar proviso was included in the *sanads* which were granted in terms otherwise identical to the Chief of Alwar and others.²⁰

“Although, therefore, I cordially approve of the decision you have arrived at in the case of Alwar, as in the similar case of Udaipur, it appears to me inexpedient to speak of that decision as being in accordance with the *sanad* of 1862, which in fact made no provision for the contingency which has arisen. Such an interpretation may be found embarrassing in future by seeming to bind your Government to follow a similar course upon an occasion when its adoption may not be recommended by considerations either of justice or policy.”

The Secretary of State then suggested that the State of Alwar should be formally regranted to the new Chief upon such conditions as the Government of India might think proper; or if it were too late, or deemed inexpedient, to adopt this course, that an opportunity might be found of causing it clearly to

¹⁹ Most of the Alwar succession papers are in Pro., Political A, February 1875, Nos. 94-149. The despatch of February 11, 1875, No. 15, is in Pro., Political A, June 1875, Nos. 132-134, where also will be found the reply of the Government of India. The final orders of the Secretary of State are in Pro., Secret, May 1876, No. 95.

²⁰ The Adoption *Sanads* granted to the three Phulkian Chiefs and here referred to are in Aitchison, IX, pages 77, 95, and 103. The Chiefs are Sikhs and the *Sanads* make no mention of the Hindu law.

be understood that the selection of a new Ruler had been sanctioned not as a matter of right, but upon considerations of sound policy, and regard to the wishes and interests of the people.

§ 327. The Government of India replied in a despatch of June 7, 1875.

Reply of the Government of India. They remarked that the memorandum to which the Secretary of State took exception had clearly stated that the late Chief had not availed himself of the power conferred upon him by the *sanad* of 1862; that there was no one who had a claim of right to succeed to the State; and that therefore it devolved on the British Government to arrange for its future administration. The despatch, which was an important one, continued in these terms:—

“In proceeding to select a collateral member of the family, we did not describe our proceedings as being in accordance with what may be termed the ‘enacting’ portion of the *sanad* of 1862, but as in accordance with the gracious policy announced in the declaratory portion of the *sanad*, to which policy the particular privilege conferred upon the recipients in regard to adoption gave expression in one particular form.

“5. It is true that adoption according to Hindu law and the customs of the race to which a Chief belonged was the only manner in which the *sanad* placed it in the power of a Chief himself to perpetuate his House in the event of the failure of natural heirs. But the *sanad* placed no restriction upon the manner in which, in the event of a Chief failing to avail himself of the privilege of adoption, effect might be given to the gracious desire which Her Majesty had expressed that the Governments of the several Princes and Chiefs in India should be perpetuated and the representation and dignity of their Houses continued.

“6. It appears to us that *the value of the sanad lies far more in the general assurance conveyed in the preamble than in the right which it conferred upon Chiefs themselves to adopt in accordance with Hindu law and the customs of their race. The concession to the Chiefs indeed would have been but a trifling boon, had the British Government intended by implication to assert that the doctrine of territorial escheat would remain applicable, according to their discretion, in all cases in which the precise conditions of the sanad were not complied with.* For example, the *sanad* requires the adoption to be made by the Chiefs themselves. It makes no provision for adoption by widows, which nevertheless is one of the commonest forms of adoption in Native States. Again, it requires that the adoption be strictly in accordance with Hindu law or custom. But it is impossible to say with precision what Hindu law or custom in regard to such adoptions is. If the adoptions that take place to Native States be judged by the law or local custom applicable to private property, few of them can be considered valid.

“7. But *it has not been the practice of the British Government, since 1862, to take advantage of informalities in adoption, or to interpret to its own advantage the doubts with which, as is well known, Hindu laws and customs when applied to adoptions to States are surrounded.* According to our understanding of the *sanad*, it was framed with a view of giving a specific assurance in one class of cases which could easily be foreseen and defined, depending upon a general assurance applicable to many other cases which (as is abundantly shown in Lord Canning’s despatch¹ of 30th April, 1860) it would be impossible to define even if they could be foreseen.

“8. There are other important proofs of the policy which dictated this *sanad* and the other *sanads* contemporaneous with it. The policy to which they gave expression in one particular form appears to us to be much wider than the special obligation contracted in the *sanads* themselves. We understand that policy to have been expressed in the Queen’s Proclamation of the 1st of November 1858 to the Princes, Chiefs, and people of India, in which Her Majesty was graciously pleased to say—‘We desire no extension of our present territorial possessions.’ It was further developed in the communications which took place between the Government of India and Her Majesty’s Government previous to the issue of the *sanads* of 1862. It is true that, in his

¹ See Appendix A.

despatch of the 28th of January 1860, Lord Canning uses expressions signifying that in default of adoption, successions would, according to reason and custom, lapse to the Paramount Power. But he was addressing himself to the special question whether or no the Chiefs of Patiala, Jind, and Nabha should be allowed to choose a successor in the case of a vacancy in either of those States. As between the two alternatives under consideration, Lord Canning might well say that it was better to affirm the principle of lapse or escheat to the Paramount Power. But even in that case he took care to guard himself by adding that, as a matter of policy, it would almost always be advisable to re-establish the Native Chieftainship; and even then his argument, applied as it was to a special case, and qualified as it was by an enunciation of the broad rule of policy, was not accepted by the Home Government.

"9. As time went on, and as the question of policy came to be discussed with a more general application, it is clear that Lord Canning's general views of policy prevailed over that which struck him as applicable to the special case of the Phulkian families. In his despatch of the 30th of April 1860 he proposed to abandon the principle of territorial escheat and confiscation with this single² limitation that the penalty of sequestration or confiscation should be used only when the misconduct or oppression (in a Native State) is such as to be not only heinous in itself, but of a nature to constitute indisputably a breach of loyalty or of recorded engagement to the Paramount³ Power. And in the 3rd and following paragraphs of that despatch Lord Canning expressed in the plainest language that the effect of his proposals would be to abandon the opportunities of extending the British possessions in India which in former times had been held to be justifiable. The complete adherence to this policy by Her Majesty's Government was conveyed in Sir Charles Wood's despatch of the 26th of July 1860.

"10. Viewed in this light, *while the sanads bind the British Government to recognise as heir to the State the particular individual lawfully adopted by the Chief himself, during his lifetime, the declared policy which it is our duty to carry into effect appears to us to be that in the event of the Chief failing to adopt, the integrity of the Native State should, if possible, be maintained. In the event of a Chief dying without natural heirs, and without exercising the power of adoption conferred by the sanad, we hold that the British Government is under no obligation to maintain the State in the person of any particular individual, and may recognise such successor as on general considerations it deems best.*

"11. If we have correctly interpreted Her Majesty's gracious assurance to the Chiefs and Princes of India as recorded in Lord Canning's *Sanads* and in the despatches by which these *sanads* are explained, then the course adopted by us in the Alwar case was, in our opinion, in perfect accord with that policy. And we are of opinion that to narrow the general terms of Her Majesty's assurance to the single concession made in the *sanads* granted to Native Chiefs, would be opposed to the spirit of the wise and generous policy which more than anything else has in recent years won for the British Government the confidence of the Princes and Chiefs of India and might be attended with dangerous consequences."

§ 328. The final despatch of the Secretary of State, while it showed that Her Majesty's Government was entirely at one with the Government of India in regard to the policy which had dictated the *sanads* and which should be observed on the death of a Ruling Chief without heirs, natural or adopted, drew an important distinction between that policy and the specific pledge which the language of the *sanads* imposes on the British Government. The Secretary of State did not press his suggestion that there should be a constructive lapse and formal re-grant of the State of Alwar. Indeed in the case of a State of Rajputana, where, from the peculiar constitution of the political society of which the Chief forms a part, a collateral succession by the election of a

² See paragraph 31 of despatch in question, Appendix A.

³ In this connection the later declaration of the Secretary of State in the Baroda case (*supra*, paragraph §12) that incorrigible misrule is of itself a sufficient disqualification for sovereign power, will not be overlooked. But there

is a distinction between the deposition of a particular Ruler and the confiscation and re-grant of a State. In the case of Manipur, where there was a distinct re-grant, there was also a distinct breach of loyalty.

Chief from a certain clan or family would be an entirely normal affair, any such formal re-grant would have been open to extremely strong political objection. No such objection was officially stated at the time, perhaps in part because the close analysis of the Rajputana Chiefships since made in the Rajputana Gazetteer and Sir Alfred Lyall's *Asiatic Studies* was not then in existence. But this particular objection was felt by the Viceroy, Lord Northbrook, as we shall show below.

The Secretary of State's final despatch No. 24, dated September 9, 1875, must be quoted almost in full. It was in part a textual examination of the actual terms of the Adoption *Sanad*, and in part a broad declaration of concurrence with the Government of India on the most essential question under consideration, accompanied, however, by a rider which may, at any time, assume great practical importance.

In acknowledging the despatch of June 7, 1875, the Secretary of State said:—"From the tenor of Your Excellency's letter under reply, I find that my remarks have been misunderstood and have been interpreted as in some sense impugning the policy which has been pursued towards the Native States of India since 1858. There is nothing in the terms of my despatch which will bear such an interpretation. The nature of the misapprehension into which you have fallen will be evident if a distinction be drawn between the policy which Her Majesty's advisers have since 1858 thought it expedient to pursue, and the solemn obligations into which Her Majesty has entered.

"Since 1858 it has been laid down by many high authorities, and has passed into a political axiom, that *any further extension of the direct jurisdiction of the British Government by the application of the doctrine of lapse is highly inexpedient*. This conclusion has not been drawn from any assumed inconsistency of that doctrine with the abstract rights of the protected Princes. Nor does it rest wholly on a consideration of the dangers to British rule which a sense of insecurity in their minds might produce. It is principally due to a recognition of the many advantages to the people themselves conferred by the existence of a considerable proportion of territory governed, under adequate supervision, by Native Rulers.

"This *policy* is closely connected with the assurances conveyed in Lord Canning's *Sanads*, but it is not identical with them either in scope or motive. If it had not been accepted, these *sanads* would probably never have been issued. But it covers a larger ground. *It aims at the perpetuation of Native rule, which is something wider than the perpetuity of the Houses of Native Rulers*, and it is based on grounds of general policy, not on an exclusive regard for their individual claims. It would be opposed to the annexation of Native territory, even though the whole of some Chieftain's family were by some accident to become extinct.

"On the other hand, *it is a policy, not a pledge*. It is capable of exceptions under the pressure of an adequate exigency. It can be administered subject to conditions, which may vary from time to time according to the circumstances of the day. In these respects it stands in contrast to a pledge from which not even the slightest departure can be suffered. A modification of this policy might imply imprudence, or even fatal error, but it would involve no dishonour. Whatever unhappy consequences it might involve, it would not entitle any family to complain that they had suffered wrong.

"*Her Majesty's Government value this policy very highly, and will on no account suffer it to be violated*. But a broad distinction must be drawn between it and the obligations, binding in honour upon Her Majesty, which are contained in Lord Canning's *Sanads*.

"International stipulations between independent potentates are among the most solemn forms of engagement; and pledges entered into between a superior and an inferior in power have a specially sacred character. But the imperative nature of their obligation exacts a corresponding exactitude in their definition. It is essential that their meaning should be expressed with precision, and that they should not be subjected to any lax interpretation.

"Viewing them in this light, I am unable to assent to the construction Your Excellency has placed upon these *sanads*. I cannot attach a different

meaning to the 'declaratory' and the 'enacting' part, or recognise a breadth of obligation in the former which is pared down and narrowed in the latter. The pledge given amounts simply to this, that if adoptions are made by the Chief, they will be recognised by the Government.

"The sentence to the two parts of which Your Excellency affixes a distinct interpretation runs as follows:—

"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, the adoption by yourself and future Rulers of your State of a successor, according to Hindu law and to the customs of your race, will be recognised and confirmed."

"It may be remarked that the 'assurance' given in the last part is in 'fulfilment of the desire' expressed in the first part. 'Fulfilment' is a word which excludes incompleteness or defect, and gives no encouragement to the suggestion that there are portions, and very large portions, of Her Majesty's 'desire' which do not find their accomplishment in the 'assurance.' If the enacting part 'fulfils' the declaratory part, the latter cannot include more than the former. But, apart from criticism of single words, I should rest my general view of Your Excellency's interpretation upon this principle—that *obligations of so solemn a character must not be taken to include more than is clearly stated in them.*

"On these grounds Her Majesty's Government must withhold their sanction from any application of Lord Canning's *Sanad* to a purpose wider than that which is expressed in the assurance it conveys.

"As regards the expressions used by Lord Canning in his letter of the 28th January 1860, which were quoted in my despatch, and which intimated His Lordship's opinion that, in default of adoption, it was in accordance with reason and custom that successions should lapse to the Paramount Power, I am unable to agree with Your Excellency's Government in thinking that, in using those expressions, Lord Canning was referring exclusively to the cases of Patiala, Jind, and Nabha, which were at the moment under discussion. On the contrary they plainly enunciate a principle of general application. Nor can it be correctly said that His Lordship's argument was not accepted by the Home Government, for in deference to it Sir C. Wood consented that, under the circumstances contemplated, the selection of a successor to the vacant *gaddi* of any one of the three States should be made by the Governor-General in communication with the surviving Chiefs, instead of by the latter alone as had been originally proposed. This modified concession was avowedly made as a very special case, in consideration of the exceptional services rendered during the Mutiny by the three Cis-Sutlej Chiefs, and was not extended to any other Chief, Hindu or Muhammadan.

"I cannot find any indication that Lord Canning's views on this point underwent modification in the three months which elapsed between the date of his letter of January 1860 and that of his subsequent letter of April on the question of adoption generally. The first letter dealt with the position of a Native State lapsing to the British Government in consequence of its Ruler not having adopted an heir. Such an omission on the part of a Chief was not contemplated in the latter letter, and Lord Canning's remarks in it on the subject of territorial escheat and confiscation had therefore no reference to that contingency. His Lordship wrote throughout on the assumption that the privilege of adoption would not be regarded by the Native Chiefs as a trifling boon, but would, as a rule, be exercised. Accordingly it was pointed out, to meet possible objections to his proposals, that the Paramount Power would not thereby be debarred from inflicting the severest penalty, even to that of confiscation, upon a Native Ruler, in his lifetime, for misconduct or oppression, although Lord Canning considered that so extreme a penalty should not be enforced except in cases of a certain defined character. No doubt, too, His Lordship contemplated that the effect of his measure would be that opportunities of extending the British possessions in India, which in former times had been accepted, would cease to occur; but for that result to follow, it was

necessary that the privilege which he proposed to concede should be exercised, and that the *sanads* conferring it should not be allowed to remain dead letters.

“Applying these views to the particular case of Alwar, I am unable, after full consideration of the arguments put forward in your letter under reply, to modify the opinion expressed in my despatch of the 11th February last, in regard to the terms in which the restoration of Native rule in that State, in itself a measure cordially approved by Her Majesty’s Government, was notified to the *kothris*.

“I regret that, by the omission formally to re-grant the State to the new Ruler by *sanad*, or otherwise, on some such terms as were suggested by your Agent in Rajputana in his letter of the 4th November last, a favourable opportunity has been lost of placing the relations between the British Government and the Alwar State on a footing less anomalous and unsuited to the present condition of India than is possible under existing treaties with that State. *While concurring generally in the views expressed in the tenth paragraph of your letter, I am of opinion that, in the circumstances therein anticipated, the British Government may not only recognise such successor to the Chiefship of a Native State as, on general considerations, it may deem best, but attach conditions to the succession which, while as little onerous as possible to the State concerned, shall secure to the Paramount Power a fair equivalent for the external protection and internal support afforded by it.* There is a wide difference between escheat or confiscation, and the attachment of conditions to the restoration of Native rule in a State circumstanced as Alwar was lately.

“These considerations should be borne in mind upon any future similar occasion.”

§ 329. The question whether any reply should be made to this despatch was considered by all Members of Council.

The orders of the Viceroy, Lord Northbrook.

A reply was actually drafted and circulated, but none was sent. The reasons for this decision appear to have been that there was no difference of opinion between the Secretary of State and the Government of India on the essential principle that the doctrine of lapse ought not to be revived; that the Secretary of State concurred generally with the Government of India as to the course which should be taken on the death of a Chief without heirs; that the original proposal for a re-grant of the Alwar State was not insisted upon; and that on the only remaining point of importance—*viz.*, that in such a case as that of Alwar, conditions might be imposed—the Government of India were not prepared to contest the decision of Her Majesty’s Government.

No further official action was taken by the Government of India, but the Viceroy, Lord Northbrook, left his orders on record. “Conditions,” he said, “based upon the principle of an ‘equivalent for protection,’ if it is intended to take the form of a tribute, do not seem to me to be generally applicable or politically expedient; but there are doubtless anomalies and anachronisms in our engagements with Native States which it is desirable to remove, and on a reconsideration of the subject, I do not think it would be right to hamper the British Government from imposing conditions in such cases. The cases when it would be wise and just to impose such conditions will, I believe, be very rare. Their justice should be determined by their accordance with the general interests of the Empire or the particular interests of the State concerned; their wisdom would be determined by the degree of their importance, and their probable effect upon the Princes and Chiefs of other Native States.

“The Secretary in the Foreign Department should take care that in any future case of a failure of lineal or adopted heirs, the instructions of the Secretary of State are borne in mind. The general policy of the British Government to maintain the integrity of Native States should be recited in any State papers on the subject of successions in such cases, and not the *sanads* of 1862. It should be considered whether a fresh *sanad* is or is not advisable in each case; and, if so, whether it is expedient to attach any new conditions to the succession.

“Particular care will be required in dealing with such cases in Rajputana, where they are by no means uncommon. Besides the Alwar case there was

lately the Udaipur case, and I am not sure whether the recent case of Karauli was not also strictly one of a failure of heirs.

"I believe the doctrine of lapse on failure of lineal heirs has never been actually applied to the Rajput States.

"Among the Rajputs, Mr. Lyall informs me, a collateral succession of a descendant however remote from the main stock is to all intents and purposes as good as a lineal descent.

"If the *sanads* of 1862 had been granted to the Rajput States in the terms of the grant to Muhammadan States, they would have included a collateral succession.

"I feel sure that it would create alarm and distrust if it were known that the Paramount Power considered a collateral succession in Rajputana to be a good occasion for using the forms of lapse and re-grant of the State before recognising the succession, which was the course which Lord Salisbury contemplated in regard to Alwar; for the failure to adopt and the failure of lineal heirs occur so commonly in Rajputana that the Rajput States, who are now thoroughly loyal to the British Government, would be constantly exposed to uncertainty as to their treaty relations with us, and a feeling of want of confidence in the intentions of the British Government⁴ would be engendered."

§ 330. The Pudukota case of 1877, which is the next to note, was one of

The Pudukota Adoption Case, 1877.

three important cases under examination when the Mysore Instrument of Transfer⁵

was prepared. The succession clause in that Instrument was so framed as to give expression to the unwritten law and practice in the matter of successions in Native States, and to avoid the difficulties in the interpretation of the Canning Adoption *Sanads* which had arisen in Kashmir, Hyderabad, and Pudukota. The Kashmir succession case has been detailed at length in paragraph § 317, and we shall notice the Hyderabad case presently in considering the question of succession in Muhammadan States. The facts and decision in the Pudukota case will be stated here.

From 1871 to 1877 the Madras Government treated the eldest son of the deceased brother of the Raja of Pudukota as heir to the Chiefship, the Raja having no sons of his own. In 1872 the Raja begged that the son of a daughter by his second wife, known as the Junior Rani, might be recognised as his heir. The Madras Government refused this request on the ground that it was manifestly impossible for the Government to recognise the son of the daughter of the Junior Rani as heir to the State when the sons of the Raja's brother were living and the Raja's daughter by the elder Rani was married. In 1877 the Raja very secretly adopted another son of the daughter of the Junior Rani, an infant aged sixteen months, and prayed that the adoption might be recognised, under his Canning *Sanad*, by the British Government.

This, then, was the question which the Government had to decide; and the question resolved itself into three, each based upon a condition in the *sanad*. First, had there been a failure of natural heirs? If not, the *sanad* did not apply to the case at all. *Secondly*, had the adoption been made in accordance with the Hindu law; and *thirdly*, had it been made in accordance with the custom of the family?

As to the third question, there had been no adoption in the family for nearly a century and a half,—from the time, that is to say, of the first ancestor of whom there was any historical record. The decision on the second question

⁴ In connection with Lord Northbrook's remarks on the Rajput States of Rajputana, it is well worth while to quote Sir Alfred Lyall's description of them (*Asiatic Studies*, page 207):—"A Rajput State where its peculiar structure has been least modified, means the territory over which a particular clan, or division of a clan, claims dominion for its Chief, and political predominance for itself, by right of occupation or conquest. A Rajput Chief is the hereditary head of a clan whose members have for centuries been lords of the soil, or of the greater part of it, within the State's limits." In all I have read of the Rajputana States I have come across nothing inconsistent with the belief that there is no such clear-cut distinction between the dominion of the Chief and the political predominance of the clan as there is between different political ideas in later political history, as for example, there is, in States of a modern type, between sovereignty and private property in land. Indeed the case of these Rajput States has long seemed to me to be a case of tribal ownership applied to political power. If these views are just, the State may be said to belong to the ruling clan, and manifestly on the death of the Chief of the clan without heirs, all that has to be done is to elect a member of the clan as his successor.

was in favour of the Raja's prayer. It was held that he, being a Sudra, could adopt a daughter's son.

The first question gave rise to much discussion, and the Members of Council were unable to agree upon it. On the one hand, it was urged that the words "natural heirs" were intended to denote lineal, as opposed to collateral, heirs. This view was supported from certain passages⁶ in the Adoption *Sanad* correspondence, and by the argument that, by bringing the right of adoption into operation on failure of lineal heirs, to the exclusion of collaterals, it was Lord Canning's object, by encouraging resort to adoption, to secure a more fixed succession to Chiefships and save the Paramount Power the difficulty of deciding upon the relative claims of numerous collaterals. In one place in his despatch of 1860 (paragraph 28) Lord Canning, speaking of successions to Muhammadan Chiefships, distinctly mentioned the adoption of one collateral in preference to another on failure of *lineal* heirs; and the Secretary of State in his reply in two places used the expression "failure of *direct* heirs" in reference to concessions which Lord Canning had made or proposed. As to the intention to avoid the difficulty of deciding between collaterals, the Government of India quoted a long passage⁷ from the Minute of Sir Henry Maine in the Kashmir succession case which has already been transcribed in paragraph §317.

On the other hand, Sir Edward Bayley, one of the Members of Council, relying on paragraph 21 of Lord Canning's despatch of April 1860 in which he proposed a new rule "not by setting aside Hindu law so far as that avails," held that by the term "natural heirs" was meant heirs whose existence would, under Hindu law, preclude a legal adoption. In the opinion of Sir Edward Bayley the effect of the *sanads* was neither to extend nor confine the right of adoption as it exists under Hindu law, but merely to give it free course without any interference (as previously exercised) on the part of the Paramount Power. Mr. Whitley Stokes, the Law Member of Council, considered that the word "natural" was used in the *sanads* in contradistinction to "artificial," and included not only male issue of the body, but also male lineal ancestors and collateral heirs, who had come into the family by the natural process of birth, as opposed to the artificial process of adoption. As the Raja of Pudukota, when he adopted his daughter's infant son, had a male collateral heir living, Mr. Stokes thought that the circumstances contemplated in the *sanad* had not occurred, and that the *sanad* was therefore inapplicable. In this opinion the Commander-in-Chief concurred, and he and Sir Alexander Arbuthnot, both officers of Madras experience, and acquainted with Pudukota affairs, believed it would be impolitic to grant the Raja's request against the wishes of the Madras Government, inasmuch as there had been a long series of intrigues in behalf of the Junior Rani against the interests of the Senior Rani and the rest of the family.⁸

The Secretary of State, who replied on November 22, 1877, was reluctant here (as in the Hyderabad case to be noted presently) to pass an authoritative decision as to the meaning of the expression "natural heirs." "It appears to me," he said, "inexpedient to affirm positively the restricted interpretation of the words to which I understand the majority of Your Excellency's Government to incline, and, equally so, by finally rejecting it, to raise at once the formidable questions suggested by Sir H. Maine in his Minute on the requests preferred by the Maharaja of Kashmir in 1868. It cannot, however, be denied that the terms of the correspondence which passed between the Indian and Home Governments prior to the issue of the *sanads* afford considerable support to the view that lineal heirs, as opposed to collaterals, were intended." Apart from the contention that there had been no failure of natural heirs in the Pudukota State, the Secretary of State thought that confirmation of the adoption could only be refused on the ground that it was opposed to the customs of the Raja's family. On this point the Secretary of State thought it could not be maintained that any custom adverse to the adoption of a daughter's son had

⁶ Lord Canning's No. 43-A, dated 30th April 1860, paragraphs 3 and 28; and Sir Charles Wood's reply, No. 59, dated 26th July 1860, paragraphs 1, 2, and 6.

⁷ From the words "The existing system of succession" down to the words "same set of problems for decision in India."

⁸ The text is an abstract of Government of India despatch No. 170, dated September 27, 1877. Pro., Political A, October 1877, Nos. 486-496.

The Secretary of State's reply is his No. 117, dated November 22, 1877; Pro., Political A, February 1878, Nos. 478-481.

been established "of so fixed a kind as to afford sufficient ground for disallowing a selection especially permitted by Hindu law to the caste to which the Raja belongs."

"*A refusal*," the Secretary of State went on to say, "*in any case to confirm an adoption made by a Chief holding a sanad, except upon the clearest and most incontrovertible grounds, would be liable to create doubt and anxiety in the minds of other sanad holders, and to be generally misinterpreted.* Her Majesty's Government are not prepared to base such a course, in the present case, either upon the contention that the failure of natural heirs contemplated in the *sanad* has not occurred in Pudukota, or upon the ground that the selection made by the Raja is repugnant to the customs of his race. Nor do they see any reason to suppose that compliance with His Excellency's wishes in the matter will injuriously affect the interests of the Pudukota State. Under these circumstances the adoption may be recognised and confirmed. Her Majesty's Government consider, however, that this decision should be communicated to the Raja in general terms, without special reference to the *sanad*, which for the reasons given by the Hon'ble Mr. Stokes, is, in their opinion, unnecessary to justify their action."

These orders were carried out, the Madras Government being simply informed (without transmission of the despatches) that the Viceroy was pleased to recognise and confirm the adoption. The Raja died on April 15, 1886, and was succeeded by the boy whose adoption had thus been sanctioned. During the minority the State is administered by a Dewan under the control of the Political Agent.⁹

§ 331. In this Pudukota case it does not appear to have been noticed

Comments on the Pudukota case.

either by the Government of India or by the Secretary of State that the really substantial and general issues in the Kashmir succession case of 1868 were decided later on in the Alwar case of 1875. What the Maharaja of Kashmir clearly desired, was a guarantee against the annexation of his State if he or any of his successors should die without lineal heirs of his body and without adopting an heir. Her Majesty's Government, in granting what they did, declined to take upon themselves, in the event of the Maharaja dying without an heir, to select a successor. But in the Alwar case the Secretary of State (though he gave no pledge, which was what the Maharaja of Kashmir had wanted) agreed with the Government of India that in such cases, as a matter of policy, "the integrity of the Native State should, if possible, be maintained;" which expression, from the context, clearly means that the Native Government should, if possible, be continued, and that the territory should not be annexed. And he agreed also that in like case the British Government might "recognise such successor as on general considerations it deems best;" or, in fewer words, might make the selection.

It may further be doubted whether the difficulties of making a selection are, in fact, so formidable as they appeared to Sir Henry Maine. When the *sanad* is inoperative, as it is if no adoption has been made, or if the conditions of failure of natural heirs and consistency with Hindu law or custom are not satisfied, the British Government is by no means bound in making the selection to follow either Hindu law or custom, as Sir Henry Maine supposed that it would gradually be led on to do. "A strict law of hereditary succession to petty Asiatic despotisms is not," says Sir Alfred Lyall,¹⁰ "a very promising political innovation." As he observed¹¹ in discussing the draft of the Mysore Instrument of Transfer, the British Government interposes "as representing roughly the power which in earlier times brought forward the fittest man, not by genealogical proofs, but by a sort of natural selection." Law and custom are two things, but only two things, which have to be considered. The wishes of the late Chief and of the influential men of the State, the fitness of the person selected, and the general interests of his future subjects, are all matters which would be duly weighed in determining upon an act of State, the result, usually, of numerous converging considerations. When a number of powerful considerations point, as in most cases they do point, to some particular person as the best successor, the uncer-

⁹ Aitchison, VIII, page 92.
¹⁰ *Asiatic Studies*, page 204.

¹¹ Demi-official to Resident, Mysore, dated August 28, 1879; K. W., Pro., Political A., March 1880, Nos. 117-118.

tainties of Hindu law or custom either may with safety be ignored, or may, if the case so require, be enlisted to support the decision. These comments, however, on the Pudukota case are, it is to be observed, made by one of the compilers and have not the authority of the Government of India.

§ 332. Whether or no the Alwar case was overlooked in 1877, it was prominently before Government in 1879-80 when the Mysore Instrument of Transfer was being prepared. It may, at least, be conjectured that the third clause of the Mysore Instrument represents what the Adoption *Sanads* of 1862 would have said if it had been possible at the time to anticipate and, therefore, to obviate future difficulties of interpretation. "The

Provisions on succession in the Mysore Instrument of Transfer, 1881. succession," so the clause in question runs, "to the administration of the said territories shall devolve upon the *lineal* descendants of the said Maharaja 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 till it has been recognised by the Governor-General in Council.

"In the event of a failure of *lineal* descendants, by blood and adoption, of the said Maharaja 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.*"

The object and significance of these provisions were fully and clearly explained in paragraphs 6 and 7 of the despatch to the Secretary of State, No. 26, dated March 3, 1880. "The Government of India," it was said, "now deals with successions in the ruling families of Native States, throughout India, upon certain general principles which, if not formulated in writing, are universally recognised in practice. Where there is a natural heir, whose title to succeed is indisputable according to law and usage, he succeeds as a matter of course, unless he be obviously and totally unfit; though in this, as in every other case, a succession is thoroughly understood to require formal confirmation and recognition by the Paramount Power. Where the succession is disputed, the Supreme Government steps in and decides authoritatively, according to the usages of the race or the family. Where all heirs, natural or adopted, fail, the Supreme Government will not only recognise such successor to the rulership of a Native State as, on general considerations, may seem best, but may attach to the succession whatever conditions seem fitting and desirable. The principle last mentioned, according to which the relations between a State and the Supreme Government may be revised in certain contingencies, was laid down by the Marquis of Salisbury in his despatch No. 24 of 1875, in the case of the Alwar succession.

"If, therefore, no special conditions, regulating the succession, were inserted in the terms under which the Maharaja's family is reinstated in Mysore, the effect, according to our view, would be that the succession would be governed by the above stated principles of general policy. It appears to us, nevertheless, expedient that in the particular case of Mysore the main conditions under which the throne will become hereditary in the Maharaja's family should be distinctly entered upon record. We think this advisable, not only for reasons analogous to those which have induced the Government of India to make definite stipulations for the future administration of the country, but also because, since this Instrument will be in some sense the title-deed of the family, there may be a tendency to regard it as exclusively representing the whole body of rights and liabilities existing between the State and the Supreme Government. The third clause of the Instrument has therefore been so framed as to forestall all controversy regarding the right of the British Government to pass over an heir on the ground of obvious incapacity, or to decide among claimants to the succession, or generally to select a successor among collaterals, where no clear pretensions to succeed by inheritance can be established. This last-mentioned provision appears very expedient in the case of Mysore, where the collateral branches of the ruling house are remote, while the order of succession among collaterals is, so far as can be ascertained, singularly unsettled, obscure, and complicated. The form in which the clause has been drawn admits the right of adoption, while it precludes, in our opinion, the

possibility of any such difficulty arising as has been produced by doubts as to the right construction of Lord Canning's Adoption *Sanads*. It will be noticed that no succession will be valid till it shall have been recognised by the Governor-General in Council and that by the last clause of the Instrument the decision of the Governor-General in Council upon any question regarding the succession is final."

§ 333. We shall presently pass on to the questions of primogeniture and of succession in Muhammadan States, but before we do so we have to complete the subject of adoption by noticing the common practice of the adoption of a successor by the widow of the late Chief.

The first case under this head is the Sandur case, 1879 and 1885. The Raja of Sandur, who held an Adoption *Sanad*, died in 1878, leaving no legitimate son and without having exercised the privilege of adoption. His father had six wives, of whom three had sons. Dadi Bai was the mother of the deceased Raja and of Bapu Sahib, who was 28 at the time of his full-brother's death. There were also three half-brothers, Vithal Rao Sahib, the eldest, aged 30, and Bala Sahib, aged 21, both married, and both by Nani Bai; and Anna Sahib, aged 25, by another wife. The widow of the late Chief expressed a wish that the Government should appoint her husband's full-brother, Bapu Sahib, to govern the State temporarily in the hope that one or the other of the brothers might hereafter have legitimate male issue; but should that hope be disappointed, that she might then be permitted to adopt a son and heir to the State. The Collector of Bellary, who is Political Agent for the Sandur State, reported that Vithal Rao Sahib, being the eldest surviving brother of the deceased Raja and born of a mother whose rank was equal to that of the other ladies who had given birth to sons by the former Chief, was clearly entitled to succeed. Moreover as a Magistrate Vithal Rao had displayed qualities of justice and impartiality. The Madras Government accepted this view, rejected the requests of the widow, and recognised Vithal Rao as Raja of Sandur. These proceedings were approved by the Government of India.¹²

Some five or six years later the widow, Rani Sundara Bai, in 1884 and 1885 memorialised the Madras Government, the Government of India, and the Secretary of State, claiming as a consequence of the grant of the Canning Adoption *Sanad* a right to adopt a successor to the State. The Government of India reported the case in a despatch of October 12, 1885. "The main contention," they said, "of the memorialist is that the refusal of the Government to recognise the widow's independent power of adopting a son capable of inheriting her husband's estate is contrary both to Hindu law and usage and to the terms of Lord Canning's *Sanad*. This raises the question whether in the event of a Chief's dying without issue and without having adopted a son, the British Government must comply with the widow's desire to adopt, and must confer the succession on the son so adopted. The answer is, we think, clearly in the negative. *The widow can adopt a son if such a course is in accordance with Hindu law and the custom of the family; but her adoption has of itself no bearing upon the question of succession.* With regard to this question the only rule or obligation binding on us is that contained in the Adoption *Sanads*, under which we recognise the right of a Chief himself to adopt a son and successor. The principle underlying the *sanads* rests, no doubt, on the abandonment of the policy of annexation, and the continuance, if possible, of existing families; but there is nothing in these purposes to require the recognition of widow adoption. It is sufficient if the succession is regulated in accordance with custom, family feeling, and the interests of the State concerned. From this point of view, the decision arrived at in this case in 1879 appears to us to be in all respects a proper one. We are therefore unable to support the Rani's request, and we would recommend that her memorial be rejected by Her Majesty's Government." The Secretary of State replied on November 19, 1885. "Upon full consideration," he said, "of the

¹² Pro. B, Political I, March 1879, Nos. 44-46. For an older case in which the desire of the widow to adopt was overruled see the Beri succession papers—Pro., Pol. A, January 1862, Nos. 199-207, April 1862, Nos. 238-239, Pol. despatch to the Secretary of State, No. 27 of 1862, ditto from ditto, No. 47 of 1862. The facts are sufficiently stated in Mitchison, V, page 29.

case it does not appear to me that the Rani Sundara Bai Sahib's claim to the independent power of adopting an heir to the State comes within the meaning of Lord Canning's *Sanad*, and I desire that the memorialist, be informed¹³ accordingly."

§ 334. That the principle of this decision is expedient there can be no doubt. To empower the widow to force the Government to accept her nominee would be to encourage palace intrigues designed to guide her nomination and to aid the interested efforts of head-quarter cliques to secure power, place, and profit for themselves and their friends by arranging for long minorities. On the other hand, there are a good many precedents for permission being given to the widow to adopt a successor to the State, her choice being subject to the approval of Government. This, of course, is a very different thing to allowing the widow or those who can influence her to force upon the State any successor whom she or they may prefer. Thus, when in 1869 the Chief of Bakhtgarh, a small State in Central India under the Bhopáwar Agency, died, leaving no heirs, natural or adopted, the widow, with the previous permission of Government, made an adoption, which the Government of India approved.¹⁴ When the Chief of Jigni in Bundelkhand died in 1870, his widow was allowed to adopt a youth, the selection to be subject to the approval of the Government of India; and an adoption made in accordance with the wishes of the deceased Chief was subsequently sanctioned by that authority.¹⁵ Again, the Chief of Tori-Fatehpur, one of the Hasht-Bhaya *jagirs* in Bundelkhand, died in 1880, having expressed a wish that his widow might be allowed to adopt. The lady proposed to adopt his nephew, and the Agent to the Governor-General recommended that the nephew's succession should "be acknowledged" by the Government of India. Here there was a difference in the procedure¹⁶; for, in accordance with the ruling of the Secretary of State in the Alwar case of 1875, the Government merely recognised the nephew as the successor; and Sir A. Lyall, the Foreign Secretary, was careful to eliminate words signifying approval of the adoption. So also in the Charkhari succession case,¹⁷ 1880, the Chief died without heirs, natural or adopted. The widow wished to adopt a successor to the Chiefship; and the final order was that the succession of the youth, whom the widow wished to adopt, should be recognised, but nothing was said about the adoption.

§ 335. In the present connection the Sarila case is an interesting and important one and deserves to be stated at length. Sarila is a very small State,—35½ square miles in area with a population of 5,622. It is one of the States in Bundelkhand held under *sanads*. On the death of Raja Hindupat, Chief of Sarila, in June 1871, the Governor-General in Council was "pleased to permit the Senior Rani of the late Raja to conduct the affairs of her State, and to adopt an heir according to usage." Her husband had preferred a written request that permission to make an adoption might be granted to her if she applied for it. She chose a distant collateral named Khalak Singh, but he was not accepted without special inquiry. The Sarila family is descended from Pahár Singh, a son of Jagat Ráj, who again was the son of Raja Chhatarsal, the famous Chief to whom many of the Bundelkhand houses trace their origin. At the time of the British occupation of Bundelkhand, Raja Tej Singh, great-grandson of

¹³ Pro. A, Political I, June 1884, Nos. 81-96, and Pro., Internal A, October 1885, Nos. 173-177, and January 1886, Nos. 81-32.

¹⁴ Pro., Political A, September 1869, Nos. 77-81; and October 1869, Nos. 38-41.

¹⁵ Pro., Political A, November 1870, Nos. 230-231.

" " May 1871, Nos. 103-106.

" " August 1871, No. 250.

" " September 1871, Nos. 275-279.

" " July 1880, Nos. 191-193.

" " June 1881, Nos. 372-399. A few further precedents have been traced to which it will suffice to give references. In 1867 the widow of the Raja of Lauawara was "permitted to give effect to her

late husband's wishes by formally adopting Waktasinghji as successor"—Pro., Political A, August 1867, Nos. 114-117. Aitchison, VI, page 381. In the Sunth case, 1872-73, an alleged will of the late Chief was set aside and the widow was permitted to adopt a successor.—Pro., Political A, November 1872, Nos. 13-50, and February 1873, No. 7, Aitchison, VI, page 385. In 1884 the Government of India sanctioned the adoption by the widow of the Raja of Kolhapur of the eldest son of the Regent, the Chief of Kagal.—Pro., Internal A, October 1884, Nos. 86-109. Aitchison, VII, page 184. In the case of the Jabru Bhill Estate (*supra* paragraph § 303) an adoption by the widow for the purpose of succession was permitted in a Muhammadan family.

Jagat Ráj and grandfather of Raja Hindupat, was recognised as Chief of Sarila. Khalak Singh, proposed for the Chiefship, was descended from Kehri Singh, another son of Jagat Ráj. His branch of the family, therefore, was not in the line of descent from the Chief originally recognised by the British Government. But in that line there were no legitimate descendants left, Raja Hindupat's only legitimate son, Bhan Pratab, having predeceased him. The Government of India, after satisfying themselves that the selection made was in accordance with family custom, passed over the illegitimate branches and recognised¹⁸ "the adoption of Khalak Singh as successor to the Chiefship of Sarila."

§ 336. Raja Khalak Singh died without issue on February 25, 1882, and the question of widow adoption then arose again. There was no lineal heir and no adoption had been made by the late Chief. Under these circumstances, the Government of India observed, quite consistently with the decision in the

The Sarila Case, 1882-83.

Alwar case, that it was at their discretion to regulate the succession. The claim of the illegitimate branches having been finally rejected in 1873, the choice lay between Rao Sambhar Singh, the father by blood of the late Chief, and Pahár Singh, a child of six, the Chief's younger brother. The widow wished to adopt the child. Sir Lepel Griffin, then Agent to the Governor-General, preferred Rao Sambhar Singh, in order to avoid a long minority. The Government of India decided "to select Kuar Pahár Singh as successor to the Chiefship of Sarila," but that during his minority the management should be carried on by Rao Sambhar Singh, his father. They added that it might "be intimated to the widow of Raja Khalak Singh that she is at liberty to adopt the young Chief in accordance with Hindu law and custom, if she should think fit to do so. *It should, however, be understood in this case, and in all similar cases, that adoption by the widow of a deceased Chief does not of itself confer a right of succession.*" The lady adopted her young brother-in-law Pahár Singli on February 12, 1883.

§ 337. This then was a case in which the ceremonial seal of Hindu orthodoxy

The Chhaliar Case, 1888-90.

was subsequently set upon the choice made by the British Government. In the Chhaliar case the Government of India repeated word for word the views they had expressed in their despatch of October 12, 1885, addressed to the Secretary of State in the Sandur case (paragraph § 333 above); and on this occasion these views were explicitly approved by Her Majesty's Government. On November 7, 1886, the Thakur of Chhaliar in Rewa Kantha died leaving no son. He left a widow and a younger and only brother named Chhatra Singhji. The widow declared that she was in the family-way, but on examination it was found that this was not the case. She asked permission to adopt a son as successor, but the Bombay Government regarded her false allegation of pregnancy as a disqualification. The Government of India sanctioned the succession of Chhatra Singhji, the brother, and agreed with the Bombay Government that there were special reasons in this case why the adoption of a son by the widow should not be recognised for the purposes of the succession. They added that even if the widow had not been specially disqualified there would have been no obligation to comply with her wishes. "No doubt," they said, "in many cases it is desirable to allow adoptions of this kind, but a widow has no claim of right in the matter." The rest of the letter to the Bombay Government was in substance a copy of the material part of the despatch of October 12, 1885, just mentioned.¹⁹ The widow appealed without avail to the Secretary of State, who concurred in the views expressed in the letter.²⁰

§ 338. The last precedent to be adduced in connection with widow adoption

The Jath Succession, 1892.

is that of the Jath succession, 1892. We have mentioned in paragraph § 51 above the misrule of the late Chief of Jath, Amrit Rao Daphle, who was deprived of all authority in 1891. He died on January 12, 1892. Five days before his

¹⁸ Pro., Political A, August 1871, Nos. 456-458.

May 1873, Nos. 206-207.

¹⁹From the words "The question.....whether in the event of a Chief dying" to "interests of the State concerned."

²⁰ No. 2464-I., dated June 21, 1888. The Secretary of State's despatch is in Pro., Internal A, October 1890, No. 718.

death he made a will expressing his intention to adopt his nephew Parashram, aged 30, and providing for the adoption of this man by his younger wife Anandi, should he himself die before carrying out his intention. In May 1892 the senior widow Lakshmibai claimed the right of adoption, but her claim was disallowed by the Bombay Government on the Chhaliar precedent. That Government proceeded to make a selection, and chose, in preference to Parashram designated by the late Chief, a boy named Bowaji, aged six, who was a much more distant collateral. The Government of India agreed, after fully satisfying themselves that there were sound reasons for the proposal. It was understood that the senior widow would be willing to adopt the boy selected by the Bombay Government. There could perhaps be no clearer instance than this of the prerogative of the Paramount Power being exercised in freely settling a succession on the failure of lineal heirs, natural and adopted.²¹

We may add here a reference to the case of Thakurain Larai Dulaya, *jagirdarni* of Naigawan Ribai (mentioned below in paragraph § 345) which must be distinguished from cases of widow adoption. This lady was permitted in 1867 to succeed her husband, Jagat Singh, as Chief of the State. In 1893 she asked for the recognition of her adoption of one Vishwanath Singh, a descendant in the female line of her late husband. It appeared that the adoption was in accordance with the Hindu law and the customs of her race, and she held a Canning *Sanad*. The Government of India sanctioned the adoption, and pointed out that Vishwanath Singh should be recognised, not as the successor of the late Jagat Singh, but as the future successor of the Thakurain. This, then, was not a case of widow adoption, but of regular adoption by the Chief of a State who happened to be a female.*

§ 339. It will have been noticed that the question whether, in the case of Hindu States, Lord Canning meant by the expression "natural heirs" nothing more than "lineal heirs" has never been determined. We shall therefore leave

this ambiguity on the face of our summary and use throughout the expression

Summary.

"natural or lineal heirs," thus calling attention at each crucial point to the doubt which has still to be set at rest. We may, however, venture to say that one of the compilers is clearly of opinion that the decision in the Mysore case was right and that the principle of selection by the Paramount Power should operate on the failure of heirs, lineal or adopted. For what is the position when there are no such heirs? Either there is or there is not a doubt as to the proper succession. If there is no doubt, if all or most of the tests so converge as conclusively to indicate a certain individual as the right person, the selection of that person by the British Government is a matter of no difficulty. If, on the other hand, there is doubt, if there is any practicable choice between two or more candidates, then there is a disputed succession of which the British Government alone can be the arbiter.

Here, as elsewhere, the summary is intended faithfully to represent the effect of existing decisions. But in the summary just about to be given there are three points requiring explanation :

First, some parts of the summary relate only to successions in States where the family of the Ruling Chief is Hindu, and the Chief holds an Adoption *Sanad*. The cases of succession (1) to Muhammadan Chiefships, and (2) where there is no *sanad*, will be considered in the next chapter.

Secondly, we reproduce the uncancelled exhortation to Chiefs to make timely and formal adoptions. But historically that part of the intention of Lord Canning's policy has failed. The faith in the policy which underlay the *sanads* has proved so strong that the inducements to make adoptions *inter vivos* have rather diminished than increased. The Chief holding an Adoption *Sanad* has in his hand the means of preventing lapse of his State, and in consequence he has ceased to fear that form of annexation. No doubt timely and formal adoptions are good things. But to suppose that they will now be often made is to expect too much of human nature.

²¹ Pro., Internal A, May 1893, Nos. 28-39. | * Pro., Internal A, November 1893, Nos. 24-26.

Thirdly, when the Government is free to make a selection and, under the orders of the Secretary of State in the Alwar case, to attach conditions to the selection, it is highly important to consider the political type of the State in which the selection has to be made. A condition, for instance, which might be imposed without objection in the case of some petty State of British creation, distinguished, perhaps, rather by some lucky accident than by any essential characteristic from an ordinary British *jagir*, might cause grave and just resentment in an old and important Rajput State of which the original constitution had been little modified.

With these remarks we offer the following summary of this chapter:—

(1) *Any further extension of the direct jurisdiction of the British Government by the application of the doctrine of lapse is highly inexpedient.*

(2) *This policy is very highly valued by Her Majesty's Government, who will on no account suffer it to be violated. It is closely connected with the assurances conveyed in the Canning Adoption Sanads, but is not identical with them.*

(3) *The Adoption Sanads were the fruit of this policy. They contain a pledge which must not be taken to include more than is expressly stated in them.*

(4) *The pledge is operative only when three conditions are fulfilled—*

(a) *First, there must be a failure of natural or lineal heirs.*

(b) *Secondly, the adoption must be made by the Chief himself.*

(c) *Thirdly, in a Hindu house the adoption must be made in accordance with Hindu law or the customs of the race of the Chief.*

When all these conditions are fulfilled, the Government of India are expressly bound to recognise the adopted heir as successor to the State, but not otherwise.

(5) *It is desirable that a Hindu Ruling Chief who sees a prospect of the failure of natural or lineal heirs should make a timely and formal adoption. This is likely to obviate dissensions in the State and interference on the part of the British Government to settle a disputed succession. The adoption ought to be open and ceremonious, particularly if it is made in articulo mortis.*

(6) *The failure of natural or lineal heirs above mentioned must be due to death or to the circumstance that natural or lineal heirs have not been born in the family. An Adoption Sanad does not confer on a Chief a right to set aside an eldest son, or an only son, or even an adopted son, and then to require the Government to recognise and confirm an adoption.*

(7) *In many cases it may be desirable to intimate that the widow of a deceased Chief is at liberty to adopt the person selected as his successor. But the widow can claim no right to adopt a successor, and an adoption made by the widow does not of itself confer a right of succession.*

(8) *It is not the practice of the British Government to take advantage of informalities in adoptions or to interpret to its own advantage the doubts with which Hindu laws and customs are surrounded when applied to adoptions to States.*

(9) *On failure of natural or lineal heirs and when no adoption has been made in accordance with the conditions of the Adoption Sanad, the succession must be determined by selection.*

(10) *In this case, it is the policy of the Government to maintain the State, but no individual can claim to succeed as of right. The British Government will recognise such successor as on general considerations it deems best, and in so doing may attach conditions to the succession.*

(11) *In making the selection the Government will not necessarily refuse to recognise an alleged adoption which does not come strictly under the terms of the sanad.*

(12) *If there be such an alleged adoption, the fact will form one of several considerations which are material in determining the succession. The more*

closely the alleged adoption conforms with law and custom, the more likely it is to carry weight.

(13) *Amongst other material considerations would be nearness of relationship to the late Chief, his wishes, if known, and the wishes of his family and of influential nobles in the State, particularly of those, if any, who are by custom consulted regarding successions, the custom of the State and the family, and principally the fitness of the person selected and the general interests of the State.*²³

(14) *The fact that a Ruling Chief holds estates in the territory of another Ruling Chief, gives the latter no voice in the selection of a successor to the former.*

(15) *In the determination of a disputed succession in a Hindu house or in the selection of a successor to a Hindu Chief during his lifetime, custom, where proved, will override the strict Hindu law. The Government, for example, holds itself free to recognise the adoption of an only son; and will not seek to impugn the validity of marriages supported by ancient tribal customs or acknowledged practices.*

(16) *When during the lifetime of a Chief, who has no lineal heir competent to succeed him, a person is recognised as his successor, either by designation or adoption, the recognition is, in the absence of any evidence of a contrary intention, provisional; inasmuch as the subsequent birth of a legitimate son may be a sufficient and proper cause for withdrawing the recognition. But the recognition of a successor once granted by the British Government can be withdrawn only by that authority.*

(17) *When a Hindu Chief holding an Adoption Sanad makes an adoption, the Government of India will scrutinise the case to see whether all the conditions have been fulfilled which are necessary to make the pledge contained in the sanad operative. But it is highly inexpedient to refuse to confirm an adoption made by such a Chief, except upon the clearest and most incontrovertible grounds.*

²³ It will not be forgotten that a special rule is laid down in the *Sanads* granted to the Phulkian Chiefs, viz. Patiala, Jind, and Nabha. As already noted the successor is selected from the Phulkian house by the two surviving Chiefs, in concert with a British officer. Aitchison, IX, pages 77, 95, 103.

CHAPTER XI.

SUCCESSIONS IN MUHAMMADAN AND OTHER CHIEFSHIPS.

§ 340. The last Chapter continued the subject of Chapter IX. It dealt with the preservation of Native Rule because, as pointed out by the Secretary of State in the Alwar succession case, 1875 (paragraph § 328), the distribution of the Adoption *Sanads* was a consequence of the acceptance of the principle of imperial policy that Native Rule ought to be preserved. We have still to pursue the same topic and to notice some points connected with successions in Native States which do not fall conveniently into any other place. Adoption in the strict sense is necessarily limited to Hindus and Sikhs; but we have to discuss somewhat fully the working of Lord Canning's policy in regard to successions in States where the ruling families are Musalmans. We have also to illustrate the application of the principle of primogeniture, and to show what is the policy of the Government of India in respect of those States to the Chiefs of which Canning *Sanads* have not been granted. We shall notice briefly the question of the succession of females and shall point out that the validity of any succession depends upon its confirmation by the Paramount Power, including in that phrase whatever is the proper British authority. Finally, while it will appear that the policy in regard to States with *sanads* and the policy in regard to States without *sanads*, are in all essentials the same, we shall also show how in 1888 at the instance of the Punjab Government, and in accordance with the spirit of Lord Canning's great measure for establishing confidence in the minds of Ruling Chiefs, a proposal was sanctioned by the Government of India for granting modified Adoption *Sanads* to certain *jagirdars* in the Punjab who are not Ruling Chiefs.

§ 341. Of the leading cases relating to successions to Muhammadan Chiefships that of the Hyderabad succession, which was very fully considered in 1861 and again in 1876-77, is the most important. Amidst much uncertainty it is at any rate clear that in Muhammadan, as in Hindu, Chiefships, where there is an only or first-born son of the body alive at the date of the death of the Chief, the rule to be followed is that of primogeniture. We have already quoted in paragraph § 293 above the remark of the Government of India made in connection with the Hindu Chiefship of Kashmir that "*in practice nothing but the clearest evidence of actual incapacity to rule should be allowed to stand in the way of a regular succession by order of primogeniture.*" Although this remark was made in the Kashmir case, it appears from the context to be applicable to all Native States in India generally.

Again, as will be seen from Appendix A, Lord Canning in his despatch of April 1860 proposing the distribution of the Adoption *Sanads*, wrote:—"The case of the Muhammadan Chiefs remains to be considered. Adoption, in the full sense in which it is exercised by Hindu Chiefs, they cannot claim. But adoption of one collateral in preference to another of closer affinity has been allowed to them where lineal heirs have failed, and it seems that it is also in accordance with Muhammadan law and usage that the sovereign should select from among his sons the one whom he may desire to succeed to him. The King of Delhi exercised this right shortly before his rebellion.

[“To the Muhammadan Chiefs then the assurance to be given would be that the Paramount Power desires to see their governments perpetuated and that any succession to them which may be legitimate according to Muhammadan law will be upheld.”]

[But to this the Secretary of State replied in the following words:—

[“Presuming that in this latter case the recommendations of Your Excellency relate only to instances in which there is a failure of direct heirs, and do not contemplate any departure from the policy of recognising the claims of primogeniture, Her Majesty's Government approve the views thus expressed.”]

Thus there is no doubt that Her Majesty's Government intended the rule of primogeniture to be applied in the case of Muhammadan Chiefships; though, as will presently appear, the extent of the application of that rule—whether for instance in successions to these Chiefships it operates to set aside the denial, under Muhammadan law, of the right of representation—is by no means free from doubt. It will be necessary to state the Hyderabad case very fully, and to review also the cases of the Maler Kotla, Peint, Rampur, Bhopal, Kurwai, Dugri, Savanur, Khairpur, and Junagarh successions.

§ 342. [In March 1864 Mr. Yule, the Resident at Hyderabad,¹ drew the attention of the Government of India to the fact that the ruling Nizam, Afzal-ud-Daula, was not in a satisfactory state of health, and asked for instructions regarding the recognition of a successor in case the Nizam's illness should terminate fatally. The circumstances under which this reference was made were

The Hyderabad Succession, 1864. somewhat peculiar. His Highness had no son. He had one brother, Roshan-ud-Daula, and two paternal uncles, Samsám-ul-Mulk and Zulfikar-ul-Mulk. Roshan-ud-Daula was without a son, and was very unlikely to have one. Of the uncles, Zulfikar-ul-Mulk had one son and Samsám-ul-Mulk had several. Therefore, admitting the right of collaterals to succeed, Roshan-ud-Daula was the heir presumptive. He was supposed to be a man of no ability or strength of character, and the Minister, Salar Jung, was very averse to the prospect of his succession. But at the same time the Minister admitted that his claim to succeed was, under existing circumstances, paramount.

[There was, however, one contingency requiring consideration. The ruling Nizam feared and hated his brother, and it was apprehended that under the influence of this feeling he might be induced to nominate some one else as his successor. He might select one of his uncles, or one of their sons, or in the event of his daughter, then pregnant, giving birth to a son, he might nominate that infant in preference to his own brother.] Accordingly two questions arose; *first*, had the Nizam a right to nominate his successor passing over the next heir or heirs? and *secondly*, if he had such a right was his choice restricted to the ruling family? [In submitting these questions for orders, Mr. Yule pointed out that whatever might have been done in other Musalman families, the custom of the Nizam's family was against interference with the regular order of succession. As far as he could learn, no instance of such interference had ever occurred, and this fact, supporting the general Muhammadan law of inheritance, would, the Resident thought, be sufficient to justify the British Government in denying the Ruling Chief's right to select a successor to the exclusion of the natural heir, or, as the case might possibly be, of the whole ruling family.

[Mr. Yule's letter closed as follows:—

[“To allow such a selection would be unjust to the heirs and most inexpedient in itself, for the knowledge that the Nizam had our sanction to order the succession as he pleased would cause incessant intrigue and disturbances, and end probably sooner or later in the total exclusion of Nizam-ul-Mulk's descendants from the throne. I think the *sanad* for His Highness which accompanied your letter No. 256, dated 11th March 1862, strengthens the above view of the case; it assures him that ‘on failure of natural heirs any succession to the government of his State which may be legitimate according to Muhammadan law will be upheld.’ This implies that so long as a natural heir survives he cannot be passed over in favour of a selected successor without

¹ Pro., Political A, June 1864, No. 66.

inherited rights: it would seem to follow from this that the person next in succession could not be passed over in favour of a remote heir. It may be said, supposing the right of selection to exist, that our influence alone ought to be sufficient to secure its proper exercise, and so it would be if we had to deal with a man of sense, but this is not the case. If the present Nizam for instance imagined that we wished him to name a successor, he would never do it; the idea would literally almost frighten him out of his senses."

[When this letter came up for consideration the Government of India deemed it necessary, in view of the importance of the questions involved, to refer to the Secretary of State. But in the meanwhile the Resident was directed² in case of the Nizam's death, and in the absence of any adverse communication from His Highness, to recognise Roshan-ud-Daula as the successor to the Nizamat.

[A few days after the issue of these orders the Government of India addressed the Resident in greater detail. The following extracts from the letter³ will show the views held by His Excellency in Council:—"You will have been informed . . . that the Governor-General in Council empowers you, in the event of the Nizam's death without male issue, to recognise his brother Roshan-ud-Daula as his successor. His Excellency is aware that the Nizam might possibly claim to regulate the succession to his territories, but it is considered extremely improbable that he will do so. Most Native Chiefs naturally shrink from such an act, and in the present case the Nizam has no strong motives, such as the interests of a favourite son, to impel him to such a selection; but in the event of the Nizam adopting such a course and setting aside the succession of his brother, the Governor-General in Council is of opinion that the selection should not be allowed. In such a case as this, the right of selection being doubtful and the right of the brother to succeed in default of selection being clear, it devolves on the British Government as the Paramount Power, and as the one Government in India responsible for the peace of the country, to regulate the succession in doubtful cases to the above extent . . . The Governor-General in Council holds it to be open to all the serious objections which you allege that the Nizam should have great latitude of discretion in the selection of a successor; and as regards the question whether any right of selection from among the remoter collaterals does in fact exist, His Excellency in Council is on the whole disposed to put the same construction on the words of the *sanad* as you do, and to accede to the view that so long as a natural heir survives he cannot be passed over in favour of a selected successor without inherited rights. From the comprehensiveness of the term natural heirs, from the main purpose in the grant of the *sanads* being to assure the Chiefs against their territories lapsing to the British Government, and from the salvo in the *sanads* as to concurrence with Muhammadan law, His Excellency in Council inclines to the consequence which you have drawn from the words of the *sanad*, namely, that the person next in succession could not be passed over in favour of a remoter heir.

[“This is a point, however, not altogether free from doubt, and it is one on which therefore it will be requisite to take the sense of Her Majesty's Government.”

[Putting aside the question of selection, the Government of India adverted also to the manner of succession in case Roshan-ud-Daula should die without issue. In this event it seemed not impossible that reasonable doubt might arise as to who was the lawful successor. If both uncles remained alive at his death, the succession according to Muhammadan law and the usage of the family would, it was believed, pass to the elder of the two—Samsám-ul-Mulk. But supposing that Samsám-ul-Mulk were to die before Roshan-ud-Daula, it would then become a matter for consideration whether the son of the elder uncle should or should not succeed in preference to the younger uncle Zulfikar-ul-Mulk. The question was whether the principle of Muhammadan law, which is valid in cases of private inheritance, *viz.*, the exclusion of the right of representation which bars grandsons, where their father has predeceased them, from inheritance with sons, would be equally applicable in

² Pro., Political A, June 1864, No. 67.

³ Pro., Political A, June 1864, No. 68.

cases of succession to principalities where the ordinary principles of divisibility of property are as inapplicable as the division of powers would be impracticable and inexpedient. "Manifestly," the Government of India observed, "the ordinary principles which regulate Muhammadan law in cases of civil inheritance are not adapted to successions to regal or *quasi*-regal powers."

[On this point, therefore, the Governor-General in Council desired the submission of a fuller report by the Resident. As will appear below, no official reply was ever made to this requisition.

[As noticed above, the Government of India announced in this letter the necessity of referring the matter to the Secretary of State.

[Accordingly two despatches, Nos. 2 and 3 of 1st and 15th June, 1864, respectively, were sent home detailing the circumstances of the case and discussing the principles involved.

[In the first of these despatches the Government of India expressed a doubt whether the construction put by Mr. Yule on the terms of the *sanad* of 1862 did not narrow the discretionary power of selection from collaterals to a greater degree than was originally intended. In explanation of this doubt the Government of India quoted those portions of the correspondence which had passed between Lord Canning and Her. Majesty's Government before the issue of the *sanads*] which are transcribed above in the last preceding paragraph. Taking into view both the language of the *sanad* and the language of these despatches, it seemed doubtful to the Government of India whether the selection by the Nizam of an infant son of his daughter to be his successor would be beyond the scope of the concession made to him in 1862 or not. In the same despatch the Government of India submitted for consideration the question whether a younger uncle surviving should exclude the son of an elder uncle who had died before the Nizam; [that is to say, whether, in the event of Samsám-ul-Mulk dying before the Nizam, his sons should be excluded by Zulfikar-ul-Mulk.

[The second despatch, No. 3 of the 15th June, entered into the matter at greater length. The Government of India took up, to begin with, the question how far regal or *quasi*-regal successions could be held to be governed by the ordinary rules of inheritance. The despatch then went on as follows:—

["Mr. Yule has, however, mooted a question still more momentous with respect to the tranquillity of the Nizam's Court and country both during his life and at his decease, *viz.*, the amount of discretionary power as to selection of a successor conveyed by the *sanad* granted by Lord Canning to the Nizam.

["We are not of opinion that the Nizam, who has always shown much jealousy of British interference in the management of the Hyderabad territory, is likely to pass over both his brother and his uncles in favour of an infant, should such be born to his daughter, the wife of the grandson of Shams-ul-Umara. By such a disposal of the succession the Nizam would practically hand over the Hyderabad country to the management, during a long minority, of the British Government. Jealousy of our rule, power, and interference, would militate strongly against such a course. It is, however, possible that, passing over his brother, the Nizam might nominate as his successor one of his uncles, or one of their sons, and the question put by Mr. Yule whether the Nizam has a right to nominate his successor, passing over the next heir or heirs, would have to be dealt with.

["The Governor-General in Council is of opinion that to allow such a latitude of selection would be dangerously inexpedient, besides being unjust to the heirs. The paramount consideration is, in His Excellency's judgment, that the succession shall take place, whenever the Nizam die, without disturbance or conflict, and that therefore the order of succession should not be exposed to the uncertainty attendant on the prejudices or caprice of the ruler enjoying unlimited discretion of selection. Had such a system our sanction, Hyderabad would be a scene of incessant intrigue during the life of the Nizam, and at his death the transition from mere intrigue to open conflict would be an easy and probable step among the competitors for power. As the custom of the Nizam's family appears to be against interference with the regular course of succession, and as the terms of the *Sanad* protect, under the comprehensive

designation natural heirs, all who have inherited rights, the Governor-General in Council is disposed to take his stand on the terms of the *'sanad*, and to consider with Mr. Yule that the refusal on the part of the British Government to permit the selection of a successor by the reigning Prince to exclusion of the heir, or perhaps even of the whole royal family, would be justifiable.

["It must at the same time be remarked that a different view may be taken, and that it may be argued that the Nizam has not hitherto been thus restricted, and that the *sanad* admits of a less narrow construction. That by the grant of that document there was no intention to infringe upon the rights of the Ruler to nominate or select a successor within the range of natural heirs, according to the custom of the family and the scope of Muhammadan law, but only to give the assurance that the failure of heirs should not involve, as an inevitable consequence, the lapse of the territory to the British Government and its annexation to our provinces. That so far from wishing by the grant of the *sanad* to clip the discretionary power hitherto exercised by Muhammadan Chiefs in the selection of a successor, the explanatory despatch of Lord Canning, No. 43-A. of the 30th April 1860, paragraph 28, specifies with regard to Muhammadan Chiefs that adoption of one collateral in preference to another of closer affinity has been allowed to them where lineal heirs have failed, and that it is in accordance with Muhammadan law and usage that the sovereign should select from among his sons the one whom he may desire to succeed him. That in support of these views the instances of the Bhopal succession and of the late King of Delhi were adduced, and that in reply to this communication the Secretary of State signified, in his despatch No. 59 of the 26th July 1860, the approval of Her Majesty's Government, accompanied by the caveat, that the assurance to Muhammadan Chiefs related only to instances in which there was a failure of direct heirs, and did not contemplate any departure from the policy of recognising the claims of primogeniture. That taken with the context, and with the words used by Lord Canning—'lineal heirs,'—it is clear that the Secretary of State, in protecting the claims of primogeniture, only had in view the rights of direct lineal descendants, and did not comprise collaterals in his protective caveat. Finally, that the *sanad* must be read by the light of these despatches and not by the construction that the wide term natural heirs admits of being applied to its purport.

["As the present is an instance of great importance, and as the decision in this case must form a precedent of the utmost weight in the regulation of all future successions to Muhammadan Chiefships where there is a failure of direct lineal descendants as heirs, we submit the whole question for your instructions, and with reference to the occurrence of any sudden casualty at Hyderabad of the kind contemplated as possible by the Resident, we would solicit an early expression of the views of Her Majesty's Government for our guidance."

[The Secretary of State replied in the following August. He approved the orders issued for the recognition of Roshan-ud-Daula in the event of the death of the Nizam without male issue and without having made any nomination. His Lordship then went on to discuss the question of selection. He did not doubt that, aided by the good offices of Salar Jung, the British Resident would be able to prevent this question from ever assuming such a shape as might subject the Nizam to a formal expression by the Government of India of views not in accordance with His Highness's wishes. "If, however," he added, "the case should occur that any other member of the family of the Rulers of Hyderabad than Roshan-ud-Daula should be selected by the family, supported by the Minister and the principal members of the Court, and accepted by the people, you will not consider yourself bound by the above instructions to support the claim of Roshan-ud-Daula, but you will be at liberty to exercise your own discretion in giving the support of the British Government to any person in the position which I have indicated."

[His Lordship "did not feel it possible to give more precise instructions," and relied on the Government of India to adopt such measures as might, in the judgment of His Excellency in Council, be best calculated to promote the peace and tranquillity of the Nizam's territory.

[This reply did not afford any authoritative solution of the questions submitted for the consideration of Her Majesty's Government. It omitted all

reference to the applicability in cases of *quasi-regal* succession of the ordinary rules of civil inheritance, and amounted merely to an enunciation of the principle that the Government of India was not bound to uphold the succession of the nearest collateral in a Musalman State in defiance of the wishes of the family, of the nobles, and of the people. As no reply was sent to His Lordship's despatch, this principle was apparently accepted by the Government of India.

[Putting aside this principle, the inferences to be drawn from the correspondence seem to be these:—

[The Government of India did not recognise the right of a Musalman Chief who is without lineal heirs to pass over a natural collateral heir in favour of a selected successor without inherited rights, nor to pass over the person next in succession in favour of a more remote collateral. And the Government of India did not consider that the ordinary rules of civil inheritance were applicable in cases of *quasi-regal* successions in Native States.]

§ 343. In the case of Hyderabad it has never yet been necessary to apply the principles implied in these opinions. *The Hyderabad Succession, 1876-77.* The Nizam Afzal-ud-Daula lived to become the father of an only son, Mir Mahbub Ali, who, being then less than three years of age, succeeded him when he died on February 26, 1869. Roshan-ud-Daula, the brother of the late Nizam, whom the Resident had been empowered to recognise as the successor in the event of the death of the Nizam without male issue, died probably in 1870, and in consequence of his death the then Resident, Mr. C. B. Saunders, was asked on November 7, 1870, to reply confidentially and demi-officially to the Government of India letter of 1864 which, as noted above, had remained unanswered. This Mr. Saunders did on July 11, 1872; and Zulfiqar-ul-Mulk having died within a year of the Nizam, there seemed to be no longer any necessity for much discussion as Samsám-ul-Mulk was clearly the heir, and his eldest son, Bábar Jung, the heir presumptive.

But in 1876 the question of the right of representation arose again. Samsám-ul-Mulk died on June 2, 1876, at about 84 years of age, and his eldest son, Bábar Jung, and his second son, Mir Sardar Ali Khan, had predeceased him. Bábar Jung had left sons of whom the eldest was Mir Wazír Ali. The eldest surviving son of Samsám-ul-Mulk was Mir Kadir Ali Khan. Should the Nizam die, was Mir Kadir Ali Khan, in accordance with the general Muhammadan law of inheritance, to exclude Mir Wazír Ali, or was Mir Wazír Ali to succeed by an application of the rule of primogeniture? In September 1876 the young Nizam had a short but very dangerous illness, and some time before that in connection with the death of Samsám-ul-Mulk the Resident, Sir Richard Meade, had reported the circumstances of the ruling family. The Nizam quickly recovered, but on September 28, 1876, the Government of India addressed the Secretary of State again on the whole subject of the Hyderabad succession.⁴ They stated that the Resident and Sir Salar Jung, the Minister, agreed in regarding Mir Kadir Ali Khan as the rightful successor; they recapitulated the correspondence of 1864; set out the terms of the Nizam's Adoption *Sanad*; quoted once more the relevant passage in Lord Canning's Adoption despatch, and continued:—

"8. The foregoing quotation appears to us to show very clearly that it was Lord Canning's intention to formally recognise the right of a Muhammadan Chief (1) to adopt as a successor, in the event of the failure of lineal heirs, one collateral in preference to another; and (2) to select from among sons the one he might prefer, without reference to primogeniture. A reservation in favour of primogeniture in the case of direct heirs was secured by Sir Charles Wood's despatch No. 59, dated 26th July, 1860: but the intention of recognising the right of Muhammadan Chiefs to select a successor from among collaterals, on the failure of lineal heirs, remained unaltered.

"9. The question then arises, if such were Lord Canning's meaning and intention, what is the explanation of the saving clause in the *sanad*—'any succession . . . which may be legitimate according to Muhammadan law will be

⁴ *Pro., Secret, March 1877, Nos. 60-68.*

upheld? We conceive that the explanation lies in this, that while in the case of Hindu Chiefs the range of adoption may extend beyond the limits of the ruling family, it was not the object of Lord Canning to recognise anything further in the case of Muhammadan Chiefs than the right to select, on failure of lineal heirs, from among those collaterals who, if the question were one of succession to private property, would, according to Muhammadan law, be admitted to a share of the property. Thus the insertion of the reference to Muhammadan law was designed, not to indicate the order of succession among collaterals irrespective of the Chief's selection, but to limit the scope within which the Chief's right of choice would be admitted. In the present case, supposing the Nizam to be of full age, and therefore capable of making a selection, he would not be able to choose those sons of Samsám-ul-Mulk who had predeceased their father, because such descendants are barred from succession to private property by Muhammadan law, but he would be able to choose any other collateral who is not thus excluded.

"10. If, then, it was intended that a Muhammadan Chief should have the power of selection within certain limits from among collaterals, and if the *sanads* conferred upon Muhammadan Chiefs reasonably bear an interpretation consistent with that intention, considerations of expediency and political advantage may be put on one side, and the question becomes one of right and obligation.

"11. As an illustration of our meaning, we point again to the present position of affairs at Hyderabad. According to our view, the Nizam, if of age, would, on failure of lineal heirs, possess the power, subject to the approval of the British Government, of selecting from within a certain number of collaterals (those, namely, entitled by law to claim a share in the inheritance) the person whom he might deem most fitted to be his successor. The Nizam being a minor, the Paramount Power acting on his behalf may justly make the selection. And it is plain that this right might be exercised so as to obtain results which would be beneficial at once to the State of Hyderabad and to the British Empire. Thus, in the present case, had the Nizam unfortunately died, it would have been possible to have selected a more suitable successor than Nawab Mir Kadir Ali, who is now 58 years of age, and is described by the Resident as 'not a very hopeful personage.' In like manner, it is easy to imagine circumstances under which selection of a successor by a Chief capable of making a worthy choice might prove of the utmost political value.

"12. We are of course aware that the decision, which we hope to elicit from Her Majesty's Government at an early date in respect to Hyderabad, will be taken as a precedent for other Musalman States under similar circumstances, and that the selection of successors from among collaterals by Muhammadan Chiefs may not always be judicious. But we do not shrink from that result, as we feel convinced that the principles recommended by us are sound and susceptible of general application."

Briefly put, the position of the Government of Lord Lytton was that a Muhammadan Chief holding a Canning Adoption *Sanad* has, on failure of lineal heirs, the right to select a successor from among those of his collaterals who, if the question were one of succession to private property, would, according to Muhammadan law, be admitted to a share of it. The Secretary of State did not accept this principle, and his reasons for declining to do so were explained in a despatch⁵ of March 8, 1877. He summarised the communication addressed to him and replied:—

"You state in your 10th paragraph that the recognition of the principle which you support may be attended with advantage from the political point of view, and you think the right of selection might be exercised so as to obtain results which would be beneficial to the State of Hyderabad and to the British Empire. But by the political advantage which you contemplate, I understand you to intend an advantage secondary and incidental; and I do not construe your observations as referring to that ultimate political right of interference with the succession which regard for the interests or necessities of the Empire might lead the Paramount Power to exercise on supreme occasions.

⁵ Pro., Secret, October 1877, Nos. 174-177.

"4. After a careful examination of all the evidence on the subject of succession to Muhammadan regalities which I have been able to collect, and after consultation with persons of authority on these subjects, I am disposed to think *it is at least doubtful whether any right of absolute or wholly discretionary selection is known to Muhammadans and whether the power alleged to be vested in reigning Muhammadan Chiefs is not at most a power of passing over, for reasons given, persons primarily entitled to the succession, but deemed to be unequal to the responsibilities of government.*

"A further question arises, whether, consistently with the terms of the *sanad*, all the relatives of the last Ruler, who in this country would be called collaterals, belong to the class among which the alleged power of selection can be exercised. In the absence of the Persian text of the *sanad* I cannot be advised to express a confident opinion, but I am informed that the Muhammadan private law of inheritance places such relatives as paternal uncles and paternal grand-uncles in the same general class with sons, and draws no such distinction between sons and uncles as is drawn between lineal heirs and collaterals, by systems of jurisprudence more familiar to Englishmen. At the same time I fully agree with the opinion expressed by Your Excellency in Council and more than once given in despatches from this office, that *the Muhammadan Civil law of inheritance furnishes scanty materials for a conclusion as to the succession to a regality.*

"5. These considerations lead me to think that the terms used by Lord Canning in his *sanad* do not possess that precision which would constitute them a guide under all circumstances that may arise. Very much is left by them to the decision of the Paramount Power upon each case as it occurs. I am not of opinion that it is desirable to supply the blank which Lord Canning has left, by the establishment of a new rule, or the creation of a precedent, binding the future action of the Government. A political advantage might be derived in the present case by recognising in the reigning Nizam a right of selection, which your Government would practically exercise. But this convenience would be purchased at the cost of vesting in a future Nizam a new prerogative, which might not be exercised with discretion. It appears that the right of Mir Kadir Ali to succeed would 'be generally acknowledged by all at Hyderabad, who might have a voice in the matter of the succession.' Taking this circumstance into consideration, I am of opinion that on an application duly made by the Regents, Your Excellency should, as an act of favour, but carefully avoiding the admission of any right, recognise Mir Kadir Ali Khan as the successor of the present Nizam, unless you have grave political objection to his succeeding, or unless you have reason to think him incompetent to rule. In either of these contingencies, I request you to inform me of your views, and of the grounds for them, with the least practicable delay.

"You will have gathered from the tenor of the above observations that it is not my intention to give a 'decision which will be taken as a precedent for other Musalman States in similar circumstances.' I prefer that *each case which presents serious difficulty should be reported to me for separate consideration.*"

The case closed with a brief covering despatch of July 2, 1877, transmitting without remark a letter from Sir Richard Meade in which he expressed the opinion that the succession of Mir Kadir Ali Khan would not be open to grave political objection.

To the inferences deducible from the correspondence of 1864 we may add some which may be drawn from the Secretary of State's despatch just quoted. Clearly if the interests of the Empire so require, and no pledge interferes, the right of selecting a successor to a Chiefship vests in the Paramount Power. In the case of a minor Muhammadan Chief, holding an Adoption *Sanad*, it is quite unnecessary to purchase that right by so interpreting his *sanad* as to confer upon his successors, when lineal heirs fail, the prerogative of selecting an heir to the Chiefship from amongst the collaterals. And even if that interpretation of the *sanad* were accepted, it would be unwise to circumscribe the class of eligible collaterals by a distinction borrowed from the Muhammadan law of private inheritance. In the Kashmir case of 1868 (paragraph § 317 above) Sir Henry Maine observed that the ordinary Hindu

law of inheritance is essentially a system of class succession, excluding primogeniture. This observation is equally true of the Muhammadan law of private inheritance; and this alone is enough to show that it is inapplicable to Chiefships. If the Muhammadan law, other than the law of private inheritance, contains nothing applicable to a succession to an Indian Chiefship, the defect which in former times was often supplied by the arbitrament of the sword, can be met, in a period of greater security, by the recognition or choice of a suitable candidate made by the Paramount Power.

§ 344. We have given in paragraph § 297 above some account of the facts of the Maler Kotla Succession, 1872 and 1892. In connection with that case there was some further discussion of the interpretation of the Canning *Sanads* when granted to Muhammadan Chiefs. The Punjab Government held at the time that the Canning *Sanad* of the Maler Kotla Chief gave him, on the failure of direct heirs, the right of selecting his successor from amongst the collaterals of his family, and that this right had actually been exercised by Nawab Sikan-dar Ali Khan in favour of Ibrahim Ali Khan, who, as already mentioned, was recognised as Chief. Mr. Aitchison, the Foreign Secretary, thought that the Punjab Government had misinterpreted the *sanad*. "It was never," he said, "Lord Canning's intention to alter any well-established law of succession in any Native State, whether Hindu or Muhammadan; on the contrary, it was his intention to confirm and perpetuate the succession of the States according to the law or custom then existing. The object of the *sanads* was to declare a policy as between the Paramount Power and the Native States, and not to introduce new or arbitrary principles of decision between different claimants. Government never contemplated anything so revolutionary and dangerous. The *sanads* were a declaration of the abandonment of the policy of annexation, and an assurance to the Chiefs that, in cases in which Government had hitherto been in the habit of treating States as escheats, they would allow the Chiefs to perpetuate their estates by the selection of a successor, provided he were one competent to succeed by ordinary law or family custom. But it was never intended to give Chiefs the power of arbitrary selection to the exclusion of those who by law or custom had valid claims." In 1872 the Government of India simply announced their decision in favour of Ibrahim Ali Khan and gave no ruling whatever in regard to the interpretation of the Canning *Sanad*. But twenty years later some remarks on the subject were communicated to the Punjab Government in a draft letter which was sent to them demi-officially for consideration. It appeared that in the event of the death of the present Nawab, Ibrahim Ali Khan, his eldest son, Khan Muhammad Khan, would, under the rules laid down in 1872 to regulate the succession to the State revenues, be placed in the impossible position of having to carry on the administration with an annual deficit. The rules were amended to meet this difficulty; but in stating the case the Punjab Government, guided, no doubt, by the correspondence of 1872, had referred to "the right of the Nawab for the time being, on the failure of natural heirs, to arrange for the succession to the State in any manner which may be legitimate according to Muhammadan law." The comment of the Government of India on this (communicated, as we have said, demi-officially) was thus expressed:—"The wording of the *sanad* is—'on failure of natural heirs, the British Government will recognise and confirm any succession to your State which may be legitimate according to Muhammadan law.' The wording is vague, but it should not, in the opinion of the Government of India, be construed as having the meaning attributed to it in your letter. In the first place it has been definitely laid down that the *sanad* does not empower a Muhammadan Chief to select a successor to the prejudice of the subsisting rights of other relations as established by family law or custom; and in the second place it is clear that the Government of India cannot possibly bind themselves to recognise a Chief's nominee, simply as such, and without reference to his qualifications for rule. Having regard to the circumstances which led up to the policy embodied in these *sanads*, the Governor-General in Council is inclined to think that they can most reasonably be interpreted as simply conveying an assurance that the State will not be treated by the Paramount Power as an escheat so long as there is a member of the family left whose succession would, under the Muhammadan law, be legitimate." Once

again, however, the official orders which were finally issued⁶ contained no allusion whatever to the Canning *Sanad* or its interpretation, nor is this omission explained by anything on record. But this is in no way remarkable; for in order to decide the question before the Government of India in 1892-93, no interpretation of the Canning *Sanad* was necessary. Moreover the demi-official letter above quoted, though probably correct in stating that a Canning *Sanad* in the hands of a Muhammadan Chief does not empower him to select a successor to the prejudice of the subsisting rights of other relations, goes beyond the facts in the assertion that this principle—though it may be a fair inference from the whole dealings of the British Government with successions to Muhammadan Chiefships since the Mutiny—has been definitely laid down.

§ 345. In considering some further leading cases under the present head, we shall show how the principle of primogeniture and the principles deducible from the Hyderabad succession case have been applied from time to time by the Government of India. But before we do this we must not omit the remark that in the second Muhammadan Chiefship in India the succession of females

The succession of females.

has been allowed. This affords further testimony, if such were needed, to the right of selection on the part of the Paramount Power and the inapplicability of the ordinary Muhammadan Law of private inheritance. It is true that in

The Peint State, 1840.

1840, in the case of the Peint State, the Government of Lord Auckland (see paragraph § 236 above) would not "admit the principle of Muhammadan female inheritance;" and about the same time, when Nawab Ahmad Ali Khan of Rampur died in 1839, the succession of his only daughter was rejected and the

Rampur, 1839.

Chiefship bestowed upon his first cousin, Muhammad Said Khan, the eldest son of his paternal uncle, Ghulam Muhammad Khan.⁷ But the long and well-known history of Bhopal shows that sex does not necessarily disqualify a lady for a Chief-

Bhopal.

ship if the political circumstances are such that the power can best and most safely be entrusted to her. When the Nawab Nazar Muhammad of Bhopal was accidentally killed soon after the execution of the treaty of 1818, he left a widow, the Kudsia Begam, and one daughter, the Sikandar Begam. It was arranged, with the sanction of the British Government, that his nephew Munir Muhammad Khan should succeed him and should marry his daughter; also that the Kudsia Begam should be Regent. Eventually Jahangir Muhammad Khan, a younger brother of Munir Muhammad Khan, married the Sikandar Begam and was installed as Nawab. He died on December 9, 1844, having bequeathed his power by will to his illegitimate son, Dastgir. The will was set aside and the British Government recognised the succession of his daughter Shah Jahan by the Sikandar Begam. Shah Jahan Begam was a child; and the regency was entrusted first to the Sikandar Begam and a brother of the Kudsia Begam, then to the Sikandar Begam alone. After the marriage of Shah Jahan Begam in 1855 to a person not belonging to the Bhopal family it was decided⁸ "that Shah Jahan Begam should be the Chief of the State, her husband being only titular Nawab, and that Sikandar Begam should continue to act as Regent till Shah Jahan Begam should reach the age of twenty-one." But Shah Jahan Begam voluntarily resigned her right to rule during her mother's lifetime, and in 1859 the Sikandar Begam was maintained in the position of Regent. Shortly afterwards, at her daughter's request, she was proclaimed Ruler and the Shah Jahan Begam her heir, the succession remaining with Shah Jahan's children. On the death of the Sikandar Begam in October 1868, Shah Jahan Begam assumed the administration, and at her request her daughter, Sultan Jahan Begam, was recognised as her heir. It is hardly necessary to say that the circumstances of Bhopal are very special. The Bhopal nobles claim by custom a limited privilege in the selection of their Chief, and would not be prepared to acknow-

⁶ To Punjab, No. 1988-I., dated June 7, 1893 (Pro. Internal A, June 1893, Nos. 163-166).

⁷ Aitchison, II, page 3.

⁸ Aitchison, IV, pages 248-251, from which the narrative in the text is much condensed. As the question of succession to Muhammadan Chiefships does not appear to have been comprehensively reviewed, it may be worth while to mention the method followed in compiling the

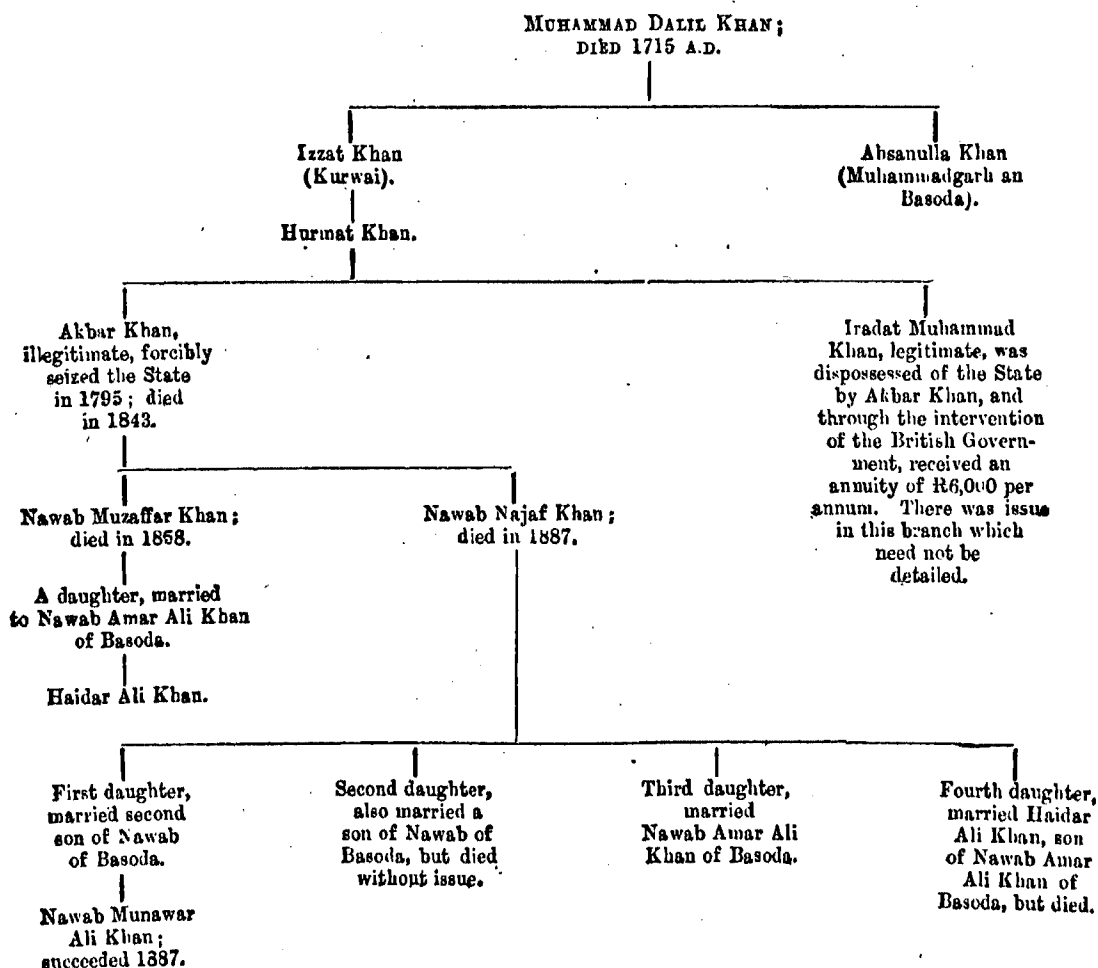
paragraphs of this treatise which refer to it. The Hyderabad succession case of 1864 was already a Leading Case in Durand's volume. I examined all the narratives in Aitchison relating to Muhammadan Chiefships, and in every case in which it appeared that there had been any doubt or any substantive question for decision, I called for the papers subsequent to 1857. I then scrutinised the files so collected, and rejecting those that threw no light on principles, abstracted the rest here.—C. L. TUPPER.

ledge as a Ruler any one not belonging to the ruling family. Accordingly the precedent which Bhopal affords for the succession of females must not be pressed too far. As already mentioned in paragraph §338, on the death in 1867

of Jagat Singh, *jagirdar* of Naigawan Ribai, a *Sanad* State in Bundelkhand, the succession of his widow, Larai Dulaya, then twenty-six years of age, was sanctioned. That State, however, is not a Muhammadan Chiefship.⁹

§ 346. Distinct from the succession of females is succession on the strength of a title derived through the female line. In this connection it is worth while

to mention the case of the small Muhammadan State of Kurwai in the Bhopal Agency, although it establishes little beyond great freedom of selection on the part of the British Government. Muhammad Dalil Khan, a Firoz Khel of Tirah or the Khaibar, was a companion in arms of Dost Muhammad, the founder of Bhopal, and acquired Kurwai, Muhammadgarh, and Basoda.¹⁰ On his death his acquisitions were divided between his sons, the elder receiving Kurwai and the younger the other territories. Muhammadgarh and Basoda are now separate Chiefships, the latter being mediatised in subordination to Sindhia. In the days of the decline of the Moghal empire Kurwai was the equal or superior of Bhopal, but it was hotly ravaged by both Mahrattas and Pindaris. The facts of the case can be most clearly seen from the following family tree, in which the earlier dates are approximate, and from which unnecessary details have been excluded:—



When Muzaffar Khan died in 1858 without male issue but leaving a grandson, Haidar Ali Khan, the son of his daughter by the Nawab of Basoda, the Government ruled that his brother Najaf Khan had the better claim. So far the case is a precedent against succession through the female line. But in 1874 Najaf Khan having no male issue selected this same Haidar Ali Khan, his brother's grandson, as his heir. The Government agreed, Mr. Aitchison noting that this selection should be sanctioned "the same as if the Nawab had received a *sanad* from Lord Canning." The Nawab had no *sanad*, but he very quickly

⁹ Aitchison, V, page 49.

¹⁰ Aitchison, IV, pages 275, 277, 278.

changed his mind. The Basoda Chief did not consent to the arrangements first proposed, and the Nawab of Kurwai alleged displeasure with him and fear of the influence of the Gwalior Darbar. He proposed to "adopt" Munawar Ali Khan, the son of his eldest daughter. The Government of India sanctioned the "selection" of the grandson, who succeeded accordingly when the Nawab died in 1887. The case is not conclusive as to succession through the female line being under some circumstances appropriate, because here there was absolutely no one who could claim at all otherwise than through a female.

§ 347. Several cases may be adduced to illustrate the application of the rule of primogeniture in successions to Muhammadan Chiefships. As we have seen above (paragraph § 303), Dugri is one of the Pindara *jagirs* which are mediatised States in the Bhopal Agency. Madar Bakhsh, the *jagirdar*, son of the Pindari Rajan Khan, died on December 5, 1884. He had three sons, Pir Muhammad, Rasul Bakhsh and Subhan Bakhsh. The two elder sons predeceased him, but on his death a grandson by the second son, Rasul Bakhsh, was living, also his third son, Subhan Bakhsh, aged 50. On the analogy of the Muhammadan law of private inheritance, Subhan Bakhsh would have excluded Khuda Bakhsh, the son of Rasul Bakhsh, representation not being allowed. Madar Bakhsh left a will appointing Khuda Bakhsh his successor and declaring that Subhan Bakhsh was quite unfit for the position of head of the family. In a petition of 1880 he had also stated that Subhan Bakhsh was illiterate and unable to look after State affairs. The local authorities reported in favour of Khuda Bakhsh, whose succession, it appeared, would be in accordance with the custom of the family. Mr. Charles Grant, the Foreign Secretary, asked whether it was the practice of the Government of India in deciding upon successions to guaranteed estates in Central India to follow the Civil Law (whether Muhammadan or Hindu) or to be guided by considerations of State. Mr. Durand, the Foreign Under-Secretary, replied that the Government were guided by considerations of State. He referred to the correspondence of 1864 (abstracted in paragraph § 315 above), pointing out that under the rules then laid down in the case of a Hindu house, the adopted son does not succeed unless the adoption is sanctioned by Government. Quoting the terms of the Canning *Sanads* as to recognising any succession which may be legitimate according to Muhammadan law, Mr. Durand said it might be argued from analogy that the Muhammadan law would also apply in the case of these guaranteed estates which have no *sanads*. But the words Muhammadan law, he thought, as used by Lord Canning, must be taken to mean "rather the custom of Muhammadan States in matters of regal or quasi-regal succession than Muhammadan law properly so called." Government, he said, adducing the Hyderabad precedent of 1864, could not be bound, with regard to successions in Native States, by the rules of private inheritance under the Muhammadan law. Though the Government of India do not admit the validity, for the purposes of succession in Native States, of the will of a Ruling Chief, "yet in doubtful cases a will would no doubt carry much weight as signifying the dead Chief's wishes—just as a nomination *in articulo mortis* like that made by Maharaja Ram Singh of Jaipur would carry much weight." Lord Canning even thought that a Muhammadan Chief should be allowed to select from among his sons the one whom he might desire to succeed him; but, Mr. Durand continued, the Secretary of State in reply "presumed that Lord Canning did not contemplate any departure from the policy of recognising the claims of primogeniture, and I think it may be pretty confidently affirmed now that, whether in Hindu or Muhammadan States, this policy would be adhered to, and that ordinarily the nomination made by a Chief in favour of a younger son would be disregarded. It is evident that a steady adherence to that policy supplies a valuable element of stability in the affairs of Native States. Of course if the eldest son were actually unfit to rule, or for some other exceptional reason, the policy might, in exceptional cases, be properly disregarded. As to the particular case now submitted, I would recognise Khuda Bakhsh."

This view was accepted by the Government of India, and Khuda Bakhsh, the heir by the rule of primogeniture, was preferred to Subhan Bakhsh, who

¹ Pro., Political I, March 1874, Nos. 7-9, and September 1874, Nos. 373-75; also Pro., Internal A, May 1887, Nos. 110-14.

would have succeeded if the rule of Muhammadan law disallowing representation had been applied. The letter¹² of the Government of India conveying the orders contained no discussion. It simply sanctioned, as recommended by the Agent to the Governor-General, "the recognition of Khuda Bakhsh as *jagirdar* of Dugri in succession to his late grandfather, Madar Bakhsh."

§ 348. The succession in 1887 of Nawab Mushtak Ali Khan of Rampur is another illustration of the importance to be attached to the principle of primogeniture.

The Rampur Succession, 1887. It is true that Mushtak Ali Khan had been acknowledged by Government as heir-apparent in 1884; but when his father, Nawab Kalb Ali Khan, died in March 1887, he was suffering from the effects of paralysis and scarcely fit for the work of administration. Mushtak Ali Khan had two sons, the elder a lad of twelve or thereabouts, a promising boy named Hamid Ali Khan. The succession of Mushtak Ali Khan was sanctioned notwithstanding his disqualifications, and commenting upon the case Sir Auckland Colvin, the Lieutenant-Governor, wrote:—"The manifest expediency of preserving the hereditary claims of the late Nawab's two grandsons, and of preventing their rights from being intercepted, has much strengthened the general considerations upon which the succession of their father, the present Nawab, was accepted and acknowledged. If Mushtak Ali Khan had been set aside on the ground of his feeble health and indifferent mental capacity, the British Government would have had to choose between admitting one of the collateral claimants, whereby the succession would have been diverted into another line, or proclaiming a minority until the elder grandson should have grown up." Both of these courses were open to objection, the former in particular, because neither of the rival claimants among the collaterals had much to recommend him. A Council was appointed to assist the Nawab, and when he died on February 25, 1889, and was succeeded by his promising elder son, Hamid Ali Khan, then about fourteen years of age, the Council, with some alterations, was continued in authority.¹³

§ 349. Las Bela is not a Native State in India. It is a province of Baluchistan said to have been granted to the Jam or Chief by Abdulla Khan, the

The Las Bela Succession, 1888. first noteworthy Khan of Kalát, on conditions of military service and fealty. It has, however, been treated for purposes of succession as if it were a State of the Indian Political System. Jam Mir Khan, the father of the present Chief, endeavoured to throw off his allegiance to Kalát, and having suffered a defeat about the year 1869 sought refuge in British territory. He was permitted to reside with his son, Jam Ali, at Hyderabad in Sindh, but was eventually deported to Poona, where he married a Hindustani lady named Roshana. In 1874 Jam Ali escaped from Hyderabad and established himself in Las Bela, where he ruled for three years. In 1876 he submitted to Major (afterwards Sir Robert) Sandeman, and in the negotiations at Mastung for the settlement of Kalát affairs entreated that his father might be restored to his country. The petition to this effect of Jam Ali and the Jhalawan Sardars was granted, and Jam Mir Khan was restored. Quarrels then ensued between father and son, said to be due in part to the dismissal of Jam Ali's Wazír and in part to the birth of a son by the Hindustani lady. There is no doubt that for seven or eight years before his death on January 26, 1888, Jam Mir Khan desired to supersede Jam Ali and secure the succession for his younger son, Yakub Khan. In 1882 war broke out between Jam Ali and his father. Jam Ali was defeated and captured, made over by his father as a prisoner to the British Government, and detained under surveillance at Jhelum. He was afterwards allowed to reside at Sibi, but having left that place in June 1886 and endeavoured to organise an attack on his father, he was imprisoned at Quetta and was there in confinement when his father died.

Jam Mir Khan left a will by which he bequeathed the Chiefship and all his property to his second son, Yakub Khan, then about ten years of age, and disinherited his eldest son, Jam Ali, then about forty. The friends of Yakub Khan were on the spot and in power, and directly after Jam Mir Khan's death the Sardars and officers tied the turban of Chiefship on Yakub's head and signed a declaration pledging themselves to support him. Some time elapsed before

¹² Pro. A, Political I, May 1884, Nos. 342-48.

¹³ Pro., Internal A, July 1887, Nos. 333-344, and May 1889, Nos. 304-311; also Aitchison, II, page 4.

the succession could be settled, and Lieutenant Newmarch and Rai Bahadur Hittu Ram were deputed to Las Bela. On April 28, 1888, the Government of India telegraphed to Sir Robert Sandeman, the Agent to the Governor-General in Baluchistan:—"With reference to the late Jam's will, please note that in cases of succession in India we ordinarily go by primogeniture and do not recognise testamentary dispositions." On receipt of a full report from Sir Robert Sandeman, the Government of India replied on July 7, 1888, in these terms:—

"The late Jam Mir Khan left four sons, the eldest of whom, Jam Ali, had long been estranged from him. By his will the Jam has disinherited Jam Ali Khan, and has nominated as his successor Yakub Khan, his favourite son by an Indian wife. It appears that he had also succeeded before his death in attaching to the cause of Yakub most of the influential persons in the State.

"For reasons given you consider that this will should be set aside, that the principle of primogeniture should rule the case as between the two brothers, and that Jam Ali Khan should be recognised as the Jam's successor. But on the ground that the actual succession of Jam Ali Khan to the Chiefship of the State would be impracticable, you proceed to recommend that he should be permitted to resign in favour of one of his sons. You apparently select the second son, a boy nine years of age, and you propose that the State should be administered during his minority by your Native Assistant, Rai Bahadur Hittu Ram.

"It is not necessary to enter in detail into the arguments by which you have endeavoured to prove that the principle of primogeniture is in full force in Las Bela; but they seem rather to establish the fact that among the Brahui Confederacy hereditary succession is the rule than to show that any special value is attached to primogeniture. In fact, your letter does not give the Government of India any reason to believe that the custom in this part of the country differs from that prevailing in other uncivilised Asiatic States, where the death of the Chief is generally followed by a struggle for power between his several sons. In such a case the eldest son, if he is as capable as his brothers, no doubt has a certain advantage, but he has to take and hold his place. Nevertheless, setting aside all arguments as to the actual prevalence in Las Bela of the principle of primogeniture, the Governor-General in Council is inclined to think that the time has now come when, in the interests of peace and order, it may be desirable to act upon the principle with regard to this small State in the same way as since the predominance of the British power it has been acted upon among the Native States in India. The desire of the Governor-General in Council therefore would be to recognise Jam Ali Khan as his father's successor."

The letter then went on to say that if this could not be arranged, there could be no question of right, and the selection would then become purely a matter of expediency. From this point of view the best course would be to defer to the wishes of the late Jam and his people and to recognise the succession of Yakub Khan. The opinions of the Chiefs of the Brahui Confederacy, recorded at the request of Sir Robert Sandeman, were decidedly in favour of his views. But the Government of India did not doubt that if it were finally determined to sanction the succession of Jam Ali Khan, the influence of Sir Robert Sandeman would suffice to secure the acquiescence and support of the Chiefs.

In the end Jam Ali Khan having accepted certain conditions was formally installed on January 21, 1889. The case is a strong one in favour of primogeniture; for that principle was applied to a State outside India and prevailed over the will and wishes of the late Chief, the actual investiture of a succession by the local Sardars, the original advice of the Agent to the Governor-General, and the opinion, recorded at his request, of the Chiefs of the Brahui Confederacy.¹⁴

¹⁴ Pro., External A, March 1888, Nos. 114-123.
 " " " " 379-383.
 " July " " 169-191.

Pro., External A, October 1888, Nos. 20-31.
 May 1889, " 312-319.
 Aitchison, IX, pages 379-380.

§ 350. The Janjira case of 1879, like the Las Bela case, shows that though in disputes relating to successions and Chiefships the Government of India are prepared to consider the wishes of the local Sardars, it is far from being in any way bound by them. The case is also a precedent in favour of legitimacy, though it would not be worth while to quote it merely on that ground. We have already mentioned in paragraph § 44 the claims of the Sidi Sardars to interfere in the administration which were overruled in 1870. There is some reason to believe that the constitution of the Janjira State was originally oligarchical, and it is, at any rate, a fact that the treaty of alliance against Angria made in 1733 was concluded with the leading Sidi Sardars. Apparently they claimed the right not only to elect the Chief, but to depose him if he failed to rule to their satisfaction. It was this latter right which they assumed in 1870 when they proclaimed Ahmad Khan, the legitimate son of Ibrahim Khan, then absent at Bombay, as his successor. It was held that, whatever irregular authority the Sardars might have previously exercised, they had ceased since the State had come under British supremacy to have any right to change the Chief or control his administration.

On January 28, 1879, Nawab Ibrahim Khan, the Chief, whom we had restored on certain conditions, died leaving by Saida Bai, a concubine of low birth, two illegitimate sons, Muhammad Khan, aged twenty-seven, and Abdur Rahman, aged eighteen, and the legitimate son, Ahmad Khan, then about nineteen, who had been irregularly elected in his stead in 1870. The Sardars, alleging the excuse that by their customs a new Chief must be elected before a deceased Chief is buried, proceeded forthwith to elect Muhammad Khan, the elder of the two illegitimate sons. Under the orders of the Bombay Government, Mr. Bosanquet, the Political Agent, Kolaba, proceeded to Janjira and informed the Sardars that though the election had been made for a temporary purpose, the real nomination rested with the Government of India, and that the Chiefship was therefore still vacant. The Sardars openly acknowledged that they understood this to be the position. The party of Ahmad Khan had apparently acquiesced in the election of Muhammad Khan, to avoid disturbance, which might have put Ahmad Khan's life in danger. Muhammad Khan appeared to be by character and education unfitted for the Chiefship. His illegitimacy was undoubted, but the late Nawab himself was illegitimate. There was no doubt also as to the legitimacy of Ahmad Khan, who seemed to be a promising youth. The succession of Ahmad Khan was sanctioned, and the decision was tranquilly carried out, Muhammad Khan himself taking a becoming part in the installation ceremony. He appealed, however, without success against the decision. In approving and confirming the recognition of Ahmad Khan as Nawab of Janjira, the Secretary of State, alluding to the election of Muhammad Khan, said that this act on the part of the Sardars "was no doubt intended as a fresh assertion of a right of control over the administration of the State, which was negatived in 1870 after full inquiry. It was, therefore, properly disallowed by the Government of Bombay. There seems," he added,¹⁵ "no reason to doubt that the rightful successor of the late Chief is Ahmad Khan, who, at the time of the events of 1870, was certainly regarded in that light both by the Sardars and by Government."

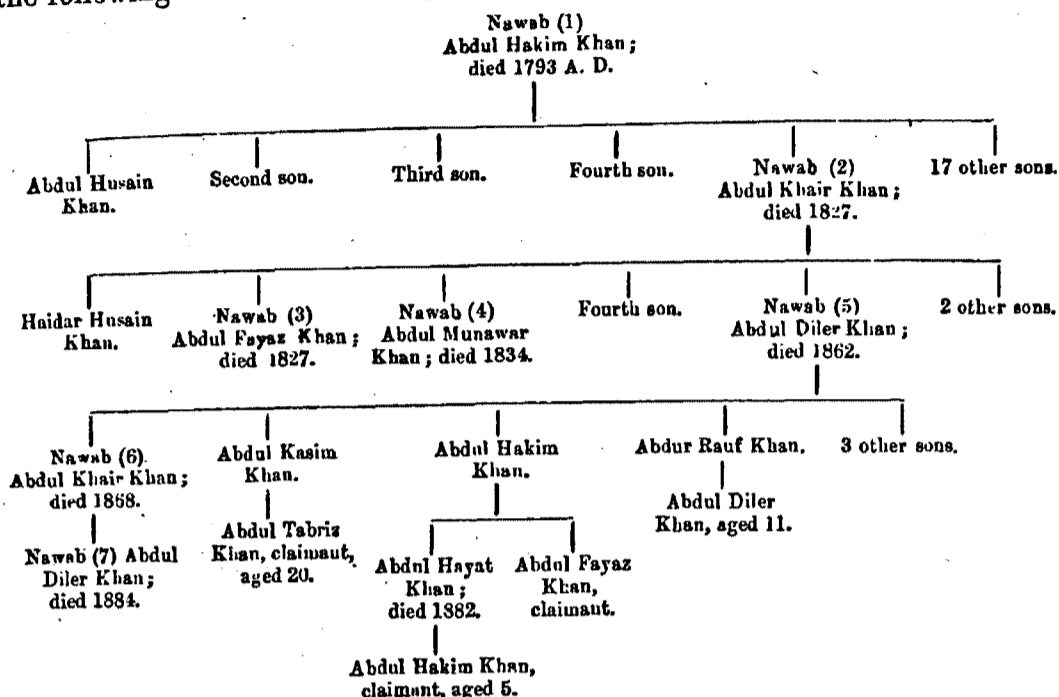
§ 351. The Savanur case of 1884-85 affords another instance of the rejection of a will purporting to dispose of rights of sovereignty, and further illustrates the principle of primogeniture and the inapplicability of the Muhammadan law of private inheritance to successions to Muhammadan Chiefships in India.

Nawab Abdul Diler Khan of Savanur died on August 11, 1884, leaving a widow and one daughter, about three months old, and no male descendants. There were four claimants to the succession, but of one of these, Abdul Muhammad Akbar Khan, nothing need be said, except that he was the son of a younger brother of the late Nawab's grandfather, and thus, being quite

¹⁵ Pro., Political A, May 1879, Nos. 158-164.
" " August " " 67-86.

Pro., Political A, November 1879, No. 401.
Aitchison, VII, page 109.

out of the line of succession, had no case. The other claimants are shown in the following extract from the genealogical tree of the family :—



The claim of Abdul Fayaz Khan was manifestly untenable, as it was based merely on the fact that he was the oldest living cousin of the late Nawab. Abdul Hakim Khan was more remote than Abdul Tabriz Khan. Virtually the only question was between Abdul Tabriz Khan, the eldest surviving son of the eldest uncle of the late Nawab, and the young Abdul Diler Khan, in whose favour the deceased Chief had executed a will four days before his death. The young Abdul Diler Khan was the only brother of the late Nawab's widow, and the will professed to make him the Nawab's heir and directed that he should succeed to the State.

It did not appear that any custom was established by which the nearest heir could be passed over under the authority of a will. Nawab Abdul Hakim Khan, the first Nawab in the above table, had many wives,—three hundred, it is said. But of these so-called wives only four could have had the legal status of a wife at the same time, and the legitimacy of his eldest son, Abdul Husain Khan, was impugned; but on the Nawab's death in 1793, Abdul Husain Khan possessed himself of the State. He was, however, ousted by his younger brother with the aid of the Mahrattas, the Peshwa having decided that Abdul Khair Khan was the heir in virtue of a will said to have been made by his father.

Putting aside the forcible accession of Nawab Abdul Khair Khan, the Chiefship, on and after his death in 1827, appears to have descended by the rule of primogeniture; for Haidar Husain Khan, his eldest son, was absent and not available. Nawab Abdul Khair Khan had married a sister of Tipu Sultan of Mysore. She and her son, Haidar Husain Khan, just mentioned, were detained as prisoners at Seringapatam, were in Vellore when the mutiny occurred there, and were sent as State prisoners to Calcutta. The second son, Abdul Fayaz Khan, therefore succeeded. He died childless, and was succeeded by his next brother, Abdul Munawar Khan, who also died childless. The fourth son had died under like circumstances. Thus Nawab Abdul Diler Khan, the fifth Chief in the above table, came into possession, and was succeeded in 1862 by his eldest son, Abdul Khair Khan, who was followed by his only son, the Nawab who died in 1884.

The Bombay Government referred the case to the Remembrancer of Legal Affairs, and both he and the Political Agent held that the ordinary law of Muhammadan inheritance did not apply. The reports, however, contained a great deal of learned discussion from the point of view of that law and of other law supposed to be applicable to Chiefships. The Political Agent and the Law Officers were agreed that the will should be set aside and that Abdul Tabriz Khan was entitled to succeed.

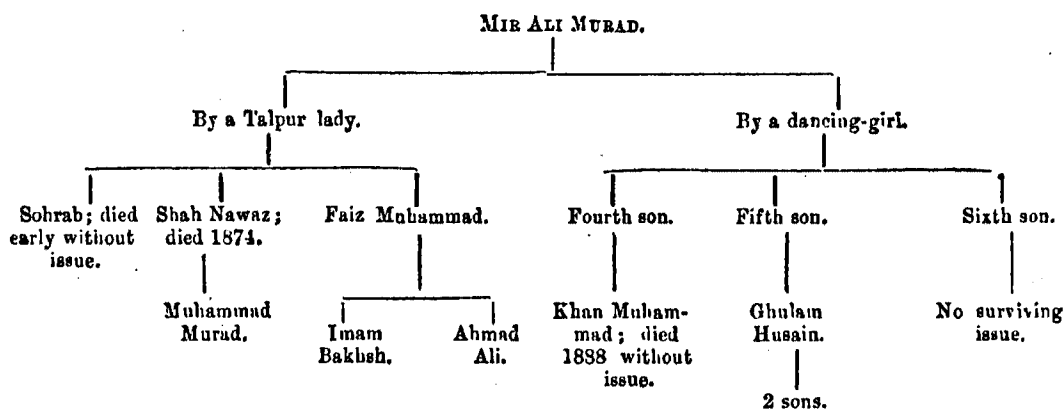
In reporting the case to the Government of India the Bombay Government said—"There being several claimants to the *yaddi*, one of whom was designated by the late Nawab as his successor, the Governor in Council has been guided by the opinion of the Government Legal Officer in deciding the succession to vest in Abdul Tabriz Khan, cousin of the late Chief." The Nawab of Savanur, it has to be added, holds a Canning *Sanad*.

The essential portion of the Government of India reply¹⁶ was thus worded:—

"I am to inform you that His Excellency the Viceroy and Governor-General is pleased to recognise the succession of the Nawab Abdul Tabriz Khan.

"I am, however, to observe that *the ordinary rules of inheritance are not necessarily applicable to cases of successions in Native States*. The correspondence forwarded with your letter under reply discusses questions of some difficulty; and *I am to suggest that, whenever a succession may be open to doubt, the views of the Government of India may be ascertained before it receives provisional sanction from His Excellency the Governor in Council*. This procedure would be specially convenient in dealing with States the succession to which may have been guaranteed by *sanads*."

§ 352. The case of the Khairpur succession is exceptional, but it serves to show that the British Government is not bound even by the principle of primogeniture when expectation and family and public feeling point some other way. The sons of Mir Ali Murad, who was recognised by Sir Charles Napier as Chief of Khairpur, and has lately died at 84 years of age, are shown in the following table:—



In 1876 after the death of his eldest surviving son, Shah Nawaz, but in the lifetime of his grandson Muhammad Murad by Shah Nawaz, the Chief nominated Faiz Muhammad as his successor. This nomination was at variance with the rule of primogeniture, by which Muhammad Murad would be the heir; but it was in accordance with the Muhammadan law of private inheritance, under which Muhammad Murad would not represent his deceased father Shah Nawaz. The case came before the Government of India at the time, but they did not then understand that Shah Nawaz had issue and that the Mir was excluding the elder branch, but seem to have thought, on the contrary, that he was nominating "the natural successor." It is stated that the whole proceeding was irregular, but no objection was raised at the time, apparently because it was supposed that the Mir was not proposing any departure from the natural order of succession. The Government of India letter¹⁷ of August 16, 1876, simply acknowledged without remark the communication from Bombay "reporting the selection by Mir Ali Murad Khan, of Khairpur, of his eldest surviving son, Mir Faiz Muhammad Khan, as heir-apparent." Many years afterwards the Mir became dissatisfied with Faiz Muhammad and endeavoured to secure the succession for Ghulam Husain, his grandson by a son whose mother was a dancing-girl. He actually made a will to this effect; but was informed that the regulation of successions in Native States by testamentary documents could not be permitted, and that the Government could not guarantee some

¹⁶ Pro., Internal A, June 1865, Nos. 264-270.

¹⁷ Pro., Political A, August 1876, Nos. 32-35.

other bequests which he had made in his will.¹⁸ He was also told by the Bombay Government that "at present Faiz Muhammad is recognised as the natural heir and the next in the order of succession." Soon afterwards, in 1893, the Mir strongly urged that if the Government were resolved to reject his will, his grandson Muhammad Murad by Shah Nawaz should be recognised as his successor. The position was difficult, because Faiz Muhammad had apparently been treated as heir-apparent for nearly twenty years; the Mir, as just said, had been told that Faiz Muhammad had been recognised as the "natural heir,"—the expression used in the Canning *Sanad* granted to the Khairpur Chief; and no reasons worth mentioning were alleged by the Mir for setting Faiz Muhammad aside.

On May 30, 1893, the Bombay Government telegraphed that the Commissioner expected the early demise of Mir Ali Murad and that they had instructed him to act on existing orders, which were to deliver to Faiz Muhammad a *kharita* prepared and signed in 1891 for presentation to him on his succession. The Government of India replied that if the Government of Bombay were satisfied that the recognition of Faiz Muhammad would be in accordance with the feeling and expectation of the family, the Commissioner might act as proposed, but that the eldest legitimate son of Shah Nawaz seemed to be the "natural successor," and that the nomination of Faiz Muhammad by his father in 1876 carried with it no rights. The Bombay Government rejoined that Muhammad Murad, son of Shah Nawaz, was married to a daughter of Faiz Muhammad, and, so far as they were aware, had never expressed any discontent at the recognition of his father-in-law as the next successor. The succession of Faiz Muhammad, they said, would be in accordance with Muhammadan law, with family and public feeling and expectation, and with the custom of the Talpur family to which the Chiefs of Khairpur belong. In the circumstances the Government of India approved of the proposal that Faiz Muhammad should succeed his father.¹⁸

§ 353. The Khairpur case is instructive, because it exhibits the reluctance with which the Government of India sanctioned a deviation from the rule of primogeniture and because it very clearly implies that in a Muhammadan Chiefship when the Chief holds a Canning *Sanad* and there is more than one candidate whose succession would be legitimate by any law or custom which could be applied, the prerogative of recognising a successor is not that of any Ruling Chief, but of the Paramount Power. In other respects, however, it is not a good precedent because until 1893 the Government of India were not fully informed of the facts of the case and are believed to have acquiesced in the action of the Chief under a misapprehension. On the other hand, the last case which we shall adduce in connection with successions to Muhammadan Chiefships is an excellent precedent, and illustrates some of the principal points which the above review is intended to make clear. The case is that of the Junagarh succession, 1892.

In 1882 Mahabat Khan, Nawab of Junagarh, died leaving, by different wives, three sons. A fourth wife, Kamalbakhta, the daughter of the Nawab of Radhanpur, alleged that she was the mother of a fourth son of the Nawab, but on more than one occasion he formally denied that he was the father of the boy in question. Including this supposed or supposititious son, the four came thus in order of age: *first*, Bahadur Khan, by Ladibu, born in March 1856; *secondly*, Ahmad Khan, said to be the son of Kamalbakhta, born in August 1856; *thirdly*, Rasul Khan, by Narbu, the daughter of an elephant-driver; *fourthly*, Idal Khan, by Soji, a dancing-girl. There was no real doubt of Bahadur Khan's legitimacy. His mother was the daughter of one Hasan Bai, a servant of Mahabat Khan's mother; and the family of this servant acquired very great influence and power in the State. In January 1856, when the Radhanpur family were well aware that Ladibu was far advanced in pregnancy, Kamalbakhta went to her own home. The date on which Kamalbakhta first announced that she was expecting to give birth to a child is uncertain; but the Junagarh Darbar knew in July 1856 that she had made this

¹⁸ Pro., Internal A. January 1893, Nos. 97-100.
Pro., Internal A. July 1893, Nos. 65-71.

announcement. It was subsequently asserted that she had given birth to Ahmad Khan on August 24, 1856, but the whole circumstances, so far as ascertained, were apparently compatible with her never having given birth to any child at all, and with Ahmad Khan having been procured from some unknown quarter for the purpose of supplanting Bahadur Khan. The point was left in doubt at the time, and the doubt has never been resolved in any conclusive manner. In 1857 the Political Agent was directed to inform the Nawab of Junagarh that it was useless to question the legitimacy of the child without some clear proof of its having been surreptitiously obtained; and the Political Superintendent, Palanpur, was instructed to intimate to the Nawab of Radhanpur that the Bombay Government, "should the question ever come before it, will not acknowledge (solely upon the facts now brought to its notice) that Bibi Kamalbakhta has borne a child to her husband, the Nawab of Junagarh, nor will it deny the circumstance." This position was approved by the Court of Directors in 1858.

In January 1866 Nawab Mahabat Khan begged that Government would formally recognise Bahadur Khan as his heir and successor. It was reported that Bahadur Khan was certainly legitimate and that the succession in Junagarh followed the rule of primogeniture irrespective of the rank of the mother. The Government of India, after noticing that the probabilities were against Kamalbakhta having had a son by the Nawab of Junagarh, went on to say—"But independent of these circumstances, the son of Ladibu by the Nawab has the right of primogeniture, a circumstance which, in addition to his father's support, is decisive in his favour. Among Muhammadans, the presumptive right of inheritance to a Chiefship is clearly in favour of the first-born; such a right no doubt is often set aside, but it is even in that case admittedly done from favour and affection. His Excellency in Council has no hesitation, therefore, in supporting the view of the Bombay Government and directing that the son of Ladibu by the Nawab be recognised as the heir of the Junagarh State." The Secretary of State confirmed this recognition of Bahadur Khan, saying that he saw no reason to question the decision of the Government of India "in this very doubtful and difficult case." This decision was affirmed by the Secretary of State in 1870 and 1872, on receipt of memorials; and in 1877 the Government of India concurred with the Bombay Government in considering that there were no sufficient reasons for insisting on a maintenance allowance being granted to Ahmad Khan by the Junagarh State.

On the death of Nawab Mahabat Khan in 1882 Ahmad Khan again claimed the succession. His prayer was rejected and the succession of Bahadur Khan confirmed.

Bahadur Khan died on January 2, 1892, and the whole case then formed the subject of an exhaustive report by Mr. Ollivant, the Political Agent, Kathiawar. The candidates were Ahmad Khan, Rasul Khan, and Idal Khan. Rasul Khan was seven years older than Idal Khan, the son by the slave-girl, Seji. The Junagarh Chief holds a Canning *Sanad*.

All else that is material in the case is contained in the final orders of the Government of India, dated May 7, 1892:—"The late Nawab Bahadur Khan," they said, "died without issue, and without exercising the powers conferred by the Adoption *Sanad*. The selection of a successor to the Chiefship, therefore, rests with the Governor-General in Council, and the choice lies between Ahmad Khan, Rasul Khan, and Idal Khan, each of whom claims to be a son of Mahabat Khan, the father of the late Nawab. As regards Ahmad Khan, I am to observe that, although the doubts as to his legitimacy cannot be excluded from consideration, it is not necessary for the Government of India to give a decision on the point. Your letter of the 22nd March 1892, and the elaborate report of the Political Agent, clearly show that the general feeling in the Junagarh State is in favour of Rasul Khan, who is some years older than the third candidate; that his succession is supposed to be in accordance with the wishes of the late Chief, and that it is in accordance with the wishes of the ruling family. Under these circumstances the Governor-General in Council has no hesitation in accepting the view of the Bombay Government, that the succession of Rasul Khan should be approved. The new Chief, I am to add, will no doubt readily acquiesce in the proposed condition that, in respect of

the education of his son, he should be specially guided by the advice of the Political Agent."

This decision of the Government of India¹⁹ was approved by the Secretary of State in a despatch of July 21, 1892.

Here we see that the Government of India were guided by the rule of primogeniture in 1866, and again, as between Rasul Khan and Idal Khan, in 1892. But on failure of lineal heirs of a Muhammadan Chief, who had not exercised any power conferred upon him by his Canning *Sanad*, the freedom of selection vesting in the Paramount Power was held to be so extensive that it was not necessary to decide whether the eldest surviving brother of the late Chief was legitimate or not; though if that brother were legitimate and the Government of India had been absolutely bound to apply the rule of primogeniture in all cases, as a court of law might be bound, the succession must have gone to him and not to the person selected. We have found no clearer case to prove that the confirmation of a succession to an Indian Chiefship is an act of State, not to be based solely upon considerations of law, or even custom. In this case many other considerations were taken into account,—the history of Ahmad Khan, the general feeling of the Junagarh State, and the wishes of the late Chief and of the ruling family.

§ 354. In examining these precedents relating to Muhammadan Chiefships, we have gathered much confirmation of the principle stated in paragraph § 295 that wills purporting to dispose of rights of sovereignty are not recognised for this purpose by the Paramount Power. Thus we have seen that the Government declined to give effect in 1844 to the will of Nawab Jahangir Muhammad Khan of Bhopal in favour of Dastgir, in 1885 to the will of the Nawab of Savanur in favour of his nephew, and brother-in-law Abdul Diler Khan, in 1888 to the will of the Jam of Las Bela disinheriting his eldest son, and in 1893 to the will of the Mir of Khairpur rejecting the accepted heir Faiz Muhammad Khan. If, on the other hand, the decision of 1884 in the Dugri case was in accordance with the will of the late *jagirdar* Madar Bakhsh, still the document was accepted merely as evidence of his wishes, not as determining the succession.²⁰ Here, too, as in the case of the precedents relating to Hindu Chiefships, we have elicited some rules which are applicable to all Chiefships, both Muhammadan and Hindu; and here, as in paragraph § 339, we shall indicate by the terms of our summary what rules apply to Chiefships in general and what rules apply only to the successions of Muhammadan Chiefs.

The conclusions, then, which we draw from paragraphs § 342 to § 353, inclusive, are these:—

(1) *The recognition or selection of a successor to any Chiefship is an act of State, not to be determined merely upon considerations of law or custom, though these considerations may, and usually do, influence the decision.*

(2) *The successor to any Chiefship may be selected by the Paramount Power if the interests of the Empire so require, and when conditions are absent demanding the fulfilment of any pledge, such as that given to Hindu Chiefs by the Conning Adoption Sanads.*

(3) *The ordinary rules of private inheritance under the Muhammadan or Hindu law are not applicable to successions to Chiefships.*

(4) *In Muhammadan as in Hindu houses, primogeniture is the ordinary rule of succession to Chiefships. But this rule is not absolutely binding on the Government in all cases. For instance, a departure from it might be warranted by proved incapacity for rule on the part of the heir, by previous proceedings on the part of the Government, or by the general expectation and family and public feeling in the State combining to support some other candidate.*

(5) *In certain States a lady is not disqualified merely by her sex from succession to a Chiefship.*

(6) *Though successions to Chiefships cannot be regulated by will, the will of a Ruling Chief may carry weight as evidence of his wishes.*

¹⁹ Pro., Internal A., July 1892, Nos. 10-23; and August 1892, No. 146.

²⁰ For another case in which a will purporting to settle a political succession was ignored see the correspondence as to the half share in Piplianagar, part of the Jabria Bhil estate,—Pro., Internal A., April 1894, Nos. 54-55.

(7) *The Canning Sanads granted to Muhammadan Chiefs leave much to the discretion of the Paramount Power.*

(8) *When a Muhammadan Chief holding a Canning Sanad is without lineal heirs, it is at least doubtful whether he possesses any great latitude of discretion in the choice of a successor. It is the better opinion that if a selection has to be made in a Muhammadan Chiefship, the prerogative of selection vests not in the Chief, but in the Paramount Power.*

(9) *Having regard to these doubts, and to the fact that the possession of a right of selection by the Chief would tend to promote intrigue and disturbance, the British Government, as the Paramount Power and as responsible for the peace of the country, will not recognise the right of the Chief to exclude by the selection of a more remote collateral heir, or of a successor without inherited rights, a person who by custom would have a valid claim.*

(10) *But if any member of a Muhammadan ruling family, other than the person who would appear to stand next in the order of succession, should be selected by that family, and supported by the principal officers and nobles of the State, and accepted by the people, the British Government will not consider itself bound to uphold the person apparently standing next in the order of succession, but will be at liberty to exercise its discretion in giving or denying its support to the person selected.*

(11) *Whatever right of selection a Muhammadan Chief holding a Canning Sanad may have on failure of lineal heirs,²¹ the class of eligible members of the ruling family need not be restricted to the sharers under Muhammadan law.*

(12) *In any disputed succession in any Chiefship, the Government of India, though prepared to consider the wishes of the principal officers and nobles of the State, are not bound by them or by any installation of a successor which the officers and nobles may have irregularly made.*

(13) *When a succession is doubtful, even the provisional recognition of the candidate locally approved should be deferred until the views of the Government of India have been ascertained; and when serious difficulty is presented by a doubtful succession to a Muhammadan Chiefship of which the Chief holds a Canning Sanad, the case should be reported for the consideration of the Secretary of State.²²*

In heads (8), (9) and (10) of this summary the wording of the heading of the leading case of 1875, entitled "Affairs in Hyderabad," have been closely, but not exactly, followed.

§ 355. In settling questions of successions in States where the Chiefs have Policy regarding States without Canning Sanads. no Canning Sanads the Government of India is guided by the same considerations as are applied in the case of States where the *sanads* have been granted. This proposition can be fully established from several cases which we proceed to quote.²³

In the original distribution of Canning *Sanads* in March 1862 twenty-seven *sanads* were forwarded for Bombay Chiefs. The Bombay Government reported that the Nawab of Savanur had been omitted by mistake, and that apparently there were also other omissions. They were asked to supply

²¹ As it has never been settled what this right of selection is, or indeed whether it exists at all, it may perhaps be useful if I give my own opinion on the point. I think that a Muhammadan Chief holding a Canning *Sanad* may, on failure of lineal heirs, propose as his successor any member of the ruling family, but that it rests entirely with the Paramount Power to accept or reject his selection. I construe the pledge given by the *Sanad* as amounting to this, that in default of lineal heirs, some successor will be approved, whose selection will not be opposed to the custom of the family. In approving or rejecting the choice of the Chief, the Government of India would be guided by the usual considerations—the personal fitness of the nominee, his relationship to the Chief, the wishes of the Chief, his family, nobles and people, and generally the best interests of the State.—C. L. TUPPER.

²² Head (9) in this summary is an inference from the way in which the Government of India dealt with the Hyderabad succession. It is not a copy of an order of the Government of India or the Secretary of State. In the

recent case of the Palitana succession the Government of India observed:—"It might, if necessary, be argued that the grant of an adoption *sanad* does not in any case give a Chief the power of arbitrary selection to the exclusion of those who, by law or custom, have valid claims. *Here that point may be left undecided*, for there is no present need to take up the question of the power of selection as a general one."—Pro., Internal A, September 1894, Nos. 215 to 227.

²³ Another precedent may be added to those mentioned in the text. In 1872 the Government of India wrote:—"The Raja of Sunth received no adoption *sanad*, because he was considered to be on the footing of the Medatised Chiefs of Malwa to whom such *sanads* were not given. This fact, however, should make no difference in the case, and it is the desire of the Governor-General in Council that the State of Sunth be continued in the person of some fit successor." The widow was then allowed to adopt a successor.—Pro., Political A, November 1872, Nos. 13 to 50, and February 1873, No. 7.

an additional list, but in reply proposed that *sanads* besides those already given should be granted only to the Nawab of Savanur and the Mir of Khairpur and to a Sardar named Raghunath Rao Vithal Vinchurkar, who was not a Ruling Chief, who did not get a *sanad*, and whose case need not be detailed. In the course of the letter making this very limited proposal the Bombay Government expressed the supposition that the omission to grant a Canning *Sanad* did not imply that, if heirs failed in States without *sanads*, leave to adopt would be refused and escheat insisted on. The object of the Government of India appeared to them to be to convey to the aristocracy of the country an assurance against annexation by lapse; and in this view it was unnecessary to send a *sanad* to every petty Chief, although, in almost every instance, resumption on failure of male issue would be deprecated. The Government of India, in a letter of November 24, 1864, agreed that the grant of an

Ruling in the case of Bombay Chiefs, Adoption *Sanad* by no means implied that 1864. the right of adoption would not be admitted in other cases; and observed that whenever a Chief died leaving no heirs descended from the common ancestor, who originally acquired the estate or Chiefship, the case should be considered and decided on its own merits, and that when the rules and customs of the family allowed of adoption, or when its antiquity, services or influence in the country gave it a claim, the British Government would no doubt allow the adoption to take place. It would, however, be open to consideration whether, under these circumstances, a moderate *nazarana*, say half a year's revenue, might not be demanded from the adopted heir on his succession. After some further correspondence on this question of *nazarana*, *sanads* were granted for the Khairpur and Savanur Chiefs.¹

§ 356. Only three of the Kathiawar States—that is to say, Bhaunagar, Nawanagar, and Junagarh—were included in the original distribution of *sanads* in 1862. In 1867 a proposal to permit the Chiefs of Kathiawar to make adoptions on certain conditions was negatived because adoptions are rare in that Province, and, it was supposed, by custom cannot exclude the succession of collateral male agnates; and because the Government hesitated to take away the reversionary rights of Chiefs to whom other Chiefs were subordinate.² But in 1888 the Thákur of Gondal, who is one of the principal Chiefs of Kathiawar,

Grant of additional *Sanads* to Bombay applied for an Adoption *Sanad*, and the Chiefs, 1889. Government of Bombay in 1889 recommended the grant of these *sanads* to all Kathiawar Chiefs of the first or second class, who might ask for them; that is, to the Chiefs having powers of life and death over their own subjects. It was proposed to add to the usual form of *sanad* a proviso saving the customary rights of agnates. As to the rights of overlords, Sir Mortimer Durand, the Foreign Secretary, noted that he would not let them interfere with the grant of Adoption *Sanads* to the principal Chiefs of Kathiawar. "We have," he said, "a right to expect that Native Chiefs will act upon the policy to which each one of them owes the security of his own State and house, and I would not admit the existence of any right of escheat in the case of States which we think important enough to receive a *sanad*. If any overlord objected to the grant of an Adoption *Sanad*, the best answer would be a reference to his own." The Government of India doubted whether the special circumstances of Gondal, or of Kathiawar in general, were such as to necessitate an alteration of the established form of *sanad*. They said—"By the words 'according to Hindu law and to the customs of your race' provision is made for the recognition of rights of collaterals, if such rights exist; and it appears open to question whether anything is to be gained by asserting these rights in a formal document of this nature." It would, they thought, suffice if the Government of Bombay in transmitting the *sanad* would add in a letter to the Chief that, as the wording of the *sanad* implies, it is not intended to override family custom, and that any adoption in opposition to such custom would not be recognised by the Government of India³ for the purposes of the succession." After some further correspondence, *sanads* were granted to all

¹ Pro., Political, March 1862, Nos. 380-395.
 " " June " " 4-5.
 " Political A, Nov. 1864, " 238-240.
 " " Dec. 1865, " 172-174.
 " " March 1866, " 141-142.

² Pro., Political A, May 1867, Nos. 176-77.
³ India to Bombay, No. 3085-I., dated August 1, 1889.
 (Pro., Internal A, August 1889, Nos. 222-230.)

Chiefs previously without them in the Bombay Presidency who have plenary civil and criminal jurisdiction over their own subjects. In each case the transmitting letter was to give the above explanation of the effect of the *sanad*. The supplementary list of Chiefs thus approved contained the names of nine Kathiawar Chiefs, and of seven others.

§ 357. On October 29, 1881, Maharana Rupdeo, Chief of Ali Rajpur, in Central India, died without lineal heirs. He held no Adoption *Sanad*, and indeed it appeared that the ruling family of Ali Rajpur was extinct. There were, however, three claimants: first, a boy named Waje Singh or Vijay Singh of Sondwa, a distant relative of the late Chief, supported by the ladies of the family; secondly, one "Maharana" Kalubawa, belonging to a branch where the descent had been broken by an unsuccessful attempt to procure the recognition of a supposititious child; and thirdly, the Chief of Dharampur, a State in the Bombay Presidency, who claimed on behalf of one of his sons, both as next of kin and because when heirs had failed in the Dharampur house, successors had been taken from the Ali Rajpur Ruling family, and he therefore contended that in the converse case, a successor should be taken from Dharampur. His claim as next of kin was based on the fact that he was fourth in descent from one of the members of the Ali Rajpur family who had been called to the Dharampur Chiefship. His claim and that of Kalubawa were rejected; and the rest of the case is sufficiently stated in the letter⁴ of the Government of India to the Agent to the Governor-General in Central India, No. 328-I. P., dated May 31, 1882, of which we transcribe the material portion:—

"You express," they said, "the opinion that as the late Chief had received no Adoption *Sanad*, and as it is further understood that he made no attempt to adopt an heir, the British Government is not bound to continue the existence of the State, and in a strictly legal aspect this view may be fairly held, but the Governor-General in Council considers that it would be highly impolitic to annex this small but ancient Chiefship, or to make any change in the conditions under which it is held. The State will, therefore, be maintained in existence; and its relations with the British Government will remain unchanged.

"With regard to the choice of a successor, I am to say that the Governor-General in Council is pleased to accept your recommendation and to select Waje Singh for the purpose. *As there is no candidate having a claim to succeed as of right, the British Government is free to confer the Chiefship as it pleases, subject only to the condition that the candidate shall be thoroughly qualified to succeed. In judging of the comparative fitness of the several candidates in such a case, the considerations to which weight must be given are, first, personal capacity, and secondly, the wishes of the nobles and people of the State.* With reference to both these considerations, Waje Singh seems to have the best claim. He is the choice of the Ranis, and probably of the late Chief, and it seems likely that his succession would be popular. You also report that he is intelligent and well-mannered; and his age is such as to allow of some training before he is finally entrusted with power.

"If the Ranis wish to adopt Waje Singh, they are at liberty to do so. This is in fact a matter with which the British Government is not directly concerned; for it is wholly distinct from the question of succession, though it may be added that *the hasty adoption of a person whose claims to the succession the Governor-General in Council might afterwards have felt bound to disallow, in favour of some other candidate, would have been imprudent and embarrassing.* The Ranis acted rightly, therefore, in deferring adoption till the pleasure of Government should be known.

"I am to request that you will now inform the Ranis that, in token of his earnest desire to maintain the existence and privileges of Native States, the Governor-General in Council has determined to continue the State of Ali Rajpur, and to confer the Chiefship upon Waje Singh, without alteration of the relations obtaining between the State and the British Government. You should report whether it is in your opinion desirable to levy *nazarana* on this or on

⁴ Pro., Political A, June 1882, Nos. 172-187.

any future succession; and should keep the Government of India informed as to the progress made by Waje Singh at the Indore College."

The orders of Lord Northbrook in the Alwar succession case, 1875 (paragraph § 329 above), were duly referred to before this letter was drafted. The principles of selection which it embodies are substantially the same as those applied in the Baroda case (paragraphs § 284 and § 289 above) and acted upon (see paragraph § 339) when a Chief holding an Adoption *Sanad* has died without natural or lineal heirs and without making an adoption. And finally the ruling here given regarding adoption by a widow of the late Chief is consistent with the doctrines upon that subject which we have explained in paragraphs § 333, § 334, § 335, § 336, and § 339. In this, as in many other cases, the Government of India were careful to see that proper arrangements were made for the education of the minor Chief.

§ 358. The best precedent for applying to States without Adoption *Sanads* the same principles as are applied to States which have Adoption *Sanads* is the Sitamau Adoption Case, 1884-85. Sitamau is a small mediatised State of Central India tributary to Sindhia and held by a Rathor Rajput family. It was separated from the Ratlam State in A. D. 1660. Under the guarantee⁶ of 1820 and the correspondence of 1864 abstracted in paragraph § 315 above, Sindhia has no right to interfere in the succession; and his claim to be consulted in regard to it on the failure of the direct line of the ruling family was expressly disallowed⁶ in 1885. In the original distribution of the Adoption *Sanads*, no *sanad* was given to Sitamau because it was a mediatised State. In excluding it from his proposals for the grant of *sanads*, Sir R. Shakespear, the Governor-General's Agent, said—"There are very many Chiefs, such as Ratlam, Sitamau, etc., whose possessions are guaranteed to them by our Government, but they are all dependent on some other Native State, and, consequently, as in the Amjhera case,⁷ if the estate lapsed, it would not fall to our Government."

In October 1883 Raja Bhawani Singh, Chief of Sitamau, being in bad health and having no son, asked permission to adopt Mod Singh, a boy of eight years of age, belonging to the Dabri family, and ninth in descent from the second son of Ratan Singh, the founder of the Sitamau Chiefship. To this Takht Singh, Thákur of Chiklia, and first cousin of the father of Raja Bhawani Singh, objected on the ground of nearness of relationship, urging that one of his sons should be adopted by the Chief and recognised as the heir. Sir Lepel Griffin, the Agent to the Governor-General, declined to support the request of the Raja. "The Raja," he said, "is not one of those to whom the Government has been pleased to grant the right of adoption. It consequently would stultify the object of Government and would confer on the Raja that very privilege which has been, after due consideration, withheld from him, were it to permit him now to adopt some distant collateral."

The reply of the Government of India was addressed to Colonel Bannerman, who was officiating for Sir Lepel Griffin. Commenting upon Sir Lepel's refusal to recognise the adoption of Mod Singh in preference to a nearer kinsman they said:—"Sir Lepel Griffin's main reason for this refusal was that the Sitamau Chief had received no formal *sanad* of adoption from the Government of India. He was of opinion that 'where no *sanad* whatever had been granted, any adoption by the Raja would more wisely follow the natural rule of inheritance,' that is to say, should be made in favour of the nearest of kin. These views, I am desired to say, need some correction. It is true that the Sitamau Chief has received no *sanad* of adoption, but the State is not one of modern creation and the Sitamau line has for a considerable period held the position more or less of Ruling Chiefs. Under these circumstances, *although the Governor-General in Council has not bound himself by express engagement to recognise adoptions made by the Chief as regulating the succession to this State, yet he would be guided, in settling questions of succession to the Sitamau Chiefship, by considerations similar to those applying to States having Adoption sanads.* Speaking generally, the Government of India would neither desire to

⁶ Aitchison, IV, page 376.

⁶ Fro., Internal A, September 1885, Nos. 51-57.

⁷ See paragraph § 11 above.

benefit itself by lapses in the ruling line of such States as Sitamau, nor would it view with satisfaction the absorption in any other way of the ancient Rajpu principalities of Central India.

“The only object of the Governor-General in Council in intervening to regulate the succession in such cases, would be to settle it in accordance with family and tribal custom and feeling, provided that the Chief, selected on these grounds, was properly qualified for his position.

“In the present case it seems clear that the Sitamau Chief’s proposal does not give sufficient weight to these important considerations. The Raja of Ratlam, who is the head of the family, told Colonel Martin that ‘the Raja of Sitamau was bound to adopt the son of Takht Singh of Chiklia according to all precedent and to the traditions and customs, not only of the Ratlam family, but also of the Rajput race,’ and there is much evidence before the Government of India to show that among Rajputs great regard is paid to considerations of kinship in adoptions. In so far, therefore, Sir Lepel Griffin’s conclusion seems to have been right, though, as has been explained, the Governor-General in Council does not concur with him in the opinion that the absence of an Adoption *Sanad* need, in the case of such a State as Sitamau, involve departure from the broad principles which would otherwise guide the Government of India in regulating succession by adoption. *Where a sanad has been granted to a State the Government of India has limited its freedom of action by express engagements*; and from this point of view the Governor-General in Council might consider himself entitled to exercise a wider discretion in dealing with *non-Sanad* than with *Sanad* States; but in either case he would regard the same general considerations, *viz.*, those set forth above, as applicable.

“On the other hand, it seems very undesirable to leave matters in their present undefined position, which must not only be distasteful to the Chief, but may also lead to intrigue and disquiet in the State. I am, therefore, to suggest that you should endeavour to bring about a settlement of the question in conformity with the views above indicated. With this object *it would be well first to ascertain who would be the most suitable candidate, having regard to family custom, personal fitness, and acceptability to the present Chief.* Your opinion on this point should be reported to the Governor-General in Council, and, in doing so, it would be convenient if you would state what steps you would take for procuring the Raja’s adhesion to your proposal.”

The question whether the Chief of Sitamau can, by custom, adopt, for the purpose of succession, a distant collateral to the exclusion of an eligible and comparatively near kinsman, was never determined. Sir Lepel Griffin, after his return to Central India, explained that his contention had been not that the absence of a *sanad* would influence the principle on which the Supreme Government would decide the question of adoption, but rather that the possession or non-possession of a *sanad* enlarged or circumscribed the limits within which the Chief’s discretion in adoption might be exercised. He ascertained and quoted the opinion of Colonel Bradford, the Agent to the Governor-General, Rajputana, that, amongst Rajputs in that part of India, although kinship below the degree of first cousin conveys no very strong claim, it is yet an advantage in the claimant’s favour, which cannot rightly be passed over; and he said—“When no *sanad* has been granted, then, although the Government in no way depart from the principles which they have ever maintained, they will still neither encourage nor permit the supersession of the true heir, who is accepted as such by the Hindu law, by Rajput custom, by the decision of the head of the clan, and by natural capacity.” Before this letter was answered Raja Bhawani Singh died without adopting anyone; and the Government of India, without deciding any other point which need be mentioned here, recognised Bahadur Singh, the elder son of Thákur Takht Singh of Chiklia, as Chief of Sitamau. The widows and all the principal people in the State had agreed to this, and it appeared that Raja Bhawani Singh had expressed, before his death, his willingness to adopt Bahadur Singh, if there was a difficulty about Mod Singh, the distant collateral.⁸

⁸ Pro. A, Political, June 1884, Nos. 424-434.
 Pro. Internal A, „ 1845, „ 56-64.
 „ „ September 1885, Nos. 51-57.

§ 359. While the Sitamau case was pending another case from Central India was decided on the same lines. Sailana is a mediatised Rajput Chiefship of Central India and originally formed part of the Ratlam State, from which it appears to have been separated in 1709 A.D. The tribute, formerly payable to Sindhia, was assigned to the British Government in 1844 in part payment for the Gwalior Contingent.⁹ In 1884 the Raja Dule Singh, having no son, and holding no Adoption *Sanad*, adopted Jaswant Singh of Semlia, his nearest relative, and requested that this young man, who appeared to be intelligent, well educated and in every way suitable, should be recognised as heir to the Chiefship. A claim on the part of the Raja of Ratlam to succeed to, or to be consulted in regard to the succession in, the Sailana State was rejected; and the Governor-General in Council was¹⁰ "pleased to recognise the adoption of Jaswant Singh by the Raja of Sailana, and to select Jaswant Singh as successor to the Chiefship."

The Sailana adoption, 1884.

§ 360. In 1890 the position which had existed in Ali Rajpur in 1881 was almost exactly reproduced. Rana Vijai Singh, who, under the name of Waje Singh, had been selected in 1882, died on August 18, 1890, without male issue. A daughter was born soon after his death. He was the only son of Chandradeo of Sondwa, and next to him in his own original family was his first cousin,

Partab Singh, a boy of nine, also an only son. The Raja of Dharampur renewed his claim on behalf of his sons or grandson, asserting that his ancestor from the Ali Rajpur house had never been adopted into the Dharampur family, had thus retained his right of succession to Ali Rajpur, and had transmitted that right in the Dharampur family. The Bhabra branch also again put forward its untenable claim on behalf of the descendants of the supposititious son. The only important difference in the situation was that some of the ladies of the Ali Rajpur family, who had previously favoured the Sondwa branch, had now changed their minds, and wished for the succession of the second son of the Raja of Dharampur. The other ladies of the family and the leading men and people of the State were in favour of Partab Singh of Sondwa, who was described as a bright, intelligent child. His succession was approved by the Government of India with these remarks:—

"The Government of India cannot admit the claims of the Dharampur family, or of anyone, to succeed to the Chiefship by right of consanguinity. Upon the failure of heirs, direct or adopted, the State has again become liable to be treated as an escheat to the British Government, as was previously the case when the late Rana Vijai Singh was selected. Under these circumstances, the Government of India have been guided in their selection of Rana Partab Singh, solely by a consideration of the best interests of the State and of the generally expressed wishes of its nobles and people.

"Partab Singh is also the choice of the late Rana's principal wife and perhaps of the Rana himself. It is, however, unnecessary to base the decision upon any questions of adoption. Rana Partab Singh succeeds to the Chiefship in virtue of his selection by the Government of India, and not as a consequence of any relationship, natural or artificial, to Rana Vijai Singh."

This assertion of the nature of Partab Singh's title was repeated a little later on when the Dharampur Chief and one of the widows of Rana Vijai Singh telegraphed protesting against the decision and praying that the adoption of Partab Singh by the senior widow might be postponed.¹¹

§ 361. The doubt which we observed in summarising the results of Chapter X reappears in the papers which we have just abstracted. In Kathiawar, in Rajputana, and elsewhere, what are the rights of collaterals with reference to succession to Chiefships? On failure of lineal heirs by blood or adoption, have collaterals any claim as of right? If so, is the claim limited to male agnates, and to male agnates of what degree? It is unlikely that any general answer could be made to these questions, and it does not appear that there is

⁹ Aitchison, IV, page 349.

¹⁰ Pro., Internal A, September 1884, Nos. 175-181.

¹¹ Pro., Internal A, March 1891, Nos. 117-158.

" " April " " 18-24.

any practical disadvantage in leaving them unsolved. In the Sitamau case the Government of India were rapidly approaching a decision on the cognate question whether the Chief of that State could exclude by the adoption of a very distant collateral the succession of a comparatively near one; but the necessity for a decision disappeared when the Chief died without making an adoption. If there had been a decision, it may safely be said that it would have been limited to the particular family, and it is probably best that each case of this kind should be dealt with on its separate merits.

Beyond this we offer no opinion on these doubtful points. The points on which there is no doubt appear to us to be these:—

(1) *Adoptions for the purpose of succession may be permitted in States to the Chiefs of which Canning Sanads have not been granted.*

(2) *The Government of India will deal with successions in these States generally on the same principles as with successions in other States. When the antiquity, services, or influence of the State give it a claim, a request, on failure of heirs, for permission to make a valid and suitable adoption is likely to be granted.*

(3) *A Canning Sanad in the usual form is not intended to override family custom; and any adoption in opposition to that custom would not be treated by the Government of India as a valid adoption.*

(4) *It is advisable to avoid the premature adoption of a person whose succession the Governor-General in Council may afterwards disallow.*

(5) *Where there is a Canning Sanad the Government of India have limited their freedom of action by express engagements. Where there is no Canning Sanad, and no valid adoption has been made, and the ruling family is extinct, the State becomes liable to be treated as an escheat; but it is highly impolitic to annex an ancient Chiefship, and, in the case of such a Chiefship, the British Government will ordinarily select a successor, not on any ground of relationship by blood or adoption, but with a view to the best interests of the State, and on grounds of the fitness of the person selected and his acceptability to the nobles and people.*

(6) *The Government of India are opposed to the absorption of ancient Rajput principalities by lapse to other States.*

§ 362. It is very well established that no succession in a Native State is valid until it has been formally recognised and confirmed by the Paramount Power; that is to say, either by the Government of India or by some British authority to which the Government of India have expressly or by practice delegated, in this behalf, the exercise of their prerogative. This has been stated or implied in several cases which we have already adduced, and, indeed, we have noted in the summary given in paragraph § 354 above that the Government of India are not bound by the installation of a Chief irregularly made by the nobles and people of a State without their sanction. It will, however, be convenient to collect in one place the leading passages relating to this prerogative.

In the Shahpura succession case, 1870 (paragraph § 318), three days after the Chief's death, the Thákurs under pressure acknowledged the child Ram Singh as his adopted son and successor; but this proceeding was set aside and the Chiefship conferred on Nahar Singh, who was really more acceptable to them and nearer of kin to the late Chief.

In 1873 a circular addressed to all chief Political authorities requested that the death of the Ruler of any Native State, together with the name, relationship, age, etc., of his heir and successor, might be immediately reported to the Government of India in the Foreign Department.¹² It was added that this report should be made in every case, whether the succession required the confirmation and sanction of the Government of India or not.

¹² Confidential circular No. 1736-43-P., dated August 2, 1873, addressed to Bombay, Madras, Bengal, North-Western Provinces, and Punjab Governments, Chief Commissioner, Central Provinces, and Agents to the Governor-General, Central India and Rajputana.

When the Janjira Chief died in 1879, the Sidi Sardars (paragraph § 350) forthwith elected his illegitimate son, Muhammad Khan, to succeed him; but this was disallowed, and the legitimate son Ahmad Khan preferred.

The Janjira Succession, 1879.

So also in 1889 the succession of Jam Ali of Las Bela was approved, although the Sardars and officers of the State had previously tied the turban of Chiefship, as mentioned in paragraph § 349, on the head of his younger brother, Yakub Khan.

The Las Bela Case, 1889.

The Government of India, in the despatch of March 1880, which forwarded for the approval of the Secretary of State the Mysore Instrument of Transfer, expressly said (see paragraph § 332)—“Where there is a natural heir, whose title to succeed is indisputable according to law and usage, he succeeds as a matter of course, unless he be obviously and totally unfit; *though in this, as in every other case, a succession is thoroughly understood to require formal confirmation and recognition by the Paramount Power.*”

The Mysore Case, 1880.

§ 363. As in the Shahpura and Janjira cases, so in the Nandgaon case, 1883-84, the people of the State at once acknowledged a successor. Mahant Ghasidas, the Chief of Nandgaon, died in 1883, and thereupon “the members of the family of the deceased Chief, the *mahájans*, and respectable people of Nandgaon” placed his son Balramdas, an intelligent youth of 18, “on the *gaddi*.” The Chief Commissioner thought that an installation of the kind should be performed by a British officer appointed for the purpose, and that “the investiture of the young Chief by the people of his State should be distinctly regarded as an *ad interim* arrangement, subject to formal investiture by an officer of the British Government.” There was no objection to the succession of Balramdas, but the Government of India agreed that the formal investiture of a Chief should, if possible, be performed by a British officer. “Such a course,” the letter¹³ of the Foreign Secretary said, “may not always be practicable; but I am to observe that *the succession to a Native State is invalid until it receives in some form the sanction of the British authorities.* Consequently an *ad interim* unauthorised ceremony carried out by the people of a State, such as that which occurred in the present instance, cannot be recognised, though the wishes of the ruling family and the leading persons in a State would naturally in all cases receive full consideration.”

The Nandgaon Case, 1883-84.

§ 364. In August 1884 the Bengal Government by an order “subject to the confirmation of the Government of India” approved of the succession to the Kharsawan State of Mahendra Narain Singh Deo, the eldest son of the late Chief. On this occasion a large number of precedents were examined, and the result was stated in an office note by Mr. Martindale accepted as correct by Mr. Durand and Mr. Charles Grant. “It is an invariable rule,” said Mr. Martindale, “that all cases of succession must be reported to the Government of India for assent and formal recognition. In small and unimportant States the local British authorities may and do *provisionally* recognise successions in which there is no doubt or question, but here their authority ends. The succession is not complete until formally recognised by the Government of India.” In the same notes a rule of practice was suggested and approved that, except in cases wherein special circumstances render a report to Her Majesty’s Government desirable, no case of succession should be reported by the Government of India to the Secretary of State unless the deceased Chief was entitled to a salute.¹⁴

The Kharsawan Succession, 1884.

§ 365. Maharana Sajjan Singh, whose election to the Udaipur Chiefship we mentioned in paragraph § 324, died on December 23, 1884. Fateh Singh, a distant collateral, was unanimously chosen as the successor by the widows of the late Chief and by the principal nobles and officials of the State. A ceremony of investiture took place on the night of December 24, 1884, but Colonel

¹³ Pro. A, Political I, February 1884, Nos. 21-29.

¹⁴ K.-W., Pro. A, Political I, August 1884, Nos. 230-236.

Walter, the Resident, announced that he could not recognise Fateh Singh officially until the choice was confirmed by the Viceroy. The Government of India promptly telegraphed to the Agent to the Governor-General, Rajputana, that this action on the part of Colonel Walter was proper; but that Fateh Singh should not have been invested without orders, and that his selection was invalid until orders were passed. Colonel Bradford, the Agent to the Governor-General, explained that the action of the Sardars and officials was in accordance with custom and precedent. The theory is that the Chief never dies, and while the *gaddi* is vacant, traffic and business are suspended. The Darbar was aware that the informal investiture could not give validity to the election of Fateh Singh. The Government of India recognised Fateh Singh as Ruler of Udaipur,¹⁵ and their orders on the point here in question were thus worded:—"The Governor-General in Council is aware of the difficulty of interfering with Udaipur custom in the matter of the selection of a Chief, and my telegram of the 31st December was not intended to impute any blame to Colonel Walter for not preventing the ceremony of investiture. But such ceremonies ought to be discouraged in all Native States. They confer no right and they tend to keep alive mistaken ideas as to the source from which Native Chiefs derive their authority. Moreover, it is possible to imagine circumstances under which the performance of a ceremony of this kind might produce much practical embarrassment to the Government of India. I am to request that these views may be borne in mind in the case of future successions in Rajputana." Maharana Fateh Singh was formally installed on March 4, 1885.

The Sarangarh succession of 1888 affords a similar precedent. The Raja, a young man of twenty-two, died on September 29, 1888. His mother and the notables of the State at once installed Lal Raghubar Singh, his first cousin and nearest male relative. The Government of India pointed out that the proceedings were irregular, and directed that the Political Agent should in future take measures to prevent the occurrence of unauthorised ceremonies of the kind.¹⁶

§ 366. Local Governments and Administrations have on several occasions been reminded of the general rule, requiring them to report the deaths of Chiefs and successions to Chiefships. Thus in 1884, when the *Nazarana* Register was being revised, it appeared that in fifteen or sixteen cases in recent years successions had taken place in small States in the Bombay Presidency without any report of them being made to the Government of India. Attention was called demi-officially to the orders of 1873. Letters in a somewhat similar sense were also sent simultaneously to the Punjab, the Central Provinces, and the Agents to the Governor-General, Rajputana and Central India, the primary object in these cases being to ensure that the liability of States to the *Nazarana* Rules should be considered and determined as successions occurred.¹⁷ As we have seen (paragraph § 351 above) it was suggested to the Bombay Government in the Savanur succession case of 1885, that before a succession open to doubt is provisionally sanctioned by that Government, the views of the Government of India should be ascertained. When the Madras Government on August 15, 1885, authorised the Resident, Travancore, to recognise as Maharaja of that State the nephew of the late Chief, who was installed accordingly in August 19, the Government of India¹⁸ approved the proceedings, but added "that in view of the important interests involved in the succession to a great Native State, the Governor-General in Council considers it desirable for the future that the Madras Government should communicate with the Government of India before recognising a new Chief or designating an heir-apparent in Travancore." And again, when in July 1888 the Madras Government reported to the Secretary of State the death of the Raja of Cochin and the succession¹⁹ of his brother, the Government of India

¹⁵ Pro., Internal A, February 1885, Nos. 170-196. Aitchison, III, page 15.

¹⁶ Pro., Internal A, January 1889, Nos. 26-28.

¹⁷ Pro., Internal A, December 1884, Nos. 184-135.

¹⁸ " " " September 1885, Nos. 204-221,

¹⁹ " " " August 1888, Nos. 51 to 54.

called attention to the above remarks, which they had made in 1885 regarding the Travancore succession, and requested that, with the consent of the Governor in Council, the reference to the Government of India suggested therein might be made in all future cases of a similar nature.

§ 367. On the other hand, in the case of petty Chiefships in Kathiawar²⁰ authority to sanction successions has been expressly delegated to the Bombay Government. On a report from that Government the Government of India in August 1889 sanctioned a succession consequent on the death of a sixth-class *talukdar* and shareholder of Jetpur-Chital in the Sorath district of Kathiawar and said—"that except in the first and second class States successions need not under ordinary circumstances be reported to the Government of India for sanction when the liability or non-liability of the State to the operation of the *Nazarana* Rules has been finally decided by the Governor-General in Council."

§ 368. The latest enunciation of the general rule has already been quoted in the Manipur case (paragraph § 8), but may be repeated here for convenience of reference:—"Every succession must be recognised by the British Government, and no succession is valid until recognition has been given." In 1892 a dispute arose regarding the succession to the *taluka* of Virsoda in the Mahi Kantha

The Virsoda case, 1894. and the parties were referred to a Civil Court. The Governor-General in Council, when the case came before him in 1894, observed that "the reference of a political question, such as that of a disputed succession in a Native State to a judicial tribunal, is not in accordance with the policy of the Government of India, as it is the right and duty of the British Government to settle successions in Native States, and the duty is one which has almost invariably been discharged by the political authorities." The Bombay Government reported in reply that the broad principle which they had laid down was that no reference to a Civil Court should be permitted except in cases which concern the right of succession to Chiefships to which no jurisdictional powers are attached or the inheritance to, or partition of, any estates which have not hitherto supported the jurisdictional rights of a Ruling Chief. This principle was accepted by the Government of India.²¹

Summary.

The general purport of paragraphs § 362 to § 367 inclusive may be stated shortly in five rules:—

(1) *Except where authority to sanction successions has been expressly delegated and the question whether the State is liable to the *Nazarana* Rules has been decided, every death of a Ruling Chief and every succession to a Chiefship should be reported to the Government of India.*

(2) *No succession is valid until it has been confirmed by the proper British authority.*

(3) *In disputed successions and in successions to important Chiefships provisional sanction should not be given by the local authority, which should obtain the orders of the Government of India before it recognises any succession in any such case.*

(4) *When by practice a local authority provisionally sanctions undisputed successions to petty Chiefships, the case, in the absence of any express delegation of power to deal finally with it, should be reported to the Government of India for formal recognition and confirmation of the succession.*

(5) *Except under special circumstances,²² successions to Chiefships need not be reported to the Secretary of State unless the deceased Chief was entitled to a salute.*

§ 369. We will end this chapter by noticing the leading case of Sardar Lal Singh, Kalianwala, 1888. The case of Sardar Lal Singh, Kalianwala, 1888. Singh, Kalianwala, in which it was decided that, on the analogy of the Canning policy,

²⁰ Pro., Internal A, September 1889, Nos. 1-4.

²¹ Pro., Internal A, May 1894, Nos. 177-178 and September, 1894, Nos. 195-196.

²² As will be seen from paragraphs § 343 and § 354 above a report should be made to the Secretary of State when a doubtful succession to a Muhammadan Chiefship presents serious difficulty and the Chief holds a Canning *Sanad*.

the right of adoption might be granted as a personal privilege to selected *jagirdars* in the Punjab who are not Ruling Chiefs. Lord Canning proposed that the assurance which he advocated should be given to Chiefs governing their own territories and holding a position higher than that of a *jagirdar*. The exception that he made in favour of certain so-called *jagirdars* related to Chiefs whose territories *and the administration thereof* had been granted to them and their successors in perpetuity so long as certain obligations should be observed; that is to say, it related to men who, though *jagirdars* in name, were Ruling Chiefs in reality.²³

Sardar Lal Singh, Kalianwala, held a 'perpetual *jagir*' of the value of R15,000 per annum. He was the son of a man who had been a Member of the Council of Regency in the Punjab before annexation; and he had several times petitioned, without success, for the right of adoption. He was informed that he was, of course, at liberty to adopt an heir who would succeed to his private property, but that no hope could be held out to him that a son so adopted would inherit his position and privileges. Taking this case as the occasion for his proposal, Sir Charles Aitchison, as Lieutenant-Governor of the Punjab, raised the question whether the right of adoption might not be conceded on certain conditions in respect of perpetual *jagirs*. This concession would, in general accordance with the laws and traditions of India, put a son by adoption in the place of a son by blood. It would be granted only to *jagirdars* selected with regard to the influence, position, history and services of the family, to its loyalty and activity in the cause of good government in times of peace, and to the reputation of the *jagirdar* for kindness towards his dependents and the landholders and others living on the *jagir*. It would be essential that the *jagir* should remain undivided; and the right of adoption would not be restricted by the formalities of the Hindu law. It would suffice if the adoption were made in such a manner as to satisfy the Government that the heir adopted was the real choice of the *jagirdar* or his family.

As to the public and private advantages of the concession the Punjab Government said:—"It is well known that the grant of Adoption *Sanads* to Chiefs has not operated to increase the number of adoptions but to allay disquietude of mind. Many cases that have come before the Lieutenant-Governor have convinced him that the practice of declining to consider grants till the death of the grantees gives the grantees much unnecessary anxiety in their declining years. It is natural and laudable on the part of heads of families to desire before they die to know that their houses will survive them and their relations will be provided for. The Lieutenant-Governor knows that much anxiety prevails in this matter which it is within our power to remove; and one measure which would tend to set these painful uncertainties at rest would be the grant of Adoption *Sanads* to selected *jagirdars* holding in perpetuity.

"It may be admitted, however, that the purely public advantages would be much more important. The measure in contemplation would give great political strength to the Government. In the Punjab in particular the boon would be a proper recognition of the loyal and faithful services in peace and war of the most prominent men in the British territories in this part of India—services rendered in most cases with unswerving zeal and praiseworthy alacrity for more than a generation. The men who have thus served us are the men who stood by us in the storm of the Mutiny; and we know by the heartfelt offers made during the Afghan War, and later at the time of the Panjdeh incident, that the spirit which animated them and their fathers thirty years ago still lives. We desire its perpetuation; we desire that the families, who have aided us in the difficult task of continuous administration and have proved themselves our friends in times of need, shall not die out of the land. We need leaders of the people; and times may come again in which the diminution of that class would be felt as a serious public calamity. The measure proposed would tend directly to the attainment of these objects, and would invigorate and cheer the performance of those duties of which it was the reward, and for the continued performance of which it would be a security.

"In India generally the effect of the concession, even if limited at first to the Punjab, could not fail to be most beneficial. It would be a universally understood and impressive sign that the British Government desires to make

²³ See paragraph 27 of Lord Canning's despatch of April 30, 1860, in Appendix A.

no fiscal gain out of the misfortunes of leading families; that the deep private anxieties of its friends and well-wishers have its attentive sympathy; that it values the hereditary services of its hereditary supporters; and that it has confidence in the loyal feeling and power for good of distinguished families upon whose help it has often relied in times past and may often have to rely again."

The proposals of the Punjab Government were the subject of a very full and prolonged discussion in the Government of India. In the course of it Sir Charles Aitchison, who had left the Punjab Lieutenant-Governorship and had become a Member of the Governor-General's Council, laid stress on the historic character of many of the Punjab *jagirs*. In the Punjab, as in many other parts of India, the dissolution of the Moghal Empire stimulated the formation of numerous petty Chiefships. South and east of the Sutlej a great number of Chiefships so formed came under British protection; north and west of that river the tendency of local chieftains to assert independence was largely repressed or crushed by the vigorous centralising despotism of Ranjit Singh. From most of the cis-Sutlej Chiefs sovereign powers had been withdrawn, because they took or sympathised with the wrong side in the first Sikh War. Hence the origin of one large class of Punjab *jagirdars*. Another class was that of the trans-Sutlej Hill Rajas to whom we refused the rights of sovereignty which we acknowledged in the case of the Simla Hill Chiefs. On the frontier there were numerous tribal chieftains who, in the days of Sikh aggression, had retained a greater or less degree of political strength according to their following and opportunities, but who, under our supremacy, were *jagirdars*, not Ruling Chiefs. Lastly, there were the descendants of men whom the great Maharaja had rewarded with *jagirs* in the central territories which he completely subdued,—the sons and grandsons of his Generals and of the Brahmans and Pandits and Musalmans of good family whom he had employed as councillors and civil administrators. All these classes had political importance and the forefathers of some of them had exercised sovereign powers. Sir Charles Elliott, also a Member of Council, agreed in the views of Sir Charles Aitchison. "The idea," he said, "that an adopted son has inferior rights to a natural and legitimate son is in my opinion an altogether erroneous one, imported from Western law, and opposed to oriental conceptions of law and family. It would never have found favour had we known in 1850 what we have learnt from Maine's Ancient Law, La Cité Antique, and other works of that description." He saw no reason to refuse to grant power to recognise the validity of a single adoption by a selected *jagirdar*.

§ 370. The views put forward by the Punjab Government were generally accepted by the Government of India, whose orders were passed on June 1, 1888. They held that the objects set before them would be best attained by selecting from time to time in individual cases the *jagirdars* to whom it might be proposed to give the privilege of adoption. "That privilege," they said, "will be conferred by *sanad* and will be personal to the recipient and not heritable."

The form of the *sanad* was so devised as to provide for the integral inheritance of the *jagir* by a single heir when this was not already a condition of the tenure. The form of *sanad* itself is a sufficient summary of the general results of the case of Sardar Lal Singh, Kalianwala. It stands thus:—

"The Governor-General in Council being desirous of recognising the loyalty and good services of your family is pleased to inform you that, if no male heir of your body should survive you, he will recognise as successor to your perpetual *jagir* any person approved by the Local Government whom you may adopt in accordance with the custom of your family.

"This privilege of adopting a successor to your perpetual *jagir* is personal to yourself.

"Your successor will hold the *jagir* on the same terms and subject to the same conditions as those on which you have hitherto held it."

"Henceforward the *jagir* shall only be inheritable integrally by a single heir, but in all other respects your successor will hold it on the same terms and subject to the same conditions as those on which you have hitherto held it."

Sardar Lal Singh died while the case was under consideration. He had already adopted his nephew, Gulzar Singh, who was recognised as his successor in his perpetual *jagir* on the same conditions on which it was originally granted.

In July 1889, on the recommendation of the Punjab Government, a *sanad* of the sort here described was granted to Bhai Nand Gopal, an Honorary Magistrate of Lahore, the founder of whose house had been a follower of the fighting Guru, Gobind Singh, and members of whose family had been expounders of Sikh doctrines and ministers and politicians of note at the Court of Maharaja Ranjit Singh and his successors.²⁴

²⁴ Pro., Internal A, August 1888, Nos. 145-168 ; and August 1889, Nos. 72-75.

CHAPTER XII.

SOME CONSEQUENCES OF SUCCESSIONS.

§ 371. In treating of the consequences of successions we shall anticipate something of what may be said regarding the duties of Political Officers. When a

Introductory.

Ruling Chief dies, what is expected of the local Political Officer? We have already explained¹ that he must report the death of the Chief and certain particulars regarding the succession; but what steps should the Political Officer take for the security of the State property, the safety of the ladies of the ruling family, and the prevention of disputes, intrigue, excitement or disorder? What are the rules laid down on the subject of *nazarana*? If the succession involves a minority, what are some typical arrangements which, in important cases, have been approved by the Paramount Power? And lastly, what is the action which should be taken by Political Officers when minor Chiefs come of age? These are the questions to which we propose to supply in this chapter and the next such answers as appear to be suggested by fairly recent records of a leading character.

§ 372. The best way to explain what action should be taken by the local Political Officer on the death of a Chief is to mention what has actually been done in a few typical cases with the express or tacit approval of Government. In doing this we shall not attempt to describe at length the full proceedings in any case. It will suffice to note some measures of interest or importance or such as may properly suggest similar action in similar circumstances.

We have already referred in another connection² to the circumstances of the Udaipur succession, 1874. When it was clear that the death of Maharana Shambhu Singh was near at hand, Colonel Wright, the Officiating Political Agent, approached him, as delicately as possible on the question of the succession. This was on October 6, 1874, and the Maharana promised to write down the name of his successor in two or three days' time. He died, however, the very next day without mentioning his wishes about the succession to any one. Sir Lewis Pelly, the Agent to the Governor-General, Rajputana, on hearing the news of the Maharana's death telegraphed to Colonel Wright—"Please look carefully to adoption question and safety of *zanana*. Do not recognise succession without orders from Government." Sir Lewis Pelly also authorised the Political Agent to summon two companies of troops as a precaution and to arrange for rapid communication with Nimach, providing for telegrams and reinforcements if necessary. These instructions were approved by the Government of India. The caution conveyed on the

The Udaipur Case, 1874.

The wishes of the Chief regarding his successor may, if possible, be ascertained.

Sati must be prevented.

subject of the *zanana* was fully justified by events. Five of the women made preparations to immolate themselves; but before the death of the Chief Colonel Wright had already directed the *zanana* doors to be locked and guarded and had told five of the principal men in the State that he would hold them individually responsible that none of the women should escape. These precautions were successful, but the whole passage in which Colonel Wright described the conduct of the women is so graphic and interesting that it is well worth quoting at length. Immediately after the death of the Chief, he said, "the usual ceremonies of preparing the body commenced in silence. About dawn the wail for the dead arose, and this was the first intimation to the *zanana*, as I had given strict orders on the point, and had had the doors locked, and kept the key in my own possession all night. A Sardar, whom I had directed to take charge of one of the *zanana* doors, sent word that Buri

¹ See the orders of 1873 quoted in paragraph § 362. | ² Paragraph § 324 above.

Bai, the Maharana's favourite concubine, was making desperate efforts to get out; other messages of the sort followed, and no doubt several women would have escaped by bribing the guards had the key not been secured, and the two nobles made responsible. The *zanana* contains about 500 women, including slaves and attendants, and their united shrieks and wails were appalling, and continued without intermission for many hours. The women of the city also came in processions of many hundreds together, passing quickly through the courtyard, wailing and shrieking unceasingly. Men joined the cries until exhausted, and were relieved by new comers, who streamed in from the city and surrounding country without cessation.

"One of the Council requested my permission to take the usual jewels for adorning the corpse, and brought them to me on a tray; four of the jewels, *i.e.*, one pair of ear-rings, one necklace, and one anklet were to be burned with the body and the remainder returned to the *Toshakhana* after the ceremony. At a little before seven o'clock the body, in full Court dress, and covered with jewels, was carried from the upper part of the palace down the main steps in a sitting posture by Brahmans, preceded by men bearing palm leaves. The Sardars and relatives came, each supported on either side by an attendant, and on fronting the body commenced an awful wailing and rocked themselves to and fro until apparently worn out. On reaching a platform at the bottom of the steps, the body, still in a sitting position, was placed in a *dol* (a sort of square sedan chair) with a canopy of crimson and gold, the wailings and groanings increasing. The procession was then formed as follows:—

"A guard of footmen armed with swords.

"Five men each bearing a bag containing Rs. 1,000 to be thrown among the followers of the corpse on the road.

"Another guard.

"Torch and candle bearers.

"A crowd of Brahmans, some bearing palm branches, others throwing roses and flowers over the face and body of the corpse.

"Then the body carried by Brahmans.

"More Brahmans, immediately followed by nobles and people of the household.

"The procession was joined by nearly every male inhabitant of the city.

"As soon as it was set in motion, the women of the *zanana* became more violent and excited, and many of them climbed to the windows, but these are too high for them to be recognised by the crowd; the life of any woman who had succeeded in exposing her face would have been considered forfeited, and her death compassed by private means as *sati* was prevented. Buri Bai, accompanied by others, again attempted to force the door, made most determined efforts to escape, and at last threatened to throw themselves from the windows; the people about me seemed very much alarmed, and begged me to have *shamianas* pitched under the windows to break their fall in case they did so; but considering they might attempt it at once on finding such an easy method of escape, I refused and sent a message that I would immediately imprison, and thereby disgrace, any of them who made the endeavour. They then became more quiet, and the mother of the Maharana sent to demand permission to perform *sati* with her son, as I would not allow any one else to do so, and no Maharana of Udaipur, up to the present time, had ever died alone, and his memory, country, and people would be disgraced for ever. The fact of the head of the *zanana* setting such an example, and men of the highest position bringing the message, shows how deeply prejudiced they are upon this point."

These occurrences in one of the chief States of India, not much more than twenty years ago, afford remarkable testimony to the vitality of traditions and feelings at variance with the civilised system which British supremacy has superimposed on the archaic societies of India. In Udaipur, notwithstanding the opposition of Thákur Sohan Singh to the succession of Maharana Sajjan Singh, there was no disturbance. Of course troops should never be moved into

a. Native State unless there is real necessity, and if it is in contemplation to call them in on the occasion of the decease of a Chief, the Chamba precedent (paragraph § 311 above) should not be overlooked, and the sanction of the Government of India should be requested to the measure. What precautions are needed in any given case to prevent *sati* is a question on which there can be no general rule; but we have quoted the above description of occurrences in Udaipur in order to call attention to an important point and to prevent its being overlooked if it is at all likely to arise.

§ 373. Maharaja Mahendar Singh of Patiala died very suddenly on April 14, 1876. The Patiala State is under the direct superintendence of the Punjab Government and there is no local Political Officer. The Commissioner of

The Patiala Case, 1876.

the Umballa Division and the Civil Surgeon, Umballa, were directed to proceed at once to Patiala to report on the cause of death and the state of affairs. Though cremation had been delayed for a very short time by the order of the Secretary to the Punjab Government, they did not arrive at Patiala till after the body had been burnt. They reported that there was nothing suspicious connected with the Chief's death, which appeared to have been due to an epileptic fit brought on by the excessive use of stimulants. Mr. (afterwards Sir Lepel) Griffin, the Punjab Secretary, hastened to Patiala, received visits from the Rajas of Jind and Nabha who had also gone there, inquired into the circumstances of the Maharaja's death, had interviews with the leading men of the State, and went carefully over the lists of all persons imprisoned for political reasons or without any form of trial. "The number of these," he said, "was eighty-three, the two principal political prisoners were Sardar Mangal Singh, the Kuka leader, and Sardar Amla Singh, the brother of the Maharani, who has lately died, and uncle of the present heir. By far the greater number of prisoners in confinement without trial were so for offences of a most trifling description:—Servants who had omitted to clean the palace; cooks who had not behaved properly in the kitchen; *fakirs* who had annoyed the Maharaja by following and shouting for alms in the streets, and orderlies who in their manner had shown some real or fancied disrespect. All these I directed the

Release of persons imprisoned without trial. Prime Minister to at once release, and they were set free the same day. One,

whose case was of giving false evidence with intent to injure, I said should be transferred to the ordinary criminal court, and all political cases connected with the two Sardars above mentioned I said must remain as at present, until the orders of Government should be known. After this I went to the palace and was engaged for some three or four hours in placing in security and sealing

Precautions for safety of jewels and treasure. up with the official seal of the Punjab Government all treasure and jewels belonging to the deceased Maharaja. For many years the system at Patiala has been

to invest in Government promissory notes; consequently the amount of cash found is not of recent collection, and whatever it was I did not count it, nor was it possible to do so without the expenditure of far more time than was at my disposal. The Government promissory notes amounted to Rs. 68,38,400. These I left in charge of the officials, as the papers are necessary in order to draw interest, and no transfer is, of course, possible, except under the signature of the Maharaja or some one appointed on his behalf.

"The outer jewelry treasury, containing the ornaments usually worn by the Maharaja on State occasions and valued at 25 lakhs of rupees, I sealed up and placed under proper charge. Within the palace were several treasuries: some of money collected during the time of Maharaja Narendar Singh, and which it was said had not been opened during the reign of the late Maharaja. In one of the rooms of the palace, upon tables and drawers and loose on the floor, was an enormous collection of jewelry, of which no accurate lists are forthcoming, but undoubtedly worth many lakhs of rupees. The doorways of these rooms were sealed, and I may express my belief that since the death of the Maharaja nothing whatever has been tampered with or abstracted, for every seal was correct, and the whole of the money and treasure being within the *zanana*, no official, however high in rank, could penetrate. The persons in charge, Chaudhri Charat Ram and Sardar Budh Singh, being old men of the highest respectability and devoted

to the family, I think it may fairly be asserted that nothing whatever has been abstracted. All this loose and unguarded treasure I sealed up and placed in the strong rooms, of which I have spoken in the preceding paragraph. It would have been impossible without the expenditure of many days' exertions to have made lists of the jewelry, but it is all under seal till such time as the Lieutenant-Governor shall direct it to be made over to the charge of responsible persons.

"The money in the outside treasury of ordinary income and expenditure and amounting to Rs. 4,79,371-8-3 I left in charge of the officials of the State, the amount being attested under the signature of the Prime Minister, the Finance Minister, and the Treasurer. This was, of course, necessary for the ordinary purposes of the administration."

The proceedings of Mr. Lepel Griffin were approved by the Lieutenant-Governor of the Punjab and the Government of India.*

§ 374. A few days before the death of Maharaja Ram Singh of Jaipur, Dr. Hendley, who was in charge of the Eastern Rajputana States Agency, was called in to consult with that Chief's private physician. When it appeared that the Chief was certainly dying, Dr. Hendley asked him, in the name of the Paramount Power, whom he wished to adopt as his son to rule in his place. The Maharaja at first declared that the nearest of kin was the proper person, but afterwards in the presence of some fifty of the leading men of the State he said: "I adopt Kaim Singh, the younger brother of Partab Singh, the Thákur of Isarda; therefore after me, Kaim Singh is master of this State." One of the Thákurs not having heard distinctly, doubted, and Dr. Hendley put the question to the Chief again with the same result. The Chief died on September 18, 1880, and Dr. Hendley at once sent for Thákur Fateh Singh, the Vice-President of the Council of the State, and told him that he personally would be held responsible "for, *first*, the safety of the *zanana* and its careful guardianship, so that in the first agony of grief none of its inmates should be able to break their way out or injure themselves; *secondly*, that no *sati* should be performed, though the tradition of Jaipur is against the celebration of this inhuman rite; *thirdly*, for the safe custody of all the (Ráj) State property; *fourthly*, for the maintenance of order; and *fifthly*, for the general conduct of affairs until the Agent to the Governor-General otherwise ordered." Seals were placed on all the public offices, the treasury, jewel-house and record offices. Dr. Hendley then telegraphed full particulars to the Agent to the Governor-General. Kaim Singh was a distant collateral, and it was doubtful whether his family was the nearest akin; and however that might be, the Chief had preferred him to his elder brother, Partab Singh, who was already Thákur of Isarda. The nobles, ministers and officials having a voice on the question of the succession were then assembled in the palace to the number of four or five hundred, and the declarations made by the late Chief were read to them. On being asked whether Kaim Singh was the proper person to succeed they received his name with acclamations. Thákur Fateh Singh, the Vice-President, then sent a letter into the *zanana*, intimating the selection of Kaim Singh, and this was signed by all the ladies in token of assent and approval. Dr. Hendley pointed out in his report that as *all* signed, this practically proved that no posthumous issue was to be expected. The Government of India recognised the succession of Kaim Singh on the understanding that his nomination was supported by all the principal nobles of the State who were entitled to a voice regarding the succession and had the assent of the Maharanis, and on the assumption that, so far as could be judged, he was not personally unfit for the Chiefship. The Agent to the Governor-General was authorised to make an announcement accordingly subject to such conditions regarding the present administration of the State and other matters as it might hereafter be deemed necessary to impose. The Darbar attached much importance to the recognition of the succession by the Viceroy being formally announced directly after the performance of certain ceremonies which were observed on the twelfth day after the death of the late Chief. These were the binding on of the turban and the putting on of the customary State dress in token of the acknowledgment by the brotherhood of a new head of the

* *Pro*, Political A, May 1876, Nos. 233-245.

family. On September 29, 1880, after the performance of these ceremonies Lieutenant-Colonel Bradford, the Agent to the Governor-General, at a public assembly in the palace, formally announced the Viceroy's recognition of Kaim Singh as the successor to the Chiefship, and placed him on the *gaddi* with the designation of Maharaja Sawai Madho Singh. Dr. Hendley's proceedings were approved by the Government of India.⁵

§ 375. Maharaja Dungar Singh of Bikanir died on August 19, 1887, having adopted his young brother Ganga Singh, a child between six and seven years of age, whose succession was recognised by the Government of India. Immediately after the death of Maharaja Dungar Singh the Council of the State was assembled under the directions of Captain A. P. Thornton, the Officiating Political Agent, and proceeded to take possession of, and seal up, the State insignia and all the depositories of treasure and valuable property, including certain vaults in the palace believed to contain the private hoards of the late Chief. Guards were then mounted wherever required, and special precautions taken to prevent egress from the *zanana* until the funeral was over.⁶

§ 376. On February 15, 1890, the death occurred of Udai Singh, Maharawat of Partabgarh. Lieutenant Pinhey, the Assistant Political Agent, Banswára and Partabgarh, was at the time in camp at Udaipur. But as the late Maharawat had no legitimate son and had not adopted any one, Lieutenant Pinhey thought it necessary to start at once for Partabgarh to make inquiries about the succession to the Chiefship, and to exercise such control as might be requisite over the administration of the State until a successor should be appointed. In accordance with the wishes of the Maharanis and the assembled Sardars of the State, the succession of Raghunath Singh, the nearest surviving relative of the late Chief, was approved by the Government of India.⁷

§ 377. When Bairi Sal, Maharawal of Jaisalmir, died on March 10, 1891, the circumstances were very similar. He died childless and without making an adoption. Immediately after his death his three widows united in adopting a boy five years old named Sham Singh, who was a tolerably near collateral. At first a more distant relative, named Sheodan Singh, claimed to succeed, but he presently withdrew his pretensions. The adoption of Sham Singh was said by the Ranis and believed by the people to be in accordance with directions given by the late Maharawal shortly before his death and was accepted by the *Jagirdars* and the officials. Colonel Powlett, the Resident, Western Rajputana States, proceeded to Jaisalmir, inquired into the question of the succession and provisionally appointed certain Sardars and officials to form a Council for the purpose of carrying on the business of the State. In a written proceeding he defined the powers of the Council and of various State Courts subordinate to it. The Government of India approved of the selection of Sham Singh, permitted his succession to the Chiefship, and intimated that they had no objection to his adoption by the widows of the late Maharawal.⁸

§ 378. Sawai Mangal Singh, Maharaja of Alwar, died on May 22, 1892, at Naini Tal. Lieutenant-Colonel Fraser, the Political Agent, had been with him at that place and took the body, which was partially embalmed, to Alwar for cremation. After the ceremony Lieutenant-Colonel Fraser held a Darbar of mourning and then proceeded with the Members of the State Council and other leading men to add his seal to theirs which they had placed on the *toshakhana*, armoury and treasury. A sum of Rs. 35,000 was kept out for current expenses. There were some twenty lakhs of rupees in the fort, and here also the members of Council affixed their seals, and posted a special guard of infantry. Lieutenant-Colonel Fraser noted in his report that the ceremonies of mourning would last for twelve days from the date of the death of the late Chief. There was no doubt about the succession, which fell to the only son of the deceased Maharaja, a boy of ten years of age. The young Maharaja, Jai Singh, was installed

⁵ Pro., Political A., September, 1880, Nos. 127-140; and November 1880, Nos. 68-80.

⁶ Pro., Internal A., December 1887, Nos. 86-108.

⁷ Pro., Internal A., May 1890, Nos. 166-75.

⁸ " " May 1891, Nos. 246-53.

by the Political Agent in a Darbar held in the Alwar palace on June 5, 1890. In passing orders on the case the Government of India observed that the cash balance of the State amounted to upwards of sixty-one lakhs of rupees, of which only about twenty-six and a quarter lakhs were invested in Government paper, while over twenty lakhs in silver were kept in the Alwar Fort in addition to thirteen lakhs retained in the treasury. They therefore suggested that arrangements should be made for the investment in Government securities of a further sum and desired the preparation of a well-considered plan of expenditure on public works and administrative improvements.⁹

§ 379. Rudra Pratab Singh, Maharaja of Panna; died without issue on
November 8, 1893. He was succeeded
Panna, 1893. by his eldest surviving brother, Lokpal

Singh; and the two widows personally assured the Political Agent on the spot that there was no hope of a posthumous child, and that they agreed to Lokpal Singh's succession. Lokpal Singh was forty-four years of age and Captain Ramsay, the Political Agent, made over the temporary management of affairs to him pending the orders of Government. "I have told him," said Captain Ramsay, "that until such time as His Excellency the Viceroy is pleased to recognise his accession, he should confine himself to carrying on the current business of the State without making any changes in the arrangements now in force, and that in important matters, which do not admit of delay, he should consult me." On January 17, 1894, Mr. R. J. Crosthwaite, the Agent to the Governor-General in Central India, held an installation Darbar at Panna, and formally placed Lokpal Singh upon the *gaddi*.*

§ 380. After the death on December 12, 1893, of Maharaja Jaswant Singh
of Bhartpur, it was ascertained that, in
Bhartpur, 1893. addition to a cash balance of some twenty

lakhs of rupees in the public treasury, there was a balance of Rs. 14,15,465 in a private treasury at Sewar. This was claimed by the ladies of the family, who alleged that it was the accumulation of their allowances for years which the late Chief withheld from them. It was well known that he steadily drew an allowance from the State Treasury for each member of his family, and that he gave them nothing but food and clothing. The Government of India asked for proposals for the investment of this sum in Government securities, believing that it might form the nucleus of a fund, under the management of the Bhartpur Maharaja for the time being, the interest on which should be devoted to the support of the members of the family of the ruling house of Bhartpur.¹⁰

§ 381. We have already mentioned in paragraph § 352 above the endeavours
made by Mir Ali Murad Khan, Talpur,
Khairpur, 1894. Ruler of Khairpur, to set aside his second

son and designated heir, Mir Faiz Muhammad, and to arrange that his successor should be first, Mir Ghulam Husain Khan, the son of his fifth son, whose lineage was not pure, and afterwards when he saw that this was impossible, Mir Muhammad Murad Khan, son of his eldest son, Mir Shah Nawaz Khan, deceased. Mir Ali Murad Khan died on April 2, 1894, at the advanced age of 84. With his incapacity for work the administration had fallen into disorder, and although shortly before his death he was reconciled to Mir Faiz Muhammad and entrusted his family to his care, it seemed necessary to guard against obstruction or some possible outbreak of lawlessness on behalf of a pretender. Accordingly, Mr. James, the Commissioner in Sindh, settled that, as soon as the death of Mir Ali Murad Khan appeared to be at hand, Mr. Giles, the Political Agent, should proceed to the Mir's camp with a force of police, that a detachment of Baluch infantry should be despatched to the spot, and that Mir Faiz Muhammad's succession should be announced as soon as possible. All this was carried out. Mr. Giles went to the Chief's camp with 50 armed police and as many *sowars* as he could collect and was joined there by a company of the 2nd Baluch Battalion. He at once publicly recognised the succession of Faiz Muhammad and formally installed him on April 8, the seventh day after the death of the late Chief, in presence of the Talpur Mirs and of a large assembly. On this occasion Mr Giles presented to Faiz Muhammad the *kharita* pointing

⁹ Pro., Internal A, October 1892, Nos. 244-61.
¹⁰ Pro., Internal A, March 1894, Nos. 223-232.

¹⁰ Government of India No. 569-1, dated February 15, 1894, to Agent to the Governor-General, Rajputana.

out the necessity for reforms, the delivery of which to the successor of Mir Ali Murad had been sanctioned in 1891.

§ 382. What should be done immediately before and after the death of a Chief is obviously a matter of tact and discretion. Though there are some points

Summary.

on which the Political Officer must necessarily report, he should not be fettered by hard-and-fast rules as to what he should do. The cases we have quoted suggest the expediency of certain action in certain circumstances; but they do no more. They have not been quoted as binding precedents from which it would be an error to depart. On the contrary they have been quoted merely as examples to be used with care and skill by way of analogy. So also in summarising these cases we offer no more than mere suggestions as to what it might be right and proper to do under given circumstances. If, for instance, the succession was known to be a sore point with a Chief, it might be exceedingly indiscreet to vex his last moments with questions on the subject; and if it is desirable, in the case of a Chief without lineal heirs, to know that no posthumous issue is expected, it would be extremely foolish to raise this question in such a way as to suggest to any one of the widows that a claim upon that ground was possible. Our summary, therefore, must here be read with the understanding that it will be used on such points as these with great discretion and is intended merely to prevent important matters from being overlooked and not to lay down any rigid rules. Subject to this explanation we give it in the following form:—

(1) *If a Chief, believed to be about to die, has no lineal or adopted heir, it is for consideration whether he should be encouraged to declare his wishes in regard to his successor.*

(2) *It may also be a point for consideration on the death of a Chief, especially if there is a prospect of a disputed succession, whether any additional force of troops or police is required to ensure the maintenance of order. In this connection the rule already mentioned, that no troops may be moved into a Native State except with the sanction of the Government of India, must not be overlooked.*

(3) *Immediately upon the death of a Chief any precautions which may appear necessary should be taken for the safety of the inmates of the zanana. This applies to States which have comparatively recent traditions of sati.*

(4) *Precautions should also be taken for the security of State property, particularly treasure and jewels.*

(5) *If any persons are believed to have been imprisoned without trial, their cases should be investigated and appropriate orders passed.*

(6) *The question of the succession, if open to any doubt, should be promptly inquired into, and, in any case, report should be made regarding it to the proper authority.*

(7) *In an inquiry regarding the succession, if the Chief has died without lineal heirs, it is a material point whether there is any prospect of the birth of a posthumous child.*

(8) *Arrangements must be made for carrying on the business of the State pending the decision of Government on the question of the succession. For instance, a principal official of the State may be made responsible, or a State Council may be appointed or continued, or if there is practically no doubt as to the successor and he is a person of mature years, the government may be entrusted to him provisionally.*

(9) *It is desirable to obtain orders on the question of succession very promptly, both to prevent intrigue and the assertion of previously unthought-of claims, and because it will probably be in accordance with popular feeling that the formal installation of the new Chief should take place as soon as possible after the days of mourning for the late Chief have closed.*

(10) *It is usually desirable to ascertain the amount of the cash balances in the State treasury and in any private treasuries or hoards of the deceased Chief. If the balances are large and the new Chief is a minor, it may be for consideration whether any part of them should be invested in Government securities and whether plans should be prepared for expenditure on public works and administrative improvements.*

§ 383. The orders of 1873 which require an immediate report of the death of any Ruling Chief and of particulars regarding his successor are entirely silent on the subject of *nazarana*. Nevertheless it is certain from the notes which were written at the time that the principal object in calling for these reports was to afford an opportunity on the occasion of each succession for determining whether the State concerned is or is not liable to the operation of the *Nazarana* rules. The rules which are now in force were submitted to the Secretary of State in November 1872 and sanctioned by his despatch No. 69, dated May 1, 1873; and it was in consequence of the receipt of that despatch that the orders of 1873 were issued.

We will here reproduce the rules in force; and then say something on their history and quote some of the cases which show the manner in which they are applied. The precedents are by no means all good ones; and we shall purposely omit some which appear to us to be doubtful or misleading or to have been virtually or actually superseded by later decisions.

The rules, as sanctioned by the Secretary of State in 1873, stand thus:—

“1st.—*Nazarana* shall not be taken on succession in the direct line, *i.e.*, when the son succeeds his father, or the grandson his grandfather, and the like; nor on collateral successions when the person succeeding is not more distantly related than the second degree, *i.e.*, brother, or when he is descended in the direct line from a brother.

“2nd.—In collateral successions, if the person succeeding or adopted is not more distantly related than the third degree, and does not fall under Rule 1, *nazarana* of half a year's revenue shall be taken.

“3rd.—In other cases, if the person succeeding or adopted is more distantly related than the third degree, and does not fall under Rule 1, *nazarana* of a year's revenue shall be taken.

“4th.—When *nazarana* on successions is already taken under agreement, whether the agreement be more or less favourable to the Native State, existing arrangements shall not be disturbed.

“5th.—When a State liable to *nazarana* pays an annual tribute in any form, the *nazarana* shall be calculated on the net revenue, that is, the revenue less such tribute.

“6th.—In special cases the *nazarana* may be paid in such instalments not extending over more than four years as the Local Government may decide.

“*Exemptions.*”

“7th.—States exempted by the British Government for special reasons.

“8th.—Cases in which the succession shall have followed within one year after the last preceding succession on which *nazarana* has been taken.

“9th.—If the succession shall have followed within four years after the last preceding succession on which *nazarana* has been taken the *nazarana* shall be remitted in such part not exceeding three-fourths as the Local Government may decide.”

§ 384. The word *nazarana* is thus defined in Wilson's *Glossary of Indian Terms*:—“A gift, a present, especially from an inferior to a superior; but the

History of the *Nazarana* Rules.

term was more particularly applied to sums received as gratuities, although in fact exacted by the State on various occasions, as fees or fines, upon an assignment of revenue to an individual, or on appointment or succession to office, or to a *jagir* or other possession, although hereditary: also an exaction of an additional tribute from a tributary dependant, or a contribution in excess of the usual revenue payment levied upon the people of the country in professed cases of emergency.” This shows what *nazarana* was under Native Governments. For present purposes we may define *nazarana* as a fee calculated upon the

revenue of a Native State and leviable upon certain successions to Ruling Chiefships.

Lord Canning, when proposing the grant of adoption *sanads* to certain *jagirdars* administering their own territories in Bundelkhand, added that it would be expedient to require a *nazarana* whenever adoption took effect. From a fourth to a third of a year's revenue would, he thought, be a fitting amount. In his reply Sir Charles Wood did not deal directly with the question of *nazarana*, but was "disposed to think that, except in very special cases, no assurance should be given" to *jagirdars*.¹¹ In the original distribution of the adoption *sanads* Lord Canning stipulated for *nazarana* in twenty-five cases: three in the Punjab, twenty-one in Bundelkhand, and one in Baghelkhand. From the three Punjab Chiefs—Patiala, Jind, and Nabha—a *nazarana* of one-third gross revenue is leviable under the adoption *sanad* if the Chief die without male issue and without adopting a successor.¹² In Bundelkhand and Baghelkhand the adoption *sanads* prescribe a *nazarana* (a) from the Chiefs of Samthar, Ajaigarh, Beri, Bihat, Chhatarpur, Garauli, Kothi (in Baghelkhand), Naigawan-Ribai, from the five Kalmjar Chaubes and the four Hasht Bhayas, of a quarter net revenue on each direct succession, and half net revenue on an adoption; (b) from Alipura and Jigni, of a quarter net revenue, when the succession does not go to a direct lineal heir; (c) from Baoni of a half net revenue, under like circumstances; and (d) from Jaso, of Rs. 2,500 on all successions.¹³ In the correspondence of 1865-66 with the Bombay Government regarding the grant of certain additional *sanads* (see paragraph § 355 above), the Government of India proposed that a *nazarana* should be leviable in Muhammadan States when the Chief had been permitted to recognise as his heir any one not lineally descended from the holder to whom the Government had originally confirmed the Chiefship. This correspondence was reported to the Secretary of State, who observed that no definite system had been established for the levy of *nazarana* and authorised the Government of India "to determine on the adoption of a fixed scale of *nazarana* for all conditions of succession." Accordingly, after communication with local authorities, the Government of India framed the rules of 1868; which imposed, amongst other things, a *nazarana* of half a year's revenue on direct lineal successions. The States excepted from the operation of the rules of 1868 were the following:—

"1st.—States and Chiefships between which and the British Government treaties exist or which are held under treaty engagements.

"2nd.—States and Chiefships which already pay an annual *nazarana* or tribute in any shape, save in cases where the said annual *nazarana* shall be less than 10 per cent. of the ordinary revenue, in which event the *nazarana* on succession shall be levied and calculated on the net revenue less the annual *nazarana*

"3rd.—States and Chiefships where a *nazarana* on succession is already leviable and fixed by existing arrangements as to amount."

It will be observed that the exemptions founded on the possession of a treaty or the payment of tribute have no place in the rules of 1872. Neither of these original grounds of exemption is now one of those special reasons for which the Government of India will exempt a State. The rules of 1868 were published in the *Gazette of India* and returns were called for showing the States that would be exempt and those that would be liable. When the first decision of Lord Mayo's Government classifying the States was given in 1870, "a storm of opposition," says Sir Charles Aitchison,¹⁴ "was raised in Bombay. The newspapers of the day, particularly the *Times of India*, denounced the

¹¹ Lord Canning's despatch No. 43-A., dated April 30, 1860, para. 27; Sir Charles Wood's No. 59-P., dated July 26, 1860, para. 7. See Appendix A.

¹² Aitchison, IX, pages 77, 95, 103.

¹³ Aitchison, V, pages 109, 110, 165, 169, 174, 175.

¹⁴ The history in the text is much compressed. Those who have occasion to study the subject in the Foreign Office should read the following notes —

(1) By Sir Charles Aitchison, dated February 8, 1878; Pro., Political A, February 1880, Nos. 244-247.

By Sir Charles Aitchison, dated September 13, 1880; Pro., Political A, June 1881, Nos. 400-402.

(2) By Mr. Lee-Warner, dated March 31, 1884, and June 27, 1884; Pro., Internal A, October 1884, Nos. 86-102.

(3) By Mr. Botelho, dated April 15, 1884; Pro., Internal A, December 1884, Nos. 134-135.

(4) By Mr. Forbes, dated November 29, 1886; Pro., Internal A, December 1886, Nos. 132-463.

whole scheme of *nazarana*, and there was much political agitation. The Bombay Government formally remonstrated, 1st, against the application of the rules to direct successions; and 2nd, against their application to the States of Kathiawar." The Government of Lord Mayo proposed to abandon the rules, but the Secretary of State would not permit this. The Viceroy, Lord Northbrook, and Sir Barrow Ellis, a Bombay Civilian and Member of the Governor-General's Council, then met the Governor of Bombay in Council in conference at Bombay; and the rules of 1872 were the result of this conference. *Nazarana* on direct successions was given up; the vague arbitrary exemptions of 1863 were cancelled; and the new rules were accepted as applicable to Kathiawar. In the despatch¹⁵ forwarding the rules of 1872 to the Duke of Argyll, the Government of India observed:—"We entirely concur in the remarks of Your Grace that the many important political considerations involved in the levy of *nazarana* do not admit of rules being inflexibly acted upon, and that such rules must be regarded as embodying a general line of policy to be pursued in ordinary cases, but which shall as a matter of course undergo modifications when such may be required." The Secretary of State did not refer to this passage in his reply, but it is quoted here because it shows that the *Nazarana* Rules should be worked with much discretion and that they are open to modification, if necessary, though they have now been in force unaltered for more than twenty years.

§ 385. A *Nazarana* Register is maintained in the Foreign Department of the Government of India, and as the case of each State is considered on the occasion of a succession, the State is entered in the Register as liable or not liable, as the case may be, to the payment of *nazarana* under the rules. In 1874 the rules were communicated to the Governments of Madras, Bombay, Bengal, the North-Western Provinces, and the Punjab, and to the Agents to the Governor-General, Rajputana and Central India; and these authorities were instructed that, while no general promulgation of the rules should be made, as each succession in any Native State occurs, it should be reported together with an opinion as to whether the State ought or ought not to be exempted on special grounds, under the provisions of rule 7, from the levy of *nazarana*. Apparently by oversight the rules were not sent at the time to the Chief Commissioner of the Central Provinces. They were, however, forwarded to him in 1884, with the request that in future he would, at the time of reporting every succession in a Native State, express his opinion whether the State concerned should be entered in the *Nazarana* Register as liable or exempted.¹⁶

§ 386. When a Political Officer has to report on the question whether a particular State is or is not liable to the levy of *nazarana*, the first point for consideration is what, if any, provision there is upon the subject in any *sanad* or other written engagement affecting the State concerned. Thus in

the cases of the twenty-five States mentioned in paragraph § 384 *nazarana* is taken on certain successions in accordance with the terms of the Adoption *Sanads*. All these cases, therefore, are governed by the fourth *nazarana* rule which left existing arrangements undisturbed. On the other hand a good many States have been exempted on the ground that the written engagements made with them preclude the levy of *nazarana*. Thus the *sanads* granted in 1826, 1841, and 1863 to the *jagirdar* of Sandur in the Madras Presidency confer the *jagir* upon him and his heirs for ever "free of *peshkash* and pecu-

¹⁵ No. 2-C. P., dated November 18, 1872, Pro., Political A, December 1872, No. 327.

¹⁶ Chief Political authorities have frequent occasion to refer to the orders under which they report on the *nazarana* question. We therefore give here a list of the letters of the Government of India communicating the *Nazarana* Rules:—

To Madras, No. 2399-P., dated November 7, 1874.	To Agent to the Governor-General, Central India, No. 1843-P., dated August 21, 1874.
" Bombay " 2448-P., " November 14, 1874.	To Agent to the Governor-General, Rajputana, No. 2400-P., dated November 7, 1874.
" N.-W. P. " 2398-P., " November 7, 1874.	To Chief Commissioner, Central Provinces, No. 1991-I., dated June 2, 1884.
" Bengal " 850-P., " April 11, 1874.	
" Punjab " 1039-P., " May 15, 1874.	

The letter to Central India varied the phrase somewhat, but the purport of the instructions was the same.

niary demand." The same expression is used in the *sanad* granted in 1849 to the *jagirdar* of Banganapalle in the same Presidency. In view of this language in the *sanads* the Madras Government recommended in 1875 that these two States should be exempted. In accepting the recommendation the Government of India pointed out that the States were mere *jagir* grants of the British Government, and questioned whether the expression "free of *peshkash* and pecuniary demand" meant more than free of revenue; but as the point might be disputed, they gave the States the benefit of the doubt and they¹⁷ have been entered as exempt in the *Nazarana* Register.

Again, the *Kaulnamas* granted in 1803 to twelve of the Orissa Tributary Mahals—*viz.*, to Athgarh, Baramba, Jormu, Dhenkanal, Hindol, Khandpara, Narsingpur, Nayaghar, Nilgiri, Ranpur, Talcher, and Tigiria—fix the *peshkash* in perpetuity and then provide that no further demand, however small, shall be made on the Chief "or received from him as *nazar*, supplies, or otherwise."

The Orissa Tributary Mahals. Athmalik, Bod, Pal Lahera, and Morbhanj, also States of the same description and the same part of the country. In 1881 it was held in correction of former decisions that Hindol and Dhenkanal were exempted by this clause in the agreements with them, and like orders were passed simultaneously as regards Talcher,¹⁸ and as regards Narsinghpur¹⁹ and Tigiria²⁰ in 1885 and 1886 respectively. Athmalik and Bod¹ were declared liable to the general application of the *Nazarana* Rules in 1877 and 1880, and Morbhanj² was registered as liable in 1885. The case of Pal Lahera was settled in 1890; and the liability of the four excepted estates has been asserted in the revised *sanads* which have now (1894) been granted. The exemption of Athgarh³ was expressly recognised in March 1894.

In 1881 the Junior Chief of Kurundwar was exempted on the ground that he is one of the eight Southern Mahratta Jagirs whose engagements contain an exempting clause.⁴ Before this in 1875 when an adoption by a widow was permitted in the senior Chiefship of Miraj, which belongs, like Kurundwar, to the Patwardhan house, the Bombay Government levied a *nazarana* of half a year's revenue. Many years afterwards, on an occasion when the condition of the *Nazarana* Register was minutely examined, the Government of India pointed out that the Chiefs of the Patwardhan family are expressly exempted from the payment of *nazarana* by article 6 of the treaty of 1819. This provides⁵ that when new *sanads* are required for descendants of the Chief, they will be conferred "without exacting any *nazar*." The Bombay Government replied⁶ in March 1885 that when the *nazarana* was levied, the provisions of the agreement of 1819 with the Patwardhans were not overlooked but were fully discussed in regard to their bearing on the question of *nazarana*. "It was found," they said, "that while the *jagirs* held under agreements, such as that of Miraj, were held exempt under these agreements in the case of successions of natural descendants, it had been the invariable custom to levy *nazarana* on succession by adoption. This practice was also followed in the *jagirs* held under similar tenure by feudatories of the Kolhapur State, who pay *nazarana* to that State on adoption only. Among the Southern Mahratta Jagirs that of Mudhol only had not paid *nazarana*, no adoption having occurred in it; in all the others the liability had been already enforced, and the Governor in Council, I am to say, considers that the article in the agreements of these *jagirs* cited in your letter, although it may be held to exempt successions in the family of the *jagirdar*, cannot apply to heirs by adoption." The orders of the Bombay Government having been passed ten years before,

¹⁷ Pro., Political A, May 1875, Nos. 114-116.

¹⁸ " " June 1881, Nos. 415-417.

¹⁹ " Internal A, August 1885, Nos. 34-39.

²⁰ " " June 1886, Nos. 129-130.

¹ Pro., Political A, June 1877, Nos. 86-88, and July 1880, Nos. 46-47.

² Pro., Internal A, October 1885, Nos. 165-166.

³ For Pal Lahera see Pro., Internal A, July 1889, Nos. 87-88, and February 1890, No. 147; and for Athgarh, see Pro., Internal A, April 1894, Nos. 37-47.

⁴ Pro., Political A, June 1891, No. 413.

⁵ Aitchison, VII, pages 235-239.

⁶ Pro., Internal A, June 1885, Nos. 199-202.

the Government of India did not desire in 1885 to review them. They observed, however, that the matter could be fully considered when the next succession occurred.

§ 387. It is an inference from several cases that the feudatories of Ruling Chiefs (other than mediatised tributaries with whom the interference of their nominal superiors is barred) are not liable to pay *nazarana* to the British Government. In 1869 the Resident at Hyderabad pointed out⁷ that all the Chiefs and *jagirdars* residing in the Hyderabad Assigned Districts are feudatories of the Nizam and that *nazarana* on successions, if imposed, could only be realised on his behalf, and not on that of the Imperial Treasury. The *Nazarana* Rules were never communicated to the Resident and no doubt this omission was intentional. In 1886 it was decided that Nimrana, a feudatory of Alwar,⁸ and the Kagal State,⁹ a feudatory of Kolhapur, are exempt from the operation of the rules. Under an agreement¹⁰ of 1868 Nimrana pays *nazarana* to Alwar. As to Kagal, we may quote from the report of Mr. Lee-Warner, Acting Political Agent, Kolhapur—"The Kagal estates were originally granted by the Kings of Bijapur and were confirmed by the Kolhapur State which undertook by the treaty of 24th January 1826 'never to molest Hindurao Ghatge, Kagalkar, in the enjoyment of his lands and rights according to ancient custom.' The treaty of 1862, article 8, distinctly recognised the 'seignioral rights of the Raja,' although it provided for the supervision of Kagal by the Political Agent. . . . The seignioral rights of Kolhapur have not been obliterated, as the more shadowy rights of the Gaekwar over the Mahi Kantha Chiefs were by his treaty of 3rd of April 1820."

§ 388. It will be observed from Appendix O that in the case of mediatised Chiefs of the second class in Central India, that is to say, Chiefs whose *sanads* do not by express terms exclude the interference of the immediate suzerain, the levy of *nazarana* is limited to successions by adoption. The *nazarana* must not exceed one-fourth of the net revenue of the guaranteed estate or *tankha*, and the feudal Chief gives to the subordinate a dress of honour equal in value to one-fourth of the *nazarana*.¹¹ In 1882 and 1884 the Maharaja Holkar claimed the right of levying *nazarana* upon direct successions to the guaranteed *tankhas* payable to the Thákurs of Narwar and Jawasia; and while admitting that his demands were inconsistent with the rules of 1864, urged that the rules should not be enforced on the ground that he was not consulted before they were framed. "In thus questioning," said the Government of India, "the validity of the rules of 1864, which have been in force for twenty years, the Maharaja seems to forget that the power which accepted the responsibility for the pacification of Central India, and which had authority to make the original settlement, was equally entitled to lay down rules subsidiary to that settlement when necessity arose. The Governor-General in Council cannot permit any discussion regarding the rules of 1864, or consent to question the validity of the proceedings then taken by the Government of Lord Lawrence. Any pretensions advanced by the State of Indore, which are inconsistent with these well-established rules, must be distinctly¹² repudiated."

We have already stated the facts connected with the Sitamau succession of 1884-85 in paragraph § 358 above. Bahadur Singh, whose succession was sanctioned by the Government of India, was the second cousin of the deceased Chief. Accordingly, if the *Nazarana* Rules applied, the State was, unless exempted under the seventh rule, liable under the third rule to the payment of one year's revenue. Sir Lepel Griffin, the Agent to the Governor-General, Central India, remarked that there was no conflict between the rules of 1864 and of 1872, respectively. In the case of States of the first class, such as Sitamau, that is, when the terms of the guarantee exclude the interference of the superior Chief, he cannot demand

⁷ From Resident, Hyderabad, No. 8, dated February 19, 1869; Pro., Political A, March 1870, No. 239.

⁸ Pro. Internal A, April 1886, Nos. 31-7.

⁹ " " June 1886, Nos. 216-219.

¹⁰ Aitchison, III, page 299.

¹¹ Paragraphs 15 and 16 of Government of India letter No. 352-A., dated March 31, 1864, to Agent to the Governor-General, Central India. Aitchison, IV, page 6.

¹² Pro. A, Political I, June 1884, Nos. 104-125.

nazarana, which, Sir Lopel Griffin held, would be payable to the British Government. The reply of the Government of India was thus worded:—"The Governor-General in Council concurs in your opinion that the Sitamau State, being a mediatised chiefship of the first class, is liable to the payment of *nazarana* to the Government of India, and that one year's revenue is properly leviable under the rules. In consideration, however, of the poverty of the State and the heavy tribute which it pays to Maharaja Sindhia, the Governor-General in Council is pleased to accede to your recommendation, and to direct that, as a special case, a *nazarana* equal to half a year's net income may on this occasion¹³ be taken."

This precedent, when the case of Narsingarh came up in 1890, was not considered as sufficient to establish the general rule that all mediatised States

Narsingarh, 1891.

of the first class in Central India are liable to pay *nazarana* to the British Government under the rules of 1872. Mahtab Singh, who succeeded to the Narsingarh Chiefship, was in the third degree of relationship to the late Chief, so that if the Sitamau precedent had been acted upon, a *nazarana* of one-half the year's net revenue would have been taken. But Narsingarh is in a peculiar position. It is a mediatised State paying tribute to Holkar; and though there is no express stipulation excluding the interference of the superior Darbar, in practice that interference has never been allowed. Mr. Henvey, the Agent to the Governor-General, held that Narsingarh could not be placed in either of the two recognised classes of mediatised chiefships. In the orders of 1864 the *nazarana* of States of the second class is limited, so that petty chiefs may not be overwhelmed by pecuniary difficulties. Mr. Henvey contended that the British Government stands towards Narsingarh in the room of Holkar's Darbar and should not take more or other *nazarana* than Holkar could take from an ordinary State of the second class. But under the rules of 1864 from such a State *nazarana* could be taken only in case of adoption. Here Mahtab Singh had succeeded in virtue, not of any adoption, but of his natural relationship. Holkar could not take *nazarana* in such a case, nor, thought Mr. Henvey, should the British Government take it. This view was substantially accepted by the Government of India. They agreed that Narsingarh did not come within the definition of either of the two classes of mediatised States given in Aitchison and held that "the principles and conditions which regulate the payment of *nazarana* by second class mediatised States to their superior Darbars" might "fairly be made applicable to the payment of *nazarana* by Narsingarh to the Government of India." No *nazarana* was levied on the succession of Raja Mahtab Singh.¹⁴

Although the Sitamau precedent must not be regarded as establishing a general rule, it is material to note that the Agent to the Governor-General, Central India, was informed in 1884 that even mediatised States are not necessarily exempt from liability under the *Nazarana* Rules.¹⁵ It is, therefore, clear that the orders requiring a report on the *nazarana* question on the occasion of a succession apply to mediatised Chiefships, as to others.

§ 389. There is no general explanation anywhere of the special reasons which might induce the Government to exempt a State under the seventh of the *Nazarana* Rules; nor would an attempt to formulate the reasons be consistent with the very flexible character impressed upon the rules by the correspondence which created them.¹⁶ But we may adduce some authoritative remarks on suggested grounds of exemption not considered adequate by the Government of India; and we may cite a few precedents of exemptions actually made, which may be useful in the examination of future cases.

As we have seen in paragraph § 384, by the rules of 1868 States under treaties were exempt from *nazarana*. In a Resolution of March 5, 1870, subsequently superseded by the rules of 1872,

The Kolhapur *Nazarana* Case, 1884.

the Government of India directed that for the purpose of the *Nazarana* Rules only those engagements should be considered treaties of which the form and substance indicated the mutual independence of the contracting parties at the time of the agreement.¹⁷ It was at the same

¹³ Pro., Internal A, September 1885, Nos. 51-57.
¹⁴ " " " " March 1891, Nos. 310-313. The Narsingarh precedent has been followed in the case of the Jabalpur State, Pro., Internal A, May 1895, Nos. 100-108.

¹⁵ Demi-official of October 20, 1884, Pro., Internal A, December 1884, Nos. 124-135, K.-W., page 23.

¹⁶ See paragraph § 381 above.

¹⁷ Pro., Political A, March 1870, No. 2.

time declared that Kolhapur, with some other States, was exempt under this ruling. In 1884 the Bombay Government, relying upon these orders and upon certain arguments put forward by the Political Agent, reported that Kolhapur was exempt from the operation of the rules. A correspondence of some length followed, in the course of which the Bombay Government represented that if a State at the commencement of its relations with the British Government held a position of subordination to any other State whose place is now taken by the British Government, and if the contribution of reliefs in any form were then incidental to its position, the State would be properly brought within the operation of the *Nazarana* Rules. If, on the other hand, the State then held a position of complete independence, the Bombay Government thought it should be exempted from the rules. "You point out," said the Government of India in their reply,¹⁶ "that, if neither former independence as indicated by treaties, nor silence of treaties hitherto regarded as defining the relations of States to the British Government, nor custom, whether as preceding or following the advent of British superiority, are admitted among the special reasons entitling to exemption from the *nazarana* tax, the Governor in Council is unable to imagine what special and permanent reasons were in contemplation when No. 7 of the rules of 1872 was framed. And you add . . . that, if exceptions are to be made, it would appear that no better guide could be taken than the status of each State at the commencement of its relations with the British Government. In the opinion of the Governor in Council, if a State then held a position of complete independence, it should be exempted from those rules.

"The particular consideration thus put forward is one which, in the opinion of the Governor-General in Council, might, under certain circumstances, be taken into account. It must, however, be remembered that, in some instances, States in India have gradually lost importance, owing to the growth of the British power or to natural deterioration, since treaties were first concluded with them or they otherwise came into relations with the British Government. Therefore it is not possible to estimate the existing rights and liabilities of all States entirely by their original position. Regard must also be paid to their relative rank among other Indian States, to special agreements with them (should such exist), and to any exceptional circumstances (ordinarily of a temporary character) which would justify the Government of India in dealing with them specially. Generally speaking, it appears to the Government of India that, except where the demand for *nazarana* is barred by the poverty of the State or by special agreement, each case must be considered on its merits; and that no general or inflexible rule can yet be laid down."

The decision was that the Kolhapur State should be entered in the register as liable to the payment of *nazarana*, but for special reasons *nazarana* was not demanded on the particular occasion.

§ 390. Another case in which a Treaty State has been held liable under the rules is that of the Dewas State, Junior Branch, which occurred in 1892. Mr. R. J. Crosthwaite, the Agent to the Governor-General, Central India, understood the seventh rule to mean that all States were exempted from the payment of *nazarana* which had been or might hereafter be exempted for special reasons. Dewas had been exempted under the rules of 1868 for the reason that a treaty existed between that State and the British Government, and Mr. Crosthwaite supposed that this exemption would hold good. The Government of India explained that it had not been ruled that those States which were, under the rules of 1868, exempted as being Treaty States, should be on that ground alone reckoned among those exempted for special reasons within the meaning of rule No. 7 of 1872. Mr. Crosthwaite represented that the rules of 1868 were published in the *Gazette of India*, whereas the rules of 1872 had never been published at all; so that Dewas and other States might suppose that they had been exempted. He could find no precedent for the payment of *nazarana*. The two Dewas States, Dhar, and the great Mahratta houses of Sindhia and Holkar had a bond of sympathy as having derived their origin from the Mahratta Empire. The levy of the duty, he thought, would

¹⁶ No. 3180-I., dated August 1, 1884; Pro., Internal A, October 1884, Nos. 86-109.

be regarded as a new departure and as lowering the dignity and position of the State, and would probably attract the attention of all the principal Chiefs of Central India and give rise to feelings of anxiety and distrust on the part of the Mahratta Chiefs, who would apprehend that the rule laid down for the Dewas State would also be applied to them. Nevertheless, after carefully considering these arguments the Government of India decided that the Junior Branch of the Dewas State should be held liable to the payment of *nazarana*. Malhar Rao, however, the Chief who succeeded in 1892, was the son of the late Chief's brother; and on this ground no *nazarana* was levied on his succession.¹⁹

§ 391. The second ground of exemption under the rules of 1868, that is, the payment of tribute in certain cases, is clearly eliminated by the language of the rules of 1872. The fifth rule implies that States paying an annual tribute may be liable to *nazarana* whether the tribute be more or less than 10 per cent. on the ordinary revenue. It is, moreover, an inference from the case of the Nandgaon State in the Central Provinces that liability to periodical revision of tribute does not carry with it exemption from *nazarana*. In the superseded Resolution of March 1870, which reviewed the application of the rules of 1868 to the various Native States, it was declared that nearly all the Chiefs of the Central Provinces paid tribute and therefore fell under one of the exceptions. The Resolution then went on to say that "their tribute is generally liable to revision after a series of years, corresponding with the ordinary British land settlement." In 1884, when the Chief Commissioner of the Central Provinces was asked whether there was any reason for exempting the Nandgaon State, he referred to this passage and inquired whether there was not some oversight in holding the *Nazarana* Rules to be applicable to Chiefs who pay a tribute subject to periodical revision. The Government of India answered that "the *Nazarana* Rules of 1872, which were approved by the Secretary of State in supersession of the previous rules, distinctly contemplate the liability of tribute-paying States to the payment of *nazarana*, on condition that the *nazarana* is calculated on the net revenue, that is to say, the revenue less the tribute. It is possible that in certain cases difficulties might have to be met in calculating the set-off which States liable to periodical revisions of tribute might claim. But each question would be decided upon its own merits and after full consideration of the whole circumstances." The language here used about a possible set-off is not very explicit, but it appears from the notes that the idea was that if an enhancement of tribute occurred about the same time as a levy of *nazarana*, a State might be excused some part of the double demand. The Government of India added that the *Nazarana* Rules had been declared applicable to three chiefships in Bengal which were subject to periodical revision of tribute. The three chiefships referred to were Korea, Bônai, and Udaipur. Eventually the Chief Commissioner and the Government of India agreed that there was no reason for exempting Nandgaon, and it was registered as a State to which the rules are applicable.²⁰

§ 392. A leading case for the exemption of a State from *nazarana* on the ground of poverty is that of Anghad, one of the many petty chiefships in Rewa Kantha of which a list is given in Aitchison, Volume VI, pages 386-388. In January 1887, the Bombay Government reported that one of the principal sharers in the Anghad estate had recently died and been succeeded by his son. The succession being in the direct line, no *nazarana* was, under the circumstances, leviable. But the Bombay Government pointed out that the total annual income of the State was Rs. 900, of which Rs. 174-11 had to be paid as tribute to the Gaekwar. The balance was required for the maintenance of the family, and the Bombay Government recommended the exemption of the State from liability to the levy of *nazarana*. To this the Government of India agreed.¹

Footnote 1

¹⁹ Pro., Internal A, June 1892, Nos. 251-254.

²⁰ Pro., Political I, June 1884, Nos. 1-3.

" " July " " 135-136.

¹ Pro., Internal A, February 1887, Nos. 181-182. See

also Pro., Political A, December 1874, Nos. 22-27, by which Sikkim was temporarily exempted, on account of its peculiar position, and because, "with the exception of the sum annually paid by the British Government, the revenues are of a precarious description and difficult to assess."

§ 393. Later on in the same year, on the occasion of a succession to the Provisional exemption of the Dang Chiefships, 1887. Gadvi Dáng chiefship of which the income was apparently Rs. 4,691 per annum, the Bombay Government recommended exemption. It was, however, represented to the Government of India that it is unwise in any case to declare a general exemption and that a decision should be given upon each succession with reference to the pecuniary and other circumstances of the State at the time; that because a State is small is no sufficient reason for exemption, but rather the reverse; that payment can always be made easy by being spread over a term of years; and that in 1885 in the case of the Thákur of Bolandra, whose income was only Rs. 1,500 a year, the Government of India had declared the rules applicable without remonstrance on the part of the Bombay Government. The orders were that as a special case the State should be exempted, "pending the reconsideration of certain points connected with the rules on the subject." The Government of India added that "if exemption in the present instance is likely to give rise to undue expectations, and to complicate the eventual settlement of the question, it might, in His Excellency's opinion, be preferable to levy *nazarana* on the succession, rather than run the risk of allowing the concession to be misunderstood." The Bombay Government replied that no *nazarana* had ever before been levied in a State of the kind; that the Political Agent had reported that its levy would give rise to great dissatisfaction; that the Dáng Chiefs would be much surprised if they were asked to pay *nazarana* on indirect successions; and that the poverty and uncivilised condition of these Chiefs seemed to the Governor in Council to furnish an ample reason for exempting them from the operation of the rules. The peculiar status of these chiefships has been described in paragraph § 237 above. Having regard to the fact that these Chiefships had never yet paid *nazarana*, the Governor-General in Council was of opinion that the existing custom might continue for the present, until the question of *nazarana* was reconsidered as a whole, if this should be done.²

§ 394. The peculiar position of the Mehwási Chiefships in Khandesh has been explained in paragraph § 238. In Provisional exemption of the Chikhli estate, 1888. 1888 a succession occurred in the Chikhli Chiefship, one of this group, the deceased Chief being succeeded by his eldest son. The income of the Chikhli estate is Rs. 30,000 and its area 200 square miles. It is a Scheduled District of British India. The Bombay Government doubted whether the succession needed the formal sanction of the Government of India and supposed that the *Nazarana* Rules would not apply. If the Government of India took a different view, then the Bombay Government proposed that the rule laid down for the Dáangs should be adopted for the Mehwási States, which had never yet paid *nazarana* and are all of them extremely poor. Having regard to the poverty of the Chikhli State, the Government of India waived "for the present" their demand for *nazarana*, but they were "not prepared upon the scanty information in their possession as to the anomalous tenure on which the Mehwási States are held, to sanction any general exemption in favour of these petty chieftains." We have already noted the substance of this decision and also the direction that succession to Mehwási estates should continue to be reported to the Government of India. When further information was obtained in connection with the case of the school-master transferred to the Kathi State, no further general ruling was passed.³

§ 395. We have mentioned in paragraph § 392 the exemption of Anghad in Rewa Kantha on the ground of poverty. Some thirty more of the petty chiefships in that quarter were exempted in the years 1889 to 1892. When the exemption of Dudhpur with a net income of Rs. 480 per annum was proposed in 1889, Sir Mortimer Durand noted that *prima facie* a State with an income of Rs. 480 can afford to pay a year's income as *nazarana* just as well as a State with an income of a lakh or a crore could afford it. The exemption was, however, allowed.⁴ Six sharehold estates in Rewa Kantha without jurisdiction were exempted⁵ in July 1889 and a list was called for showing the other similar estates which it was proposed to include in the exemption. A list of twenty-eight estates, including the six already dealt with, was supplied. In three cases the net annual income varied from some Rs. 4,500 to some Rs. 14,400 and these three estates were not exempted. In the remaining twenty-five estates, which were all exempted, the net annual income was in all cases but three less

² Pro., Internal A, July 1887, Nos. 151-158.
 November 1887, Nos. 180-181.
³ Pro., Internal A, August 1888, Nos. 63-64.
 August 1889, Nos. 331-339.

⁴ Pro., Internal A, July 1889, Nos. 295-296.
⁵ Pro., Internal A, August 1889, Nos. 124-131.

than Rs. 2,000. In the three exceptional cases, the aggregate annual incomes were Rs. 2,655 in one case and slightly over Rs. 5,000 in the other two cases; but there were probably sufficient reasons for exemption in all three cases.⁶ By orders of July 1889 and January 1892 six petty chiefships of Rewa Kantha, which are not shared, were exempted from the operation of the rules.⁷ The net annual income in these cases varied from Rs. 386 to Rs. 1,446.

§ 396. It only remains to note the orders on the *nazarana* question which are applicable to the States of Kathiwar. In 1885 the Government of India accepted the proposals of the Government of Bombay that all successions to Kathiwar Chiefships "having jurisdictional powers" should be reported and should be subject to the application of the *Nazarana* Rules. It was, however, arranged in 1887 in the case of the Thákur of Dhrol⁸ that the Bombay Government might make recommendations for exemption in particular cases, if necessary. In the correspondence of 1885 the Bombay Government had noted that in the case of Kathiwar States in which partition obtains, it would "be impossible for the Political Officers in all cases to keep count of the fractional shares which pass by survival or inheritance." They therefore proposed to limit the operation of the *Nazarana* Rules to States represented by Chiefs having powers of jurisdiction. The notes written in 1885 show an intention on the part of the Government of India to accept this proposal on the grounds that the loss of *nazarana* from other States would not be large, and that the difficulties in applying the rules to divisible estates would be considerable. But the orders actually issued neither accepted nor rejected the proposal. They were entirely silent on this point. Later on, as we have seen, the Bombay Government and the Government of India agreed that three sharehold estates without jurisdiction in Rewa Kantha should not be exempted, and it is clear from the Jetpur case of 1893 that liability to partition and absence of jurisdiction are not of themselves sufficient reasons for exemption.

Jetpur is a large and flourishing tract, with a revenue of some nine lakhs of rupees, divided amongst seventeen *talukdars*. Nearly all of these have jurisdiction of the 4th, 5th, or 6th class; but on the death in 1892 of Vala Ram Samat, one of the Jetpur *talukdars* who exercised no jurisdiction, the question arose whether *nazarana* was leviable in respect of his estate. The estate fell in the regular order of succession to a cousin of the late *talukdar*, related to him in the fifth degree, the cousin being himself the minor *talukdar* of Wadia and entitled, on attaining his majority, to exercise 5th class jurisdiction. If the *Nazarana* Rules applied the estate was liable to pay one year's revenue, which, after deducting tribute, amounted to Rs. 66,064. The Bombay Government proposed to spread this payment over four years. The Government of India agreed and the estate was registered as liable to the operation of the rules.⁹

§ 397. The present subject hardly admits of a summary of the usual kind. Sir Charles Aitchison remarked in his well-known note of 1878 that at the outset the proposal to levy *nazarana* was limited almost exclusively to political *jagirs* in British territory and to States of a petty kind whose original tenures were derived from the British Government. These limitations were abandoned in the acceptance of the rules of 1872 which greatly diminished the occasions for the levy of *nazarana* and greatly widened the area from which the demand could be made. But the rules of 1872 were not intended to be inflexible and they are no more than principles by which for the time being the Government proposes to guide its action and which are at any moment open, with the sanction of the Secretary of State, to change. The main principle observed in the working of the rules is that each case must be decided on its separate merits as it occurs; and there is a growing tendency, when exemptions are made, to limit them to particular cases under the special circumstances of the time and to avoid magnify-

⁶ Pro., Internal A, December 1890, Nos. 185-187.

⁷ " " January 1892, Nos. 193-195.

In considering any further proposals for exemption in this quarter the cases of Sihora in Rewa Kantha and Bolandra in Mahi Kantha should be referred to. Pro., Internal A, November 1894, Nos. 293-306; February 1885, Nos. 222-224.

⁸ Pro., Internal A, March 1887, Nos. 48-49.

⁹ " " June 1885, Nos. 189-200.

" " August 1893, Nos. 12-17.

For a similar precedent see the Jetpur-Chital succession case, Pro., Internal A, September 1889, Nos. 1-4.

ing them into class or permanent exemptions. It would stultify a long course of action extending over twenty years to attempt to define with any closeness the circumstances which justify or which preclude the levy of *nazarana*. Some of these circumstances are sufficiently defined in the rules of 1872; for the rest, subject to the remarks just made, we may set down here a few conclusions which do not seem open to doubt:—

(1) *On the occasion of each succession which has to be reported to the Government of India, the question of the liability of the State to the payment of nazarana should be included in the report.*

(2) *Provisions in an existing engagement apparently exempting a State from the levy of nazarana should be construed with liberality.*

(3) *Feudatories of Native States, who are such in fact, and do not resemble the mediatised Chiefs of the first class in Central India, are not liable to pay nazarana to the British Government.*

(4) *The nazarana payable by mediatised Chiefs of the second class in Central India to their superior Darbars is regulated by the orders of 1864.*

(5) *Any nazarana which may be payable by any mediatised Chief of the first class in Central India, is payable to the British Government.*

(6) *A treaty State is not, as such, exempt; nor is a State exempt because it pays tribute to the British Government even if the tribute be liable to periodical revision. Except where the demand for nazarana is barred by special agreement, each case must be considered on its merits and no general or inflexible rule touching the exemption of States can be laid down.*

§ 398. There are various matters of ceremony which require attention on the occasion of a succession, and of some of these a brief notice may be entered here.

What some of these matters are will sufficiently appear from a report by Colonel Bradford, the Agent to the Governor-General in Rajputana, regarding the installation of Maharana Fateh Singh, the successor of Maharana Sajjan Singh of Udaipur. As the Udaipur family stands first amongst Rajput houses, the ceremonial observed in the case of the Udaipur State has a specially instructive significance. "Precedents," said Colonel Bradford, writing on January 19, 1885, "drawn from recent successions in this and other leading Rajput houses establish a definite form of procedure to be followed on occasions like the present. On receiving an intimation of his formal recognition by the Government of India, the Chief addresses a *kharita* to His Excellency the Viceroy, announcing the demise of his predecessor, and his own succession to the vacant *gaddi*. A formal and complimentary reply to this *kharita* is returned in due course by His Excellency and is presented to the Chief at the time of his installation, together with a *khilat*, the detail and value of which are similarly determined by the precedents which obtain in the case of the State immediately interested. This was the course followed on the succession of the Ruling Chiefs of Jaipur and Jodhpur, and I conceive that in the present instance no departure from established usage will be suggested. The value of the *khilat* presented at previous installations of Maharanas of Udaipur may be taken at Rs. 20,000 and the cost has invariably been borne by the State."

Colonel Bradford then explained that the only instance in which a *khilat* had been actually paid for by the British Government had occurred in 1861, when a *khilat* was presented to Maharana Shambhu Singh, in recognition of the Mutiny service of his predecessor. *Khilats* had been variously supplied either by the Darbars concerned, or from the Government *Toshakhana*, the cost then being refunded by the State. In this Udaipur case of 1885 the *khilat* was supplied by the *Toshakhana*, and directions were given for the recovery of its value from the Darbar. A list made out in the Foreign Office in 1887 shows nineteen cases in which, when a *khilat* was given at the installation of a Chief or on his investiture with full powers, no charge fell upon the British Government, either because the articles comprising the *khilat* were supplied by the State itself, or because the cost of it was recovered, or because a *peshkash* of not less value than that of the *khilat* was paid on the occasion. Nearly all of these cases were from Rajputana, but Gwalior and Indore were included in the list. It is believed that the practice will be found

to vary in different parts of India; and the only safe rule of guidance is the series of precedents applicable to the particular State.¹⁰

§ 399. Proposals have, indeed, been made for the adoption of uniform rules for the bestowal of *khilats* and receipt of *peshkash* on the occurrence of successions and investitures in the Rajputana and Central India Agencies, but in the end the idea of uniformity was abandoned and the subject was left to be dealt with, as before, in accordance with particular precedents and without any general rules. The rules which the Foreign Department was prepared to consider and which the Agent to the Governor-General, Rajputana, did not oppose were, after consultation with him, suggested to the Agent to the Governor-General, Central India, in this form:—

- “ I. In future a *khilat* will be bestowed upon all Native Chiefs on the occasion of their installation. In the case of a Chief who succeeds as a minor, a second *khilat* will not be given upon his investiture with full powers of administration. The *khilat* shall in future be provided entirely by the Government *Toshakhana*, no articles being supplied by the Chief himself.
- “ II. In all cases of succession, whether *nazarana* is leviable or not, the value of the installation *khilat* to be bestowed upon the Chief will be determined solely according to a fixed scale (to be hereafter drawn up¹¹) of values for *khilats*. It will not be affected by the levy of *nazarana*.
- “ III. In all cases, whether *nazarana* is leviable or not, the Chief upon whom an installation *khilat* is bestowed, will be expected to present a cash *peshkash* of equal value.”

Mr. Henvey, the Agent to the Governor-General, Central India, objected that there were many States in Central India which had heretofore received no *khilats*; that some mediatised Chiefs received *khilats* from their superior Darbars only; that where *nazarana* was payable under the adoption *sanads* there was a special rule; and generally that the political conditions of Central India were extremely various and that innovations made merely for the sake of uniformity would be regarded with suspicion as possibly designed to destroy privileges. In more than twenty States, mostly in the Bundelkhand Agency, when *nazarana* is levied under the adoption *sanads*, a *khilat* of investiture equal in value to one-fourth of the amount of the *nazarana* is given by the British Government. Mr. Henvey was informed on September 20, 1890, that the idea of introducing a fixed scale of *khilats* would not be pressed in Central India; nor were any rules or scale ever sanctioned for any other part of the country.¹²

§ 400. As to *kharitas*, the extract given in paragraph § 398, from Colonel Bradford's report on the Udaipur case of 1885, shows what is the proper procedure. The new Chief reports his succession and the Viceroy then recognises and confirms it. But here again the question is one entirely of precedents applicable to the particular State concerned. It is only in the case of certain important Chiefships that this interchange of *kharitas* occurs. In one or two exceptional cases the Viceroy has sent a *kharita* without awaiting one from the new Chief¹³. When a *kharita* is received from the Viceroy it is usually read in open Darbar on the occasion of the installation of the Chief, or, as the case may be, his investiture with full powers. From lists of comparatively recent cases lately prepared, it appears that on such occasions *kharitas* were sent from the Viceroy to Udaipur¹⁴ in 1875 and 1885, Alwar¹⁵ in 1875, Karauli¹⁶ in 1876, Kish-

¹⁰ Pro., Internal A, February 1885, Nos. 197-207, and September 1887, Nos. 472-474.

¹¹ A scale was prepared for Rajputana, but never sanctioned. Pro., Internal A, September 1887, Nos. 472-474.

¹² Pro., Internal A, July 1887, Nos. 227-228.

“ “ September 1887, Nos. 472-474.

“ “ October 1890, No. 6.

¹³ Karauli, Pro., Political A, March, 1876, No. 165. Kashmir, Pro., Secret E., December 1885, Nos. 211-212. But in this case the successor had reported the death of his father through the Resident by telegraph.

¹⁴ Pro., Internal A, February 1885, Nos. 176-196.

“ “ May 1885, Nos. 147-151.

“ “ Pro., Political A, January 1875, Nos. 386-387.

¹⁵ Pro., Political A, August 1875, Nos. 13-16.

angarh¹⁶ in 1880, Jaipur¹⁷ in 1881, Kashmir¹⁸ in 1885, Holkar¹⁹ in 1886, Sindhia²⁰ in the same year, Bundi²¹ in 1890, and Kota²² in 1893. It is not necessary to give a list of cases in which no *kharitas* were sent, because in any case of doubt it would be for the Political Officer concerned to establish from precedents the propriety of an interchange of *kharitas* with the State concerned. If there is no precedent for the despatch of a *kharita*, of course the assumption is that none is necessary. In the Travancore case of 1885 a *kharita* was sent not by the Viceroy, but by the Governor of Madras, on the death of the Chief, and another *kharita* by the Governor on the occasion of the installation of the new Chief. The latter *kharita*, with a proclamation of the accession of the Chief, was read out in public Darbar.²³

The present subject has been briefly treated and requires no summary.

¹⁶ Pro., Political A, February 1880, Nos. 388-405.

¹⁷ " " May 1881, Nos. 349-362.

¹⁸ Pro., Secret E., December 1885, Nos. 211-212.

¹⁹ Pro., Internal A, October 1886, Nos. 339-385. This is another case in which there was no *kharita* from the new Chief. But as in the case of Kashmir, communications had been exchanged by telegraph. As the Viceroy's *kharita* arrived late, its substance was telegraphed and read in the installation Darbar.

²⁰ Pro., Internal A, December 1886, Nos. 432-463.

²¹ " " February 1890, Nos. 186-191.

²² The Viceroy's *kharita* was read in Darbar when the Chief was invested with full governing powers.

²³ Pro., Internal A, February 1893, Nos. 10-18.

The Viceroy's *kharita* was read in Darbar on a like occasion.

²⁴ Pro., Internal A, September 1895, Nos. 204-221.

MINORITIES OF RULING CHIEFS.

§ 401. It is well known that minorities of Chiefs are of frequent occurrence in Indian States, and one cause of this is that deaths of Chiefs without male issue often occur, and the adopted son or selected successor is then, in a very large proportion of cases, a minor. On the occurrence of a minority the Government of India exercise very extensive powers in arranging for the administration of the State and the education of its future Ruler. The leading case which illustrates

the nature and extent of the powers in question is that of the Hyderabad Minority, 1869. This case was included in Sir Mortimer Durand's compilation of 1875, and we reproduce his version here with hardly any alteration :—

[On February 26, 1869, the Nizam Afzal-ud-daula died at Hyderabad after an illness of a few days' duration. At the urgent request of the Minister, Sir Salar Jung, and with the view of tranquillising the minds of the people, Mr. Saunders immediately sanctioned¹ the proclamation as Nizam of the late Ruler's infant and only son Mir Mahbub Ali 'subject to such orders as the Government of India might issue in regard to his guardianship and the administration of the country under a Regency or otherwise during his minority.' At the same time the Resident intimated² to the Minister that on the occasion of the forthcoming visit of condolence to the young Nizam, and at the subsequent installation, he would not, excepting under the orders of the Government of India, adhere to 'the old humiliating custom of taking off shoes and sitting on the ground,' but would require the Darbar to be held according to the rule observed at all other Courts, and that chairs must be provided for all the British officers. Mr. Saunders was at once informed that the Government of India approved of all he had done, and 'the old humiliating custom' adverted to by Mr. Saunders was in fact broken through, and is now a thing of the past.

[On the morning after the death of Afzal-ud-daula Mr. Saunders summoned to the Residency the Minister, Sir Salar Jung, and the two Nawabs, Amir-i-Kabir Shams-ul-Umara and Khurshid Jah, influential noblemen of high family, who were connected with the Nizam by marriage.³ A meeting accordingly took place, and all the most important questions arising out of the existing emergency were discussed at length. After hearing the Resident's remarks the three noblemen retired to deliberate among themselves upon the several points raised, and finally returned with the following proposals :—

- [(1) That the young Nizam should remain for the present, until such time as his education could be satisfactorily begun, under the immediate charge of his mother and grandmother, but that the general control and superintendence of His Highness and of the Sarf-i-khas or Nizamat estates should be vested in the Nawab Amir-i-Kabir and the Minister conjointly, the Resident being kept duly informed as to the manner in which this trust was discharged.
- [(2) That the country should be administered by the same two noblemen conjointly, the executive remaining as before in the hands of Sir Salar Jung as Dewan, the usual communications being made to the Resident in accordance with existing usage.

¹ Pro., Political A, March 1869, No. 259.

² Pro., Political A, March 1869, No. 260.

³ Pro., Political A, March 1869, No. 276.

[These proposals Mr. Saunders supported. He intimated at the same time that the late Nizam's only brother, Roshan-ud-daula, was not considered qualified to be associated with the two noblemen in the control of public affairs.

[A few days after the interview, and before the receipt of the Resident's letter, the Government of India telegraphed⁴ to him to send up as soon as possible the heads of his proposal for the administration of the country. The telegram ended with the following words :—

["Take care that no pledge is given to prevent our giving the young Nizam a good education at some future day."

[In answer to this telegram Mr. Saunders forwarded⁵ a *resumé* of the proposed scheme. It has been roughly summarised above, and it will not be necessary to quote here more than two sentences of Mr. Saunders' message. The first of these was—'The Resident is to be consulted by the Dewan as heretofore, and, specially in consideration of the Nizam's childhood, in every emergency and on all important matters, in firm conviction that his support and advice will always be tendered with due regard to the interest and ancient rights of the State.'

[The second passage ran as follows :—

["In reference to above scheme I have intimated that current administration of affairs may meanwhile proceed on the principles laid down, pending further instruction from Supreme Government. I have also expressed my belief that Government will insist on reserving the right of interfering when necessary in the affairs of the State to prevent misgovernment, and most especially with regard to proper education of Nizam."]

§ 402. Two days after the despatch of this message the Resident forwarded⁶ with his own remarks the proposals of the Amir-i-Kabir and Sir Salar Jung, now elaborated in writing, and a dissertation of his own on the state of affairs in general.

[The papers submitted by Mr. Saunders consisted of a memorandum drawn up by the joint administrators, which embodied the scheme of administration, and a demi-official note from Sir Salar Jung from which one passage may be quoted here. It ran as follows :—

["Although it is only said in the paper that in all necessary matters the Resident's opinion and advice will be sought, yet you are aware that no matter of importance is taken in hand, nor any new measure initiated without the Resident's approval We do more than we can state in writing in any official document in this way to trouble the Resident by continually seeking his advice, for we are quite sensible of the great need we have of British support and assistance on questions which are continually arising. How could the accession even have been placed on so secure and firm a basis without the concurrence and support of the British Government ?"]

[The covering letter of the Resident contained some important proposals, and it will be necessary to extract from it at some length.

[Mr. Saunders began with a review of the existing "crisis" in the Deccan. He spoke of the "state of seclusion and thralldom" in which the ruling Nizam had up to that time been retained, and expressed a hope that the time had come when a new order of things should naturally create itself. The letter went on as follows :—

["It is well for me here to state distinctly that any thought of our availing ourselves of this period of comparative weakness, in order to grasp even temporarily for the purpose of imperial aggrandisement a more direct control than we have heretofore exercised over the Hyderabad administration, is as dissonant from my own views of what is just and expedient, as I believe it to be foreign to the policy of Her Majesty's Government.

⁴ Pro., Political A, March 1869, No. 268.

| ⁵ Pro., Political A, March 1869, No. 269.

⁶ Pro., Political A, March 1869, Nos. 279-281.

["Perhaps it would have been desirable if our indubitable position as the Paramount Power in India had been proclaimed with respect to the Deccan at the time when that power accrued to us *de jure* as it had long been ours *de facto*, namely, after the removal of the last semblance of the Moghal dynasty in 1857, but that was not then done, and our subsequent negotiations with this State have been conducted on the old footing and with the old phraseology of full equality.

["Nevertheless, as a matter of fact, the influence which we have wielded over the counsels of this State has been as complete, perhaps, as if our title to exercise it had been duly conceded to us by treaty. An implied recognition of this fact occurs in Sir Salar Jung's demi-official letter, which forms Appendix B. In some respects, indeed, the manner in which we have guided the government of the country, while not asserting for ourselves any dominant rights towards it, further than those which inevitably accrue to us as masters of the vast continent which surrounds it, has led to even more marked results than might have been attainable under a system admitting, as by right, of direct interference on our part. The events of the past eight days at Hyderabad sufficiently illustrate our real position. Thus it will be noticed that the infant Nizam was not proclaimed until after a reference on the subject had, in accordance with precedent, been made by the Minister to the British Resident. And the sanction of the latter to His Highness' accession was coupled with a special proviso reserving for the Government of India the right of associating themselves as they might deem expedient in providing for the education of the Prince, and for the administration of affairs during his minority.

["If it were ever to be urged that such reference to the Resident, since it rested upon no treaty obligations, but solely on ancient usage, cannot be regarded as more than an act of courtesy on the part of the weaker towards the stronger power, then I would observe that, whatever force might belong to this argument with the *masnad* occupied by a Sovereign who had attained the years of discretion, it is less appropriate to the present juncture, inasmuch as our treaties do not run in the name of the Hyderabad nobles, but in that of His Highness the Nizam; while His present Highness, as an infant, stands in need of our guardianship alike to defend him against his enemies and protect him from his friends.

["The noblemen, who, with my concurrence, have proposed to undertake the administration during His Highness' minority, have no official or hereditary claims to be invested with the authority and functions of a Regency. No instrument conferring upon them such powers in the event of His Highness the late Nizam's death was ever executed by His Highness. The present Nizam is, of course, incapable of doing so. I think it clearly follows that whatever system may be finally instituted for governing the country during His Highness' minority, must be held to have been derived from, or at any rate impressed with sanction by, the Paramount Power, and will depend on any document which the Supreme Government may issue or execute in confirmation or otherwise of the proposals now submitted. Whether such document should assume the form of a mandate or of a treaty, it will be for the Government of India to decide. The essential condition of the system to be inaugurated, I hold, should, under any circumstances, be this—namely, that the British Government should, during the minority of His Highness, exercise at least as potential an influence as that of the more direct guardians of the State, namely, the two noblemen who have undertaken the task at my call, in dictating, regulating, or preventing such measures of public policy as concern the future stability of His Highness' dynasty, and the good government of his three millions of subjects."

[The Resident then went on to review the proposals embodied in the memorandum. After passing a high eulogium on the character and abilities of the Minister and his colleague, Mr. Saunders wrote:—

["The scheme of administration, which is set forth in the appended document, recommends itself, in so far as it extends, to my judgment and approval. I think it holds out a far better prospect of gradually reforming the administration of the country, and of securing the present happiness of

its people, than if a direct and ostensible share in the government had been assigned to the British Resident.

[“ But it treats of the matter entirely from the point of view proper to this Court. It may be regarded, indeed, as the schedule put in by one only of the contracting parties to the arrangements which fall to be entered into for the government of this country during His Highness’ minority. It will, therefore, rest with the Paramount Power to take such action, in modification of the scheme now submitted; as may be deemed expedient and consistent with existing Treaties, and with the present political features of Hyderabad as above cursorily glanced at.

[“ Having plainly indicated my view that the transfer of a direct part in the administration to the British Resident should form no feature of whatever arrangements may be definitively concluded for the conduct of affairs during His Highness’ minority, I would venture now to submit the three points on which I would solicit the mature consideration of the Supreme Government in connection with the memorandum now laid before them.”

[These points, briefly stated, were the following :—

[(1) Provision had not been made against the acquisition of real or supposititious power in State matters by the young Nizam’s grandmother, the Begam Sahiba Dilawar-un-Nisa. Her name figured prominently in the memorandum, and though Mr. Saunders was not prepared to say that its introduction was not a politic measure, he deprecated “ its being left possible that this lady’s name should ever be made use of as a screen or obstacle in the way of the carrying out of such measures as our Government might deem of importance for the welfare of the State.”

[(2) The right of the Paramount Power to interfere as might be necessary on the occurrence of marked or manifest misgovernment had nowhere been asserted. It could hardly indeed have been expected in a document emanating from the Hyderabad Court. But Mr. Saunders thought that the right might now be plainly stated by the British Government.

[(3) There was not a sufficiently clear understanding as to the education of the young Nizam. It was to be feared that unless the Government of India at once determined to hold itself responsible for securing the boy a sound education on English principles, opposition—passive at least if not active—would be encountered when the time came for immediate decision. The old *régime* of a secluded and suspicious sovereign in the palace, surrounded by nobles intriguing among themselves for such shares as they could get of his abnegated power, was a *régime* which many would be glad to see re-inaugurated with the majority of the young Nizam. Maternal and female affection would enlist the Begams only too warmly on the side of those who would leave His Highness in the hands of the *fakirs* and parasites of the Court. “ And thus difficulties, which unless effectually guarded against now might prove almost insuperable hereafter, would be imposed in the way of educating His Highness on the only method calculated to emancipate him from the dominion of those around him, and fit him at once to command and adorn his future position.”

[The Resident’s letter closed as follows :—

[“ To summarise : the system recommended in the accompanying memorandum is, in my opinion, preferable to any plan having for its object the direct association of the British Resident with the responsible administrators of this State; and will afford all the scope which is to be desired for the introduction into the government of the country of those gradual and moderate measures of political and administrative reform which consist with the idiosyncracies of its people, or are expedient in a Native and independent State. But I think it is most necessary that the Paramount Power should consider fully the questions of securing to themselves the right of providing for His Highness a liberal education as that is understood by our countrymen of the nineteenth century; of letting it be distinctly known that neither in regard to this all-important topic, nor with respect to any public measure, is the wish or opinion of the Begam Sahiba to be put forward, by those conducting the administration, in contravention of such policy as may be thought expedient; and lastly, of

asserting the right of authoritative interference, during His Highness' minority, and in the interests of His Highness' dynasty, whenever anarchy or misgovernment may demand such action on our part."

[Pending receipt of orders on this important communication and in reply to the Minister's "repeated solicitations," Mr. Saunders sanctioned⁷ in the following words certain existing arrangements for carrying on the necessary work of the administration :—

[" Without in any way committing thereby my own Government to the adoption of any particular line of policy, much less to an approval of the several arrangements and proposals contained in the general scheme for the future administration of the country, I nevertheless consider that I am, under the circumstances you so strongly urge, justified in authorising your at once entering conjointly with the Amir-i-Kabir Shams-ul-Umara upon the task of administration upon the general principles laid down in the document, upon the distinct understanding that the authority I now convey does not in any way prejudice the right of His Excellency the Viceroy to alter or amend to any extent he may deem requisite the scheme of administration, as well as the proposed arrangements for the guardianship and education of the youthful Prince during his minority, which have been now submitted for his consideration and final orders."

§ 403. [On the 22nd of March those final orders⁸ were conveyed to the Resident. They are of very great importance as an exposition of the general policy of the British Government, and it will be necessary to quote from them at some length. The letter opened as follows :—

[" The opinions expressed and the measures recommended by these two noblemen in the memorandum of March India, March 1869. 2nd, a copy of which is enclosed in your letter, with regard to the administration of the State of Hyderabad during the minority of the Nizam, appear to His Excellency to be, as far as they go, well suited to their purpose, and to contain the basis upon which the Government of his territory, during His Highness' minority, can be satisfactorily conducted.

[" It is not the wish of His Excellency that the Representative of the British Government should, for the future, possess more direct control over the internal affairs of the State than has lately been exercised. No new treaty or convention is required, nor is it desirable to issue any mandate from the British Government as Paramount Power. The existing treaties, the conditions of which will be scrupulously observed, are sufficient.

[" But while His Excellency in Council is anxious to maintain the integrity of the Hyderabad State and the independence of its administration, he must, on this important occasion, express his desire that every security that is possible should be taken for preserving intact the friendly relations that exist between the Government of Her Majesty and that of His Highness the Nizam, and for establishing in Hyderabad a strong and beneficent administration.

[" The Resident will, therefore, on all important occasions, and at every fitting opportunity, offer, as heretofore, to the Ministers of the Nizam such advice and support as he may think desirable, with a view to assist them in carrying on their important duties with prudence and success

[" The position of the Resident, as representing the paramount Government in India, must always be one of commanding influence and power, and late events have certainly in no wise diminished his responsibility; but the Ministers of His Highness may be assured that that influence and power will never be used except for the maintenance of order, for the repression of crime, and for the promotion of measures which may have for their object the welfare and prosperity of His Highness' subjects.

[" With regard to the special points referred to in your letter, His Excellency in Council is of opinion that, in any arrangement which may be sanctioned by the Resident for the future government of the country, care should be taken

⁷ Pro., Political A, March 1869, No. 283.

⁸ Pro., Political A, March 1869, No. 284.

that no interference should be exercised, on the part of any person whatever, with the powers of the two noblemen who are the Chiefs of the Administration; and though it is only proper and right that the near relatives of His Highness, and especially those charged with the care of his person, should communicate freely with his Ministers, and should be treated with the highest consideration and respect, yet still it is in accordance with sound policy that a positive rule should now be made that the supreme control of public affairs is to be placed absolutely in the Ministry without any interference or hindrance, direct or indirect, from any relative or subject of the Nizam.

[“As long as the administration of affairs is vested in the two distinguished noblemen, Sir Salar Jung and the Amir-i-Kabir, political difficulties with regard to the position of the Resident or to the government of the country are not likely to occur, but, in the uncertainty of life, it may happen that one or both of these noblemen may be removed. It is therefore desirable that the occurrence of such a calamitous event should be considered, and provision made for securing to the Hyderabad State the continuance of that good government which, His Excellency in Council anticipates, will exist during the lifetime of the present Nawabs. On such an occasion, disorders might arise which would endanger the dynasty of the Prince and the stability of his Government. In this case it would be manifestly the duty of the Resident to interfere, but security against such misfortune might be taken by the association, in a subordinate position, of one or more persons of suitable rank and status, who had displayed talents for administration, so that provision might be made for the succession in their high offices to one or other of these noblemen, should it please Providence to remove them.

[“Were some such arrangement as I have indicated made now, it would receive the cordial assent of the British Government, and might be the means of avoiding much difficulty and danger hereafter. The Resident must be aware that an administration, however good, can never be stable that depends on the life of one or more individuals. It should be one of his primary duties to ensure, if possible, a succession of able Ministers. This can best be done by his sedulously making the acquaintance of young men of promise in the Hyderabad State; by his encouraging all such to take an interest in public affairs; by his inducing them to qualify themselves for office; by his imbuing them with a sense of the value of administrative system; and by teaching them the merits of the principles which, for years past, the Hyderabad Government has been striving to introduce.

[“The future education of the youthful Prince is an object of much solicitude to His Excellency and to his Council.

[“It is a matter of the greatest importance that His Highness should receive every advantage in this respect that can be afforded to him, and that every effort should be made, by extending to him the blessings of a sound and liberal education, to fit him, as far as possible, for the high and important duties of his future life.

[“His Excellency is therefore of opinion that this question should, as far as possible, be settled now, and that a guarantee should be given that at an early period, as soon as His Highness' years will permit, an English gentleman of learning and ability should be received into His Highness' service and entrusted with the important duties of superintending his education.

[“Considering the practice which has heretofore existed in the Nizam's Government of employing European gentlemen in situations of trust in its service, the Government of India trusts that the Ministers will now see the importance of employing European agency in the very sphere where it can be most useful, namely, in the education and training of the young Prince for his future duties as sovereign.

[“The two noblemen who are now' charged with the government of the country are doubtless aware of the extreme importance of this matter.

[“The selection of the person who should be entrusted with this duty should rest entirely with the Ministers, who will, doubtless, avail themselves of such advice and assistance as the Resident would be anxious and willing to afford to them.

[“The duties of the gentleman so appointed should be not only to superintend the general system of instruction given to His Highness, but with him also should rest the selection of those subordinate teachers whom it might be necessary to employ in the different branches of education.

[“The person selected should, if possible, be an independent gentleman, who would thoroughly appreciate the importance of the duty confided to him, and who, while offering to his pupil all the advantages of an English education, would not neglect those studies which are specially necessary for the proper instruction of an Indian Prince.”

[The Government of India then went on to point out the importance of consolidating and strengthening the system already established in the State, and of proceeding with the many reforms already introduced, so that the stability of the Nizam's Government might be made to rest, “not on the uncertain lives of eminent persons, but on the comparatively certain results of good government.”

[The measures which demanded constant attention at the hands of the administration were then enumerated. They were:—

- [(1) The final settlement of all past accounts with the creditors of the Nizam's Government.
- [(2) The release of all districts mortgaged or assigned to Chiefs of various denominations in satisfaction of debt, or for the payment of troops and establishments, excepting always the old established *jagirs* like the Paga and others.
- [(3) The gradual reduction of those portions of the army not really needed for the defence of the country—especially the Arabs. It was not necessary to discharge the Arabs then in the service, but no more Arabs from Arabia were to be entertained.
- [(4) The working of the Police.
- [(5) The completion of the land revenue settlement, and the limitation of the State demand for a term of years.
- [(6) The furnishing of full and adequate instructions to the divisional and district officers (*Talukdars* and *Sadr Talukdars*).
- [(7) The repair of existing tanks for irrigation and the restoration of ancient works of public utility.
- [(8) The current repairs of the rough district roads, even if the administration had not the means of constructing new roads on a large scale.
- [(9) The care of the sanitary condition of large towns, particularly of Hyderabad.
- [(10) The organisation of the Courts of Justice, the prevention of corruption and other malpractices, the due and judicious enforcement of the decrees of the Judges, and the gradual habituation of all classes, whether high or low, to respect and obey the law.

[Representations on these important points were to be “impressed on Sir Salar Jung and his colleague with firmness and decision, but in such a way as to avoid any appearance of dictation and the possibility of offence.”

§ 404. [When the orders of the Government of India were communicated to the Ministers they expressed their gratitude and promised to follow “such good advice and counsel” as might be offered by the British Government. But on one point they raised a decided objection.⁹ The proposal that an English

Arrangements for the education of the young Nizam. tutor should be appointed to have general control of the Nizam's education seemed to be very distasteful to them. To begin with, the Ministers expressed some apprehension lest a gentleman vested with the power recommended by the Viceroy might consider it within his province to interfere in the matter of religious observances. This idea was at once expelled from their minds by the Resident, but their objections remained. They were anxious that the mentor of the infant Chief should be a Musalman, and that with him should rest

⁹ *Proc., Political A., June 1869, No. 45.*

the selection of all subordinate teachers except the gentleman appointed to teach English, who, on the other hand, was to be a teacher pure and simple, without any powers of superintendence, and was to "conform to the customs and manners of the Court." In other words, he was to sit on the floor and take off his shoes in the presence of his pupil.

[Mr. Saunders thought Government might give way with regard to the selection of the subordinate teachers. But he went on to say that if the English tutor were to be merely a teacher in the sense intended by the Hyderabad Ministers, the arrangement was one in which the name of the British Government should in no way be associated. The tenor of the Ministers' arguments seemed to be this:—"We wish by assigning to the English Superintendent proposed an inferior position and status to obtain a man of an inferior stamp as regards social prestige, because over the opinions and actions of such a man we could look to exercise a control which in the case of one higher in the social scale, of independent mind and habits, it might be difficult, if not impossible, for us to obtain." The views of the Resident himself were stated in the following words:—

["It will not escape the attention of His Excellency that this question may possibly present not precisely the same features four years hence, when the decision of it comes to have practical effect, that it does now, and therefore there may possibly, under the circumstances, be some advantage in postponing the demand for such a guarantee on this head as the British Government may, after considering the present representations of His Highness' Ministers, see fit to require; but a delay of that kind would not, I think, be really expedient. It might afford the Hyderabad Ministers reason to attach an overweening confidence to the strength of their arguments, and to consider that the British Government disclaimed chief responsibility, or accepted but a secondary position, in determining the matter of the young Nizam's bringing up—so far, of course, as the measures necessary for ensuring to him the advantages of what we understand by a liberal education are concerned.

["My own view, as may be gathered from what I have already written, is that, conceding to the Ministers the *selection*, with the approval of the Resident, of the subordinate teachers, His Excellency might rightly claim for the English gentleman proposed the position of a *Superintendent* in all other respects, under the advice and control of His Highness' Ministers, acting in consultation with the British Resident.

["That the English Superintendent should be a gentleman of good position, one who in social intercourse with the Residency and the British officers at Hyderabad would be in nowise below the level of the society English gentlemen are accustomed to move in, is a point I hold to be of paramount importance; but how to secure the services of such a gentleman, if he be required to take off his shoes and sit on the floor when in the presence of his pupil, is, I conceive, a difficulty not to be surmounted, and, were it otherwise, involves a position in which the British Government ought not to allow the Superintendent to be placed."

[A few days later Mr. Saunders submitted copies of further correspondence on the subject, which need not be noticed in detail. Sir Salar Jung stuck to his views throughout, the only concession he made being the offer that a room furnished after the European fashion should be set apart for the use of the Nizam and his English teacher while studies were actually going on. But this was only to be done supposing the gentleman appointed to be a teacher and nothing more. If he were to be a Superintendent, he must conform to the manners of the Court. When these two letters from the Resident came up for consideration, the Viceroy (Lord Mayo) described¹⁰ the arrangements proposed by Sir Salar Jung as being "exactly what we wish to avoid," and in this opinion the Government of India were unanimous.

[Accordingly on May 31, 1869, the Resident was addressed as follows:—

["There is nothing in the tenor of any of the communications from Sir Salar Jung which could lead the Government of India to depart, substantially, from the policy expressed in the letter from this Office, dated the 22nd March

¹⁰ Pro., Political A., June 1869, No. 51.

1869. To the broad and liberal policy laid down in that communication as to the education and training of the young Nizam, His Excellency in Council must record his adherence in all essential points.

[“ His Excellency in Council observes that Sir Salar Jung and the Amir-i-Kabir must have been very well aware that the British Government never contemplated any interference with the religion or religious customs of the young Nizam, as pointed out clearly in the 4th paragraph of your letter of the 1st of May 1869.

[“ His Excellency in Council will content himself with expressing a confident hope that there will be no further opposition to the principles already enunciated by the Government of India, but that the education of the young Nizam may be proceeded with under the supervision of an English gentleman of character, position, and high qualifications when the Prince arrives at a suitable age, so as to ensure the objects aimed at in the letter quoted. Any details not involving a substantial departure from those principles can be best settled by yourself in communication with the Minister.”

[On the receipt of these orders the Resident forwarded a copy to the Nizam's Ministers, and asked them to meet him, in order that he might explain more fully the intentions of the Government of India with regard to the young Nizam's education. A meeting took place, and the Ministers, without expressing any change of opinion, made no further objection to the Government proposals. Shortly afterwards they sent in a written communication which, though vague and general in its terms, led Mr. Saunders to suppose they would offer no further opposition. Mr. Saunders thought that, as four years must elapse before any active steps need be taken in selecting an English tutor, the question might rest. In reply, His Excellency in Council expressed his gratification at the turn affairs had taken, and his conviction that when the proper time came for carrying into effect the measures deemed necessary by Government, the Nizam's Ministers would use all the great influence they possessed to prevent the occurrence of any of the inconveniences they feared.

[Four years later that time seemed to have arrived. In March 1873 the Secretary of State intimated that it had been necessary to take into serious consideration the propriety of inviting the Ministers to propose a definite scheme for the education of the young Nizam under proper superintendence. A copy of the Duke of Argyll's despatch¹¹ was forwarded to the Resident, who was at the same time directed to confer personally with the Nizam's Ministers, and elicit from them a statement of the scheme which they would propose to adopt, “ bearing in mind the views already expressed by Government on the subject.”

[The upshot of the matter was that Sir Salar Jung, after at first deprecating the necessity for any immediate action in the matter, suddenly wrote off to England to make arrangements for selecting a Superintendent.

[This action seemed somewhat precipitate, and indicative of unnecessary distrust. But the Government of India¹² thought there was no reason for objecting to the arrangements made by the Minister. It was pointed out that by taking direct charge of the Nizam's education and the selection of a tutor, Government would become responsible for all the details of the boy's up-bringing, and would moreover run the risk of making the system of education distasteful both to the Nizam himself and to his Ministers. The late cases of Alwar and Bhartpur were instanced as unsuccessful attempts to undertake the direct education of Native Chiefs. Government determined therefore to leave the selection of a tutor and the details of the Nizam's education in the hands of the Minister, reserving to itself only a general right of control. Accordingly the Resident was told that Sir Salar Jung's measures were approved. But lest this announcement should be misunderstood, the letter went on as follows :—

[“ Although it is far from the desire of Government unduly to interfere with His Highness' education, yet it is right and expedient that you, as representative of the British Government at Hyderabad, should be consulted by the Nizam's Ministers on questions of importance connected therewith. His Ex-

¹¹ *Pro.*, Political A, June 1873, Nos. 255-256.

¹² *Pro.*, Political A, September 1873, Nos. 146-152.

cellency in Council will be glad to receive from you in due course the detailed scheme of studies after sufficient time has elapsed to admit of its preparation in communication with the gentleman who may eventually be selected as His Highness' tutor It will be your special duty to see that the legitimate position and influence of the tutor is maintained."

[Little more need be said on this matter. In March 1875 the Resident reported¹³ the arrival in Hyderabad of Captain Clerk, the tutor selected for His Highness. He submitted at the same time some remarks as to the influences surrounding the young Nizam, and the necessity of his being "gradually transplanted into some more wholesome atmosphere."

[Mr. Saunders was informed in reply that in the opinion of His Excellency in Council it was highly desirable that the Nizam should at an early date be somewhat withdrawn from the influences to which he would be exposed by an uninterrupted residence in the Palace. This object, His Excellency thought, would be to some extent attained by occasional visits to other parts of India—an arrangement the Resident would doubtless be able to effect in time.

§405. [It will be seen from the foregoing *resumé* of correspondence, which has purposely been given at some length, that, on the occurrence of a minority in one of the most important of the Native States, the Paramount Power claimed, and insisted upon, the right of exercising a greater degree of control and interference than it ordinarily exercises in the administration of Native States. To begin with, the form of administration and the persons who were to be entrusted with the conduct of public affairs were chosen by the Government of India, and the "positive rule" was laid down that there was to be no interference with their authority on the part of any relative or subject of the Chief. The Government of India further took upon themselves to point out the various administrative reforms which seemed to be necessary. The Ministers of the State were given clearly to understand that "the position of the Resident as representing the paramount Government in India must always be one of commanding influence and power," and that they would be expected to seek his counsel and support on all important occasions. For the training of the future Ruler the Government of India plainly intimated that they felt themselves to be responsible, and in the face of protracted opposition they forced the Native Government to entrust that training to an English gentleman of character and social standing. In short the Paramount Power, while abstaining as much as possible from interference with matters of detail, assumed in the most unmistakable manner the *locum parentis*.]

§406. The Hyderabad precedent is valuable, because whatever authority the Government of India could exercise during a minority in such a State as Hyderabad, they could, in the absence of express engagements to the contrary,

Practice of the Government of India certainly exercise in any other State in during minorities. India. But the manner of dealing with minorities necessarily varies with the circumstances of particular cases; and here, as in effecting reforms after misgovernment, there is no inflexible rule. In considering, in paragraphs § 66 to § 68 inclusive, the arrangements made when the powers of Chiefs are withdrawn or restricted in consequence of misconduct or misrule, we mentioned the objection entertained by the Government of India to the principle of Joint Administrations; and what we have said on that subject need not be repeated here. During a minority sometimes a European Superintendent is appointed, if the circumstances of the State so require; sometimes the sole Superintendent is a Native; on many occasions there has been a Council of Regency with the Political Officer for President; or the administration has been entrusted to a Native Council working under the control of the Political Agent or Resident, his position, unless it is considered necessary to lay down specific rules, or expressly to bind the Council to follow his advice, then differing from that which it usually is only by reason of the greater responsibilities which the occurrence of a minority imposes on the Paramount Power. There is no fixed age for the termination of a minority; but the Government of India are ordinarily reluctant to refuse governing powers to a Chief who has attained the age of eighteen. There are many

¹³ *Pro.*, Political A, March 1875, Nos. 323-326.

instances in which a Chief between the ages of eighteen and twenty-one has exercised his powers under certain specified restrictions devised so that he may learn his work by actual practice and with suitable guidance. Finally, there are instances in which for special reasons, such, for example, as the inexperience or prolonged incapacity of the Chief, some special control has been maintained for a longer or shorter period after he has reached the age of twenty-one, or a Chief already of full age at the time of his succession has been placed in some sort of tutelage. We will now refer to a considerable number of cases in illustration of these remarks.

§407. Sikandar Ali Khan, the Nawab of Maler Kotla, died on July 16, 1871; and for some time, while the European Superintendents during the minorities. question of the succession (already discussed in paragraphs §297 and §344 above) was under consideration, the State was left without a recognised head. Early in 1872 occurred the Kuka outbreak which took the form of a fanatical attack upon Maler Kotla itself. In February 1872, after the outbreak, Mr. Forsyth, the Commissioner of the Umballa Division, recommended that, considering the miserable state of misgovernment in Maler Kotla and the want of a head owing to the contentions

Maler Kotla, 1875 and 1885. of the several factions, a Native or European Extra Assistant Commissioner should be sent to assume temporary charge—not to interfere in the internal management of the State, but to preserve order. In anticipation of approval he sent Narayan Singh, an Extra Assistant Commissioner, to do this.¹⁴ Eventually the administration of the Maler Kotla State was entrusted to Mr. Heath, a European Extra Assistant Commissioner, who was in charge when the Nawab attained his majority in 1875. When the Nawab ten years later unfortunately became insane, the State was placed under the management¹⁵ of Mr. Wakefield, a retired Deputy Commissioner. His services were dispensed with after a time and a Native Superintendent was appointed.

§ 408. In paragraphs §21 and §66 above a good deal has already been said of the arrangements made in 1873 and 1874 for the conduct of affairs in the Dholpur State during the minority of the Chief. It was intended that Sir Dinkar Rao should have general powers of supervision in all departments, subject to the control of the Political Agent of the Eastern States of Rajputana, and that a Dewan or Minister to be selected by Sir Dinkar Rao should be charged more immediately with the business of administration.¹⁶ In accordance with proposals made by Sir Dinkar Rao, his brother was appointed his Assistant or Dewan and a Council was formed consisting of five members, who were either connected with the ruling family or old servants of the State.¹⁷ As we have seen, Sir Dinkar Rao resigned and Major Dennehy was appointed¹⁸ Political Agent in Dholpur “for the purpose of controlling the administration of that State and superintending the education of the young Chief during his minority.” It may be mentioned that the State was indebted to the amount of eight lakhs of rupees; ¹⁷ and, as explained in paragraph § 21, had been the scene of Patiala interference. But the reason specifically mentioned by Sir Dinkar Rao for preferring European superintendence was that a really good officer, who could both control the affairs of the State and be tutor to the young Chief, would cost little more than a mediocre Native Minister and a mediocre British tutor, each holding separate charge.

§ 409. Another case in which a European Superintendent was appointed is that of Chamba mentioned in paragraph § 50. The Raja misbehaved and abdicated in 1873, thus avoiding deposition. His son, a boy of eight, then succeeded him. But a Superintendent had been in charge since January 1863, when a British officer was appointed at the request of the Raja. This appointment¹⁹ had been continued by desire of the Chief in 1865 and 1870, and was naturally maintained in 1873.

¹⁴ K.-W. of Pro., Political A, April 1872, Nos. 329-350, page 16.

¹⁵ Aitchison, IX, page 63.

¹⁶ Pro., Political A, March 1873, No. 855.

¹⁷ Pro., Political A, July 1873, Nos. 389-398.

¹⁸ Pro., Political A, January 1874, Nos. 322-330.

¹⁹ Pro., Political A, December 1862, Nos. 342-344.

Pro., General A, January 1865, Nos. 89-91.

Pro., Political A, December 1870, Nos. 161-163.

Pro., Political A, June 1873, Nos. 280-287.

§ 410. When the late Raja of Kapurthala became insane in 1874 an attempt was made to carry on the administration by a Native Council composed of the Wazir and Dewan of the State and a Native officer in the service of the British Government. The arrangement failed; and in March 1875 the Government of India sanctioned the appointment of an English officer as Superintendent. The Raja died in September 1877 leaving a son, Jagatjit Singh, whose succession was recognised. The State remained under the administration of a British Superintendent during the Raja's minority. The Raja was invested with full powers of Government on November 24, 1890.²⁰

§ 411. When the Chief of Jhalawar died in August 1875 one of the widows announced that she expected to be confined in the following February. The Maharaj Rana had left an adopted son, Bakht Singh, but the condition of the adoption was that if there should be a son of the body, he should succeed in preference to the adopted son. The recognition of Bakht Singh as the successor was therefore postponed; and a sort of Council of officials was appointed by the Political Agent to carry on the administration under his direction. Captain Abbott subsequently took charge as Political Superintendent and exercised full governing powers with the aid of these officials who were locally known as the *Panch Sardars*. Under his scheme of management, as finally approved, he took the advice of these Sardars on questions of finance, religion, communications with other States, palace affairs, local customs, ceremonials, cases involving sentences of death or imprisonment for life, and important matters in general. The Sardars formed a merely consultative Council and did not exercise any judicial powers or any executive powers except during the absence of Captain Abbott in emergencies. It appeared from his reports that the affairs of the State were in very considerable confusion; and its debt amounted to eleven and a half lakhs of rupees. The orders approving his arrangements were passed after it had become certain that the alleged pregnancy of the Rani was a myth and the succession of the adopted son Bakht Singh, then a minor, had been recognised.¹

We may add that Captain Abbott being anxious to get the revenue affairs of the State into good order proposed to appoint as Chief Revenue Officer the son of an Alwar official. Major Walter, in charge of the Rajputana Agency, remarked on this:—"I am of opinion that the employment of foreigners in a Native State under British management should be limited to the very smallest number, and it should be our object to work as much as possible with the materials we may find to our hand." In answer the Government of India said:—"His Excellency in Council fully concurs in the opinion expressed in paragraph 4 of your letter under reply that *the employment of foreigners in a Native State under British management should be reduced to the narrowest possible limits*. In the present instance, however, it is represented that there is no official of the Jhalawar State fitted for the position of Chief Revenue Officer. Such being the case, His Excellency in Council does not object to the Revenue Department being placed under Pandit Ram Charan, son of Pandit Rup Narayan of Alwar, as a temporary measure, pending the training of some native of Jhalawar, who should eventually be entrusted with this branch of the administration."

§ 412. When the Maharaja of Rewa died on February 4, 1880, leaving an only son, aged three and a half years, the State was already under British management. In 1875, the State being then deeply indebted and entirely disorganised, the Chief had voluntarily resigned its control. For five years it had been administered by the Political Agent, and some progress had been made. A proposal to appoint Mir Shahamat Ali, who had lately relinquished charge

²⁰ Pro., Secret, March 1875, Nos. 64-65.
Pro., Secret, March 1875, No. 68.
Pro., Political B, March 1878, No. 163.
Pro., Political A, June 1881, Nos. 364-367.
Aitchison, IX, page 163.

¹ Pro., Political A, September 1875, Nos. 16-17.
Pro., Political A, September 1875, Nos. 241-242.
Pro., Political A, January 1876, Nos. 179-183.
Pro., Political A, March 1876, Nos. 264-267.
Pro., Political A, September 1876, Nos. 122-138.
Pro., Political A, July 1877, Nos. 218-222.

of the Ratlam State, to be Superintendent of Rewa under the Political Agent in Baghelkhand, was negatived, because it was "considered, on principle, undesirable to place in a Native State, when by force of circumstances it may come under the care of the British Government, a larger number of British Political Officers than is actually necessitated by a due regard to efficiency of administration." Eventually the existing administrative arrangements were very little altered. Captain Barr was appointed Superintendent of Rewa and Political Agent. The finances having improved, the State was required to bear the cost of his salary. But in consideration of the fact that he continued to hold charge of the small States of Nagod, Maihar, Sohawal and Kothi, in addition to his duties as Administrator of Rewa, the Government of India consented to bear the leave and pensionary charges attaching to the appointment.² The State was in a very backward condition, but steps were taken to associate some of the leading Thákurs with the Superintendent so as to form a Council.

§ 413. The cases abstracted above will suffice to illustrate the employment of European Superintendents during minorities. In all these cases there were some special circumstances which, even if they cannot be proved to have

Summary.

determined the preference shown for British agency, were doubtless taken into consideration by the Government of the day. Thus in Maler Kotla there had been political disturbance; in Dholpur Native agency was tried first, the State was in debt, and Patiala had interfered; in Chamba the Chief had misconducted himself and abdicated; there was also a rival claimant to the *gaddi* in the person of Suchet Singh, and there was a European Superintendent already in charge; in Kapurthala a Native Council had failed; Jhalawar, like Dholpur, suffered from financial embarrassments and the administration stood in need of considerable reform; Rewa was just struggling out of debt and already under British management.

§ 414. When the question of appointing a Native Superintendent during a minority comes under consideration, great weight will necessarily attach to the local recommendations. The size and relative importance of the State will be borne in mind and, of course, its general circumstances at the time. The chief point will often be found to be whether a suitable person is available for the appointment.

The Charkhari case of 1881-86 occupies an intermediate position. In Administration by real fathers of the first instance the arrangements then adopted sons. Charkhari, 1881-86. recently made on account of the absence of the Chief were continued; that is to say, Captain Maitland, as Political Agent and Superintendent, was Chief Administrator, and carried on the work with the aid of two Native officials of the State as Councillors. As already mentioned (paragraph § 334 above), the succession of Malkhan Singh, whom the Bani wished to adopt, was sanctioned by Government; and it was subsequently arranged that the administration should be conducted under the supervision and control of the Political Agent in Bundelkhand, by Rao Jujhar Singh, the father by blood of the young Chief. This arrangement was made in 1887, the appointment of Superintendent of the Charkhari State being abolished.³ Charkhari has an area of some 880 square miles, a population of 143,261, and a revenue of about six lakhs of rupees.⁴

The plan of entrusting the administration to the father by blood of a minor who has been adopted does not appear to be unusual. Thus when Kurwai, 1887. Muhammad Najaf Khan, Nawab of Kurwai, died on January 15, 1887, and was succeeded by Munawar Ali Khan, the son of his eldest daughter, Mazhar Ali Khan, the father of Munawar Ali Khan, was appointed to carry on the administration.⁵ The case was virtually one of adoption, as will be seen from what is said in paragraph § 346 above. The area of Kurwai is 162 square

² Pro., Political A, August 1880, Nos. 131-143.
Pro., Political A, April 1882, Nos. 234-242.
Pro., Internal A, February 1837, Nos. 89-96.

³ Pro., Political A, June 1881, Nos. 372-399.
Aitchison, V, page 21.
Pro., Judicial A, January 1882, Nos. 20-21.
⁴ Aitchison, IV, page 276.

miles; the population 21,575, and the revenue some Rs. 50,000. As already noted in paragraph § 336, when Pahar Singh was selected in 1882 to succeed his brother as Chief of the petty Bundelkhand *Sanad* State of Sarila and was adopted by the widow of the late Chief in 1883, the management of the State was entrusted to Rao Shambhu Singh, his father.

§415. Ratlam is a fairly important State with an area of 1,200 square miles, a population of 87,310, and a revenue of six and a half lakhs of rupees. When Raja Bhairon Singh died in January 1864 he was succeeded by his son Ranjit Singh, then a child of three years of age. British superintendence was considered necessary for various reasons amongst which were the embarrassed condition of the finances and the dissensions between the parties in the State. In these circumstances Mir Shahamat Ali (mentioned in paragraph § 412 above) was appointed Superintendent. He had been an Assistant in the Central India Agency and had successfully managed the Sailana State. The Agent to the Governor-General reported that the means did not exist for forming a Council of Regency; but eventually the uncle of the young Chief and one of the Thákurs were associated with the Superintendent in the administration for the purpose of strengthening his position. There had, indeed, been a Council of Regency in Ratlam during a short minority of eight or nine months after the death of Raja Balwant Singh in 1857. But in 1864 there were two parties, one headed by the Dowager Rani, a lady of the Udaipur family, and the other by Thákur Bakhtawar Singh, who, as Kamdar, had absorbed all power in the State. Against him there were great complaints of oppression, and in the Rani's party there was no one capable of the duties of government.⁶

When defining the powers of Mir Shahamat Ali, in instructions which were approved by the Government of India, the Agent to the Governor-General said:—"He must be regarded as the head of the administration and responsible for all that goes on in the State. His powers will, pending the orders of Government; be those of a Deputy Commissioner in a non-regulation province in the Revenue and Criminal Departments, his Court being also the Appellate Court for appeals in civil cases from the decisions of the Kamdar; all matters which are beyond the Superintendent's powers as above defined will be referred for the orders of this office, as also all appeals against his' decisions."

The case of the next succession in Ratlam is a case where there was a native official on the spot capable of conducting the administration. Khan Bahadur Kharsedji Rustamji had been Head Translator in the Bombay High Court, a Subordinate Judge, and for 15 years Chief Justice in Baroda. He was appointed Dewan of the Ratlam State by Raja Ranjit Singh, who died on January 28, 1893, leaving a son aged twelve. It was decided that the administration of the State should be conducted, as far as possible on the same lines as before, by the Dewan under the supervision of the Political Agent.⁷ The powers approved for the Dewan as Superintendent were very similar to those of Mir Shabamat Ali in 1864.

§ 416. In Jigni also when a minority began in 1870 a sufficiently capable Native official was available on the spot and existing arrangements were continued. The late Chief had in 1855 been deprived of all authority for misrule. Rai Parmeshwari Das had been Manager for seven years. The widow⁸ of the *jagirdar* was a girl of 18 and could not be expected to control the turbulent spirits in a *jagir* surrounded by States in which outlawry had been suppressed with difficulty. Rai Parmeshwari Das had done well, and it was arranged that the management should remain in his hands. Jigni is a small *jagir* of 21 square miles and has a population of 3,904 only.

⁶ Pro., Political A, December 1864, Nos. 230-232.

⁷ Pro., Political A, February 1864, Nos. 242-245.

Pro., Political A, May 1864, Nos. 122-124.

Pro., Political A, December 1864, Nos. 230-232.

Aitchison, IV, page 348.

⁸ Pro., Internal A, July 1893, Nos. 144-152.

⁹ She was allowed to adopt a successor—*vide* paragraph § 334 above.

Pro., Political A, November 1870, Nos. 230-231, May 1871, Nos. 103-06, August, 1871, No. 250, September 1871, Nos. 205-206 and 275-279.

§ 417. The objections to entrusting administrative authority in a Native State to a Native lady are sufficiently obvious, but two cases may be mentioned in which this has been done. Sarangarh, in the Central Provinces, has an area of 540 square miles, a population of 83,210, and a revenue of some Rs. 58,000. When Raja Sangram Singh of that State died in 1872, he left an only son aged seven years. It was said to be the unanimous wish of the family and the people of the State that during the minority the control and management should rest with the Dowager Rani, who was described as a woman of some character and intelligence. There were no dissections in the State, nor was it indebted; and the Government of India agreed.¹⁰

Administrative powers entrusted to females.
Sarangarh, 1872.

When Balram Das, then 18 years of age, succeeded in 1883 to the Chiefship of Nandgaon, the Chief Commissioner of the Central Provinces arranged that until the young Chief attained the age of 21 years or gave evidence of being able to discharge the duties of his position, his mother should carry on the work of administration with the aid of Gobind Rao, a trusted servant of his late father, as Dewan. The lady was described as being shrewd, intelligent and possessed of much influence. The Government of India accepted the arrangement, but remarked that it was not usual for a Chief to be excluded altogether from a share in the administration of his State after the age of 18.¹¹ The area of Nandgaon is 87 square miles, the population 183,866, and the revenue Rs. 1,90,000.

Nandgaon, 1883.

At the same time it must be remembered, whenever proposals are made or received for entrusting administrative authority to females in Native States, that in the Dholpur case of 1872 (*vide* paragraph § 21 above) some very strong objections were adduced against putting such power, perhaps nominally, in the hands of *parda* ladies. When the Agent to the Governor-General refused to recommend the appointment of the Dhulia Sahiba as "regent" of the State, he pointed out that "the rule of a woman behind a *parda*, with whom communication could be held only through the medium of a slave girl, was unsuited to the requirements of a State, in which were many lawless classes, unruly individuals and intriguing officials."¹² *Parda* rule, it may be added, is notoriously an opportunity for official cliques to retain power in their own hands.

§ 418. The case of the Pudukota minority, 1886, requires to be stated rather more fully. When the Raja died in April 1886, he was succeeded by his grandson through his senior daughter whom he had adopted under the circumstances explained in paragraph § 330 above. The grandson was then a boy of ten, and Sheshaya Shastri, a well known official, in whom the Madras Government had the fullest confidence, was Dewan of the State. The Madras Government proposed that Sheshaya Shastri should be appointed "Dewan-Regent" with powers similar to those exercised by the late Raja; and that the administration should be conducted much on the same lines as those followed in the Baroda State by Sir Madhava Rao during the minority of the Gaekwar. The Madras Government entered into some detail and proposed that the Dewan should submit for approval an annual budget, and that appointments made by him should be subject to revision by Government, but only on grounds of public policy. On the other hand, representations on behalf of the Chief's family were received by the Government of India praying that, during the young Raja's pupilage, the administration might be entrusted to a resident English Superintendent. "These representations," said the Government of India "and the remarks

The Pudukota minority, 1886.

¹⁰ Pro., Political A, November 1872, Nos. 120-121. A much earlier precedent has been traced. Nanabai, the mother of the late Raja of Lunawara, was, in 1849, appointed Regent during the minority of the adopted son. He died in 1851 and she remained in power but died before the question of the succession was determined. She had expressed a wish to adopt one Dalel Singhji, but the Court of Directors ruled that she had no right to confer political power on her nominee, but that there was no objection to Dalel Singhji being appointed Raja of Lunawara by the direct authority of the British Government. From Political gent, Rewa Kanta, No. 476-60, dated July 9, 1867, paragraphs 5-9. Pro., Political A, 1867, Nos. 114-117.

¹¹ Pro., A, Political I., February 1884, Nos. 21-29.

¹² Pro., Political A, March 1873, No. 345. Since this Chapter was in type a further very important precedent has occurred in the decision that the administration of the Mysore State shall, during the Maharaja's minority, be conducted by the Maharani as Regent, and by the Dewan, assisted by a Council, of which he is to be President. The Maharani, described as well-educated and wise and judicious, announced that she would be accessible to her advisers and to the Resident.—Pro., Secret I, April 1895, Nos. 1-43.

made thereon by the Government of Madras have been attentively considered. During a long minority a Native State derives many advantages from the direct supervision of a British officer; and if a scheme based on this principle had been proposed in the present instance, the Government of India would have been prepared to regard it favourably. Mr. Sheshaya Shastri is under a misapprehension when he writes that such an arrangement would be 'altogether out of keeping with the policy pursued in recent years in respect of Native States under similar circumstances.' On the contrary, the course which the Dewan believes to be 'out of the question' has frequently been adopted, and has, as a rule, worked exceedingly well.

"In the present case, *the Government of India defer to the strong opinion expressed by the Governor in Council*, and are willing to sanction provisionally, subject to the remarks that follow, the arrangement which His Excellency recommends. The appointment of Mr. Sheshaya Shastri as Dewan of Pudukota is accordingly confirmed." With regard to the Dewan's powers the Government of India went on to say:—"Sheshaya Shastri's character and abilities are well known, but he is an alien Minister in Pudukota, and for a variety of reasons it does not seem desirable that he should be vested with practically uncontrolled authority. The right of the Political Agent, subject to the orders of the Governor in Council, to supervise and control the Dewan's proceedings, should be maintained; and the Dewan should be made clearly to understand his position in this respect. It is not intended that the Political Agent should interfere unnecessarily with the details of the administration; but it is essential that he should have the right to interfere during the Chief's minority whenever he thinks it desirable to do so, and when he gives advice the Dewan must accept it. This is the position lately established in the Gwalior State, and it seems equally suited to Pudukota." It was added that it might be preferable to avoid the use of the title of "Regent," unless the Governor in Council thought that it could not now be withdrawn without embarrassment.¹³

The Pudukota State has an area of 1,101 square miles, a population of 373,096, and a revenue of ten lakhs of rupees.

§ 419. The case of Kalahandi (area 3,745 square miles, population 326,295, revenue about Rs. 1,20,000) is instructive in several ways. When the Raja died in April 1881 there were two claimants, Rambhadra Sai, once an adopted son, whose adoption had been cancelled in 1876 in consequence of his misconduct, and Raghu Keshar Deo, a boy of tender years, who had been adopted in 1876. The Government of India decided in favour of Raghu Keshar Deo, and the administration of the State was entrusted to the Senior Dowager Rani, regarding whom a very favourable report had been made. The Rani and the Dewan of the late Raja did not work in harmony. Symptoms of disaffection began to appear amongst the Khands—a wild tribe who constitute nearly one-third of the population of the State. Mr. Ismay was despatched to enquire into the position, and shortly after his arrival in January 1882 the Khands rose against the Kultas, a Hindu tribe of agriculturists, and plundered several of their villages. This outbreak was easily quelled by the Commissioner; and on inquiry it appeared that the policy of the late Chief had been to oust the Khands in favour of the Kultas, in order to increase his land revenue by introducing a more skilful class of cultivators; also that the government of the Rani was thoroughly inefficient. Moreover, there was evidence of a conspiracy in favour of the rejected claimant, Rambhadra Sai. It was, therefore, decided that the State should for a time be administered by a British officer; and Mr. Berry, who was selected for the appointment, entered upon his duties on March 31, 1882. In May 1882 the Khands rose again, and massacred a large number of Kultas with vindictive cruelty. This outbreak was speedily suppressed, and the State continued to be administered by Mr. Berry under the orders of the Additional Commissioner.

In 1885 and 1886 successive Chief Commissioners, Mr. Crosthwaite and Mr. Fitzpatrick, took into consideration the general question of the control of the Feudatory States in the Central Provinces. With a few exceptions these

¹³ Pro., Internal A, September 1886, Nos. 430-452. The somewhat important Government of India letter quoted in the text is No. 3354-1, dated September 17, 1886.

States are small. They are in a backward condition. They were recognised as Feudatory Chiefships under the peculiar circumstances explained in paragraphs §36 and §203 to §205 above. A higher degree of responsibility is felt for their administration than would be felt in the case of larger States exercising wider powers and better organised. Of the fourteen Feudatory States in the Chhattisgarh Division, six were in 1886 under British management in consequence of the maladministration either of the Chief himself or of his guardian during his minority; and a seventh, Bastar, was nearly in the same position. The Commissioner and the Deputy Commissioners were unable to visit the States regularly or, without detriment to their other duties, to supervise them effectually. Years had been known to pass without certain States having been seen. There was no desire to interfere unduly. Mr. Fitzpatrick quoted orders issued by Mr. Jones as Chief Commissioner in 1884, in which Deputy Commissioners were warned against entertaining petitions from persons who ought to have gone in the first instance to the Chief himself; and against accepting, without the strongest reasons, petitions of appeal against judicial orders passed by the Chief. Officers were also reminded that, as a rule, petitions of over-assessment and the like demand notice only when they are so numerous as to indicate general discontent. The object of the Chief Commissioner in issuing these instructions was to minimise rather than increase interference, friendly supervision being all that was desired. It appeared, however, that if supervision could be made more close, there would be fewer occasions for actual interference in consequence of misrule. Accordingly the separate Political Agency at Kalahandi, with which the charge of Patna had been combined, was abolished, and a Political Agent was appointed for all the Chhattisgarh Feudatories to work under the general control of the Commissioner of the Division. Mr. Fitzpatrick, agreeing with Mr. Crosthwaite, further proposed that the immediate charge of any one of these States under direct management should be held by a Native officer. Cases might sometimes occur, on the occasion, for example, of a serious disturbance, in which it would be desirable to put a European officer in charge for a time. But as a rule, Mr. Fitzpatrick preferred a Native officer for several reasons. *First*, the pay that could be afforded would not secure the services of a European officer of sufficient standing; *secondly*, the same officer should remain in charge for a long period, and it was vain to hope for this in the case of European officers posted to such out-of-the-way and often very unhealthy tracts; and *thirdly*, the administration would revert to the Chief, and it was important to prove to him that his State could be governed through a Native Minister at a moderate salary in such a manner as to command the approval of Government. It might, indeed, be hoped that in some cases the Chief would, on the termination of the management, keep on the Native Manager permanently as his Minister. The proposal that a selected Native officer should be appointed to each State under direct management was accepted by the Government of India.¹⁴

In this case we see, first, a failure when the administration had been entrusted to a lady; secondly, the appointment of a European officer to manage a State where political disturbance had occurred; and thirdly, some of the motives and circumstances which may induce a preference for direct management by Native officers under European control.

§ 420. We have mentioned that in 1886 Bastar was nearly in the position of being under British management.

The Bastar Minority, 1891. The measures taken to remedy the confusion which was found to exist in this State in 1883 were not successful; and in 1886, an officer, selected by the Chief Commissioner, was appointed by the Raja as his Dewan to administer the State. This arrangement lasted till the death of Raja Bhairam Deo in July 1891. He left an only son of six years of age whose succession was recognised by the Government of India. The Dewan then became Superintendent, the orders in force relating to other States in the Central Provinces under direct management being applied to Bastar.¹⁵

§ 421. A recent case in which the administration during a minority was entrusted to a Native Superintendent is that of Ali Rajpur, 1891. The insurrec-

¹⁴ Pro., Political A., July 1883, Nos. 396-429.
Pro., Internal A., May 1887, Nos. 209-220.

Aitchison, VIII, pages 502-508.
¹⁵ Pro., Internal A., November 1891, Nos. 103-106.

tion which occurred in that State in 1883 (*vide* paragraph § 147 above) was due to a combination between Jit Singh, Thákur of Phulmal, who disliked the selection of Waje or Vijai Singh¹⁶ for the Chiefship, the Makranis, whose influence was waning and who were glad of a chance of plunder, and the Bhils, who had suffered oppression under the lax administration of the Dewan. When the rising was put down Thákur Jawan Singh, of Jhaknaoda, in Jhabua, was appointed Superintendent of the State; and when Vijai Singh, who was a minor, returned from the Indore College in 1888, the administration was left in the hands of the Thákur. In July 1890 it was determined to allow the Chief to administer two *parganas*, but he died in August 1890 before he was invested with these limited powers. As we have seen (*vide* paragraph § 360 above), Partab Singh of Sondwa was selected to succeed him; and as this young Chief was only nine years old, the management was naturally suffered to remain with Thákur Jawan Singh who had conducted the affairs of the State for many years. The case, therefore, is one of a sufficiently capable Native officer being already available on the spot.¹⁷

§ 422. We have so far been considering the appointment of European Councils of Regency. or Native Superintendents, but Native Agency is often utilised during minorities by the formation of a Council of Regency. Here the leading case is that of Gwalior in 1886. We shall also notice the case of the Phulkian Chiefs where the Government have tied their own hands by special obligations; and we shall enumerate a few more cases, without citing them at length, which may be referred to as precedents when occasion so requires.

In the Gwalior arrangements Sir Ganpat Rao Khadke, already Dewan of the State, was appointed President of the Council. Associated with him were seven members selected on account of their near relationship to the Maharaja, their high rank, or their acquaintance with public business. It was provisionally determined that the President should have, in addition to the general supervision of all departments, direct control over the Revenue and Financial branches of the administration, assisted by two Members of Council, Sintoba (who had been Governor of the Malwa provinces of Gwalior territory, and more lately Naib Dewan for Civil Justice) and Sahibzada Ghulam Ahmad Khan, of the Karnal family, in the Punjab, whose former functions had resembled those of a District Officer. The army and military affairs were entrusted to Bapu Sahib Avar, Commanding-in-Chief, and Appa Sahib Angria, the highest in rank of the Gwalior officials. The supervision of the household and the numerous departments connected with the Court was divided between Bapu Sahib Jadau, the maternal grandfather of the young Maharaja, and Baba Sahib Sitolia, married to a sister of the Chief. The business connected with public works was placed in the hands of Anandi Prashad, the official who was considered best qualified to perform it. A Mahratta gentleman, who had been a trusted adviser of Holkar and the Residency Vakíl, was appointed, by the Agent to the Governor-General himself, to be Secretary to the Council.

In making his proposals Sir Lepel Griffin, the Agent to the Governor-General, said that if progress in Central India, the prosperity and happiness of the Gwalior State and people, and the education of its Chief were alone considered, it would be wisest to place Gwalior during the minority under the superintendence of a British officer, but he did not recommend the adoption of this plan because he thought that the Government of India would probably consider that, "in the presence of Maharaja Sindhia's expressed wishes and the desirability of maintaining the homogeneity of the Gwalior State," it would be preferable to allow a Native and local Administration a fair chance of success or failure. The late Maharaja had left an unsigned *kharita* in which he asked that, in the event of his death while his son was a minor, the administration might be entrusted to Sir Ganpat Rao and the "old usages and observances" maintained intact. Sir Lepel Griffin reported that this document accurately expressed the wishes of the late Chief.

The case was considered by all Members of the Governor-General's Council and they were unanimously in favour of a Native administration. The State was

¹⁶ As to the selection of Vijai Singh, see paragraph § 357 above.

¹⁷ *Proc.*, A Political I., July 1884, Nos. 29 and 77. *Proc.*, Internal A., May 1892, Nos. 143-144. Aitchison, IV, pages 436-437.

not in debt; on the contrary, its finances were in a most flourishing condition. There was no evidence of general disorganisation and suffering. The experiment would probably be popular both in Gwalior and India generally; and if it failed, more direct measures could be taken hereafter. On the other hand, to put a European officer in charge might awake suspicion and distrust of our motives, especially when regard was had to recent events in Bhopal and Kashmir. These seem to have been the principal reasons for the decision which was expressed in a letter to Sir Lepel Griffin, in these terms:—

“Your proposals for entrusting the State to a Native administration have been attentively considered by the Government of India. As you point out, a British superintendency would, in some respects, be very beneficial to the Gwalior State, and the alternative scheme suggested is not in all respects satisfactory, for the proposed Council of Regency is a somewhat unwieldy body, and the Minister is not a man of strong character. Nevertheless, the Government of India are prepared to give the arrangement a fair trial. You will therefore be good enough to inform the Darbar that the Governor-General in Council has sanctioned the constitution, under the presidency of Dewan Sir Ganpat Rao, of a Council of Regency possessing the powers and functions which you recommend. It is, however, essential that the British Resident should be able to exercise an effective controlling authority over the proceedings of the Native Government, and for this purpose his position and powers should be clearly defined. I am therefore to refer you to the precedent furnished by article 8 of the treaty¹⁸ of 1844, and to say that the Gwalior Darbar must consent to act upon the advice of the British Resident in all matters whereon such advice shall be offered. Further, no change must be made in the *personnel* of the Native Government without the consent of the Resident. This condition should be explained to the Dewan Sir Ganpat Rao and the members of the Regency Council. There is, of course, no desire on the part of the Government of India that the Resident should interfere unnecessarily in the details of the administration; but it is important to make sure that his advice will be treated with due attention on occasions when he may see fit to offer it. Moreover, the stipulation, while it imposes upon the British authorities a considerable responsibility, affords, perhaps, the best chance for the maintenance of a Native Government in the Gwalior State.”

This precedent for the position of the Resident or other Political Office in relation to a Council of Regency is a very important one. The treaty of 1844 was concluded about a fortnight after the defeat of the mutinous Gwalior army in the battles of Maharajpur and Panniar on December 29, 1843. It appointed by name the members of a Native Council of Regency and it contained the provision, cited in the letter quoted above, requiring the Council to act upon the advice of the Resident. The treaty further provided that the minority should terminate when the young Maharaja attained “the full age of 18 years and not sooner,” and that no change should “be made in the persons entrusted with the administration without the consent of the British Resident acting under the express authority of the Governor-General.”

In Gwalior a vast treasure had been accumulated by the late Maharaja and placed in charge of two of his wives. Sir Lepel Griffin proposed that this should be counted, entered in proper accounts, and placed in the public treasury. The sooner, he thought, a large portion of it was invested in Government paper or in productive works, the better for the State. His proposals on this subject were accepted by the Government of India.

An English medical officer was appointed to watch over the health of the young Maharaja, and the term of office of the members of the Council of Regency was fixed at three years, each member being eligible for re-appointment. Some further particulars regarding the minority are sufficiently stated in Aitchison.¹⁹ In 1887 the Council made a loan to the Government of India of three and a half crores of rupees out of the accumulations of State treasure which were found to amount to upwards of six crores of rupees. When Sir Ganpat Rao died in 1888, Krishna Rao Bapu Sahib Jadau became President of the Council and the junior Maharani, the mother of the Chief, was nominated

¹⁸ Aitchison, IV, page 77.

¹⁹ Aitchison, IV, pages 31-32. *Proc., Internal A*, December 1886, Nos. 464-473.

Regent, but without administrative powers or right of interference with the conduct of public affairs. In 1890, with the concurrence of the Maharani Regent and the Council of Regency, Mr. J. W. D. Johnstone, Principal of the Daly College, Indore, was appointed tutor to the Maharaja.²⁰

§423. In Chapter III, paragraph § 37, we mentioned that one of the requests of the three Phulkian Chiefs sanctioned by the Secretary of State in 1859 was that in the event of the death of any one of these Chiefs, leaving an infant heir, a Council of Regency, consisting of old, trusty, and capable Ministers of the State, should be selected by the British Agent, acting with the advice of the other two Chiefs. If there is one thing which we hope to make clear in the present review of minority cases, it is that the circumstances of States are so various that no one system of administration will be best either for all or necessarily for the same State on different occasions. We multiply instances to emphasise this politic variety; and we anticipate that it is in the last degree unlikely that the Paramount Power will ever again pledge itself to accept in perpetuity a particular form of government in any particular State or to allow any one or more States, under a solemn promise, to have a recognised voice in the political affairs of any other State, as was unfortunately permitted in 1859 in the case of the Phulkian group. However, the promise having been given has been scrupulously observed.

In accordance with the orders mentioned in paragraph § 37, a Council of Regency was formed after the death of Maharaja Narendar Singh in 1862, of Patiala, 1862 and 1876. which it is only necessary to say here that in 1867, with the view of supporting the authority of the Council, certain Patiala officials had to be deported to Benares; and that in 1870 the transfer of the direct control of the Phulkian States from the Commissioner of Umballa to the Punjab Government was largely, if not entirely, due to the formation during the minority of parties in the State with one of which the Commissioner sympathised. On the death of Maharaja Mahendar Singh on April 14, 1876, a Council of Regency was again formed in accordance with the Paper of Requests and the State remained under its management until 1889 when affairs reached a dead lock. The members of Council were all old men, feeling their years. The young Maharaja had energy and wished to assume power, and his influence without actual power had a paralysing effect. In these circumstances work fell greatly into arrears; and the Council tendered their resignation, though the Chief was as yet eight months short of eighteen years of age. The Government of India agreed with the Local Government that the young Maharaja should conduct the administration with the advice of his trustworthy officials, and that no special precautionary or restrictive arrangements should be adopted. But the final and formal investiture of the Maharaja with full powers was deferred till he should come of age. The services of Mr. Sime, the tutor of the Maharaja, and of Dr. Thomson, the Medical Officer of the State, were retained for a time. Indeed, a British Medical Officer is still (1894) employed in Patiala. In October 1890, the Maharaja was formally invested with full powers by the Viceroy, Lord Lansdowne.¹

On the death of the Raja of Jind in March 1887, his grandson, a minor, succeeded to the State, and a Council of three Jind officials was formed in the manner prescribed by the correspondence of 1859. The Paper of Requests provided that "in no case should relations of the infant heir be admitted to the Regency," and the correspondence of 1887 contains a ruling on the meaning of this expression which it is unnecessary to quote, but which should be referred to if it is again proposed to exclude any one from a Council of Regency in a Phulkian State on the ground of relationship to the minor Chief.²

§424. A Council was appointed in the petty Punjab State of Kalsia on the death of Sardar Bishan Singh in 1883. The area of Kalsia is 149 square miles, the

²⁰ Aitchison, IV, pages 31-32.
Pro. Political A, August 1870, Nos. 231-241.
Pro. Internal A, October 1889, Nos. 149-150.

Pro. Secret I, February 1891, No. 183.
Aitchison, IX, pages 53-54.
² Pro. Internal A, September 1887, Nos. 422-440.

population 68,633, and the revenue about Rs. 1,75,000. The Council consisted of three officials of the State. It was arranged that appeals from their orders of every class should lie to the Commissioner of Umballa, and that his sanction should be obtained in making appointments to posts of a salary of Rs. 25 per mensem and upwards. The Commissioner preferred a Council to any other form of administration, because it would least disturb existing arrangements and be popular with the Cis-Sutlej Chiefs.³

§ 425. Other precedents for Councils of Regency, besides that of Ratlam already mentioned in paragraph § 415, are those of Bhartpur, Tonk, Udaipur, Kutch, Rampur, and Jaisalmir. In 1853 the administration of the Bhartpur State was entrusted to a Council of Sardars acting under the control and with the

Bhartpur, 1853.
advice of the Political Agent.⁴ When Nawab Muhammad Ali Khan of Tonk was deposed in 1867, his son,⁵ then 20 or 21 years old, was recognised as his successor. But as the Nawab was an illiterate youth, and had had no training

Tonk, 1868.
in public affairs, the State was administered by Ibadulla Khan, the uncle of the deposed Nawab, assisted by a Council of Regency and controlled by a British officer specially deputed to Tonk.⁶ During the minority of Sajjan Singh, Chief

Udaipur, 1875.
of Udaipur,⁷ the State was administered by a Council of Regency presided over by the Political Agent.⁸ We have already mentioned in paragraph § 410 the failure of the Kapurthala Council appointed when the Chief became insane in 1874.

Kutch, 1819, 1859 and 1876.
In Kutch a Council of Regency with the Political Agent as President has thrice been appointed; once in 1819 during Rao Desal's minority; again on his abdication in 1859; and lastly in 1876 when Rao Pragmal died leaving a son of nine years of age.⁹ As stated in paragraph § 348 the Council appointed to assist

Rampur, 1889.
the Nawab of Rampur was continued in authority on his death in February 1889.

The Nawab had been titular President of the Council and Sir Auckland Colvin, the Lieutenant-Governor, arranged that a member of the ruling family, Sahibzada Safdar Ali Khan, should succeed him in that office, but should have no direct share in the administration or vote in the proceedings of the Council. The Council was to submit its decision for confirmation by the Sahibzada; and if he disapproved of any decision on a question of serious importance, he was authorised to refer the matter to Government through the Lieutenant-Governor's Agent, who was to interfere as little as before. The Government of India remarked that the position thus given to the President appeared to be a somewhat unusual one, especially as the Agent was to exercise no increased interference. But they left the matter to the discretion of Sir Auckland Colvin.¹⁰ The arrangements for the Jaisalmir minority were settled in 1891 after some

Jaisalmir, 1891.
correspondence in which the Government of India objected to the amount of direct interference, particularly in the way of initiative, which it was proposed that the Resident at Jodhpur should exercise. "It would," it was said, "be more in accordance with the policy of the Government of India to administer the affairs of Jaisalmir during the minority of its Chief by Native agency, and to restrict the Resident's functions more to those of superintendence." Eventually it was settled that the Dewan, who had recently been appointed by the late Chief, should be responsible for the government of the State under the guidance of the Resident at Jodhpur as Superintendent. A Council of six members, including the Dewan as President, was formed, the members being relatives of the ruling family and old officials of the State. A Secretary to the Council was appointed and questions connected with the general administration are referred to it for opinion, but orders on these questions are passed by the Dewan on his own responsibility. Precise rules have been laid down requiring the

³ Pro., A Political I., June 1884, Nos. 199-206.

⁴ Foreign Consultations, May 13, 1853, No. 52. Aitchison, III, page 234.

⁵ The facts regarding the deposition are stated in paragraph § 301.

⁶ Pro., Political A., February 1868, Nos. 269-271.

⁷ Vide paragraph § 324 above.

⁸ Pro., Political A., April 1875, Nos. 16-18.

⁹ Pro., Political A., September 1877, Nos. 133-134.

¹⁰ Pro., Internal A., May 1889, Nos. 304-311.

previous sanction of the Superintendent to certain appointments and dismissals, and the confirmation by him of certain judicial proceedings of the Dewan. In proposing the final arrangements Colonel Trevor, the Agent to the Governor-General, remarked that there was no natural leader or representative man of weight in the State; that the Dewan was an alien introduced a year ago from Kutch; that Jaisalmir was 150 miles or three days' post from Jodhpur across a sandy desert; and that there was thus a greater necessity for the rules than if the State had been easily accessible.¹¹

§ 426. Having discussed the appointment of European or Native Superintendents and given many instances of the formation of Councils of Regency,

The termination of minorities.

we come next to the termination of minorities. In the Patiala papers of 1870, General Taylor, who had lately been Agent to the Lieutenant-Governor for the cis-Sutlej States, quoted an opinion expressed by Lord Lawrence as Viceroy that eighteen is the earliest age at which a Chief "should succeed to his State;"

Patiala, 1870 and 1889.

At that time, however, the young Maharaja who was not yet eighteen was provisionally given these powers under the authority of the Local Government; and, as we have seen, a similar course was followed in 1889 under very special circumstances. In 1870 the Government of India observed that it would have been better to have made a previous reference to them before issuing orders

Nandgaon, 1883-84.

not in accordance with the views of the late Viceroy.¹² In mentioning the Nandgaon case of 1883-84 we have already noted (paragraph § 417) the remark of the Government of India that it is not usual for a Chief to be altogether excluded from a share in the administration of his State after the age of eighteen.

§ 427. The leading case, however, on the present subject is that of the termination of the Baroda minority, 1881. The Gaekwar attained the age of eighteen

Baroda, 1881.

in March 1881, and in the previous September Mr. Melvill, the Agent to the Governor-General, and Sir Madhava Rao, who was administering the State, submitted some very elaborate proposals for the further education of the Gaekwar on the assumption that he could not be entrusted with any powers at all or any public functions till he was twenty-one. He was to be taught general principles of government, which were set out at length by Sir Madhava Rao, and the working of different branches of the administration by means partly of direct instruction and partly of tours in the State. Commenting on these proposals Sir Alfred Lyall, the Foreign Secretary, noted—"It has now become an accepted principle that *the government of a State is not to be made over gradually, or piece-meal, to a Chief on his majority*, but that a time is to be fixed when he is to assume his full power as Chief of the State, and that *the Supreme Government will endeavour, by introducing, with the Chief's consent, some kind of regulative machinery, or some systematic methods of government, to assist an inexperienced Ruler, and to maintain some checks over the exercise of his personal authority.*" The Government of India observed that the most important point for consideration was at what age the administration of the Baroda State should be made over to the Gaekwar. "There is," they said, "no precise rule or prevailing custom regulating the period at which the minority of a Ruling Chief expires; but the Government of India, in deciding upon the time at which he shall receive independent charge of his State, have been guided by general considerations of policy and usage, and by their judgment of the personal fitness and disposition of the young Chief himself. *It is not customary or desirable, except for some special reason, to prolong minorities much beyond the age of eighteen, and the system of investing the Chief of the State at once, upon his attainment of majority, with full powers, appears on the whole to possess advantages above the plan of introducing his authority gradually.*" The Government of India then expressed the opinion that there were no sufficient reasons for deferring the majority of the Gaekwar until he was twenty-one.

¹¹ Pro., Internal A, September 1891, Nos. 171-179.

¹² General Taylor's letter of June 7, 1870, paragraph 8.

Foreign Department letter No. 1406-P., dated August 8, 1870, paragraph 3. Pro., Political A, August 1870, Nos. 231-241.

"On the other hand," they continued, "it is not the intention of the Government of India that the whole weight and responsibility of the Government of Baroda should be suddenly imposed upon so young a Ruler. He should be provided with experienced advisers and trustworthy departmental heads, who can conduct all the details of the administration and can explain them to their Chief; and it may be essential to introduce, for the time, some such methods of government as may ensure the maintenance of the excellent arrangement now in force under Sir Madhava Rao. Whether a Dewan should be appointed to work under the Chief, or whether the provisional institution of a Council would be suitable to Baroda, are questions which might engage your early attention, and some general scheme for the aid and support of the Gaekwar on his first assuming power should certainly be considered by you, and reported to the Government of India. One essential element in the scheme will probably be the maintenance, for some time to come, of some controlling and consultative authority in the hands of the British Resident, whose advice the Gaekwar will be expected to ask and adopt in all important affairs, or before any radical change is made in the recognised system of administration, although the Resident will of course exercise no direct interference in the transaction of ordinary business." These orders were approved by the Secretary of State, and the scheme sanctioned in accordance with them was that the Gaekwar should conduct the administration with a Dewan and Council to be nominated by himself, the Dewan to preside in his absence, and certain rules of business to be drawn up, subject to the general approval of the Government of India. The nomination of the Dewan also was to be subject to the same approval. Sir Madhava Rao remained in office as Dewan till 1883, when he resigned and the Gaekwar, with the approval of the Government of India, appointed another Native officer to fill the vacancy. It was further provided that in all important affairs, or before any radical change should be made in the existing system of administration, the advice of the Governor-General's Agent should be obtained. The Gaekwar was formally invested with the full powers of government on December 28, 1881.¹³

§ 428. There are many other cases in which special arrangements have been made for the assistance and control of a young Chief exercising full governing powers between the ages of eighteen and twenty-one.

Thus, in 1863, the Agent to the Governor-General, Central India, reported that the Chief of Maihar, who was nineteen years of age, and had applied to be entrusted with the management of his State, was as yet unfit for the charge.

It was arranged that Lieutenant E. P. Gordon should be appointed to Maihar under the control of the Superintendent at Nagod for the purpose of giving the young Chief a practical insight into the principles of administration. This plan succeeded. In 1865 Lieutenant (then Captain) Gordon reported most favourably on the disposition and intelligence of the Chief and his application to work and general fitness. The management of the State was accordingly entrusted to the Chief on March 21, 1865, when he attained his twenty-first year.¹⁴

In 1869 when the Maharaja of Bhartpur attained the age of eighteen years his powers were restricted by some rather elaborate rules till he should reach the age of twenty-one in February 1872. The object of the rules was to train him gradually to the duties of the administration. It was provided that no material change should be made in the conduct of affairs, and no members of the State Council should be nominated without the concurrence of the Political Agent, and the judicial powers of the Maharaja were limited to the infliction of ten years' imprisonment or five hundred rupees fine, and to the decision of civil cases involving an amount not exceeding five thousand rupees. The rules proved distasteful to the Maharaja and ineffectual in practice; and before the expiry of the period for which they had been sanctioned, they were withdrawn, and the Maharaja

¹³ Pro., Political A, July 1881, Nos. 51-63. *Albion*, VI, page 67.

¹⁴ Pro., Political A, February 1864, Nos. 291-296. Pro., Political A, March 1865, Nos. 176-178. Pro., Political A, May 1865, Nos. 26-28.

in February 1871 was allowed full governing powers subject to certain advice given him at a personal interview by the Viceroy, Lord Mayo, and recorded in an official letter to the Agent to the Governor-General, Rajputana.¹⁵

The Nawab of Maler Kotla was placed in power on October 13, 1875, the day on which he became eighteen years of age; but it was directed that the Agent to the Lieutenant-Governor should exercise such control over him as might be necessary until he reached the age of twenty-one.¹⁶

§ 429. These cases are mentioned to show how much variety there is in the arrangements which have been sanctioned. But a leading case, in which the restrictions have supplied a model in many other instances, is that of Udaipur, 1876.

Udaipur restrictions, 1876. Maharana Sajjan Singh, the circumstances of whose succession have been recounted in paragraph § 324, became eighteen years old on June 30 in that year. His qualifications for rule appeared to be fair; and the report on the case was made by Mr. (now Sir Alfred) Lyall, then officiating as Agent to the Governor-General, Rajputana. "I do not think," said Mr. Lyall, "that from experience in Rajputana we can draw any conclusions in favour of adjourning, beyond the recognised term of minority, the investiture of a Chief with his full ruling powers. If the young Chief were undergoing some regular training at a distance from his State, there might be good reason in allowing another year or two for the completion of his education, but when he remains in tutelage at his own capital, the delay is apt only to cause discontent and impatience. Nor has the experiment of conferring upon a Chief limited powers at the outset under formal reservations of the Political Agent's authority in important affairs been found to work well. This system was tried at Bhartpur when the present Maharaja attained his majority, and did not succeed. Moreover, Shambhu Singh, the predecessor of the present Maharana, received his full powers without any formal limitations upon completing his eighteenth year.

"Upon this occasion the plan which I have the honour to submit for the approval of His Excellency the Governor-General in Council is that Maharana Sajjan Singh may be formally invested with full governing powers as soon as the transfer of the administration and the installation can be conveniently arranged. I would lay down no precise rules in any way limiting the Chief's power; but, on the other hand, I recommend a distinct stipulation that the Maharana shall hold himself bound for the present to consult the Political Agent upon all important matters, and follow his advice. It might be specified that the concurrence of the Political Agent must be obtained before any important measures or acts of the Council taken during the minority can be reversed or disturbed, before any change is made in the present system of administration by a Council, and before the two principal Ministers whom the Political Agent leaves in office can be removed." These proposals were approved by the Government of India¹⁷ and they have suggested a formula which, with some slight variations, has been frequently used. Almost exactly the same restrictions

Alwar, 1877. were imposed in the case of Maharao Raja Mangal Singh, of Alwar, who was eighteen in November 1877. Here also the orders were passed at the instance of Mr. Alfred Lyall whose *kharita* placing the administration in the hands of the Chief did not actually require the sanction of the Political Agent to the removal of Councillors and high officials, but expressed a hope that the Chief would see fit to retain for the present those who had done his State good service.¹⁸

Similarly, in a *kharita* sent by the Agent to the Governor-General, Rajputana, on September 5, 1882, to the young Maharaja of Jaipur, in accordance with orders of the Government of India, the language employed was:—"That until such time as Your Highness gains more experience, and is more capable of carrying on the administration unaided, you should consult the Resident upon all important matters and be guided by his advice, that no measures or

¹⁵ Pro., Political A, June 1869, Nos. 129-137.
Pro., Political A, July 1869, Nos. 73-75.
Pro., Political A, October 1869, No. 335.
Pro., Political A, March 1871, Nos. 641-648.
Pro., Political A, June 1871, No. 313.

¹⁶ Pro., Political A, May 1875, Nos. 4-6.
¹⁷ Pro., Political A, October 1876, Nos. 76-83.
¹⁸ Pro., Political A, March 1878, Nos. 237-249. Similar restrictions were suggested in the Sachin case (paragraph 568).

acts taken or performed by the Council during Your Highness's minority, should be altered or reversed without the concurrence of the Resident, and further that no change should be introduced without the advice of the Resident being sought thereon." As the Chief was at the time just twenty-one, this case strictly belongs to our next head,—the prolongation of restrictions after that age has been attained. But we mention the case here because the orders were immediately founded upon the Udaipur and Alwar precedents.¹⁹ The same terms were used in a *kharita* of February 19, 1883, conferring full powers on

Dholpur, 1883.

the Maharaj Rana of Dholpur,²⁰ then between nineteen and twenty years of age; and in a like *kharita* of February 21, 1884, addressed to the Chief of Jhalawar¹ who had then just completed his eighteenth year. In both of these cases the conditions were approved by the Government of India. When the Chief of

Chhatarpur, 1887.

Chhatarpur² reached twenty-one years of age in 1887, he was addressed in terms which were almost identical but were varied slightly to impress upon him the desirability of consulting his Dewan. This case, like the Jaipur case, 1882, more properly belongs to the next head but is entered here for the same

Tehri, 1891.

reasons. In Tehri, when the Chief was eighteen, the restrictions proposed in 1891 were that in all important matters he should, before overruling his Council, be bound to consult the Agent to the Lieutenant-Governor and be guided by his advice; that nothing done during the minority should be altered or reversed without the consent of the Lieutenant-Governor; and that no change should be made in the existing system of the administration and no leading official should be dismissed without the consent of the Agent of the Lieutenant-Governor. It was intended that these arrangements should be open to reconsideration at the end of five years. The Government of India did not say anything as to the duration of the arrangements, but approved them generally; adding that it might perhaps be well to require the Chief to take the advice of the Commissioner of Kumaon before filling up important vacancies arising from death or other causes.³ In Charkhari, as in Jaipur and

Chhatarpur, 1892.

Chhatarpur, the Chief was twenty-one when he was granted full powers with reservations of the usual general character. The language used to him in the *kharita* of the Agent to the Governor-General, Central India, dated January 16, 1892, was⁴—"You should avail yourself of the advice of the Political Agent in all important matters and in all cases in which it is proposed to alter arrangements of a permanent nature made during your minority. In all such matters and cases the Government of India expects that Your Highness will seek the advice of the Political Agent and act upon it."

§ 430. We mentioned in paragraph § 418 the appointment of Dewan

Pudukota, 1892-93.

Sheshaya Shastri to administer the Pudukota State during the minority of the Chief. The Government of Madras addressed the Government of India shortly before the Raja was eighteen. They said that "although the usual practice is to regard the Chiefs of Indian Native States when they attain this age as competent to govern and permit them to assume the administration of their territories," they considered "that, having regard to the still undeveloped character of the Raja, it would be desirable in this particular instance to continue the present arrangement until he attains his twenty-first year." The Government of India replied that the Viceroy, Lord Lansdowne, had recently seen the Raja and was not unfavourably impressed by him. They had no objection to giving the Raja powers of administration at the age of eighteen years, and asked the Madras Government to consider whether this might not be allowed "subject to the reservations that the Raja shall take no important step without consulting the Political Agent and shall not, without the Political Agent's consent, reverse any measure adopted during the minority or dismiss any promi-

¹⁹ Pro., Political A, July 1882, Nos. 209-212.

Pro., A Political L, October 1882, Nos. 14-19.

²⁰ Pro., A Political L, April 1883, Nos. 5-17.

¹ Pro., A Political L, August 1884, Nos. 57-85. See paragraph §65.

² Pro., Internal A, June 1887, Nos. 1-3.

Pro., Internal A, September 1887, Nos. 463-465.

³ Pro., Internal A, August 1891, Nos. 37-38.

⁴ Pro., Internal A, February 1892, Nos. 101-102.

ment officials." The Government of Madras rejoined that the existing system should continue at any rate till November 1894 when the Raja would be nineteen; and this view was accepted by the Government of India.⁵

§ 431. In a few instances since the acceptance of Sir Alfred Lyall's advice in the Udaipur case of 1876, the arrangements have followed rather different lines. Restrictions of various types. Nandgaon, 1883. We have already⁶ noted that when Balram Das succeeded in 1883 to the Nandgaon Chiefship at the age of eighteen, the administration was entrusted to his mother and a Dewan till the Chief should reach the age of twenty-one. In paragraph § 409 we briefly mentioned the fact that in 1873 there was a European Superintendent in Chamba whose appointment was continued during the minority of the Chief. The Raja attained the age of twenty-one in July 1884 and was invested with full governing powers on the conditions that he should appoint a suitable Wazir, to be approved by the Commissioner of the Division; that the appointment of Superintendent should be temporarily maintained; and that in all matters affecting the administration in which the Superintendent should see occasion to give the Raja authoritative advice, that advice should be followed. The Superintendent was withdrawn⁷ in November 1885. Practically the case was one of utilising the agency already available. The arrangements made in Kota, when Maharao Udai Singh (afterwards called Umed Singh) attained the age of nineteen in 1892, were suggested by the previous history of affairs in that State. His adoptive father, the late Chief, Maharao Shatru Sal, had been unfitted by his intemperate habits for the work of administration and the charge of it was given to Nawab Faiz Ali Khan⁸ in 1874. Ten years later it was decided that Maharao Shatru Sal, who had to some extent reformed, should be consulted on matters of importance, and certain departments were placed under his special directions subject to certain conditions. In 1892 the young Maharao was entrusted with the charge of the same departments on the same conditions; which were that he should retain in their appointments the Superintendents of the departments in question, and should make no important changes without the consent of the Political Agent.⁹

Nawab Hamid Ali Khan, the young Chief of Rampur, attained his eighteenth year in August 1893. On April 4, 1894, he was entrusted with substantial power subject to certain restrictions. An Executive Council was appointed and a resident Political Officer subordinate to the Agent to the Lieutenant-Governor (*i.e.*, the Commissioner of Rohilkhand) was stationed at Rampur. The duties of the Council were laid down in detail by the Lieutenant-Governor. The Nawab is President; he may not overrule the Council, but if he considers an order of the Council wrong he may refer the matter through the resident Political Officer to the Agent. The Government of India approved generally of these arrangements which are subject to revision if they do not work well.¹⁰

§ 432. The Bahawalpur case of 1879 has, however, certain peculiarities which distinguish it from all of these. At the time of the appointment of a Political Agent for Bahawalpur in 1866 a declaration was made that when the Nawab should attain the age of eighteen years the whole authority for the administration would be consigned to him. In 1876 when the Political Agent offered the opinion that the Nawab should not be placed in charge of the State at eighteen, the Secretary of State remarked that a positive pledge had been given by the Government of India, and that any limitation of the authority of the Nawab after that age would require to be justified by very exceptional circumstances and ought not to be contemplated. Three years later, when the Nawab was approaching the age of eighteen, which he attained on November 13, 1879, the Punjab Government submitted for sanction a "draft constitu-

⁵ Pro., Internal A, December 1892, Nos. 134-135.

Pro., Internal A, March 1893, Nos. 311-312.

⁶ Paragraph § 417.

⁷ Pro., A Political L., June 1884, Nos. 152-157.

Pro., Internal A, December 1886, No. 275.

Aitchison, IX, page 167.

⁸ See paragraph § 67 above.

⁹ Pro., Internal A, August 1892, Nos. 33-34.

¹⁰ Pro., Internal A, October 1894, Nos. 1-13

tion of the Bahawalpur State as it had to be a completely regulative character and entered on a variety of details including rules for the transaction of everyday business to the Government of India agreed that the direct authority of the Nawab should at first be limited but suggested that a few broad provisions for associating a Council with the Nawab and for the conduct of the more important departments of the administration might suffice. Essentially the Political Agent was withdrawn and the existing Council was maintained and associated with the Nawab in the government of the State until he should attain the age of twenty-one, the Members of the Council being declared irremovable except with the consent of the Lieutenant-Governor. As to the "draft constitution" the Lieutenant-Governor merely commended to the Nawab the observance of its provisions as embodying rules of practice which had been for some time in force in Bahawalpur. The Secretary of State "while deeply regretting that the personal character of the Nawab should render it necessary to impose for the present some limitation on his authority would not withhold his assent to the arrangements. He also expressed great reluctance to impose on a Ruler attaining his majority restrictions on his authority beyond those authorised by former custom, or to continue in these circumstances the administrative system adopted during the minority."

In paragraph § 429 we have already mentioned three cases in which the prolongation of minorities. The cases were continued after the age of twenty-one. This was done in Jaipur in 1862, in Chhatarpur in 1867, and in Charkhari in 1892. There are many other cases of the same kind and we will mention as briefly as possible a sufficient number of these precedents, including amongst them some cases in which restrictions were imposed on the accession of a Chief already of full age in consequence of his inexperience in public affairs. The cases to which we have already discussed are no doubt cases of the prolongation of minorities, inasmuch as the age usually accepted as that of majority is eighteen. But it is obvious that a longer justification is required for continued tutelage after twenty-one than between the ages of eighteen and twenty-one. We have therefore grouped these two sets of cases separately.

The Dhar State rebelled in 1857 and was confiscated. It was restored in 1860 with the exception of one pargana, to the minor Chief and placed under British management. In 1861, when the Chief was nearly twenty-one, it was proposed to continue the existing system of management till he should attain that age in April 1865 and then to transfer the administration to him on certain conditions. The Government of India approved the conditions, of which the chief were that the system of management introduced during the British Superintendency should be maintained and that the British should not be removed from office without the concurrence of the British Government and that should the post of Dewan fall vacant the successor should be selected with the advice and approval of the political authorities.

We have seen (paragraph § 225 above) that though the son and successor of the deposed Nawab of Dook was 20 or 21 years of age in 1867 a British officer was deputed to control the administration. In 1869 the Agent to the Governor-General proposed to entrust the government of the State to the young Nawab with effect from 1 January 1870, the British officer being retained for another year. This was sanctioned by the Government of India and approved by the Secretary of State.

Some despatches referred to, No. 102, dated September 25, 1879, in the Appendix and should be read in the general question of imposing restrictions on the authority of a Chief who has attained his majority and comes under discussion in the notes, written upon the (P. W. G. Pro.) Political A. April 1880, Nos. 212-217. will be found an abstract of numerous cases in which special arrangements made during the minorities of Ruling Chiefs have been subsequently continued, generally in a modified form. Several of these cases are mentioned in the text. They are those of Alwar, 1863, Dhar, 1864, Tonk, 1869, Bhartpur, 1863, Charkhari, 1874, Shalpur, 1875, Udaipur, 1876, Railani and Dewas, 1879. The remaining Bahawalpur papers on which the text is based are in Pro. Political A. May 1879, Nos. 16-21, October 1879, Nos. 120-121, August 1879, Nos. 131-135, and Nos. 109-112. The cases of Katlan and Dewas, 1879, fall under the preceding head of control between 18 and 21, but they are not important, and have not been abstracted. Pro. Political A. March 1880, Nos. 161-163. Pro. Political A. September 1884, Nos. 62-64. Pro. Political A. November 1862, Nos. 49-51, and Pro. Political A. June 1869, Nos. 312-315. Pro. Political A. August 1869, Nos. 122-125. Pro. Political A. November 1869, Nos. 180-181.

When Partab Singh succeeded to the Orchha Chiefship in 1874 he was between 19 and 20 years of age, but had had no education or experience to fit him to control the turbulent Bundela Thákurs in a State where there had been much dissension. With the object of training and strengthening the hands of the new Chief, a British officer was deputed to the State, and the Chief received full powers on the understanding that he would listen to his advice. It was not considered desirable that the British officer should take any active or declared part in the administration, and he was instructed to content himself with the position of the Chief's friend and Counsellor. The British officer was withdrawn in 1876.¹⁶

To the Nagod Chiefship Shambhu Das succeeded in 1874, being then nineteen years of age. He was reported "to be utterly unacquainted with the practical duties of administration;" and it was arranged that the Chief and the Dewan should manage affairs controlled and aided in all matters by the Political Agent.¹⁶ This arrangement lasted for a good many years; but in 1882 when the Raja was twenty-eight, it had fallen into abeyance. In February of that year the Agent to the Governor-General directed that the Raja should in future exercise full powers without the interference of the Political Agent, who would, however, at all times render such advice and assistance as the Raja might require. These orders met with the full approval of the Government of India.¹⁷

§ 435. In 1861 the State of Barwani was taken under management on account of the incapacity of the Rana. At that time the country was overrun with robbers; and the Bhíls, who form the greater part of the population, lived in rapine and rebellion in the Satpura hills. In 1873, when great improvements had been effected, the charge of the State was restored to the Rana as an experimental measure, Khan Bahadur Najaf Khan being appointed Minister. The Rana never showed any capacity for rule and the responsibility remained with Najaf Khan who continued to supervise the State. On the death of the Rana and the succession of his brother Indrajit Singh, then forty years of age, the new Chief being a man of very unpromising character, the Government of India authorised the continuance of the existing arrangements. In 1884 Indrajit Singh was placed in sole charge of the Anjar district in his State, a part of it which has no Bhíl inhabitants. In all other parts of the State Najaf Khan continued to conduct affairs as before. In 1886 the Chief was given full powers throughout the State as a tentative measure.

Fateh Singh, the elected successor to the Udaipur Chiefship, was thirty-five years of age when he was chosen. The facts of the case have been stated in paragraph §365. In view of the new Chief's want of training for his duties Colonel Bradford proposed and the Government of India sanctioned restrictions similar to those of which examples have been given in paragraph §429. "The Viceroy," they said,¹⁸ "is pleased to recognise Fateh Singh as Maharana of Udaipur. His Highness should be given to understand that he will be expected for the present to consult the Resident upon all important matters, and to follow his advice. The concurrence of the Resident must be obtained before any measures ordered by the late Chief are reversed, and before any change is made in the existing system of the administration."

When Bhanwar Pal succeeded in 1886, at the age of twenty-seven, to the Karauli Chiefship, he was not considered as yet fit for the sole charge of the State. It was decided, with the approval of the Secretary of State, that the existing Council under the superintendence of the Political Agent should be maintained until the Chief should have "proved his capacity to rule his State without guidance and control." A year later he was entrusted with increased

¹⁶ Pro., Political A, April 1874, Nos. 253-256. Aitchison, V, page 9.

¹⁶ Pro., Political A, March 1874, Nos. 355-357.

¹⁷ Pro., Political A, April 1882, Nos. 252-255.

¹⁸ Pro., Political A, October 1880, Nos. 107-112.

Pro., Political A, December 1880, Nos. 103-105.

Pro., A Political I, February 1884, Nos. 174-179.

Aitchison, IV, page 438.

¹⁹ Pro., Internal A, February 1886, No. 187.

powers subject to certain clearly defined conditions.²⁰ He was invested with full powers in 1889.

§ 436. We have mentioned²¹ that during the minority of Munawar Ali Khan, Nawab of Kurwai, his actual father was appointed to carry on the administration. In 1892, when the young Nawab was twenty-three, the administration of the State was placed in his hands on the understanding that he would consult his father on all matters of importance and be guided by the advice and instructions of the Political Agent.²²

Lal Bhup Deo Singh was twenty-two years of age when he succeeded to the Chiefship of Raigarh. That State being then overburdened with debt, had come under Government management for ten years in 1885. The period of management not having expired and the young Chief being considered not as yet fit for the duties of his position, his installation was postponed and the existing arrangements were continued. It was not necessary, however, to continue Government management for the full term of ten years. The State debts were paid off; and the Chief, who was favorably reported upon, was entrusted²³ with the administration in 1893.

We have noticed above (paragraph § 419) that the management of the Kalahandi State was entrusted to the senior Dowager Rani during the minority of the Chief. After the Khand rising a British officer was for some time in charge, and subsequently, as we have seen, a Native Superintendent. The young Raja was placed in power when he was twenty-one, but it was directed that for a term of three years the Native Superintendent should continue to assist him in the capacity of Dewan.²⁴ Orders to this effect were passed in December 1893.

Maharaja Jaswant Singh of Bhartpur shortly before his death, which took place on December 12, 1893, addressed *khoritas* to the Viceroy and the Agent to the Governor General in Rajputana, expressing a wish that his elder son, Kunwar Ram Singh, should be set aside and his second son, aged seven, should be recognised as his successor. The Chief had purposely neglected the education of the elder son, but there was no valid reason for depriving him of his birthright. On the death of the Chief Ram Singh was twenty-one years of age. In view of his want of education and inexperience the administration was entrusted for three years to a Council of six with the young Maharaja, having only a single vote, for President. It was further arranged that the Council should work under the general control of the Political Agent who is to be consulted on all matters of importance.²⁵

§ 437. We have reserved to the last the case of Sawantwari because it requires fuller statement. So long as Sawantwari, after the establishment of British supremacy, remained under Native rule its annals formed a continuous narrative of turbulence, insurrection and mis-government. The Sar Desai Khem Sawant at the age of nineteen succeeded to the Chiefship, through the intervention of the British Government, in 1822. Rebellion was chronic, the chief offender being Phond Sawant, an influential Sardar related to the ruling family. In 1832 the Government tried without success the experiment of appointing a Minister. In 1838 Khem Sawant was deposed and the State placed under British management. Two insurrections were suppressed and order restored for a time, but in 1844 the old Phond Sawant, then eighty, again rebelled and was joined by Anna Sahib, then sixteen, the son of the deposed Khem Sawant. The rebels were driven into Portuguese territory, but after a time Anna Sahib was pardoned and permitted to return, but with forfeiture of all his rights in Sawantwari. In 1847 the Court of Directors decided that the State should remain

²⁰ Pro., Internal A, October 1886, Nos. 15-36.

Pro., Internal A, December 1886, No. 254.

Pro., Internal A, June 1887, Nos. 38-41.

Aitchison, III, page 239

²¹ Paragraph § 111 above.

²² Pro., Internal A, May 1887, Nos. 110-114.

Pro., Internal A, May 1892, Nos. 59-61.

²³ Pro., Internal A, July 1890, Nos. 352-355.

Pro., Internal A, June 1893, Nos. 143-144.

²⁴ Pro., Internal A, February 1894, Nos. 47-50.

²⁵ Pro., Internal A, May 1894, Nos. 185-213.

under British management during the lifetime of the deposed Chief Khem Sawant, and should thereafter be regarded as at the disposal of the British Government. The family was loyal in 1857 and in 1861 Her Majesty's Government agreed that the former rebel, Anna Sahib, should be recognised as heir-apparent on certain conditions. But when Khem Sawant died in October 1867 Anna Sahib, owing to his indulgence in opium, was found to be unfit to rule. British management continued, and Anna Sahib died in March 1869 leaving a son who was a child. Thus when this son attained the age of twenty-one in September 1883 the re-grant of the State sanctioned in 1861 had never been effected and the State had been under British administration for forty-five years. There was in this way considerable analogy between the circumstances of Sawantwari and the circumstances of Mysore; and a *sanad* was drawn up on the Mysore model defining the conditions on which the Sar Desai should be placed in possession of the State and installed in the administration of it. Unfortunately it has never been possible to act on this document, which we shall notice again when we come to speak of Treaties and Agreements. The evil courses of the young Sar Desai were such that it was determined to postpone his investiture till January 1885. When that time came he had not amended his ways and his installation was again deferred. He was indifferent to business, addicted to drink, and in other ways unfitted for the work of administration. The Government of India wrote on January 16, 1885—"The responsibility which the Government of India must always incur in sanctioning the succession of a Chief to the administration of his State, is, in the case of Sawantwari, increased by the special nature of our obligations for the well-being of the people of that small principality. Therefore, though the Government of India are as a rule reluctant to postpone the succession of a Native Chief after he has attained his majority, they admit in the present instance the force of the objections set forth by the Government of Bombay, and they sanction the further postponement recommended by the Local Government." The Secretary of State expressly connected the approval which he gave to this decision with our special obligations towards the State; and the Government of India had themselves observed in April 1884 that the conditions which might properly be enforced in such a case as that of Sawantwari could afford no precedent for attaching similar terms to the recognition by the Paramount Power of successions which do not involve a re-grant. In November 1885 further facts were brought to notice showing such dissoluteness and depravity on the part of the Sar Desai as to leave little or no hope of his reformation; and with the approval of the Government of India his installation was indefinitely postponed. It had not taken place in 1893, the Sar Desai being then thirty-one.²⁸

§ 438. The treatment of minorities in Indian States is emphatically a matter of policy. It is not a subject for any rigid rules; the plan that may be suitable

Summary.

in one State, may be objectionable in another. The variety of the expedients which experience has suggested in dealing with minorities shows that efforts are and should be made to adapt the actual arrangements to the circumstances of each case. This being so, our summary can be no more than an epitome of what we observe, in the above somewhat extensive review, to be the general, though not necessarily the invariable, practice of the Government of India. The matter is not one in which there is or ought to be any invariable practice. The decision will so often depend upon the character and qualifications of the Chief and the actual condition of his State at the time that general rules are unnecessary and would be embarrassing. Still it is worthwhile to show how extensive are the powers of the British Government and in what manner those powers have been exercised in a large number of cases. This we have endeavoured to do, and we now offer the following recapitulation of the general sense of this chapter:—

(1) *On the occurrence of a minority in a Native State, it is a matter for the consideration of the British Government what arrangement shall be made for the conduct of affairs.*

²⁸ Pro., A Political I., April 1884, Nos. 138-157A.
Pro., A Political I., May 1884, Nos. 168-169.
Pro., Internal A., March 1885, Nos. 204-218.
Pro., Internal A., May 1885, Nos. 182-183.

Pro., Internal A., February 1886, Nos. 85-89.
Pro., Internal B., October 1893, Nos. 234-286.
Aitchison, VII, page 254.

(2) *During the minority, [the position of the British representative must always be one of commanding influence and power, and his advice must be taken on all occasions of importance.*

(3) *[The British Government will not allow any interference with the authority of the responsible administrators on the part of any relative or subject of the Chief.*

(4) *[The British Government will insist upon the introduction of such measures of administrative reform as may seem to it to be necessary.*

(5) *[The guardianship and training of the young Chief are matters for the consideration of the British Government.*

(6) *[The British Government will not interfere in matters of detail, but it must be consulted on all important questions connected with the young Chief's education.]*

(7) *In determining the form of Government to be established during the minority, the choice will generally be found to lie between a European Superintendent, a Native Superintendent and a Council of Regency.*

(8) *A European Superintendent has most frequently been appointed when there have been special circumstances demanding vigorous administration, such as the recent occurrence of political disorder, the failure of a Council of Regency, public indebtedness, or confusion in the State calling for administrative reform.*

(9) *A Native Superintendent has very frequently been appointed when some person has been indicated as specially fit for the position by his character and influence, or previous services in the State, or relationship to the Chief combined with some of these qualifications.*

(10) *Other reasons for preferring Native to European Superintendents may be the small size of the State, the expense of the appointment of a British officer of sufficient experience, the desirability of retaining the Superintendent long at his post, and the benefit to the State if a good Superintendent can be kept on as Dewan after the termination of the minority.*

(11) *In some rare cases ladies of the ruling family have been given during the minority a potential voice in the administration; but as a rule there are strong objections to entrusting administrative powers to a parda lady.*

(12) *It is usually inexpedient to employ in a Native State under British management persons who are subjects of other States, but there are not a few examples of the successful management of States by alien ministers selected by the British Government.²⁷*

(13) *It is a very frequent arrangement to appoint a Council of Regency,—a form of government which is recommended by its popularity. The Council should be under the control of the Political Officer, and, where no pledge suggests a contrary course, it may be advisable to bind the Council to accept any advice which the Political Officer may see fit to offer to it.*

(14) *There is no general rule regulating the period at which the minority of a Ruling Chief expires. But it is not usual to entrust the Chief with full governing powers before the age of eighteen or altogether to exclude him from a share in the administration of his State after that age.*

(15) *When it has been decided that the minority shall terminate, it is best to give the Chief at once full governing powers; but should his inexperience or other circumstances so require, it is permissible, and often expedient, to impose upon the Chief certain restrictions in the exercise of his powers, especially between the ages of eighteen and twenty-one.*

(16) *Restrictions which on many occasions have been approved are that the Chief should consult the Political Officer upon all important matters and be guided by his advice, and that, without his concurrence, the Chief should not alter or reverse any measures taken, acts performed or system of administration maintained during the minority. Other restrictions have sometimes regulated the power of appointing or dismissing prominent officials.*

²⁷ As an example of the beneficial employment of an alien minister see the case of the Tonk State, *Proc., Internal A*, November 1894, Nos. 50-53.

(17) *Sometimes the restrictions take other forms, such as the appointment or retention of suitable minister, the temporary prolongation of the term of office of the Superintendent, or the association of a late Council of Regency with the Chief in the business of Government.*

(18) *Special restrictions or arrangements of the types required during minorities are sometimes for special reasons prolonged, with or without modification, after the Chief has attained the age of twenty-one, or put in force on the succession of a Chief of full age who is not yet fit for the business of administration.*

APPENDIX A.

No. 43-A., dated Simla, the 30th April 1860.

From—His Excellency the Right Hon'ble the Governor-General of India,
To—Her Majesty's Secretary of State for India.

In accordance with the intention expressed in my despatch No. 16 of the 6th December last, I desire to bring to the notice of Her Majesty's Government the general subject of adoption, as affecting the succession to the Native States and Principalities of India.

2. I have, in the course of my recent march through Upper India, been forcibly struck by the want of some clear and well-understood rule of practice in our dealings with the Princes and Chiefs upon this subject.

3. It is not that the measures taken, under the orders of the late Court of Directors, in dealing with doubtful or lapsed successions, have not in many instances been liberal, and even generous; and certainly there is not, at the present moment, any disposition on the part of Native States to doubt the general good-will towards them of the paramount power. But there appears to be a haze of doubt and mistrust in the mind of each Chief as to the policy which the Government will apply to his own State in the event of his leaving no natural heir to his throne, and each seems to feel, not without reason, that in such case the ultimate fate of his country is uncertain.

4. It is to this alone that I can attribute the extraordinary satisfaction with which my assurance to Sindhia that the Government would see with pleasure his adoption of a successor if lineal heirs should fail him, and that it was the desire of the paramount power that his house should be perpetuated and flourish, was accepted by those attached to his Court,—to the extent that at Gwalior the news was received with rejoicing very like that which would have marked the birth of an heir. For there is not a State in India which has had stronger or more practical proofs of the wish of the British Government that its integrity should be maintained than Gwalior; from the time when, in 1826 and 1827, the then Maharaja was in his last illness perseveringly pressed by Lord Amherst to adopt an heir, and was assured that nothing could be further from the wish and intention of the Government than to exercise then or thereafter any intervention in the internal administration of his country, or to pretend to control the succession to his State, down to 1843, when the present Maharaja, then a child, was placed upon his throne, and confirmed in the possession of it by Lord Ellenborough in person.

To the same cause I ascribe the manifest pleasure of the Maharaja of Rewa when a like assurance was given to him. He said to me that his family had been in Rewa for eleven hundred years, and that my words had dispelled an ill wind that had long been blowing upon him. A son had lately been born to him; but if any Prince might reasonably expect his adoption of a successor to be respected without a special promise to that effect, it would be one who is bound to us by treaty, and who can show an unusually long and uninterrupted descent from an ancient Rajput stock, which for centuries has steadily held its own against all intrusion, whether by Muhammadans, Mahrattas, or Pindaris, as is the case with the Maharaja of Rewa.

5. I could adduce other instances, such as those of the Maharaja of Kashmir, the Maharaja of Patiala, and the Chiefs of the Cis-Sutlej country, in which the value attached to the announcement, and the eagerness to have it solemnly recorded, were strongly marked.

6. I believe that the chief cause of this feeling is the vagueness that has prevailed in our policy respecting adoptions. That policy has not only been incoherent, but even when an adoption has been admitted, there has often been long discussion in India and references to the Home Government before a final decision has been taken, thereby giving rise to doubts of our real desire to admit it.

7. But it is not only through what has passed between the Government of India and Native Courts that our hesitation and uncertainty have been made manifest to the latter. Within the last ten or twelve years the discussions between the Government of India and the Home Government, and the keen conflict of opinions between individuals of experience, and of the highest authority in India and in England upon this question of adoption, have been laid bare to all who have chosen to examine them. Since 1849 the official correspondence on not less than sixteen or seventeen cases of doubtful succession and of adoption have been printed by orders of Parliament. In these papers there is every variety of opinion as to the claims of Native States on the one hand, and as to the duty, rights, and policy of the British Government on the other.

And it must not be supposed that because these documents are published in Blue Books and in English, they are beyond the knowledge of Native Courts. They are, on the contrary, sought for and studied by those whose dearest prospect they so closely affect. It is not many months since I was informed by the Governor-General's Agent in Central India that a Native Court had received from England the Parliamentary papers on Dhar before they had reached my own hands.

8. A brief examination of the papers named in the margin will show how irreconcilably at variance with

Papers relative to the Raja of Satara, printed by order of the House of Commons, 1st March 1849. each other are the views
Papers respecting the succession, by adoption, of Sovereign Princes in India, printed by order of the House of Commons, 15th February 1860. which the highest
Papers on the annexation of Jhansi, printed by order of the House of Commons, 27th July 1855. authorities have taken
Papers on the annexation of Karauli, printed by order of the House of Commons, 3rd August 1855. of a subject which lies
at the very root of the

future existence of Native States.

9. There is disagreement even on the first fundamental point of all,—our own duty.

In one place it is urged that we are bound not to neglect rightful opportunities of acquiring territory or

revenue by refusing to permit adoption in Independent States where there has been a total failure of all heirs; and that we should take these opportunities of consolidating our territories, and of getting rid of

petty intervening principalities.

In another place, and by other authority, it is contended that the absorption of small independent prin-

palities which happen to be surrounded by our own territories will not always augment our power, but will be a source of weakness to ourselves without being a benefit to the people.

10. Neither is there agreement on the subject of our own rights. On this head there arise, as might be expected, many complications from differences of origin of race, and of tradition amongst the various Native

States. Some are designated "Independent," as having maintained their existence under successive paramount dynasties and having suffered comparatively little interference in their internal affairs from any. Such are the Rajputana States, some of the Bundelkhand States, and others. Some are called "Dependent," as having been created or re-established by the Moghals, or the Peshwa, or ourselves, and as having been invested in some instances with authority short of sovereign authority. Such were Satara, Jhansi, Jalaun. Then there are disputed points arising out of race and usages—Whether in a Rajput State the widow of a Raja may adopt a son without having received her husband's permission? To what extent in a Rajput State the voice of the principal officers of the State is necessary to the recognition of the succession? Whether in a Bundela State the Chief may adopt a stranger to the exclusion of collaterals? Whether in Hindu States generally the senior widow of a Chief is allowed to adopt unreservedly, or is limited to a choice within certain degrees of affinity? These are points of nicety which probably it would be impossible to rule absolutely, and with satisfaction to all. But, putting aside for the present all small complications, there remain broad and important questions of right on our part upon which the very highest of our officers are at issue.

11. In one paper it is maintained to be beyond doubt that a Prince's adoption of any individual does not constitute the latter heir to the principality, or to Sovereign rights, until the adoption has received the sanction of the Sovereign power; and that this sanction may be withheld even from Independent States.

Elsewhere it is confidently laid down that Hindu Sovereign Princes on failure of heirs male of the body have a right to adopt to the exclusion of collateral heirs, and that the British Government is bound to acknowledge the adoption, provided that it be regular, and not in violation of Hindu law; and further, that even in the case of a feud or dependency, a legal adoption cannot be barred by the Government or Lord paramount.

12. It is impossible that the minds of Native Rulers and of their people should not be disquieted so long as such a question as this, bearing as it does upon every class of State, independent and dependent, is allowed to remain in doubt. For the doubt has been only partially resolved by the decision of the Court of Directors on the case at issue. The Court were "fully satisfied that by the general law and custom of India a dependent principality like that of Satara cannot pass to an adopted heir without the consent of the paramount power."

But this decision extends only to dependent principalities and not even to these unreservedly; for all dependent principalities are not like that of Satara, which was created or reconstituted by the British Government upon conditions framed by that Government, and of which that Government might perhaps be assumed to be the rightful interpreter.

In another place the Court of Directors draw a marked distinction between the case of Satara, a State of recent origin and of our own creation, and that of Karauli, an old Rajput State which has existed from a time long anterior to our rule in India. But there is no admission that even in such a case as that of Karauli we are bound to recognise an adoption. It is rather implied that the question is one of expediency, and that even in that case there might have been grounds for taking the opportunity to substitute our own Government for that of a Native Ruler.

13. Another point, upon which strong difference of opinion will be found in the papers referred to, and which has a most important bearing upon the claims of many Native States, is the meaning of the words "heirs and successors" in the several treaties and grants in which we find them used.

The instances in which the Government of India has bound itself by engagements or concessions to a Chief and "his heirs and successors," or "to his heirs for ever," without explanation of what is to constitute the right of succession or inheritance, are very numerous. The question arises whether the expression is to be interpreted according to our own sense, which would limit it to heirs and successors by blood, or to be extended to heirs and successors by adoption, when the adoption has taken place in accordance with Hindu law, and with the custom of the other party to the engagement.

14. This question has never, so far as I know, received an authoritative answer. Perhaps the decision of the Court of Directors on the case of Satara may be regarded as having determined it against the admission of an adopted heir and successor where a dependent Chiefship is concerned; but this is not clear, for other considerations were mixed up in that case.

It is a question which is sure to recur. There are several of the Hill States, the possession of which was confirmed to their respective Chiefs by special grants after the Gurkha War of 1814, and in dealing with which a decision upon it may any day be called for, owing to the terms in which the grants are couched.

15. Whilst there has been so much doubt as to the duty and rights of our Government in India, there has not been less as to its policy.

16. Probably that view of our policy which would prescribe the retention in our hands of the power to disallow adoption, and thereby to secure to ourselves an accession of territory, could not be expressed in terms more moderate or less calculated to alarm Native States than those used by Lord Auckland, when, in reference to the Kolaba succession, he declared that we ought to "persevere in the one clear and direct course of abandoning no just and honourable accession of territory or revenue, while all existing claims of right are at the same time scrupulously respected."

But this declaration contains nothing reassuring or clear to those who will be most affected by it. It has been shown that the opinions of the very highest authorities in India and in England—of those, in fact, with whom alone the decision of such matters rested—have differed widely as to what accessions of territory would be just, and as to what claims of right do exist, and do deserve our respect.

17. Nor does it appear possible to lay down these points with certainty by any declaration, however detailed and elaborate.

We profess indeed to be guided by the Hindu law, and by the practice of those who have preceded us as rulers in India. But as to what that practice has been we are not agreed amongst ourselves. If indeed we never referred to it, but for the purpose of avoiding carefully all new encroachments upon the liberties of Native States, and with the determination that our authority in questions of succession should be exercised with at least as much forbearance as was shown by the Muhammadans and the Mahrattas, a little uncertainty would be immaterial. We could easily make sure of erring only on the right side. But it has been appealed to in support of a pretension to withhold our assent to adoption even in the case of Independent States, thereby making the State a lapse to the British Government; and yet we have not shown, so far as I can find, a single instance in which adoption by a Sovereign Prince has been invalidated by a refusal of assent from the paramount power.

18. I venture to think that no such instance can be adduced, and that the practice which has prevailed is truly described by Sir Henry Lawrence, where he says:—
"The confirmation of the Suzerain is necessary in all

See letter from Sir H. Lawrence on Karauli, 17th November 1843.

See Minute of Lord Dalhousie on Satara, paragraphs 8, 9, and 30.

See Minute of Mr. Willoughby on Satara, paragraph 10.

See Minute of Lord Metcalfe, 28th October 1837.

See Minute of Lord Auckland on Orcha, 2nd January 1842,

paragraph 4.

See Minute of Sir George Clark on Satara, 12th April 1848,

paragraphs 11 and 12.

See despatch from the Court of Directors to the Government of India, 24th January 1849.

See despatch from the Court of Directors to the Government of India on Karauli, 28th January 1853.

III

cases; he is the arbitrator of all contested adoptions; he can set aside one or other for informality, irregularity, or for misconduct; but it does not appear by the rules or practices of any of the Sovereignities, or by our own practice with the Istamrardars of Ajmere, that the paramount State can refuse confirmation to one or other claimant, and confiscate the State, however small."

I am aware that Sir Henry Lawrence, who, when this was written, was the Agent of the Governor-General in Rajputana, speaks only of that part of India. But although the strong brotherhood of the Rajput States, their geographical position, and other circumstances, caused their relations with the Emperors of Delhi to remain more clearly defined and less subject to capricious change than those with other feudatory States, I believe that there is no example of any Hindu State, whether in Rajputana or elsewhere, lapsing to the paramount power by reason of that power withholding its assent to an adoption.

19. It has been argued that the right to grant sanction implies the right to withhold it. This, See Minutes of Mr. Reid and Lord Falkland on Satara, 25th April and 28th July 1842. however sound logically, is neither sound nor safe practically.

The histories of feudal Governments furnish abundant examples of long-established privileges habitually renewed as acts of grace from the paramount powers, but which those powers have never thought of refusing for purposes of their own, or upon their own judgment alone.

20. Then as regards our other rule of guidance, the Hindu law. It has been said by one who is well See letter of Sir George Clark on the Chiefship of Baghat, 10th November 1842. competent to speak on the subject that "it is hunting after a shadow to search for laws of inheritance to Chiefships in India, so fixed as the Government desires to obtain.

* * * * *

"The Hindu law, which is so comprehensive regarding rights to private property, does not provide distinctly for Chiefships. It is not fair therefore to desire a claimant to support his pretensions by adducing fixed laws." And in the same letter it is observed, in reference to certain views of the right of succession amongst the Hill Chiefs, that "it is the inconsistency, caprice, and mutability of our opinions regarding all great principles that is the bane of our supremacy in India." I fear that as regards the matter now under consideration this is too true.

21. And now I would beg Her Majesty's Government to consider whether the time has not come when we may, with advantage to all, adopt and announce some rule in regard to succession in Native States more distinct than that which we have been seeking to derive from the sources above mentioned; not by setting aside the Hindu law, wherever that avails, and not by diminishing in the least degree the consideration which the feudatory States have experienced at the hands of former ruling dynasties, but, on the contrary, by increasing this consideration, and at the same time making our future practice plain and certain.

22. A time so opportune for the step can never occur again. The last vestiges of the Royal House of Delhi, from which for our own convenience we had long been content to accept a vicarious authority, have been swept away. The last pretender to the representation of the Peshwa has disappeared. The Crown of England stands forth the unquestioned ruler and paramount power in all India, and is for the first time brought face to face with its feudatories. There is a reality in the suzerainty of the Sovereign of England which has never existed before, and which is not only felt but eagerly acknowledged by the Chiefs. A great convulsion has been followed by such a manifestation of our strength as India had never seen, and if this in its turn be followed by an act of general and substantial grace to the Native Chiefs, over and above the special rewards which have already been given to those whose services deserve them, the measure will be reasonable and appreciated.

23. Such an act of grace, and, in my humble opinion, of sound policy, would be an assurance to every Chief above the rank of Jagirdar who now governs his own territory, no matter how small it may be, or where it may be situated, or whence his authority over it may, in the first instance, have been derived, that the paramount power desires to see his government perpetuated, and that on failure of natural heirs, his adoption of a successor, according to Hindu law (if he be a Hindu), and to the customs of his race will be recognized, and that nothing shall disturb the engagement thus made to him so long as his house is loyal to the Crown, and faithful to the conditions of the treaties, or grants, which record its obligations to the British Government.

24. The effect to be expected from this measure may be shortly described.

25. To the old Principalities of Rajputana it would be of no direct importance. These adoptions have been hitherto generally respected by all ruling powers, and if any class of Chiefs feels secure that we shall not question their claims to adopt successors, it is probably the Princes of Rajputana.

To the great houses of Sindhia, Holkar, Rewa, Patiala, and to other smaller ones, to whom the promise has already been made, it would be no new concession.

But to all other Chiefs, to the Gaekwar, and others in Western India, to those in Central India, in Bundelkhand, and in the Hill States, it would be a most welcome assurance.

26. It would re-assure them upon a matter on which they are specially sensitive—the continuance of the representation and dignity of their families.

It would remove a distinction already adverted to which has been drawn between independent and dependent States, founded (though I venture to think not quite correctly founded) upon Lord Metcalfe's Minute of 28th October 1837, and would do away with the difference of treatment between the independent Chiefs and the Chief of a State like Jalaun or Jhansi, who, although he and his forefathers may have exercised for more than a century the full functions of Government, is not considered entitled to adopt a successor because the Peshwa had recognised his ancestor only as a Subadar.

It would show at once, and for ever, that we are not lying in wait for opportunities of absorbing territory, and that we do deliberately desire to keep alive a feudal aristocracy where one still exists. It would establish this more conclusively, and bring it home to many more minds than the promises and declarations recently made in Darbar to the powerful Chiefs to whom we were under special obligations.

27. I have proposed that the assurance should be given to every Chief who now governs his own territory, and who holds a position higher than that of a Jagirdar.

This will mark a line which will be generally clear and intelligible, and it will accord with the one main distinction drawn by Lord Metcalfe between Chiefs who are, and Chiefs who are not, entitled to adopt.

Nevertheless, I think that some exceptions in favour of Jagirdars should be made. A jagir is usually an assignment of land or revenue in consideration of services, and not hereditary; or hereditary only for a generation or two. But, as Lord Metcalfe observes, there are in Bundelkhand Chiefs whom it is difficult to place in either of the classes which he describes, and it is clear that he alludes to some who are there called Jagirdars. In their

See DeCruz's Political Relations, page 69, et seq.

case the word means much more than in other parts of India. Their territories, and the administration thereof, have been granted to them and to their successors in perpetuity so long as certain obligations are observed, and the concession of the privilege of adoption to the most influential amongst them would have a beneficial effect not only in that dis-jointed Province, which whatever may be our desire, and however stringently we might enforce lapses, we could not hope to consolidate under our own administration for many generations to come, but throughout India.*

* These Jagirdars resemble those of whom Sir John Malcolm wrote as follows:—
 "Adoptions which are universally recognized as legal among Hindus are not a strict right (any more than direct heirs) where grants of land are for service...
 "But we have received the submission of the Jagirdars, confirmed their estates, honored them, and have continued to do so by treating them as princes; but while a few have been permitted to adopt, others are denied the privilege; and while we declare their direct heirs are entitled to succeed, we lie in wait (I can call it nothing else) to seize their fine estates, or on failure of heirs throwing them and their adherents and the country into a state of doubt and distraction. These families should either never have been placed in possession of these countries, or never have been removed from them."—*Life and Correspondence of Sir John Malcolm*, November 14, 1829.

In these last mentioned cases it would be expedient to require a nazarana whenever adoption took effect. From a fourth to a third of a year's revenue would, I think, be a fitting amount.

28. The case of the Muhammadan Chiefs remains to be considered. Adoption, in the full sense in which it is exercised by Hindu Chiefs, they cannot claim. But

See papers on Bhopal succession, 18, 19, and 20.

adoption of one collateral in preference to another of closer affinity has been allowed to them where lineal heirs have failed; and it seems that it is also in accordance with Muhammadan law and usage that the Sovereign should select from among his sons the one whom he may desire to succeed to him. The King of Delhi exercised this right shortly before his rebellion.

To the Muhammadan Chiefs, then, the assurance to be given would be that the paramount power desires to see their governments perpetuated, and that any succession to them which may be legitimate according to Muhammadan law will be upheld.

29. I recommend that in every case, Muhammadan or Hindu, the assurance should be conveyed to each Chief individually, and not by a general notification addressed to all. This would be necessary in order to avoid future claims from petty Jagirdars or others whom it is not intended

See Minute of Lord Metcalfe, 28th October 1837, paragraph 6.

to include in the measure.

30. The proposed measure will not debar the Government of India from stepping in to set right serious abuses in a Native Government as may threaten any part of the country with anarchy or disturbance, nor from assuming temporary charge of a Native State when there shall be sufficient reason to do so. This has long been our practice. We have repeatedly exercised the power with the assent, and sometimes at the desire, of the chief authority in the State, and it is one which, used with good judgment and moderation, it is very desirable that we should retain. It will indeed, when once the proposed assurance shall have been given, be more easy than heretofore to exercise it without provoking jealousy of any designs upon the independence of the State.

31. Neither will the assurance, if worded as proposed, diminish our right to visit a State with the heaviest penalties, even to confiscation, in the event of disloyalty or flagrant breach of engagement.

Upon this point I beg to refer to the following passages in papers by Sir George Clerk:—

"We should look for escheats, not from such a source as the doubtful meaning of the stipulation of an agreement, but from the incorrigible misconduct of allies when thrown back, as they should be, on the responsibilities of the Sovereign rights relinquished to them, rendering punishment in such cases signal and salutary, by abstaining from half measures, such as largely, pensioning or managng for the delinquent, or substituting his child, wife, or minister."

See Minute on Satara, 12th April 1843, paragraph 26.

And again—

The proper punishment for the paramount State to inflict for gross "mismanagement and oppression, such as prevails to a considerable extent in these hills, would be sequestration of the Chieftaincies; but this would not be fair until we had revived their interest in their ancestral territories, by manifesting the same respect for their rights, founded on a possession of many centuries, as is entertained by the people in general. Could we inspire them with confidence in our general disinterestedness, our severity, when called for, would be rightly and beneficially understood; and, for the most part, that confidence would correct the motives to neglectful or tyrannical conduct requiring punishment."

I consider these views to be sound, not only in the cases to which they refer, but in those of Native States generally; and I would apply them generally with this single limitation,—that the penalty of sequestration or confiscation should be used only when the misconduct or oppression is such as to be not only heinous in itself, but of a nature to constitute indisputably a breach of loyalty or of recorded engagement to the paramount power.

32. It is certain that objection to the proposed measure will be taken, on the ground that it will cut off future opportunities of accession of territory, and that it is our duty not to forego these. I regard this, not as an objection, but as a recommendation; and I cannot take that view of our duty.

33. Notwithstanding the greater purity and enlightenment of our administration, its higher tone, and its surer promise of future benefit to the people as compared with any Native Government, I still think that we have before us a higher and more pressing duty than that of extending our direct rule; and that our first care should be to strengthen that rule within its present limits, and to secure for our general supremacy the contented acquiescence and respect of all who are subjected to it.

Our supremacy will never be heartily accepted and respected so long as we leave ourselves open to the doubts which are now felt, and which our uncertain policy has justified, as to our ultimate intentions towards Native States.

We shall not become stronger so long as we continue adding to our territory without adding to our European force; and the additions to that force, which we already require, are probably as large as England can conveniently furnish, and they will certainly cost as much as India can conveniently pay.

As to Civil Government, our English officers are too few for the work which they have on their hands, and our financial means are not yet equal to the demands upon us. Accession of territory will not make it easier to discharge our already existing duties in the administration of justice, the prosecution of public works, and in many other ways.

34. The safety of our rule is increased, not diminished, by the maintenance of Native Chiefs well affected to us. Setting aside the well-known services rendered by Sindhia, and, subsequently, by the Maharajas of Rewa, Charknari, and others, over the wide tract of Central India, where our authority is most broken in upon by Native States, I venture to say that there is no man who remembers the condition of Upper India in 1857 and 1858, and who is not thankful that in the centre of the large and compact British province of Rohilkhand there remained the solitary little State of Rampur still administered by its own Muhammadan Prince; and that on the borders of the Punjab, and of the districts above Delhi the Chief of Patiala and his kinsmen still retained their hereditary authority unimpaired.

In the time of which I speak these patches of Native Governments served as breakwaters to the storm which would otherwise have swept over us in one great wave. And in quiet times they have their uses: restless men who will accept no profession but arms; crafty intriguers, bred up in Native Courts, and others who would chafe at our stricter and more formal rule, live there contentedly, and should the day come when India shall be threatened by an external enemy, or when the interests of England elsewhere may require that her Eastern Empire shall incur more than ordinary risk, one of our best mainstays will be found in these Native States. But to make them so, we must treat their Chiefs and influential families with consideration and generosity, teaching them that, in spite of all suspicions to the contrary, their independence is safe, that we are not waiting for plausible opportunities to convert their country into British territory, and convincing them that they have nothing to gain by helping to displace us in favour of any new rulers from within or from without.

35. It was long ago said by Sir John Malcolm that if we made all India into zilas, it was not in the nature of things that our Empire should last fifty years; but that if we could keep up a number of Native States without political power, but as royal instruments, we should exist in India as long as our naval superiority in Europe was maintained.

Of the substantial truth of this opinion I have no doubt, and recent events have made it more deserving of our attention than ever.

No. 46, dated Kurnaul, the 10th May 1860.

From—His Excellency the Right Hon'ble the Governor-General of India,
To—Her Majesty's Secretary of State for India.

In my despatch No. 42 of the 26th ultimo respecting the Chiefship of Baghat, I referred to another despatch on the subject of the Hill States generally as having been addressed to you. I regret that I was not able to send the last-mentioned despatch by the same mail with that which referred to it. I now repair the omission.

2. I beg to call your attention to the enclosed memorandum upon the Hill States which Mr. Barnes, the Commissioner of the Cis-Sutlej Division, has drawn up. It describes, he said, concisely, but very clearly, the position in which the Hill Chiefs stand towards the British Government, and it presents (as I venture to think) very strong reasons for adopting the course which I have pressed upon you in a despatch of the 30th ultimo of declaring to the Hill Chiefs, as to others, that failing lineal heirs, or heirs of their own blood, their adoption of successors to their Chiefships will be recognised.

3. The Commissioner has suggested this and another alternative course by either of which confidence might be given to the Chiefs and consistency and greater liberality secured in our treatment of cases of succession and lapse.

The alternative is that investigation should be made of the pedigree of each Chief's family for 150 years back, and that all descendants of the ancestor of that date should be admitted as eligible to the succession. Also that the former grants from the British Government, mostly of the date of 1815, should be recalled, and that they should be renewed in this more liberal spirit.

4. I am of opinion that the concession of adoption is by far the preferable measure. It avoids tedious investigations, some of which might prove of uncertain result, and the purpose of which might not be understood; and it is more thoroughly in accordance with the traditions and feelings of the Rajput families. Whichever course be chosen I would not recall the grants of 1815. This process is not necessary, and is better omitted, even though the object be to make the terms of the grants more favourable to the holders of them.

5. A perusal of the papers relating to Umed Singh's case may perhaps suggest two objections to giving to the Hill Chiefs a more lasting tenure of their States—the mismanagement and oppression which, according to Sir George Clerk's testimony in 1842, then prevailed in the hills; and the value to the British Government of retaining to itself the lapse of lands suited to tea plantations and other purposes of improvement.

6. Upon the first head I would observe that in Sir George Clerk's view the greater respect which it is proposed to show to the old rights of the Chiefs will leave us quite as well able as we are now to punish and correct mismanagement and oppression by temporary sequestration, and that the instances of oppression are not so frequent or serious as they used to be. This may be due, in part, to a closer watch kept upon the Chiefs of late years; but I believe that it is mainly to be attributed to the fact that the people are able to migrate, without restraint, from the territory of one Hill Chief to another, each of whom is glad enough to receive upon his lands refugees from his neighbour's State, and none daring to resent the reception, as would have been done before our rule became paramount in these hills. Each Chief, therefore, for his own interest, refrains from oppression.

7. In some of the States the value of the ground for tea culture is indisputable; but until other roads than the one great Tibet road are carried through the hills the lands suitable for European settlers will continue to be very limited; and although it might be a convenience to us that some of these lands should fall into our hands, it is certain that the direct government of at least one-half of the Hill States would be a dead weight and a loss to us. The British Government cannot wisely desire to have cast upon it the responsibility of administering by its own officers States so far remote in the mountains and so little productive or politically important as Bashahr, Kumharain, Mangal, Baghal, and others; and if we pursue the course of annexing those which lie conveniently, as we have done in the case of Baghat, and of allowing collateral succession in those which it does not suit us to take, as we have done in the case of Kumharain, we must not be surprised if our policy fails to be understood, or respected.

No. 59-P., dated India Office, London, the 20th July 1860.

From—Her Majesty's Secretary of State for India,
To—His Excellency the Right Hon'ble the Governor-General of India in Council.

In several recent communications Your Excellency has informed me that, during your Viceregal progress through Central and Upper India, you availed yourself of every opportunity that presented itself to you for a formal declaration in darbar that the British Government desired to perpetuate, in undiminished power and prosperity, the houses of those Native Princes and Chiefs who throughout the recent period of trouble and disaster had been true to their allegiance to the paramount State. To the Maharaja Sindhia and Holkar, to the Maharaja of Rewa, to the Maharaja of Kashmir, to the great Chiefs of the Cis-Sutlej States, and to others of less note, you publicly conveyed the gratifying assurance that, in the event of failure of direct heirs, the British Government would recognise, as Chiefs of their several houses, the heirs adopted by them in accordance with the law and with the usages of their respective families.

VI

2. These measures have already received the approbation of Her Majesty's Government. But gratifying as they were to the Princes and Chiefs who were thus assured of the continuance of their houses, it was not improbable that they would be regarded by the native community at large as special acts of grace, in consideration of good service rendered to the paramount State, and that some feelings of doubt and disquietude might be excited in the minds of those to whom the same assurances had not been conveyed. Your Excellency therefore lost no time in placing upon record and laying before Her Majesty's Government the sentiments which you entertain with respect to the propriety of a more general measure of recognition, calculated to give renewed confidence to all the Princes and Chiefs of India, whose minds had been unsettled by some recent decisions of the British Government.

3. The sentiments I have now before me in Your Excellency's letters No. 43-A. of the 30th of April, and No. 46 of the 10th of May, and I have the gratification to inform you that I am commanded to communicate to you Her Majesty's approval of the principles which they enforce, and the recommendations which they contain.

4. Observing that such an opportunity as the present can never occur again for the final settlement of a question which has long excited continual conflicts of opinion and some inconsistencies of practice disturbing to the native mind, Your Excellency now proposes to give to "every Chief above the rank of jagirdar, who now governs his own territory, no matter how small it may be, or where it may be situated, or whence his authority over it may, in the first instance, have been derived, assurance that the paramount power desires to see his government perpetuated, and that on failure of natural heirs, his adoption of a successor, according to Hindu law (if he be a Hindu), and to the customs of his race, will be recognized, and that nothing shall disturb the engagement thus made to him, so long as his house is loyal to the Crown, and faithful to the conditions of the treaties which record its obligations to the British Government."

5. To the Muhammadan Chiefs, the assurance to be given would, according to your recommendation, be that the paramount power desires their governments to be perpetuated, and that any succession to them, which may be legitimate according to Muhammadan law, will be upheld.

6. Presuming that in this latter case the recommendations of Your Excellency relate only to instances in which there is a failure of direct heirs, and do not contemplate any departure from the policy of recognising the claims of primogeniture, Her Majesty's Government approve the views thus expressed. They concur also in opinion with Your Excellency that no general notification of the intentions of your Government should be issued, but that in each case the assurance should be conveyed to the individual Chiefs in whose favour you purpose to guarantee the privilege in question. You will carefully register the names of these Chiefs, and forward me a roll of them as soon as it can be prepared.

7. With respect to the case of the jagirdars and others of a similar character, of whose position Your Excellency writes in the 27th paragraph of your letter, I am disposed to think that, except in very special cases, no assurance should be given. The distinction between territorial rights of ancient date and independent tenure, and lands held by favour of the Government of the day as rewards for good service, and generally granted only for a limited number of generations, is broad and intelligible. You will reserve to the paramount State the right of dealing with such cases as they arise, and that your recommendations will be framed in a liberal spirit is the wish, as it is the conviction, of Her Majesty's Government.

8. In the sentiments expressed in the concluding paragraphs of Your Excellency's letter of the 30th of April I entirely concur. It is not by the extension of our Empire that its permanence is to be secured, but by the character of British rule in the territories already committed to our care, and by practically demonstrating that we are as willing to respect the rights of others as we are capable of maintaining our own.

APPENDIX 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 Maharaja, 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 Maharaja Chamrajendra Wadiar Bahadur, the adopted son of the late Maharaja, 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 Maharaja 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 Maharaja Chamrajendra Wadiar Bahadur a written Instrument defining the conditions subject to which he will be so intrusted : It is hereby declared as follows :—

1. The Maharaja Chamrajendra Wadiar Bahadur shall, on the twenty-fifth day of March 1881, be placed in possession of the territories of Mysore, and installed in the administration thereof.

2. The said Maharaja 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 Maharaja 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 Maharaja 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 Maharaja Chamrajendra Wadiar Bahadur and his successors (hereinafter called the Maharaja 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 Maharaja 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 Maharaja's taking possession of the territories of Mysore, the British sovereignty in the island of Seringapataw shall cease and determine, and the said island shall become part of the said territories, and be held by the Maharaja upon the same conditions as those subject to which he holds the rest of the said territories.

7. The Maharaja of Mysore shall not, without the previous sanction of the Governor-General in Council, build any new fortresses or strongholds, or repair the defences of any existing fortresses or strongholds in the said territories.

8. The Maharaja of Mysore shall not, without the permission of the Governor-General in Council, import, or permit to be imported, into the said territories, arms, ammunition or military stores, and shall prohibit the manufacture of arms, ammunition and military stores throughout the said territories, or at any specified place therein, whenever required by the Governor-General in Council to do so.

9. The Maharaja of Mysore shall not object to the maintenance or establishment of British cantonments in the said territories whenever and wherever the Governor-General in Council may consider such cantonments necessary. He shall grant free of all charge such land as may be required for such cantonments, and shall renounce all jurisdiction within the lands so granted. He shall carry out in the lands adjoining British cantonments in the said territories such sanitary measures as the Governor-General in Council may declare to be necessary. He shall give every facility for the provision of supplies and articles required for the troops in such cantonments, and on goods imported or purchased for that purpose no duties or taxes of any kind shall be levied without the assent of the British Government.

10. The military force employed in the Mysore State for the maintenance of internal order and the Maharaja's personal dignity, and for any other purposes approved by the Governor-General in Council, shall not exceed the strength which the Governor-General in Council may, from time to time, fix. The directions of the Governor-General in Council in respect to the enlistment, organisation, equipment and drill of troops shall at all times be complied with.

11. The Maharaja of Mysore shall abstain from interference in the affairs of any other State or Power, and shall have no communication or correspondence with any other State or Power, or the Agents or Officers of any other State or Power, except with the previous sanction and through the medium of the Governor-General in Council.

12. The Maharaja of Mysore shall not employ in his service any person not a native of India without the previous sanction of the Governor-General in Council, and shall, on being so required by the Governor-General in Council, dismiss from his service any person so employed.

13. The coins of the Government of India shall be a legal tender in the said territories in the cases in which payment made in such coins would, under the law for the time being in force, be a legal tender in British India ; and all laws and rules for the time being applicable to coins current in British India shall apply to coins current in the said territories. The separate coinage of the Mysore State, which has long been discontinued, shall not be revived.

14. The Maharaja of Mysore shall grant free of all charge such land as may be required for the construction and working of lines of telegraph in the said territories wherever the Governor-General in Council may require such land, and shall do his utmost to facilitate the construction and working of such lines. All lines or telegraph in the said territories, whether constructed and maintained at the expense of the British Government or out of the revenues of the said territories, shall form part of the British telegraph system and shall,

VIII

save in cases to be specially excepted, by agreement between the British Government and the Maharaja of Mysore, be worked by the British Telegraph Department; and all laws and rules for the time being in force in British India in respect to telegraphs shall apply to such lines of telegraph when so worked.

15. If the British Government at any time desires to construct or work, by itself or otherwise, a railway in the said territories, the Maharaja of Mysore shall grant free of all charge such lands as may be required for that purpose, and shall transfer to the Governor-General in Council plenary jurisdiction within such land; and no duty or tax whatever shall be levied on through traffic carried by such railway which may not break bulk in the said territories.

16. The Maharaja of Mysore shall cause to be arrested and surrendered to the proper officers of the British Government any person within the said territories accused of having committed an offence in British India, for whose arrest and surrender a demand may be made by the British Resident in Mysore, or some other officer authorised by him in this behalf; and he shall afford every assistance for the trial of such persons by causing the attendance of witnesses required, and by such other means as may be necessary.

17. Plenary criminal jurisdiction over European British subjects in the said territories shall continue to be vested in the Governor-General in Council, and the Maharaja of Mysore shall exercise only such jurisdiction in respect to European British subjects as may from time to time be delegated to him by the Governor-General in Council.

18. The Maharaja of Mysore shall comply with the wishes of the Governor-General in Council in the matter of prohibiting or limiting the manufacture of salt and opium, and the cultivation of poppy, in Mysore; also in the matter of giving effect to all such regulations as may be considered proper in respect to the export and import of salt, opium and poppy-heads.

19. All laws in force and rules having the force of law in the said territories when the Maharaja Chamrajendra Wadiar Bahadur is placed in possession thereof, as shown in the Schedule hereto annexed, shall be maintained and efficiently administered, and, except with the previous consent of the Governor-General in Council, the Maharaja of Mysore shall not repeal or modify such laws, or pass any laws or rules inconsistent therewith.

20. No material change in the system of administration, as established when the Maharaja Chamrajendra Wadiar Bahadur is placed in possession of the territories, shall be made without the consent of the Governor-General in Council.

21. All title-deeds granted and all settlements of land-revenue made during the administration of the said territories by the British Government, and in force on the said twenty-fifth day of March 1881, shall be maintained in accordance with the respective terms thereof, except in so far as they may be rescinded or modified either by a competent Court of Law, or with the consent of the Governor-General in Council.

22. The Maharaja of Mysore shall at all times conform to such advice as the Governor-General in Council may offer him with a view to the management of his finances, the settlement and collection of his revenues, the imposition of taxes, the administration of justice, the extension of commerce, the encouragement of trade, agriculture and industry, and any other objects connected with the advancement of His Highness's interests, the happiness of his subjects, and his relations to the British Government.

23. In the event of the breach or non-observance by the Maharaja of Mysore of any of the foregoing conditions, the Governor-General in Council may resume possession of the said territories and assume the direct administration thereof, or make such other arrangements as he may think necessary to provide adequately for the good government of the people of Mysore, or for the security of British rights and interests within the province.

24. This document shall supersede all other documents by which the position of the British Government with reference to the said territories has been formally recorded. And if any question arise as to whether any of the above conditions has been faithfully performed, or as to whether any person is entitled to succeed, or is fit to succeed to the administration of the said territories, the decision thereon of the Governor-General in Council shall be final.

FORT WILLIAM;
The 1st March 1881.

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(Signed) RIPON.

APPENDIX C.

MEDIATISED CHIEFS OF CENTRAL INDIA.

(No. 362-A., dated Fort William, the 31st March 1864.)

From—COLONEL H. M. DURAND, C.B., Secretary to Government of India, Foreign Department.
To—The Agent, Governor-General, Central India.

In the two letters noted on the margin you have submitted for orders two very important questions, one general, the other special. The general question is the degree and conditions of the interference to be exercised respectively by the British Government and the Native States of Central India and Malwa in questions of succession to lands or *tankhās* held by the subordinate feudatory Thākurs of these States, the claims to which were settled by the mediation of the British Government in 1818, and the possession of which was guaranteed by the British Government on specified conditions. The special question, the answer to which will depend on the decision given on the general question, is whether or not the guarantee given in 1818 to the Thākur of Kachi-Baroda, a feudatory of Dhar, ceased on the death of the Thākur in 1856 without heirs.

2. The policy pursued by the British Government on the occupation of Malwa in 1818 was to declare the permanency of the rights existing at the time of the British occupancy on condition of the maintenance of order; to adjust and guarantee the relations of such States as owed mere fealty or tribute, so as to deprive the stronger powers of all pretext for interference in their affairs; and to induce the plundering leaders to betake themselves to peaceful pursuits either by requiring their feudal superiors to grant them lands under the British guarantee, or by guaranteeing to them payments equivalent to the *tankhās* which they levied. There were two main reasons for this policy.—1st, the absolute necessity for the interference of a stronger than any of the native powers for the pacification of the country; and, 2nd, the expediency of weakening the Mahratta powers against whom we had been engaged in a contest for empire, and who were still formidable, by having a belt of Rajput Chiefs and Girasias owing the security of their estates and the comparative independence of their *status* to the intervention of the British Government.

3. The measures adopted in 1818 not only restored peace and order in Eastern and Western Malwa at the time, and favoured its maintenance for the future, but from the jealousy and antipathy which had place, and still exists, between the Muhammadan and Rajput Chiefs on the one hand and the Mahrattas on the other, the chain of mediatised Chiefs thus drawn across Malwa broke the continuity of Mahratta influence, extending from the Jumna to the border of the Nizam's country and to the south of the Bombay Presidency. Parallel to the Nerbudda, and chiefly on the plateau of Malwa, it spread a line along which British and not Mahratta influence predominated. The wisdom of this measure was so palpable, and the State of Malwa was under its operation on the whole so satisfactory, that for long there was but rare departure from the far-sighted policy of 1818. But in later times this policy has been occasionally lost sight of, and it is with the view of ensuring a uniform and consistent policy and practice on the part of the officers of the Central India Agency in dealing with questions which arise regarding the position and rights of the mediatised Chiefs that you have made the present reference.

4. In the opinion of His Excellency in Council there cannot be a better time for the authoritative settlement of the subject than the present. The rewards and honours lately conferred on the greater Chiefs have increased their dignity and importance and somewhat obscured the political value of the minor Chiefs. Yet it would be a very unjust and short-sighted policy to neglect their rights—rights enjoyed for six-and-forty years, and only the more deeply cherished for the encouragement temporarily given to the “unquestionable tendency on the part of the feudal Chiefs to get rid of altogether, or to break through the spirit of these settlements.” As an instance, the protracted conflict between the late Gagroni* Chief and Holkar is an example how tenaciously such petty mediatised Chiefs cling to the guarantee of the British Government, and what they will endure rather than forego their rights on this point, even where their title is in some degree dubious.

5. His Excellency in Council observes that, although there is very great diversity in the tenures of the guaranteed Chiefs, they may all be divided into two great classes—those Chiefs in the administration of whose affairs the interference of the feudal superior is excluded by the express terms of the guarantee, and those Chiefs whose *sanads* contain no such stipulation.

The general question you have raised with reference to the first class, of which class you take the Raja of Ratlam as an exemplar, is—

I.—Whether any interference in successions, direct or by adoption, is, under any circumstances, to be permitted on the part of the Suzerain or feudal Chief, or if the decisions regarding successions in such cases wholly and solely rest with the British Government.

6. His Excellency in Council has no hesitation in affirming that in questions of successions to such Chiefships the decision rests solely and entirely with the British Government. Many instances might be adduced in illustration of the action of the British Government in such cases, but His Excellency in Council will confine himself to the example you have yourself quoted, that of Ratlam, as it embraces instances both of direct succession and of succession by adoption.

The Raja of Ratlam is the principal of the petty Rajput Chiefs in Western Malwa, and is descended from a younger branch of the Jodhpur family; he is tributary to Sindhia† under an engagement mediated by Sir John Malcolm in 1819 with Parbat Singh, the then Raja.

Since 1819 there have been only three successions. Parbat Singh, with whom the original settlement was made, died in 1824: he had no children, and, as disturbances had been foreseen in the event of death without proper arrangements for the succession, efforts had been made some years before to settle the question; accordingly, in 1821, Sir John Malcolm recommended ‡ that Balwant Singh, a cousin of the Chief of Salumbar, whom Parbat Singh had selected to succeed him, should be recognised; this was sanctioned on 1st September 1821 without any reference whatever to Sindhia.

† Letter, dated 31st July 1821.

‡ The tribute is now paid to the British Government under the Treaty with Sindhia of 12th December 1860; but this fact does not affect the argument in the present case.

Balwant Singh died on 29th August 1857: during his last illness he adopted Bhairon Singh as his successor. The succession of Bhairon Singh was sanctioned by the Government of India on 30th November 1857*: a *khilat* was conferred on him and a Council of Regency was appointed during his minority. All this was carried out without reference to Sindhia further than an intimation to him of what had been done.

And now Bhairon Singh is dead; he died on 27th January last, and Government has again, without reference to Sindhia, recognised the succession of his son, Ranjit Singh, a child three years old, and has deputed an officer to superintend the administration for the present.

7. The fact is that where the interference of the feudal superior is barred by the provisions of the guarantee there has never been a question of the right of the British Government to decide regarding successions. To have ruled otherwise would have been practically to render nugatory the stipulations of such guarantees and to place such Chiefships at the mercy of their feudal superiors. There can be no hesitation in adhering to the practice of close on half a century, and in maintaining the rights and interests of the first class of guaranteed Chiefs by subjecting them to no other interference in questions of succession than that which it is the sole prerogative of the British Government to exercise.

8. With regard to the other class of cases in which the tenures, whether of land or money payments, are guaranteed by the British Government, but in which the *sanads* do not by express terms exclude the interference of the immediate Suzerain, you ask instructions on the following points:—

II.—Whether *direct* successions are in any degree dependent on the pleasure of the Chief, or if, being approved and sanctioned by the British Government, they have effect, as a matter of course, without reference to the Chief, the original guarantee or mediation continuing in full force.

III.—Whether, in the absence of direct heirs, *i.e.*, male issue of the actual holder, an adoption being made by the petty Chief or Thakur during his life-time, it is optional to the feudal Chief, with the object of forcing an escheat, to refuse his consent to such adoption or to any other arrangements proposed by the holder of the estate for the succession on his demise; and whether any such adoption, if sanctioned by the feudal superior, is to be considered as further subject to the concurrence or confirmation of the British Government, the terms of the original mediation in all such cases continuing in full force.

IV.—Whether, in the event of the demise without heirs, direct or adopted, it is optional to the feudal Chief to refuse to admit the claims to the succession of any of the natural heirs (*i.e.*, by blood) of the deceased, whom the widow, with the concurrence of the family or clan, might desire to adopt with that object, or, in the absence of all such natural heirs, of any other person who might be similarly selected for the purpose; or if, in such case, the feudal Chief is at liberty to resume the estate, the interference of the British Government in its affairs, under the guarantee, thenceforth ceasing.

9. These questions involve a higher one, namely, whether the guarantee given by the British Government ends with the life of the party with whom the engagement was made, or continues to his heirs, direct or by adoption. Rarely in any of the engagements is there an express stipulation on this point, but the decisions which Government has given from time to time are in favour of the continuance of the guarantee. The expediency of these guarantees was originally based on broader principles than the mere regard to personal and individual influences. The guarantees formed part of a general policy for the permanent pacification of the country, and not only for the restoration, but also for the maintenance, of order throughout Eastern and Western Malwa. If, at the same time that these objects have been secured, the means by which they were obtained could be dispensed with, it might be a question whether there would not be some advantage in gradually freeing the British Government from such petty guarantees: but no one pretends that this is the case; on the contrary, every Political Officer avers that, viewed as an instrument for the continuance of good order, the system is not obsolete, and that to attempt to do away with it would result in the Girasia and *tankha*-receivers reverting to their old habits. Among others Major Keatinge, when procuring the sanction of Government to the continuance of the pension or *tankha* to Umed Singh and Bahadur Singh of Silani Bakhtgarh,† said:—“These persons are fairly entitled to it by the custom of the country, and besides, it is very bad policy at this period (1858) to disturb existing arrangements with a family of such notably troublesome character as that of Silani. You are aware that before Sir J. Malcolm’s arrangements they harassed the country from Ujjain to the Tapti, and at this time their jungle retreats are quite as strong as they were in 1820, when the agreement was drawn up.” The circumstances of this family as to the facilities which strong and difficult jungle retreats afford for a return to predatory habits are by no means singular, as any one acquainted with Central India and its mediatized Chiefs must admit. Viewed as a means to a desirable end, the expediency of the guarantees still, therefore, holds good. Independently, however, of this normal consideration, it is impossible that a prescription of six-and-forty years should be summarily put aside; the prescriptive rights established by such a protracted period cannot be either safely or equitably ignored.

These two main considerations, namely, the existing expediency of the guarantee system and the rights established by close on half a century of prescription, sufficiently dispose of the question whether, failing express stipulation on the point, the British guarantees terminate with the life of the party in whose favour it was made or continue to his heirs; and these arguments, drawn from the reason of the case, are confirmed by what has been the practice of the British Government since 1818, in illustration of which I am to quote the cases of the Dhabla Dhir and Kamalpur Chiefships.

Dhabla Dhir.—Sobhag Singh received in 1818 a grant of three villages on a quit-rent of Rs. 1,401 in the district of Shujawalpur, which then belonged to the British Government. He was also one of the Girasia Chiefs with whom Major Henley mediated settlements‡ which secured to him the following *tankhas*, for each of which he held a separate *sanad*:—

† See Malcolm’s Report on Malwa, No. 12 of Schedule No. II and No. 29 of Schedule No. III.

	Rs.
From Sindhia	9,950
“ Holkar	600
“ Dewas	100
“ Bhopal	600
TOTAL	4,250

If 1831 Shujawalpur was made over to Sindhia in exchange for the Parganas of Deori, Gaurjhawar, Chawarpatha, Jhindukhera, and Nahirmao; and Sobhag Singh thus became Sindhia’s subject. He died on 17th

November 1855, having previously expressed a desire to adopt his nephew, Rughnath Singh, but without taking any steps to carry out his intention; the widow, however, proposed to adopt Mahtab Singh, a younger brother of Rughnath Singh, and the Political Agent at Bhopal recommended that this should be sanctioned "with a view to the continuance of our guarantee."

But Sir R. Hamilton, the Agent to the Governor-General, took a different view;* he was of opinion that the connection of the British Government with Shujawalpur ceased on the transfer of the district to Sindhia; that it would neither be just nor expedient for us to continue our guarantee beyond the life of the individual to whom it was granted, "unless some express stipulation to that effect was entered into at the time, or some distinct necessity may be proved to exist;" and that "in no case can a son by adoption be considered as having any claim on the British Government." The Governor-General in Council, concurring in the views of Sir R. Hamilton, declined to sanction a continuance of the guarantee; but this decision was reversed by the Court of Directors, who observed:—"For reasons stated in paragraph 62 of our despatch, No. 13 of 1838, in the Political Department, we are of opinion that the guarantee should have been continued. We do not consider that the fact of adoption affects the merits of the case so far as our Government is concerned. We desire, therefore, that you will reconsider your decision, and we trust that, in communication with Sindhia, some means may be found of settling the case in a manner not unsatisfactory to His Highness.

† Paragraph 62.—Though the pension of Anup Singh was granted only on a life tenure, Mr. Wilkinson has adduced very strong arguments in favour of continuing it to his posterity. The original grant seems to have been made on the same principles and for the same purposes as the provisions secured to other Girasia Chiefs at the time of the pacification of Central India, all of which have been considered hereditary; and although the *tankhā* claims of Anup Singh, being upon territories which we annexed to our own possessions, were not recognised, but a pension granted in lieu of them, this seems no reason for our not setting an example to our native allies of adhering in our treatment of the Girasia to the principles which we enforce upon those allies. We do not direct that the pension of Bahht Singh be formally declared hereditary, but you will not resume it on the demise of the present incumbent without our express authority.

Indeed it was discovered on inquiry that the Gwalior Darbar regretted "equally with the Girasia Chief the decision of the Government that its guarantee did not extend to the heirs of the Chief with whom the settlement was made:" accordingly, not only the Shujawalpur villages, but the *tankhās* amounting to Rs. 4,250, are enjoyed by the heirs of Sobhag Singh to this day.

Kamalpur.—Besides villages in Shujawalpur held on a quit-rent of Rs. 700, Udaji, Thākūr of Kamalpur, received *tankhās* of Rs. 4,600 from Sindhia under British guarantee. He was succeeded by his son, Jujhar Singh, on whose death, in 1828, the Political Agent in Bhopal, without reference either to the British Government or to Sindhia, recognised as his successor Moti Singh, who was adopted by the widow, and assigned Rs. 3,100, or two-thirds of the *tankhā*, to the boy, and Rs. 1,500 to the widow. The young Thākūr fell into debt, and Sir R. Hamilton of his own authority reduced the widow's allowance to Rs. 600 and allotted the other Rs. 900 for payment of the debts; but Government ruled that, although the original assignment in 1828 had not received the sanction of Government, still, as it had been enjoyed for more than twenty years, it should not have been altered without sanction of Government. As the widow objected to the reduction of her stipend, the redistribution was disallowed; but as regards the future, two general rules were laid down:—

‡ Despatch to Court of Directors, No. 25, dated 2nd April 1853, paragraph 102.
 § Despatch from Court of Directors, No. 32, dated 17th August 1853, paragraphs 41 and 42.

- 1st.—That *tankhādārs* have no power over the *tankhās* beyond their own lives, and no right to burden them with sums payable after their death.
 - 2nd.—That the guarantee of the British Government should not be continued to an *adopted* heir, unless the consent of the British Government to the adoption be obtained.
10. In the opinion of His Excellency in Council the arguments and precedents above brought forward prove clearly—
- 1st.—That the British guarantee descends in all cases to direct heirs.
 - 2nd.—That it descends to adopted heirs when the adoption has received the sanction of the British Government.
 - 3rd.—That it does not descend to adopted heirs unless the adoption be sanctioned by the British Government.
 - 4th.—That *tankhādārs* have no power over the *tankhās* beyond their own lives, and no right to burden them with sums payable after their death.

11. It remains now to decide what voice the British Government and the Suzerain Chief respectively have in determining the succession. This, in the opinion of His Excellency in Council, depends on the interest which the British Government has in maintaining its guarantee and the rights which the Suzerain Chiefs have in the subordinate estate or the *tankhā*. That the British Government has a strong interest in still enforcing a sacred respect for the pledges which it gave in 1818, and maintaining unimpaired the rights of the feudal subordinate as well as those of the feudal Chief, has already been shown; on the other hand, the Suzerain Chiefs have a reversionary claim on the domain or the *tankhā*, which has recently been acknowledged by the British Government in more than one instance: thus, when the Raja of Amjhera, who was a Chief much in the same position as the Raja of Ratlam, rebelled, and his estate was confiscated, it was ruled that Sindhia, and not the British Government, had the claim to the territory. A stronger case, perhaps, is that of Larawat. This petty State was granted, under the mediation of the British Government in 1818, to Vithal Rao Puar. The deed conferred on him the shares of Dhar and Dewas in the district of Sundarsi: he was succeeded by his son, Madho Rao, on whose death, in 1849, leaving illegitimate sons only, the estate was claimed as a lapse by Dhar. The Government of India, however, decided that it was an escheat to the British Government, but continued the estate for life to the eldest illegitimate son, Ram Chandar Rao, the present Chief, subject to an annual payment of Rs. 1,000. This decision was reversed by the Home Government, § who ruled that, if the estate was an escheat, it lapsed to Dhar and Dewas, to which States the annual payment should, therefore, be made. So also, on the failure of heirs to the Gagrani Thakur, his estate lapsed to Holkar and was incorporated with the Indore possessions.

§ From the Honourable the Court of Directors, dated 31st July 1850, No. 22.

12. These rights on the part of the feudal superior limit to some extent the hereditary descent of the guarantee. Wherever there are direct heirs the guarantee continues unbroken, and there is no opening for the reversionary claims of the Suzerain Chief. In all such cases, therefore, where estates or *tankhās* are claimed by virtue of direct descent from the original grantee, the decision regarding the succession is the sole prerogative of the British Government, on whom, and not on the Native Chiefs, the obligations of the guarantee rest. The only circumstances under which the superior Chiefs are entitled to a voice are when the directness or legitimacy of the descent is disputed. The reversionary interest of the superior Chiefs entitles them to a patient hearing of any reasonable objections they may bring forward on these points.

13. On the other hand, when there are no direct heirs, and it is proposed to continue the estate or *tankhā* to an adopted heir, the superior Chief cannot claim the right to decide whether or not the adoption shall be recognised, because considerations of public policy and the necessity of maintaining the peace of the country must always be of prior importance to any merely reversionary rights; and if, by refusal to recognise the adoption, the peace of the country would likely be disturbed, the British Government is justified for the same reason that

justified its interference in 1818, in recognising the adoption of an heir, whether the Suzerain Chief consent to it or not. Again, it is obvious that the superior Chief cannot bind the British Government to continue its guarantee to any adopted heir of the subordinate Thákur or *tankhádr* whom he may choose. While, therefore, in cases of adoption sanctioned by the British Government, the Suzerain Chief is entitled to a patient hearing, he is entitled to nothing more; he cannot claim any concurrent authority with the British Government in deciding the question of succession, nor, where a British guarantee is involved, can he take any step in recognition of an adopted heir prior to the action of the British Government and independently of its preliminary action. Of course, where the British guarantee is in no way involved—that is to say, in grants made by the Suzerain Chiefs of their own will without the intervention of the British Government—there is no pretension to interfere; in all such cases the questions whether the grant shall be resumed or not and who shall not succeed rest exclusively with the Suzerain Chief.

14. These considerations and those already adduced in paragraphs 9 and 10 of this letter are, in the opinion of His Excellency in Council, sufficient to establish the following rules, which may be considered as answers to the questions you have raised:—

A.—When there are direct heirs, the decision regarding the succession and the continuance of the guarantee rests solely with the British Government; but the superior Chief has a right to be heard if he has any reasonable objections to bring either (a) to the legitimacy or (b) the directness of the descent.

B.—When there are no direct heirs, the previous recognition by the British Government of the adoption is, as a rule, essential to the continuance of the guarantee: with this previous sanction the guarantee descends to an adopted heir.

C.—When previous sanction has not been obtained, the guarantee does not descend to adopted heirs, unless the adoption subsequently obtains the formal sanction of the British Government.

D.—When there are no heirs, direct or adopted, the escheat is to the Suzerain Chief.

15. There is one other general question which you have raised in connection with these guaranteed Chiefs, viz.—

V.—Whether the feudal Chiefs have the right to levy *nazarana* from the guaranteed Chief either when they themselves succeed to their territories or when the subordinate Chief succeeds to his estate, or on any other occasion on which such *nazarana* is ordinarily exacted in Native States.

In paragraphs 10 to 18 of your letter of 31st December you show what is the practice among the Chiefs themselves and what is the state of feeling on the subject. Your proposal is that, if the terms of the settlement of 1818-20 are not considered such as absolutely to interdict the claim to *nazarana*, the exercise of the right, limited as in the case of the Bundelkhand States, to the actual succession to the guaranteed *tankhá* or estate, should be permitted except in the case of those guaranteed tributary or other estates with the succession to which the feudal Chief is wholly barred from interfering, and that the amount payable on the succession should be fixed by the British Government or with its concurrence.

16. His Excellency in Council, while admitting the levy of *nazarana* as being in accordance with native custom and feeling, is of opinion that both the amount which may be taken and the occasions on which the *nazarana* may be levied should be strictly defined; otherwise the levy of *nazarana* may be made the occasion of overwhelming the petty Chiefs in pecuniary difficulties, and thus forcing them to a breach of the conditions of their *sanads*. In Bundelkhand the British Government levies *nazarana* only on successions to the different States, and the amount is limited to a quarter of a year's net revenue on direct successions and half a year's net revenue on successions by adoption. His Excellency in Council is of opinion that the levy of *nazarana* from the mediatised Chiefs on account of their guaranteed *tankhás* or estates should be limited to successions by adoption, and should not exceed one-fourth of the net revenue or *tankhá*; and on such occasions the feudal Chief should give a dress of honour equal in value to one-fourth of the *nazarana*.

17. His Excellency in Council now proceeds to pass orders regarding the special case of the Kachi-Baroda Thákurate. On 14th December 1818 a settlement was made by Sir John Malcolm with Bhagwant Singh of Kachi-Baroda, by which the Thákur received sixteen villages, subject to an annual payment of Rs. 9,459 to Dhar, and engaged to be responsible for the peace of the villages; a copy of the engagement is furnished in your letter No. 11-20-E., dated 14th January 1864. This Thákur died in 1856 without direct heirs. The matter was not reported to the Government of India, but, under instructions from Sir R. Hamilton, then Agent to the Governor-General, the Dhar State was informed that, as the Thákurate had become vacant, the guarantee was at an end; the widow of Bhagwant Singh, however, adopted Dald Singh, the present Thákur, and the adoption was confirmed by the Dhar State. The question is whether the withdrawal of the guarantee should not be cancelled.

You think that the guarantee should be restored, and that the withdrawal of the guarantee was probably made in conformity with the decision in Sobhag Singh's case, which was given in January of the same year, but which was afterwards reversed by the Court of Directors. In this opinion His Excellency in Council concurs. The reasons for the restoration of the guarantee to the Thákur of Kachi-Baroda should be fully and considerately explained to the Dhar Darbar.